

SPIN

Electric Scooter Share Program Agreement

This Electric Scooter Share Program Agreement ("Agreement") is made this [Date Day] day of [Month] 2019 (the "Effective Date"), by and between [City] ("City") and Skinny Labs Inc. dba Spin ("Spin").

Recitals

1. City seeks to provide safe and affordable multimodal transportation options to City residents and visitors, reduce traffic congestion, and maximize carbon-free mobility.
2. Electric scooter share services are a component to help the City achieve its transportation goals, and the City desires to make electric scooter share services available to City students, faculty, and staff.
3. Spin proposes to operate an electric scooter share program within the City grounds.
4. The Spin-owned electric scooters ("E-Scooters") contain GPS, bluetooth and self-locking technology that, among other things, (i) enables individual users to lock and unlock such E-Scooters using a mobile app and (ii) permits Spin to track such E-Scooters to provide, among other things, maintenance and operations support.

In consideration of the mutual covenants and representations set forth in this Agreement, City and Spin hereby agree as follows:

Agreement

1. Scooter Share Program.

- a. *Exclusivity.* City hereby appoints Spin as the exclusive provider of Scooter Share Services within City limits ("City Property") during the Term (as defined in Section 9(a)) as further set forth herein and in Exhibit A. For purposes of this Agreement, "Scooter Share Services" means an E-Scooter share program, which includes, without limitation, the provision, deployment, management, operation, maintenance, parking, and other use of E-Scooters.
- b. *License.* In furtherance of the rights granted to Spin in Section 1(a), City hereby grants to Spin and the individual users of who have booked an E-Scooter using the Spin mobile app (collectively, "End-Users") an exclusive right and license to access, travel, cross, and/or otherwise use the sidewalks, roads, streets, avenues, boulevards, thoroughfares, and other pathways on City Property consistent with applicable law (collectively, the "Right of Way" or "ROW") in connection with Spin's provision, and each End User's use, of the Scooter Share Services as further set forth herein and in Exhibit A; provided, that Spin may access, travel, cross, and/or otherwise use any non-private City Property as reasonably necessary or convenient to maintain, retrieve, and/or repair E-Scooters in connection with the Scooter Share Services.

2. Spin Obligations.

- a. *Scooter Share Services.* Spin shall perform the Scooter Share Services in a professional and workmanlike manner in accordance with the prevailing industry standards applicable in

- Spin's industry, including, without limitation, meeting the minimum maintenance level obligations set forth in Exhibit A.
- b. *Limitations on E-Scooters.* Except for placements and/or attachments of E-Scooters in accordance with this Agreement and/or Exhibit A, Spin shall not place or attach any personal property, fixtures, or structures to the ROW without City's prior written consent. Spin shall use reasonable efforts to ensure that (i) its provision of the Scooter Share Services does not unreasonably block pedestrian walkways or the ROW or create conditions that threaten public safety and (ii) E-Scooters are parked in an orderly fashion on the ROW or in otherwise agreed-upon designated areas set forth in Exhibit A; provided, that E-Scooters 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 Spin's customer service app portal listed in Exhibit A, or through another agreed-upon mechanism for any E-Scooter that, in City's reasonable discretion, is adversely affecting the Right of Way. Spin shall be responsible to correct improperly parked scooters within the timeframes listed in Exhibit A.
 - c. *Repairs.* Spin 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 Spin's provision of the Scooter Share Services.
 - d. *Reports.* Spin shall provide quarterly reports to City concerning utilization of the E-Scooters and route usage.
 - e. *Further Limitations or Obligations.* Further limitations and/or obligations, if any, on Spin in connection with its provision of the Scooter Share Services will be set forth in Exhibit A.
3. City Obligations. City shall support the Scooter Share Program as set forth in Exhibit A, which may include, without limitation, creation and/or implementation of a research program, installation of additional parking racks or painted parking spots, identification of preferred parking spots to End-Users, and/or other activities.
 4. Confidentiality.
 - a. *Definition.* "Confidential Information" means any and all information and data disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") under this Agreement, which includes, without limitation, information (tangible or intangible, written or oral) regarding the Disclosing Party's technology, patents, patent applications, developments, inventions, designs, drawings, techniques, research, know-how, specifications, products, product plans, services, pricing, customer information, marketing information, regulatory information, reports, data and information, software (including source and object code), computer systems configurations, formulas, agreements with third parties, current or future strategic information, current or future business plans, processes, policies or practices, employee information, and other business and technical information, that (i) is marked "confidential" or "proprietary" at the time of disclosure by the Disclosing Party or (ii) by its nature or content is reasonably distinguishable as confidential or proprietary to the Disclosing Party. Confidential Information may also include information of a third party that is in the Disclosing Party's possession under an obligation of confidentiality and is disclosed to the Receiving Party under this Agreement. Without limiting the foregoing, any E-Scooter usage data provided by Spin to City under this Agreement, including, without limitation, usage data identified on Exhibit A, is Confidential Information of Spin (the "Usage Data").

- b. *Obligations of Confidentiality.* The Receiving Party agrees not to use any Confidential Information for any purpose other than to exercise its rights and perform its obligations under this Agreement. The Receiving Party shall not disclose or permit disclosure of any Confidential Information to third parties or to employees of the Receiving Party, other than directors, officers, employees, consultants and agents of the Receiving Party ("Representatives") who are required to have the information to exercise the rights in or perform the obligations under this Agreement. The Receiving Party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such Confidential Information. Such measures shall include, without limitation, taking the highest degree of care that the Receiving Party utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. The Receiving Party is responsible for any breach of the confidentiality provisions of this Agreement by its Representatives. The Receiving Party agrees to notify the Disclosing Party in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information that may come to the Receiving Party's attention. The obligations of this Section 4(b) shall survive expiration or termination of this Agreement for a period of three (3) years from such termination or expiration; provided, that the obligations of the Parties regarding the use, protection and confidentiality of Confidential Information that constitutes a trade secret of the Disclosing Party shall survive the termination or expiration of this Agreement for so long as such Confidential Information remains a trade secret of the Disclosing Party. Without limiting the foregoing, and except as otherwise agreed to between Spin and City, City shall not copy, modify, translate, decompile, disclose, distribute, publish, export, re-export, sublicense, sell, rent, lease, commercialize, modify, create any derivative works based on, disassemble, reverse engineer, or otherwise exploit the Usage Data in any manner. Spin owns all right, title and interest in and to the Usage Data and hereby grants to City a limited, non-exclusive license to access the Usage Data in accordance with the restrictions of this Section 4.
- c. *Compelled Disclosures.* Without limiting any obligations in this Agreement, in the event City receives a public records law request for Spin's Confidential Information or other documents or information that Spin deems confidential or a trade secret, City will promptly notify Spin of said request and will not make an immediate disclosure in order to provide Spin with a reasonable opportunity to, at Spin's cost and expense, seek judicial intervention or other protection concerning the potential disclosure of such Confidential Information or other documents or information that Spin deems confidential or a trade secret. If Spin informs City in writing of its intent to seek a court order barring disclosure, City will withhold all requested information during the pendency of the judicial proceedings. If Spin does not seek a court order barring disclosure, or if the court order is denied, City will redact Spin's confidential and/or trade secret information prior to making any disclosure under such public records law request.
5. Representations and Warranties; Disclaimers.
- a. *By Spin.* Spin 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 Scooter Share Services under this Agreement. If any license, permit, or other governmental authorization is required for Spin's lawful use or occupancy of Right of Way or any portion thereof, Spin shall procure and maintain such license, permit, and/or governmental authorization (a "Permit") throughout the Term. City shall reasonably cooperate with Spin, at no additional cost to City, such that Spin can properly comply with this Section 5(a), including, without limitation, by facilitating Spin's procurement and maintenance of any Permit.

- 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, (b) the execution of this Agreement and performance by City of its obligations hereunder to not and shall not violate any agreement to which City is otherwise bound and (c) City implements appropriate legal, technical and organizational measures to protect Usage Data and other Confidential Information of Spin against unauthorized or unlawful use, access and processing, and against unauthorized loss, destruction, damage, alteration, or disclosure, as well as any breach or attempted breach of City's security measures.
- 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 E-SCOOTERS ARE STORED, PARKED, OR OTHERWISE MAINTAINED AND SPIN HEREBY WAIVES ANY CLAIM AGAINST CITY IN THE EVENT THAT ANY E-SCOOTER IS LOST OR DAMAGED; AND (II) SPIN PROVIDES THE SCOOTER SHARE SERVICES, THE USAGE DATA AND ANY OTHER INFORMATION HEREUNDER "AS-IS" WITH NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, AND SPIN DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, QUIET ENJOYMENT, INTEGRATION AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

6. Indemnification.

- a. *Indemnity.* Spin shall defend, indemnify, and hold harmless City and its officers, officials, employees, and agents (collectively "City Indemnitees") from any and all damages, demands, costs, or expenses of any kind or nature, including without limitation court costs and reasonable attorneys' fees (collectively, "Losses") incurred by such City Indemnitees resulting from any third-party claim, suit, action, or proceeding (a "Claim") relating to loss of life, bodily or personal injury, or property damage due to an End-User's use of an E-Scooter with Spin's permission in accordance with the terms and conditions between Spin and such End-User, except to the extent any Losses arise from or in connection with City's negligence or willful misconduct.
- b. *City.* City shall defend, indemnify, and hold harmless Spin and its directors, officers, employees, and agents (collectively, "Spin Indemnitees") from any and all Losses incurred by such Spin Indemnitee resulting from a Claim relating to City's breach of this Agreement.
- c. *Procedure.* If a Claim is made or appears possible, the indemnified party ("Indemnitee") shall notify the indemnifying party ("Indemnitor") in writing. Indemnitor may defend any Claim with counsel of its own choosing and settle such Claim as it deems appropriate; provided, that Indemnitor will not enter into any settlement that adversely affects Indemnitee's rights

or requires any admission by Indemnitee without Indemnitee's prior written consent. At Indemnitor's expense and request, Indemnitee shall reasonably cooperate with Indemnitor in the defense and settlement of any Claim. At its discretion and expense, Indemnitee may participate in the defense, any appeals, and settlement with counsel of its own choosing.

7. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY: (A) SPIN SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ARISING FROM LOSS OF USE, LOSS OF DATA, LOST PROFITS, BUSINESS INTERRUPTION, OR COSTS OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF; AND (B) SPIN'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF SHALL NOT EXCEED \$50,000, IN EACH OF THE FOREGOING CASES (A) AND (B), REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM CONTRACT, INDEMNIFICATION, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER SPIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES AGREE THAT THIS SECTION 7 REPRESENTS A REASONABLE ALLOCATION OF RISK AND THAT SPIN WOULD NOT PROCEED IN THE ABSENCE OF SUCH ALLOCATION.

8. Insurance.

- a. *Insurance Coverages.* Spin shall, at its cost, procure and maintain insurance continuously throughout the Term from such companies listed in the current "Best's Insurance Guide" as possessing a minimum policyholder's rating of "A-" (Excellent) and a financial category no lower than "VI" (\$25,000,000 to \$50,000,000 of adjusted policyholder's surplus) or a minimum A rating from Standard and Poor's or a minimum A rating from Fitch or a minimum A3 rating from Moody's.
 - i. Workers' Compensation insurance for statutory limits or a state certificate of self-insurance and Employer's Liability insurance for not less than one million dollars (\$1,000,000) per occurrence;
 - ii. Occurrence type Commercial General Liability insurance including, but not limited to, blanket contractual coverage for bodily injury (including death), personal injury, property damage, and products liability and completed operations with limits of not less than three million dollars (\$3,000,000) per occurrence;
 - iii. Automobile Liability insurance covering all non-owned and hired vehicles with limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence.
- b. *Additional Insurance Terms.* With the exception of Workers' Compensation and Employer's Liability, each insurance policy listed above, must name City as an additional insured under the policy(s). All insurance policies shall be primary and not in excess to or contributory with any self-insurance or insurance policies carried by City and shall provide that the policy may not be cancelled without 30 days' prior written notice to City. Spin may use subcontractors in the performance of this Agreement and subcontractors shall procure and/or maintain insurance coverage at the limits described above.
- c. *Mutual Waiver of Subrogation.* Spin and City each hereby waive any and all rights of subrogation that their insurers may have for recovery against the other and its parent, subsidiaries and affiliates and each of their respective officers, directors, stockholders, agents and employees relating to losses or damages arising from the performance of this Agreement. This mutual subrogation waiver will preclude the assignment of any insurance

claim by way of subrogation to any insurer. Spin and City agree to give immediately to each appropriate insurer written notice, if required, of the terms of these mutual waivers and, if necessary, have said insurance policies properly endorsed to prevent the invalidation of the insurance coverages by reason of these waivers if required by the respective insurance policies. Spin and City each shall indemnify the other against any Losses resulting from the failure to obtain such insurance subrogation waiver.

9. Term and Termination.

- a. *Term.* This Agreement shall commence on the Effective Date and will continue for an initial term of 12 months (the "Initial Term") and will automatically renew for successive one-year terms (a "Renewal Term," and collectively with the Initial Term, the "Term"), unless and until one party provides the other party with written notice of termination at least 30 days prior to the expiration of the then-effective Term.
- b. *Termination.* Either party may terminate this Agreement in the event of the other party's material breach if the breach is not cured by such breaching party within thirty (30) days after the breaching party receives notice of the breach from the non-breaching party.
- c. *Effect of Termination.* Within a reasonable timeframe after termination of this Agreement, Spin shall, at its cost, remove all E-Scooters on City Property and shall, at its cost, use commercially reasonable efforts to restore all ROW to the condition of such ROW as of the Effective Date.

10. Miscellaneous.

- a. *Entire Agreement.* This Agreement, along with Exhibit A, 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.* The laws of the State of California, without reference to its choice or conflicts of laws provisions, shall govern the interpretation and enforcement of this Agreement.
- 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.

Executed on the Effective Date, by the parties as follows:

City

Name: _____

Signature: _____

Title: _____

Spin

Name: _____

Signature: _____

Title: _____

Exhibit A

Spin Operations and Maintenance Plan

E-Scooter Sharing Program

[City]

Fleet Size

Spin will deploy an initial fleet of [Number of scooters] electric scooters over the course of the first two weeks of the pilot program. The vehicles will initially be deployed with an emphasis on transit stations, commercial areas, and denser residential areas, to help guide distribution based on user demand and usage trends.

Placement Plan

Spin will also work with the City to determine where to initially deploy the [Number of scooters] electric scooters. Spin's nimble and flexible operations can adjust vehicle deployment and distribution based on user demand and usage data. Spin's ground operations team will place Spin vehicles in a neat fashion on sidewalks at least [Minimum width of sidewalk] feet wide and at or near racks and corrals. Spin will ensure that vehicles are not obstructing pedestrian or motor vehicle traffic.

User Education

Spin believes that the most effective, consistent, and efficient method of providing important notices and educating users is through Spin's app. Any Spin user may utilize the app, helping to ensure important information is seen and acknowledged (as opposed to stickers or physical signs that may be unseen or become damaged or lost).

New Spin users will receive informational pop-ups when they use Spin's app to take a ride for the first time. The pop-ups will require the new users to affirmatively dismiss the pop-ups in order to proceed. The informational pop-ups will include: a) reminders about applicable scooter laws; and b) instructions on how to park responsibly.

Customer Support

Spin provides easy mechanisms through which users and the public can contact us to ask questions, report Spin scooters that are damaged or obstructing the public right of way, or otherwise. Spin's app has a "Help" button on the user interface. The "Help" buttons enable users to report any issues via live chat, email (support@spin.pm), and phone.

Spin vehicles display our URL, where the public will be able to easily report relocation requests via in-app messaging, email, or phone. For additional details, please see <https://help.spin.pm>.

Ground Operations

Spin's ground operations staff are hired locally and help ensure the safety, accessibility, and responsible placement of Spin vehicles. The exact number of locally hired staff will depend on the fleet size in operation. The ground operations staff perform two primary functions:

- Roving
 - Inspect and tune-up vehicles.
 - Visually survey the streets and remove obstructing vehicles.
- Rebalancing
 - Retrieve vehicles that have been marked for repair.
 - Visually survey the streets and remove obstructing vehicles.

Placement of Vehicles

- Vehicles will be neatly placed by Spin staff on wide sidewalks and at or near public racks and corrals.
- Vehicles will be neatly placed such that they do not obstruct the public's right of way.

Relocation Requests

- Spin users and the general public can report scooters 24/7 via the website or the app.
- Spin will dispatch a ground operations member within three hours between the hours of 9am-6pm on weekdays, with submission of supporting evidence, to deal with vehicles reported as obstructing the public right of way.
- Requests received after normal business hours, weekends, and/or holidays will be handled as soon as practicable the following day.

Maintenance and Safety

- Every vehicle is inspected for safety, with a recorded inspection history.
- Vehicles reported by the public as unusable are remotely disabled and marked for safety inspection.
- All repairs are done by certified mechanics contracted by Spin.
- Safety inspections are performed by the ground operations team, who are trained by certified mechanics. Ground operations staff inspect:
 - Handlebars
 - Brakes
 - Brake levers
 - Grips
 - Light
 - Reflectors
 - Tires
 - Bell
 - Wheels
 - Fender
 - Signage
 - Cables
 - Stem

- Baseboard

Tune-ups are performed on the spot by the ground operations team during safety inspections. The ground operations team is equipped with the necessary tools.

Repairs are performed at the warehouse by certified mechanics.

All vehicles are inspected against the above checklist, at a minimum, for:

- Cleanliness;
- Damage;
- Secureness; and
- Safe and reliable operation

Reporting

Spin will provide quarterly reports to the City with aggregate usage data including:

- Number of users in the system
- Number of trips generated for the month
- Heat maps of usage trip showing top pick-up spots and drop-off spots. Average trip length and trip time