

SHARED MICROMOBILITY DEVICE LICENSE AGREEMENT

Effective Date: September 7, 2021

City: City San Marcos, Texas, a home rule municipal corporation, 630 East Hopkins Street, San Marcos, Hays County, Texas 78666

Licensee: Skinny Labs Inc. dba Spin, 450 Mission Street, STE 400, San Francisco, California 94105

Right-of-Way: All public roads, streets, avenues, boulevards, thoroughfares, and other pathways owned by or within the control of City within the City limits of San Marcos, Texas, subject to limitations as set forth in in this License Agreement, applicable ordinances and rules adopted by City regarding the use of City property or facilities.

1. Background and Purpose. City and Texas State University (“Texas State”) issued a joint request for proposals identified as RFP No. 754-TXST-2021-RFP-254-TRANSPT (the “RFP”) seeking proposals to make available for use by the public certain shared micromobility devices (“SMD’s”) such as electric scooters and electric pedal assist bicycles. Licensee submitted a proposal, together with a best and final, offer dated July 9, 2021 (collectively, the “Proposal”) in response to the RFP. The Proposal was accepted by City. Under the terms of the RFP, the successful proposer would be granted a license by the City to enable operation of SMD’s within the City. The purpose of this License Agreement is to establish terms and conditions under which Licensee will be allowed to make available for use by the public certain SMD’s to be operated on the Right-of-Way.

2. Grant of License. City hereby grants a non-exclusive license to Licensee (and the individual users of whom have booked an SMD using the Spin mobile app) to allow SMD Services. “SMD Services” means an SMD program, which includes the provision, deployment, management, operation, maintenance, parking, and other use of SMD’s. This License Agreement is only a grant of permission by the City for Licensee to conduct certain activities and is not a conveyance of an interest in real property.

a. Subject to Terms. The grant of a license under this License Agreement is subject to any restrictions herein and the terms and conditions of the RFP and the Proposal. The RFP and the Proposal are incorporated herein by reference for all purposes and this License Agreement, the RFP and the Proposal may, collectively, be referred to as the “License Agreement.” In the event of a conflict between this License Agreement, the RFP and the Proposal, the Proposal shall control over this License Agreement and the RFP shall control over the Proposal, unless specifically stated otherwise herein.

b. Limited to City Property. Licensee hereby acknowledges that it shall not represent to any third party that the City has authorized Licensee to conduct its activities or allow the operation of SMD’s in a manner that encroaches on or utilizes any third party’s

property. Licensee is solely responsible for securing authorizations to do so from such third parties.

c. As-Is. Licensee acknowledges that it enters into this License Agreement with the understanding that the Right-of-Way is provided for use “AS-IS” with all faults and without any representations or warranties as to condition or suitability for use for the purposes of this License Agreement

3. General Obligations of Licensee. In consideration of being allowed to conduct SMD Services, Licensee agrees to conduct its activities as set forth in the RFP and Proposal and supplemental provisions herein. Where no time is specified for Licensee’s satisfaction of obligations, the City Manager or the City Manager’s designee shall negotiate with Licensee and approve the time allowed therefor. If the parties are unable to mutually agree on any such time frames, City may suspend this License Agreement pending resolution of a disagreement.

a. SMD Services. Licensee shall perform the SMD Services in a professional and workmanlike manner in accordance with the prevailing industry standards, including, without limitation, meeting the additional standards and obligations set forth in this License Agreement.

b. Placement and Installations. Except for placements or attachments of SMD’s in accordance with this License Agreement, Licensee shall not place or attach any personal property, fixtures, or structures within the RIGHT-OF-WAY without City’s prior written consent. Licensee shall use reasonable efforts to ensure that: (i) its provision of the SMD Services does not unreasonably block pedestrian walkways or the RIGHT-OF-WAY or create conditions that threaten public safety; and (ii) SMD’s are parked in an orderly fashion on the RIGHT-OF-WAY or in otherwise agreed-upon designated areas; provided, that SMDs parked on non-City Property (i.e., private property) will be at the discretion of such property owner or occupier. City shall notify spin@support.pm, through Licensee’s customer service app portal listed in the Proposal, or through another agreed-upon mechanism for any SMD that, in City’s reasonable discretion, is adversely affecting the Right of Way. Licensee shall be responsible to correct improperly parked SMD’s within the timeframes listed in the Proposal. The minimum requirements of the Americans with Disabilities Act of 1990, as amended, will be met at all times.

c. Repairs. Licensee shall repair, replace, or otherwise restore—or reimburse City for its reasonable and documented costs in repairing, replacing, or otherwise restoring—any part or item of City-owned real or personal property that is damaged, lost, or destroyed as a result of Licensee’s operation of the SMD Services.

d. Reports. Licensee shall provide monthly reports to City throughout the Term concerning utilization of the SMD’s and route usage.

4. License Fee. Licensee shall compensate the City in the amount of 20 cents (\$0.20) per trip that starts in the City of San Marcos as stated in the best and final offer dated July 9, 2021.

Payment shall be made twice per year for the periods ending September 30 and March 31. Payment shall be remitted to City on or before the 30th day following the end of each such period.

5. Right of Use of Right-of-Way by City and Release of Liability. Neither the granting of the license, nor any related permit, constitutes an abandonment by City of any City property, or any other rights or real property interests of City. The City, for itself and all entities authorized by applicable laws or by City to use the Right-of-Way, reserves the right at all times, to use and maintain the Right-of-Way for all lawful purposes and to perform related construction, maintenance and operation activities on, under or above the Right-of-Way. **Licensee acknowledges that the City's rights in relation to use of the Right-of-Way shall have priority over Licensee's rights granted under this License Agreement. City shall have no liability for, and Licensee specifically releases City from, any liability or claims, including those arising from death, injury or property damage associated with Licensee's activities and the operation of Licensee's SMD's upon the Right-of-Way, regardless of whether caused or alleged to have been caused by City's maintenance or use of the Right-of-Way.**

6. Extra Costs to City. Licensee shall pay or reimburse City for any additional costs incurred by City as a result of Licensee's activities under this License Agreement as set forth in the RFP and Proposal. Notwithstanding the RFP and Proposal, City may, by providing a written invoice therefor, charge Licensee for the costs incurred by the City if:

- a. any installation, reinstallation, relocation or repair of any existing or future public improvements by City within the Right-of-Way is made costlier by virtue of Licensee's activities under this License Agreement; or
- b. Licensee damages any City property when installing any equipment, facilities or structures.

Licensee shall, within 30 days of receipt of such an invoice from the City, pay the invoice. If Licensee fails to timely pay such invoice, City may suspend this License Agreement until the invoice is paid, assess the penalties as set forth in this License Agreement.

7. Insurance. This License Agreement shall not be effective unless and until Licensee satisfies the insurance requirements below. During the term of this License Agreement Licensee shall procure and maintain, at its expense insurance as set forth in Exhibit A, attached hereto and made a part hereof. If such insurance policies are not kept in full force and effect throughout the term of this License Agreement, the License Agreement may be suspended immediately by City upon providing written notice of suspension to Licensee for the duration of such non-compliance. Spin may use subcontractors in the performance of activities under this License Agreement and such subcontractors shall procure and/or maintain insurance coverage at the limits described above.

8. Compliance with Laws and Regulations. Licensee agrees to comply with all federal, state laws and local ordinances in conducting its activities under this License Agreement.

9. Indemnity and Release.

a. Indemnity. Licensee agrees to indemnify, save harmless, and defend City, its elected officials, agents and employees, from all claims, lawsuits, liens, costs, including reasonable attorney fees, losses, or damages (collectively, "Claims"), brought against City and caused by or resulting from a negligent act, error, omission, or willful misconduct by Licensee or Licensee's employees, contractors or agents.

b. Release. Licensee hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all Claims, caused by or alleged to be caused by, arising out of, or in connection with the City's rights in, use or maintenance of the Right-of-Way and the performance of any maintenance, construction, reconstruction, repair, relocation, expansion, or removal of any of City's facilities on, above or under the Right-of-Way. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by the Licensee, any subcontractor, or any person or organization directly or indirectly employed by any of them. This release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City.

10. Representations and Warranties; Disclaimers.

a. By Licensee. Licensee represents, warrants, and covenants that it is in compliance with, and during the Term shall comply with, all statutes, ordinances, regulations, and requirements of all governmental entities applicable to its provision of the SMD Services under this Agreement. If any license, permit, or other governmental authorization is required for Licensee's lawful use or occupancy of Right of Way or any portion thereof, Licensee shall procure and maintain such license, permit, and/or governmental authorization (a "Permit") throughout the Term. City shall reasonably cooperate with Licensee, at no additional cost to City, such that Licensee can properly comply with this section, including, without limitation, by facilitating Licensee's procurement and maintenance of any Permit, subject to requirements of applicable ordinances. Licensee further represents, warrants, and covenants that (a) it has the full right, power and authority to enter into this Agreement and to perform the acts required by it hereunder, and (b) the execution of this Agreement and performance by City of its obligations hereunder do not and shall not violate any agreement to which Licensee is otherwise bound.

b. By City. City represents, warrants, and covenants that (a) it has the full right, power and authority to enter into this Agreement and to perform the acts required by it hereunder, and (b) the execution of this Agreement and performance by City of its obligations hereunder do not and shall not violate any agreement to which City is otherwise bound.

c. Disclaimers. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR

WARRANTY TO THE OTHER PARTY. WITHOUT LIMITING THE FOREGOING: (I) CITY SHALL NOT BE RESPONSIBLE FOR, NOR INCUR ANY LIABILITY FOR, ANY SECURITY AT ANY LOCATION WHERE THE SMD'S ARE STORED, PARKED, OR OTHERWISE MAINTAINED AND LICENSEE HEREBY WAIVES ANY CLAIM AGAINST CITY IN THE EVENT THAT ANY SMD IS LOST OR DAMAGED; AND (II) LICENSEE PROVIDES THE THE USAGE DATA AND ANY OTHER INFORMATION HEREUNDER "AS-IS" WITH NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT THAT SUCH USAGE DATA IS ACCURATE TO THE BEST OF THE KNOWLEDGE OF THE LICENSEE'S REPRESENTATIVES PREPARING THE USAGE DATA OR SUBMITTING THE USAGE DATA TO THE CITY.

11. Assignment. Licensee may not assign this License Agreement without the written consent of the City.

12. Term. The initial term of this License Agreement shall be from the Effective Date until June 30, 2022. The parties may renew this License Agreement for up to five additional one year terms upon mutual written agreement.

13. Penalties and Remedies. City may assess penalties against Licensee for non-compliance with this License Agreement as set forth in Exhibit B, attached hereto and made a part hereof. Either party may pursue such remedies as are available at law or in equity in relation to this License Agreement not otherwise specified herein.

14. Termination.

a. Termination of Texas State Contract. At the discretion of either party, upon delivery of written notice to the other party, this License Agreement may be terminated immediately if Licensee's corresponding contract with Texas State to provide SMD Services is terminated.

b. Termination for Cause. For violations of this License Agreement by Licensee for which penalties are not specified, City shall provide notice of the violation. If the violation is not cured within 60 days after receipt of such notice by Licensee, City may terminate this License Agreement. Notwithstanding the foregoing, City may suspend this License Agreement as specifically stated elsewhere herein. A suspension of this License by City shall not extend the term of this License Agreement.

c. Termination for Convenience. Either party may terminate this License Agreement for convenience by providing at least 60 days' written notice of termination to the other party.

d. Removal of Licensee Property. Upon termination of this License Agreement, Licensee, at its own expense, shall cease operation of its activities authorized under this License Agreement and, within 30 days after termination of this License Agreement, shall remove its SMD's and other property on or affixed to the City's Right-

of-Way. After such 30-day period any such License property remaining shall be considered abandoned and may be disposed of by City.

15. Miscellaneous.

a. Entire Agreement. This License Agreement, inclusive of all exhibits, the RFP and Proposal, contains the full and complete understanding and agreement between the parties relating to the subject matter hereof and supersede all prior and contemporary understandings and agreements, whether oral or written, relating such subject matter hereof. Any modification or amendment to this Agreement shall be effective only if in writing and signed by both parties.

b. Amendment. This Agreement may be amended by mutual agreement of the parties. Such amendments shall only be effective if incorporated into written amendments to this Agreement and executed by duly authorized representatives of the parties.

c. 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.

d. Governing Law and Venue. The laws of the State of Texas, without reference to its choice or conflicts of laws provisions, shall govern the interpretation and enforcement of this Agreement. Venue for any disputes arising under this Agreement shall be in the state courts having appropriate jurisdiction in Hays County, Texas, or, if in federal court, the United States District Court for the Western District of Texas, Austin Division.

e. 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.

[SIGNATURES ON NEXT PAGE]

EXECUTED to be effective as of the Effective Date first written above.

LICENSEE:

CITY:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF TEXAS)

)

COUNTY OF HAYS)

This instrument was acknowledged before me on _____, 2021 by Bert _____, _____ of the City of San Marcos, a Texas municipal corporation, in such capacity, on behalf of said municipality.

Notary Public, State of Texas

STATE OF _____)

)

COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, by _____, _____ of Skinny Labs, Inc., dba Spin, in such capacity, on behalf of said corporation.

Notary Public, State of Texas

EXHIBIT A
INSURANCE REQUIREMENTS

- Workers' Compensation Insurance coverage for each of the Licensee's employees employed on this project. The Licensee must meet the statutory requirements of the Tex. Lab. Code, 401.011(44); and
- Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

<u>Employers Liability - Each Accident</u>	<u>\$2,000,000</u>
<u>Employers Liability - Each Employee</u>	<u>\$2,000,000</u>
<u>Employers Liability - Policy Limit</u>	<u>\$2,000,000</u>

- Commercial General Liability Insurance with limits of not less than:

<u>Each Occurrence Limit</u>	<u>\$5,000,000</u>
<u>Personal & Advertising Injury</u>	<u>\$5,000,000</u>
<u>General Aggregate</u>	<u>\$5,000,000</u>
<u>Products - Completed Operations Aggregate</u>	<u>\$5,000,000</u>

- The required Commercial General Liability policy will be issued on a form that insures Contractor's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or otherwise acceptable to City.
- Policies must include the following clauses, as applicable:
 - This insurance shall not be canceled, materially changed, or non-renewed until after thirty-days prior written notice has been given to City.
 - It is agreed that the Licensee's insurance shall be deemed primary with respect to any insurance or self-insurance carried by City for liability arising out of operations under this License Agreement.
 - City, including, the city council of City; its respective, officers, directors, employees, representatives; and agents will be named as additional insureds under the policy and provide all of the above described with a waiver of subrogation.
- Without limiting any of the other obligations or liabilities of the Licensee, the Licensee shall require each subcontractor performing any activities in connection arrangement resulting from this License Agreement, at the subcontractor's own expense, to maintain during the term of this License Agreement, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, the Licensee may include its subcontractors as additional insureds on its own

coverage as prescribed under these requirements. The Licensee's certificate of insurance shall note in such event that the subcontractors are included as additional insureds and that the Licensee agrees to provide Workers' Compensation for the subcontractors and their employees. The Licensee shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. The Licensee must retain the certificates of insurance for the duration of this License Agreement plus five years and shall have the responsibility of enforcing these insurance requirements among its subcontractors. City shall be entitled, upon request and without expense, to receive copies of these certificates.

EXHIBIT B PENALTIES

Performance Criteria	Standard	Frequency	Penalty
Fleet adjustments may not go above the agreed maximum fleet size.	Quantity of SMDs above agreed maximum fleet size.	Each Occurrence	Fleet Size Reduction
All fleet adjustments affecting more than 10% of the maximum approved fleet size must be approved by City.	Failure to receive approval for >10% fleet adjustment	Each Occurrence	Fleet Size Reduction
City, at its discretion, may require Licensee to remove or relocate any equipment located on private property, or public property, or rights-of-way, at any time due to weather, public safety, or other events, or for any reason. City reserves the right to further supplement the regulations regarding large scale event parking.	Failure to remove SMD's as requested.	Each Occurrence	Fleet Size Reduction
City requires reporting of injuries, automotive collisions, riparian/river incidents, or serious malfunctions involving SMD's or Operator vehicles within 2 hours.	Failure to report at all.	Each Occurrence	Fleet Size Reduction/ Service Area Restriction
	Failure to report in mandated timeframe.	Each Occurrence	Fleet Size Reduction
City requires Operators to file police reports regarding incidents of theft, vandalism, or property destruction. Reports must be filed in 2 business days.	Failure to report.	Each Occurrence	Fleet Size Reduction
All SMDs shall be consistent with current industry safety standards and bikes and scooters must comply with all applicable local, state, and federal laws and regulations covering bicycles or other applicable devices.	SMD's through damage, loss, or other reason, do not have standard safety equipment functional or present.	Per SMD Per Occurrence	Fleet Size Reduction
Inoperable or unsafe SMDs shall be disabled immediately upon notification and removed within 2 hours of notification or 1 hour if the SMD is in a priority zone as defined by City, and it must be repaired before placed back onto the right-of-way or into revenue service.	Failure to respond within 2 hours.	Per SMD Per Occurrence	Impoundment / Fleet Size Reduction/ Service Area Restriction
	Failure to respond within 1 hour in priority zones.	Per SMD Per Occurrence	Impoundment / Fleet Size Reduction/ Service Area Restriction
The Operator shall provide a monthly report to City.	Failure to report.	Each Occurrence	Fleet Size Reduction
Maintain proper staffing level.	Failure to maintain proper staffing level.	Each Occurrence	Fleet Size Reduction
Implement a reduction in fleet size as a penalty	Failure to remove SMDS as requested.	Per SMD Per Occurrence	Impoundment
Implement service area restriction as a penalty.	Failure to implement a service area restriction	Each Occurrence	Impoundment
Systemic Issues	Failure to address systemic issues	Each Occurrence	Fleet Size Reduction

Performance Criteria	Standard	Frequency	Penalty
	Repeated failure to address systemic issues	Each Occurrence	Fleet Size Reduction/ Service Area Restriction
Operator shall respond to requests for rebalancing, relocation, reports of incorrectly parked SMDs, or reports of unsafe/inoperable SMDs by relocating, re-parking, or removing SMDs within 2 hours or 1 hour if the SMD is in a priority zone as defined by City, of notification between 6am and 10pm on weekdays, not including holidays, and within 4 hours of notification all other times. Failure to respond may result in impoundment by City.	Failure to respond within 2 hours in non-priority zones between 6am and 10pm on weekdays, not including holidays	Each Occurrence	Fleet Size Reduction/ Service Area Restriction
	Failure to respond within 1 hour in priority zones between 6am and 10pm on weekdays, not including holidays	Each Occurrence	Fleet Size Reduction/ Service Area Restriction / Impoundment
	Failure to respond within 4 hours all other times	Each Occurrence	Fleet Size Reduction/ Service Area Restriction
SMD impoundment	Fee to release SMD from Impoundment.	Per SMD Per Occurrence	\$60 per SMD