

## **Service Agreement**

### **Stationless Bike Share Services**

This Bike Sharing Services Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_ 2017, by and between the City of \_\_\_\_\_, a municipal corporation ("City") and Skinny Labs Inc. dba Spin ("Spin"). City and Spin are each individually referred to as a "Party," and collectively, the "Parties."

### **Recitals**

1. A goal of City is to provide safe and affordable multimodal transportation options to all residents, reduce traffic congestion, and maximize carbon-free mobility.
2. Bike share services are a component to help the City achieve its transportation goals, and the City desires to make bike share services available to residents and those who work in the City.
3. Spin proposes to operate a stationless bike share program within the City.
4. Spin will abide by all City ordinances and rules governing the use of public right of way to efficiently and effectively provide bike share services.
5. Spin possesses GPS, cell connectivity, and self-locking technology in its stationless bicycles such that its bicycles may be locked and unlocked by users with an app and tracked to provide for operations and maintenance ("Bike Fleet").

In consideration of the mutual covenants and representations set forth in this Agreement, City and Spin hereby agree to launch an exclusive pilot stationless bike share program as follows:

### **Agreement**

1. Pilot Term. Pursuant to the terms of this Agreement, the City hereby gives Spin the exclusive, revocable, and non-transferrable license to utilize the City Right of Way in order to provide bike 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 Spin the exclusive right to operate a pilot stationless bike share program for a term up to twelve (12) months, which may be extended in writing, by mutual agreement.
2. License to Use City Right of Way. City authorizes Spin an exclusive license to use the public Right of Way solely for the purposes maintaining and offering its Bike Fleet for a stationless bike share program within the City. Authority to utilize the City Right of Way for this Bike 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.
3. Permitted Use. Spin customers may use the public right of way solely for parking of bicycles owned and maintained by Spin for use in the bike share program. Spin 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. Use of the Right of Way, and Spin'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 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; and d) not create conditions which are a threat to public safety and security.
  - b. Upon termination of this Agreement by either party, Spin shall, at its sole cost and expense, immediately remove its property from the Right of Way.
4. Bike Parking. Spin bikes may be parked in a legal manner in Right of Ways including public sidewalks by individuals participating in the stationless bike sharing program. Bikes parked on private property will be allowed at the discretion of the private property owner. Spin will actively manage the Bike Fleet to ensure orderly parking and the free and unobstructed use of the Right of Way. The City, at its own discretion, may choose to support the bike sharing program with the installation of additional bike racks, painted bike parking spots, and/or recommended bike parking spots without racks or painting.
5. Condition of City Right of Way.
  - a. City makes the public right of way available to Spin in an "as is" condition. City makes no representations or warranties concerning the condition of the public way or its suitability for use by Spin or its customers, and it assumes no duty to warn either Spin or its customers concerning conditions that exist now or may arise in the future.
  - b. City assumes no liability for loss or damage to Spin's bikes or other property. Spin agrees that City is not responsible for providing security at any location where Spin's bikes are stored or located, and Spin hereby waives any claim against City in the event Spin's bikes or other property are lost or damaged.
  - c. The City will notify Spin at support@spin.pm or through the customer service portal in the app as listed in "Exhibit A" for any bike that is found adversely affecting the City Right of Way. Spin shall be responsible to correct improperly parked bikes within the timeframes listed in "Exhibit A."
6. Maintenance and Care of portion of City Right of Way. Spin 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 Spin's use of City Right of Way. Should the Spin fail to repair, replace, or otherwise restore such real or personal property, Spin expressly agrees to pay City's costs in making such repairs, replacements, or restorations.
7. Operations and Maintenance. Spin shall be responsible to maintain the Bike Fleet as set forth in "Exhibit A." Spin shall be solely responsible for all maintenance and service costs in order to maintain the Bike Fleet and associated maintenance to minimum level of service and reporting outlined in "Exhibit A."

8. Indemnification. Spin shall defend, pay, indemnify, and hold harmless City, its officers, officials, employees, agents, invitees, and volunteers (collectively "City Parties") from all claims, suits, actions, damages, demands, costs, or expenses of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses, including without limitation court costs and reasonable attorneys' fees, resulting from or in connection with loss of life, bodily or personal injury, or property damage arising directly or indirectly out of or from or on account of:
- 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 Spin or by anyone making use of City Right of Way at the invitation or sufferance of Spin, except such loss or damage which was caused by the sole negligence or willful misconduct of City.
  - b. Use of Spin's bikes by any individual, regardless of whether such use was with or without the permission of Spin, including claims by users of the bikes or third parties.
9. Insurance. Prior to beginning and continuing throughout the term of this Agreement, Spin, 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 shall be written on an occurrence basis and shall name the City Indemnitees as additional insureds with any City insurance shall be secondary and in excess to Spin's insurance. If Spin'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.
10. Compliance with Law. Spin, at its own cost and expense, shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities applicable to its use of City Right of Way and the operation of its stationless bike

share program, including but not limited to laws governing operation of bicycles. If any license, permit, or other governmental authorization is required for Spin's lawful use or occupancy of City Right of Way or any portion thereof, Spin shall procure and maintain such license, permit, and/or governmental authorization throughout the term of this Agreement. City shall reasonably cooperate with Spin, at no additional cost to City, such that Spin can properly comply with this Section and be allowed to use City Right of Way as specified in Section 3, above.

11. Required Reports. Spin shall provide reports to the City concerning utilization of its bikes and bike route usage not less than quarterly.
12. 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.
13. Term. This Agreement shall commence on [\_\_\_\_\_], (the "Commencement Date") and shall expire 12 months after the Commencement Date, unless earlier terminated pursuant to Section 13, below.
14. Termination. This Agreement may be terminated prior to the expiration date set forth in Section 12, above, upon the occurrence of any of the following conditions:
  - a. Upon delivery of written notice from City to the Spin terminating this agreement for any reason, or for no reason, by giving at least thirty (30) days' notice to the Spin of such termination.
  - b. An attempt to transfer or assign this agreement.Spin shall not terminate this agreement without first by giving at least 180 days' written notice of plans for termination. Upon the effective date of termination of this Agreement, Spin shall remove all bicycles 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.
15. Amendment. This Agreement may be amended by mutual agreement of the parties. Such amendments shall only be effective if incorporated in written amendments to this agreement and executed by duly authorized representatives of the parties.
16. Applicable Law and Venue. The laws of California shall govern the interpretation and enforcement of this Agreement.
17. 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.

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

City:

City of \_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Spin:

By: \_\_\_\_\_

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

Title: \_\_\_\_\_