



CITY OF PROVIDENCE

Jorge O. Elorza, Mayor

PERMIT AGREEMENT FOR PERSONAL TRANSPORTATION DEVICE SHARING OPERATIONS

THE CODE OF ORDINANCES OF THE CITY OF PROVIDENCE, SECTION 23-24,
PROVIDES:

No person shall in any manner obstruct the public right-of-way, except for legally parked or standing motor vehicles or upon the filing of a petition and a finding by the director of public works that the proposed obstruction does not unduly hinder the free flow of pedestrian and vehicular traffic. The director is authorized to order the removal of any obstructions.... The director is authorized to promulgate regulations to effectuate the intent hereof.

THIS AGREEMENT, made as of the ___ day of ___, 2019 by and between the City of Providence, a Rhode Island municipal corporation ("City") and [NAME OF COMPANY], a [STATE OF INCORPORATION] corporation ("Permittee") (collectively, "Parties").

WHEREAS, personal transportation devices ("PTDs" or "devices") are defined as devices that a) are designed to transport only one person in a standing or seated position, where the rider is not enclosed; b) are operated and propelled using human, electric, or motor power; c) are not greater than 24 inches wide and 42 inches long; d) are not mobility devices designed primarily for use by persons with mobility-related disabilities; and e) are not bicycles or electric bicycles; and

WHEREAS, the City controls certain public rights-of-way ("City's ROW") and recreational trails located within its municipal boundaries; and

WHEREAS, the City recently adopted regulations to facilitate and regulate PTD sharing operations within the City's ROW ("Regulations"); and

WHEREAS, Permittee owns a fleet of commercial PTDs intended or equipped for shared use by paying consumers from locations in the City's ROW ("Permittee's Fleet" or "Permittee's devices"); and

WHEREAS, Permittee's operation requires use of the City's ROW to facilitate the stationing and parking of Permittee's Fleet within the City, and the operation is considered a PTD sharing operation under the City's Regulations ("Permittee's Operation"); and

WHEREAS, Permittee has submitted a written application to the City, incorporated and attached hereto as Exhibit A ("Permittee's Application"), for a permit to implement Permittee's Operation under the provisions of the Regulations; and

WHEREAS, Allowing PTD sharing operations to exist in the City ROW will likely encourage efficient and limited use of traditional motor vehicles, thereby reducing traffic volumes, noise, and air pollution; and

WHEREAS, the City believes PTD sharing has the potential to help achieve the City's goals concerning transportation mode share, equitable access, physical and environmental health, and climate change; and

WHEREAS, the City must balance the benefits of PTD sharing operations with its duty to the public to keep streets and sidewalks safe and convenient for travelers and its laws prohibiting unregulated obstructions and encumbrances in the public ROW; and

WHEREAS, the City authorized a Pilot Program beginning in 2018, during which time the City temporarily allowed PTD sharing operations and the use of the City's ROW by approved permittees ("Pilot Program"); and

WHEREAS, based on the overall success of the Pilot Program, the City has authorized an ongoing permit program for PTD sharing operations ("Permit Program"); and

WHEREAS, this Agreement is intended to outline the terms and conditions under which Permittee shall be allowed to utilize the City ROW during the Permit Program.

NOW, THEREFORE, for and in consideration of the following terms and conditions, the Parties agree as follows:

ARTICLE I. USE OF CITY ROW

1. Authorization. In accordance with Section 23-24 of the Providence Code of Ordinances, the Director ("Director") of the Department of Public Works ("DPW"), upon consideration of the Permittee's Application, has found that the parking and obstructing of the City's public rights of way by Permittee's Fleet does not unduly hinder the free flow of pedestrian and vehicular traffic, so long as Permittee abides by the Regulations adopted by the Director.

The Director and the City therefore grant a revocable, non-exclusive permit to Permittee to implement Permittee's Operation within the City ROW during the term of this Agreement, subject to all of the terms and conditions of this Permit Agreement and the Regulations.

2. No permit issued pursuant to this Agreement shall, under any circumstances, be construed to be a lease or an easement, nor a transfer of any real property interest in the City ROW or other City property.
3. Additional Uses. Permittee expressly understands and agrees that this Agreement does not grant Permittee or its agents the ability to exclude or prohibit others from using the City ROW. Permittee further understands and agrees that the City holds its interest in the City ROW in trust for the public, and that the City's uses, needs, and obligations shall at all times supersede Permittee's privileges under this Agreement.

ARTICLE II. TERM

The term of this Agreement shall be for one (1) year from the issuance of the permit, unless terminated earlier as provided in this Article. The City may for any reason, in its sole discretion, revoke or terminate any permit provided for by this Agreement, upon providing twenty-four (24) hours' written notice to the Permittee. In the event of early termination or revocation, Permittee shall be granted one week in which to collect and remove Permittee's devices and any other facilities owned by Permittee, and to restore the City ROW in accordance with Article V, Paragraph 4 of this Agreement. The provisions of Article V, Paragraph 9 shall survive revocation or termination of this Agreement.

ARTICLE III. TERMS AND CONDITIONS FOR USE OF CITY ROW

Permittee shall implement Permittee's Operation in accordance with the terms and conditions outlined in the Regulations Governing the Placement and Operation of Personal Transportation Devices in the City of Providence.

ARTICLE IV. PAYMENT TERMS AND CONDITIONS

1. Permittee shall receive no compensation from the City under this Agreement.
2. Per-device fee. At the time of permit issuance, Permittee shall pay the City a charge of \$80.00 per permitted device per Term to offset the City's cost impacts, newly required City infrastructure, implementation and oversight of this Permit Agreement. All devices added during the Term of the Permit Agreement shall be subject to the same annual charge; the charge shall not apply to replacement Fleet devices.
3. Street Ambassador fee. Permittee shall additionally pay the City \$20.00 per device toward a Street Ambassador program deployed to publicize the reduced-fare programs of all mobility services in the City. Permittee shall also provide the Street Ambassador program with printed materials to assist in such publicity.

ARTICLE V. REPRESENTATIONS AND GENERAL CONDITIONS

1. Ownership and Condition of ROW. This Agreement shall not be construed so as to transfer ownership or control of the City's ROW to Permittee, or to any other party. The City makes no representations or warranties concerning the condition of the City ROW, or its suitability for use by Permittee, its contractors or customers.
2. Delegation of Police Power. This Agreement does not delegate or otherwise transfer the City's police power to regulate PTDs, Permittee's Operation, and/or to enforce City regulations or other laws, to Permittee or to any other party. Permittee understands and agrees that ultimate decisions related to City enforcement against third parties and/or public compliance issues, shall remain within the City's sole discretion.
3. Compliance with Laws. Permittee agrees to comply with all applicable Federal, State, and local laws as they may be adopted or amended from time to time. Permittee further acknowledges that its rights are subject to the lawful exercise of the police power of the City to adopt, amend, and enforce regulations, resolutions, and policies designed to promote the safety and welfare of the public.

4. Removal upon Order. Permittee shall remove at once any or all devices or other property owned or controlled by Permittee upon being ordered to do so by the City. Permittee shall be responsible for restoring the City ROW to its original condition, and the City shall not be liable for any damages resulting to Permittee by reason of such an order. Such removal and restoration of the City ROW shall be at the sole expense of Permittee. Upon failure of Permittee to remove devices or other property as ordered within a reasonable time period, the City may perform the removal or work at Permittee's cost and/or initiate a claim against Permittee.

On occasions when the City issues a parking ban or school closure for snow events or any other reason, or when Permittees are notified of the need for device removal at the Director's discretion, Permittee shall remove all devices such that snow clearing and other emergency crews can complete their duties without obstruction. At the discretion of the Director, Permittee shall be provided 12 hours' notification by email or phone from the DPW to remove devices from the public ROW during emergency situations including inclement weather. Fleet devices shall remain off the streets until further notice by DPW. If less than 12 hours' notice is provided, Permittee shall turn off and make inoperable all devices within two (2) hours of notification to do so by DPW with removal of all devices within 12 hours. In no instance shall the City be liable for any damage to devices due to work associated with snow or ice removal or other emergency related work.

5. Equal Opportunity Statement. Permittee agrees to comply with the provisions of all applicable federal, state and local statutes, ordinances, and regulations pertaining to civil rights and nondiscrimination.
6. Non-Discrimination. Permittee shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affection preference, disability, age, marital status or status with regard to public assistance or as a veteran. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
7. Insurance. Permittee shall secure and maintain insurance issued by insurance companies acceptable to the City, admitted in Rhode Island, and meeting an A.M. Best's minimum rating of A- and IX. The insurance specified may be in a policy or policies of insurance, primary or excess. Full copies of all insurance policies covered under this section shall be provided to the City upon issuance of permit. Such insurance shall be in force on the date of execution of the Agreement and shall remain continuously in force for the duration of the Contract. Such insurance shall name "The City of Providence, its agents, servants, officers, and employees" as additional named insureds. The Permittee and any sub-contractors carrying out work related to this Agreement shall secure and maintain the following insurance:
 - a. Workers Compensation insurance that meets the statutory obligations with Coverage B- Employers Liability limits of at least \$100,000 each accident, \$500,000 disease - policy limit and \$100,000 disease each employee.
 - b. Commercial General Liability insurance with limits of at least \$2,000,000 general aggregate, \$2,000,000 products - completed operations \$2,000,000 personal and advertising injury, \$100,000 each occurrence fire damage and \$100,000 medical expense any one person. The policy shall be on an "occurrence" basis and shall include contractual liability coverage.

- c. Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with full automobile coverage including damages, contents and vandalism and limits of at least \$1,000,000 per accident.
- d. Computer Security and Privacy Liability for the duration of this agreement providing coverage for, but not limited to, Technology and Internet Errors & Omissions, Security and Privacy Liability, and Media Liability. Insurance shall provide coverage against claims that arise from the disclosure of private information from files including but not limited to intentional, fraudulent or criminal acts of the Permittee, its agents or employees, and breach of the City's private data, whether electronic or otherwise. The insurance policy shall provide minimum coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If written on a Claims-Made basis, the policy shall remain in continuous effect for at least 3 years after the service is provided or include a 3-year extended reporting period.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Permittee. Any policy deductibles or retention shall be the responsibility of the Permittee. Permittee waives its right to subrogation for the above listed coverages. Permittee shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Permittee's interest or provide adequate coverage. Evidence of coverage is to be provided on a current ACORD Form. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. Permittee shall require any of its subcontractors, if sub-contracting is allowable under this Agreement, to comply with these provisions, or the Permittee shall assume full liability of the subcontractors.

8. Hold Harmless and Defend. The Permittee agrees to indemnify, hold harmless and defend the City, its elected and appointed officers, employees and agents from and against any and all liabilities, claims, demands, or causes of action of any manner or kind arising out of or resulting from, the action or inaction of the Permittee, including but not limited to the presence, location, use, operation, installation, maintenance, placement or removal of PTDs, or by the acts or omissions of the employees, agents, contractors or subcontractors of the Permittee in connection with the PTDs. The City does not require PTD users over the age of 15 to wear helmets. If the Permittee requires helmets, all liability for their customers' failure to comply with this requirement is assumed by the Permittee.
9. Assignment or Transfer of Interest. Permittee shall not assign any obligation or interest in this Agreement, and shall not transfer any obligation or interest in the same either by assignment or novation without the prior written approval of the City, provided, however, that claims for money due or to income due to the Permittee may be assigned to a bank, trust company or other financial institution, or to a Trustee in Bankruptcy without such approval. Notice of any such assignment or transfer shall be furnished to the City. Except as provided herein, Permittee shall not subcontract any services under this Agreement without prior written approval of the Director.
10. Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner to, create or establish the relationship of employer/employee between the parties. Permittee shall at all times remain an independent contractor with respect to the work and/or services to be performed under this Agreement. Any and all employees of Permittee or other persons engaged in the performance of any work or services required by Permittee under this Agreement shall be considered employees or

subcontractors of the Permittee only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Rhode Island or any other state on behalf of said employees or other persons while so engaged in any of the work or services to be rendered or provided shall be the sole obligation and responsibility of Permittee.

11. Retention of Records. Permittee shall retain all records pertinent to this Permit Agreement for a period of ten (10) years. This provision expressly excludes any and all identifiable customer usage or location data.
12. Data Practices. Permittee agrees to comply with all applicable state and federal laws relating to data privacy or confidentiality. Permittee shall immediately report to the City any requests from third parties for information relating to this Permit Agreement. The City agrees to promptly respond to inquiries from Permittee concerning data requests. Permittee agrees to hold the City, its officers, and employees harmless from any claims resulting from Permittee's unlawful disclosure or use of data protected under state and federal laws.
13. Inspection of Records. All Permittee records with respect to Permittee's obligations under this Permit Agreement shall be made available to the City or its designees at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Permittee specifically acknowledges that the City is a public body subject to the Rhode Island Access to Public Records Act – Rhode Island General Laws Chapter 38-2.
14. Ownership of Materials/Intellectual Property. All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials furnished by the City in connection with this Agreement shall be the property of the City. The City may use, extend, or enlarge any document produced by the City under this Agreement without the consent, permission of, or further compensation to Permittee.

Each party acknowledges and agrees that each party is the sole and exclusive owner of all right, title, and interest in and to its services, products, software, source and object code, specifications, designs, techniques, concepts, improvements, discoveries and inventions including all intellectual property rights, including without limitation any modifications, improvements, or derivative works, created prior to, or independently, during the term of this Agreement. This Agreement does not affect the ownership of each party's pre-existing intellectual property. Each party further acknowledges that it acquires no rights under this Agreement to the other party's pre-existing intellectual property, other than any limited right explicitly granted in this Agreement.

15. Reduced-fare program. Permittee shall establish a reduced-fare program whereby eligible customers can use the service at no greater than 50% of the regular fare. Qualifying programs shall include the federal Supplemental Nutrition Assistance Program ("SNAP") and Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), as well as Rhode Island Public Transit Authority reduced-fare pass program, the RIWorks program, residency in a Providence Housing Authority property, and cohabitation with a child eligible for free or reduced-price school lunch.
16. Cash payment. Permittee shall establish a program through which customers without bank accounts or credit cards may use cash to top up their accounts. There shall be at least five locations within the City of Providence where the cash payment program may

be accessed.

17. Launch deadline. Permittee shall deploy its full fleet within one month of permit issuance.
18. Consultation regarding fare increases. Permittee shall seek and consider input from the City at least one month before raising customer fares. Fares shall not increase more than 10% from initial approved levels within the Term without prior written approval from the Mayor of Providence.
19. Local presence. Permits shall be conditional upon documentation of a physical staffed operations center within the City of Providence. Permittee shall provide the City with the street address of the operations center, as well as around-the-clock contact information (name, phone number, and email) of a manager/operations staff member with decision-making power who can respond to City requests, emergencies, and other issues at any time.
20. Contacts. The following are designated as official representatives for each of the Parties, and as points of contact for purposes of delivering or receiving notice, contract management, official requests, and all other communication contemplated under this Permit Agreement:

For the City: Alex Ellis, Principal Planner
aellis@providenceri.gov
444 Westminster St
Providence, RI 02903
(401) 824-6602

Antonio Morabito, Director of Public Works:
700 Allens Ave
Providence, RI 02905

For Permittee:

Either party may change the notice persons and addresses by sending the change in writing to the other party.

21. Entire Agreement. This Permit Agreement and attachments and other documents named, is the entire agreement between the parties. All attachments to the Agreement, whether described as an exhibit, endorsement, schedule, addendum or otherwise, are incorporated by reference. Any conflict between the terms contained in the body of the Agreement and such attachment will be governed by the terms contained in the body of the Agreement, except as specifically provided otherwise. No modification of this Agreement shall be valid or effective unless made in writing and signed by the parties.
22. Interpretation of Agreement. In interpretation of this Agreement, the language of the Agreement shall prevail, followed by the language of Permittee's Application.
23. Governing Law. This Agreement shall be governed by, interpreted and construed in accordance with the State of Rhode Island. Any actions brought concerning this Agreement shall be filed in the appropriate state or federal court in the State of Rhode Island. The Agreement shall be subject to applicable federal laws, rules, and regulations.

24. Waiver. The waiver by either party of a failure to strictly perform any provision of the Agreement is not a waiver of future performance/breach.

25. Severability. If any provision or provisions of this Agreement shall be held to be illegal, invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired; provided, however, that in the event such remaining provisions are inadequate to permit each party to realize the material benefits for which it has bargained, then the Permittee and the City shall undertake good faith efforts to negotiate mutually acceptable substitute provisions which are valid, legal and enforceable and which most nearly provide for the material benefits sought to be accomplished by the provision or provisions held to be illegal, invalid or unenforceable.

IN TESTIMONY WHEREOF, the said parties have signed and executed this instrument the day and year first above written.

For the Permittee:

By: _____

Its: _____

For the City of Providence:

By: _____

Approved as to form:

Jeffrey Dana, City Solicitor

- ADDENDUM 1: MAP
- ADDENDUM 2: RESPONSE TIME GRID
- ADDENDUM 3: MICRO-MOBILITY PARKING ZONE SPECIFICATIONS
- ADDENDUM 4: RUBRIC