



**Conditions of Approval for
Personal Delivery Device “PDD” Use Permit**

Updated November 13, 2017

A. The operation of any PDD shall not commence in, on or over the surface of any public thoroughfare, right-of-way or City property without first complying with the conditions set forth below.

B. The use of a PDD authorized by this Permit may operate solely on sidewalks and crosswalks, and transitorily on public thoroughfares interconnected to sidewalks, and crosswalks.

C. Any PDD operated pursuant to this Permit shall:

- i. Be operated in a safe and non-hazardous manner so as not to endanger pedestrians, bicyclists, other lawful users of public space or property;
- ii. Not operate above a maximum speed of 10 miles per hour;
- iii. Have a gross weight of less than 80 pounds, excluding cargo;
- iv. Not interfere with pedestrians or bicycle traffic;
- v. Yield the right-of-way to all vehicles approaching on a roadway upon entering a crosswalk to the extent necessary to safely cross the roadway, except when crossing pursuant to a crosswalk pedestrian signal;
- vi. Not operate on any sidewalk or crosswalk without a PDD operator (“Operator”) actively controlling or monitoring the navigation and operation of the PDD.
- vii. Have a system that alerts the Operator if a technology failure or loss of communication occurs, and when such alert is given, that:

1. Requires the Operator to assume direct control of the PDD; and
 2. If the Operator is unable to assume control of the device, causes the PDD to safely come to an off-roadway stop.
- viii. Obey all traffic and pedestrian control signals, signs, markings, or other restrictions.
- ix. Include a plate or marker that may be easily read by pedestrians near the PDD and that identifies the Permittee's website address and contact information. Lettering shall have a font size that is a minimum of 1" tall.
- x. Not unreasonably interfere with pedestrians or traffic, and yield to pedestrians, including, without limitation, pedestrians using personal assistive mobility devices, persons using skates or skate boards on the sidewalk, and cyclists using any sidewalk, crosswalk or public thoroughfare.
- xi. Not operate on a State or County highway or private roadway where the City does not hold an easement right allowing public access, including the sidewalk, crosswalk, or public thoroughfare associated with said State or County highway or private roadway unless express authorization by the owning jurisdiction/entity is received and provided to the City.

D. In the case of a technology failure or other circumstances that cause the PDD to come to a stop in a location other than property owned or leased by Permittee, Permittee shall remove the PDD within 12 hours.

E. Permittee shall provide staffing sufficient to respond quickly to inquiries from the public and shall respond to such inquiries within 48 hours.

F. Permittee shall document and report to City every incident involving an injury to an individual and/or animal; every incident resulting in damage to property; every incident involving a collision with any individual, animal, or property; any other operational safety issues; and any complaints from members of the public. These incident reports shall, at a minimum, include the location, circumstances and description of the incident or safety issue. Permittee shall transmit incident reports to City within 6 hours of any incident involving an injury to a person or animal and within 24 hours for any other incident or safety issue. In addition, all data capturing any incident shall be stored, maintained, and be readily available for retrieval by the City.

G. Indemnity. Permittee agrees to defend, reimburse, indemnify, and hold City and its City Council, officers, officials, employees, contractors, agents and representatives (all of the foregoing collectively "Indemnitees") harmless from and against all actual and alleged liability, loss, cost, claims, demands, causes of action, suits, legal or administrative proceedings, penalty, deficiency, fine, damage and expense (all of the foregoing collectively "Claims") resulting from or arising in connection with work, use, or activities performed by Permittee pursuant to this Permit (including without limitation, any Claims related to death or injury of any person), whether such work, use, or activities are performed by the person or property of Permittee, its PDDs, officers, directors, members, employees, agents, consultants, contractors or subcontractors (collectively, "Agents"), its invitees, guests customers or business partners (collectively, "Invitees"), or third persons related to the work, use or activities contemplated by this Permit (together with Permittee, Agents, and Invitees, the "Permittee Parties"); Claims resulting from or arising in connection with the failure of Permittee or Permittee Parties to perform work under this Permit or comply with the terms and conditions of this Permit; Claims resulting from or arising in connection with the use of any sidewalks, crosswalks and public thoroughfares or the improvements located thereon by Permittee or Permittee Parties; or Claims arising as a result of or in connection with any release of any Hazardous Material in, on, under or about the any property by Permittee, or Permittee Parties, or any other violation of any Environmental Law by Permittee or Permittee Parties. In addition to Permittee's obligation to indemnify City, Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. Permittee's indemnification obligations under this Permit do not apply to any Claims caused solely by the gross negligence or willful misconduct of any of the Indemnitees. Permittee's preceding indemnification obligations shall survive the expiration or earlier termination of this Permit. The foregoing indemnity shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, investigation and remediation costs and all other reasonable costs and expenses incurred by the Indemnified Parties. Permittee's obligations under this Section shall survive the expiration or other termination of this Permit. City and City Indemnified Parties shall have no liability to Permittee or any Permittee Party as the result of damage or loss to property or injury or death to any such person arising on any sidewalk, crosswalk, or public thoroughfare or out of the work, use or activities conducted on any sidewalk, crosswalk, or public thoroughfare, except for damages to Permittee property caused by the gross negligence or willful misconduct of City.

H. Insurance. During the term of this Permit, Permittee shall maintain the following insurance coverages. The insurance carrier is required to maintain an A.M. Best rating of not less than "A:VII":

- i. Commercial General Liability Insurance. Commercial general liability insurance written on an occurrence basis, on a form that provides coverage at least as broad as form ISO CG 00 01, covering the insured with a duty to

defend against claims of bodily injury, personal injury and property damage arising out of Permittee's activities, assumed liabilities, or use of any City property (including, without limitation, sidewalks, crosswalks, public thoroughfares, and rights-of-way) (the "City Property"), including contractual liability coverage for the performance by Permittee of the indemnity agreements set forth in this Permit, and coverage for damage to the City Property (including all improvements in Permittee's care, custody, or control), for limits of liability not less than:

- Bodily Injury, Personal Injury: \$2,000,000 each occurrence and \$4,000,000 annual aggregate
 - Property Damage Liability: \$1,000,000 annual aggregate
- ii. Automobile Liability Insurance. Automobile liability insurance policy on insurance form CA 0001 with a minimum limit of not less than \$1,000,000 per accident. Coverage shall be applicable to all owned, hired or non-owned vehicles on the City Property.
- iii. Workers' Compensation and Employers' Liability. Workers' compensation policy written in accordance with the laws of the State of California. This policy shall include employer's liability coverage with limits not less than \$1,000,000 per occurrence. The Worker's Compensation policy shall contain an endorsement stating that the insurer waives any right to subrogation against the City.
- iv. Damage to Permittee Property. Permittee hereby waives any recovery of damages against City (including its employees, officers, directors, agents, or representatives) for loss or damage to any structures, tenant improvements and betterments, fixtures, equipment, and any other personal property.
- v. The minimum limits of policies of insurance required of Permittee under this Permit shall in no event limit the liability of Permittee under this Permit. Such insurance shall: (i) name City as an additional insured; (ii) be primary insurance as to all claims thereunder and provide that any insurance carried by City is excess and is non-contributing with any insurance requirement of Permittee; (iii) provide that such insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to City; and (iv) contain a waiver of subrogation and cross-liability endorsement or severability of interest clause acceptable to City. Permittee shall deliver certificates thereof on or before the commencement date of this Permit and delivery of such policy or policies shall be a prerequisite to and condition of Permittee's right to use the City Property pursuant to this Permit.

- vi. For all liability policies required above, Permittee shall cause City to be named as a Certificate Holder on Accord-25 Certificates of Insurance that contain language requiring 30 days written notice to City in the event of cancellation or material change in any scheduled policy.
- vii. For all property policies required above, Permittee shall cause City to be named as a Certificate Holder on Accord 27 Certificates of Insurance that contain language requiring 30 days written notice to City in the event of cancellation or material change in any scheduled policy.
- viii. With regard to the liability insurance policies required above, such insurance policies shall name City as an additional insured on endorsement forms that comply with the terms of this Permit and are reasonably acceptable to City.
- ix. All policies required hereunder shall provide for the following: (i) name as additional insureds the City and its officers, agents and employees; (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability, and (iii) include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Permittee's waiver of claims against City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from Permittee's activities (and actions of Permittee Parties) under this Permit (excluding non-negligent aggravation of existing conditions with respect to Hazardous Materials).
- x. Prior to the commencement date of this Permit, Permittee shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within five (5) days after delivery to Permittee of bills therefore.
- xi. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that

claims investigation or legal defense costs are included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

- xii. Should any of the required insurance be provided under a claims made form, Permittee shall maintain such coverage continuously throughout the term of this Permit and, without lapse, for a period of three (3) years beyond the Permit expiration or termination, to the effect that should any occurrences during the Permit term give rise to claims made after expiration or termination of the Permit, such claims shall be covered by such claims-made policies.
- xiii. Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Permit or any of Permittee's other obligations hereunder. Notwithstanding anything to the contrary in this Permit, this Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

I. Protection of Property.

- i. **Liability.** Permittee shall be responsible and liable for any and all damages to City Property, other City structures and property, other public space or property, and private property due directly or indirectly to any Permittee action and shall promptly pay any just claim therefor.
- ii. **Repair.** Permittee shall be responsible for restoring to its former condition, as nearly as may be possible, any portion of the City Property, right of way, other public space or property, or private property which has been disturbed due directly or indirectly to any Permittee action. If such areas are not restored as provided herein, or if City elects to make repairs, Permittee agrees by acceptance of Permit to bear the actual cost thereof.
- iii. **Sidewalk Access Ramps.** Any portion of an existing sidewalk ramp is damaged, altered, or replaced due directly or indirectly to any Permittee action, Permittee shall be required to reconstruct such ramp in compliance with current ADA standards.
- iv. **Warranty.** All improvements, construction, reconstruction, repairs and other work performed within the City Property, right of way, other public space or property, or private property shall be warranted to be free from defects for a minimum period of one (1) year after City's final inspection and acceptance (if a public facility) or completion thereof (if a private facility). Permittee shall undertake necessary corrective work and repairs within ten

(10) business days of receipt of City's notice of defective work and shall complete repairs and corrective work diligently.

J. Permittee shall not use or permit the use of any PDD in any manner that would tend to create a nuisance or in a way that compromises the public health, safety, or welfare, or the public's use of the right-of-way.

K. All of Permittee's activities shall be performed at Permittee's sole cost, risk and expense. This permit does not entitle Permittee to install any improvements on any property within the City.

L. The term of this Permit shall commence on the date the Permit is issued and shall continue in full force until December 31, 2018, unless earlier terminated pursuant to the terms of this Permit.

M. The City may at its sole option freely terminate the pilot program or revoke this Permit at any time without cause or liability, and without any obligation to pay any consideration to Permittee. Upon any expiration, revocation or termination, Permittee shall immediately stop operations.

N. Permittee shall ensure adequate visibility of the PDD during daytime and nighttime hours of use. PDDs operated during darkness shall have reflectors at least in front and back that are visible from at least 200 feet away, and lights that cover the direction of movement including white lights in front and red lights in the back that are visible from at least 300 feet away.

O. If any term, provision or condition of this Permit is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Permit shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged thereby.

P. This Permit, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Permit shall be filed in the Superior Court of San Mateo County, California or in the Federal District Court for the Northern District of California.

Q. The rights granted hereby are personal to Permittee and may not be transferred or assigned by operation of law or otherwise without the written consent of City. Nothing in this Permit is intended to or shall confer upon any person other than the Permittee and the City any rights or remedies hereunder.

R. Definitions – for the purpose of this program, the term:

- i. “Crosswalk” means that part of a roadway at an intersection included within the lateral lines connecting sidewalks on opposite sides of the roadway.
- ii. “Pedestrian” means any person afoot or who is using a wheelchair.
- iii. “Personal Delivery Device” means a device powered by an electric motor, for use primarily on sidewalks, capable of transporting items with or without an operator directly controlling the device; identifying and yielding to pedestrians, bicyclists, other lawful users of public space, and property; navigating public thoroughfares; and interpreting traffic signals and signs at crosswalks.
- iv. “Public thoroughfare” means any street, road, alley, paved public space, or sidewalk that is under the jurisdiction of the City of Redwood City.