

PILOT LICENSE AGREEMENT

Stationless Bicycle Share Services Pilot Program

This Stationless Bicycle Share Services Pilot Program License (“License”) is made this _____ day of _____ 20____, by and between the City of Flagstaff, a political subdivision of the State of Arizona (“City”) and Skinny Labs, Inc., a Delaware corporation dba Spin (“Licensee”). The City and Licensee are each individually referred to as a “Party,” and collectively, the “Parties.”

Recitals

- A. A goal of the City is to provide safe and affordable multimodal transportation options to all residents, reduce traffic congestion, and maximize carbon-free mobility;
- B. Bicycle share services are a component to help the City achieve its transportation goals, and the City desires to make stationless bicycle share services available to residents and those who work in the City;
- C. Licensee proposes to operate a stationless bicycle share services pilot program within the City;
- D. Licensee will abide by all City ordinances and rules, now, existing or as amended in the future governing the use of the public right-of-way to efficiently and effectively provide stationless bicycle share services; and
- E. Licensee possesses GPS, cell connectivity, and self-locking technology in its bicycles such that its bicycles may be locked and unlocked by users with a software application and tracked to provide for operations and maintenance (“Bicycle Fleet”).

In consideration of the mutual covenants and representations set forth herein, the City and Licensee hereby agree as follows:

Terms

1. Definitions.

Furnishing Zone refers to “the portion of the sidewalk nearest to the curb used for street trees, transit stops, street lights, benches, trash containers, bike racks or other street furnishings or equipment,” as defined in the Flagstaff City Code Section 10-80.20.060.

Improperly parked for purposes of this License refers to bicycles that are not parked in the ROW in an upright and safe position. For example, bicycles laying in the middle of the sidewalk.

Right of Way (“ROW”) refers to “[t]he strip of land dedicated to public use for pedestrian and vehicular movement ... that is (sic) publically owned ... for the right-of-way purposes benefiting the general public,” as defined by Flagstaff City Code Section 10-80.20.180. ROW does not include state roads managed by the Arizona Department of Transportation (Highway 89/Milton Road, Highway 180/Fort Valley Road, and Route 66). City ROW does

not include Northern Arizona University (“NAU”) campus roads owned and maintained by the Arizona Board of Regents/NAU.

Sidewalk means “that portion of the public way between the curb lines of the roadway and the adjacent property lines intended for use by pedestrians,” as defined in Flagstaff City Code Section 8-03-002-0001(M).

2. License to Use ROW.

- a. The City hereby issues Licensee an exclusive license to use the ROW subject to the terms and conditions of this License. There will be no license fee charged to Licensee to use the ROW.
- b. Licensee agrees that the City is not responsible for educating customers regarding helmet requirements and other laws. Neither is the City responsible for educating customers on how to ride or operate a bicycle.

3. Customer Safety Agreement. Licensee will require that customers read and “accept” the Customer Safety Agreement in its software app as a condition of renting a bicycle from Licensee. The Customer Safety Agreement is attached hereto as Exhibit A. Licensee is responsible for the Customer’s compliance with the Customer Safety Agreement.

4. Operations.

- a. Licensee shall maintain a business office within the City limits at the local address of _____.
- b. The direct contact phone number for Licensee is _____. Additional contact phone numbers for Licensee are _____.
- c. Between the hours of 6 am and 6 pm Monday through Friday, Licensee shall respond to a City-initiated request to relocate a bicycle within one (1) hour. Licensee shall respond to any bicycle parking concerns within two (2) hours of a public-initiated request. Licensee shall respond to requests outside those parameters within ten (10) hours.
- d. All bicycles used under this License shall meet the standards outline in the Code of Federal Regulations under Title 16, Chapter II, Subchapter C, Part 1512 – Requirements for Bicycles. Additionally, licensed systems shall meet the safety standards outlined in the International Organization for Standardization under ISO 43.150 – Cycles, subsection 4210 and Flagstaff City Code Chapter 9.

5. Customer Service.

- a. Every bicycle must have a unique identifier that is visible to the customer.
- b. Licensee must place a 24-hour responsive phone number on the bicycle for customers to report improperly parked bicycles, safety concerns, complaints, or ask questions.

6. License to Use ADOT/NAU Roads. If so desired, Licensee will endeavor to obtain licenses to use Arizona Department of Transportation and NAU roads for its stationless bicycle share services pilot program.
7. Pilot Program Study Data. As a condition of this License, during the term of this License, Licensee will provide the City with a monthly report that includes the following:
 - a. Number of Licensee bicycles deployed in the City;
 - b. Number of Licensee customer rental hours in the City;
 - c. Licensee bicycle rental rates and any other charges;
 - d. Number of calls/reports Licensee received that bicycles are improperly parked and Licensee's average response time to reposition improperly parked bicycles.
 - e. An incident report for each Licensee bicycle involved in an accident within the City limits, to include location and general details;
 - f. Geographic description of most prevalent usages (e.g. ridership data);
 - g. Any other information Licensee feels is relevant to evaluating the bicycle share services pilot program; and
 - h. All Licensees shall keep a record of maintenance activities, including, but not limited to, bicycle identification number and maintenance performed.
8. Licensee Fixtures. Licensee shall not place or attach any personal property, fixtures, or structures to the ROW without the prior written consent of the City or private property owners. The City, at its own discretion, may choose to paint bicycle parking spots and/or recommend bicycle parking spots to Licensee.
9. Management of Bicycle Fleet. Licensee will actively manage the Bicycle Fleet to ensure orderly parking and the free and unobstructed use of the ROW at all times. Licensee will actively manage the Bicycle Fleet in a manner that is non-discriminatory and affords persons from all socioeconomic backgrounds an opportunity to participate in the program.
10. Condition of ROW. The City makes the ROW available to Licensee in an "as is" condition. The City makes no representations or warranties concerning the condition of the ROW or its suitability for use by Licensee or its customers, and it assumes no duty to warn either Licensee or its customers concerning conditions that exist now or may arise in the future.
11. Damages to Licensee Property. The City assumes no liability for loss or damage to Licensee's bicycles or other property. Licensee agrees that the City is not responsible for providing security at any location where Licensee's bicycles are stored or located, and Licensee hereby waives any claim against the City in the event Licensee's bicycles or other property are lost or damaged.
12. Damages to City Right of Way. Licensee 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 Licensee or its customer's use of the ROW. Should the Licensee fail to repair,

replace, or otherwise restore such real or personal property, Licensee expressly agrees to pay the City's costs in making such repairs, replacements, or restorations.

13. Indemnification. Licensee shall defend, pay, indemnify, and hold harmless the 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 the ROW or occasioned wholly or in part by the entry, use, or presence upon the ROW by Licensee or by anyone making use of the ROW at the invitation or sufferance of Licensee.
 - b. Use of Licensee's bicycles by any individual, regardless of whether such use was with or without the permission of Licensee, including claims by users of the bicycles or third parties.
14. Insurance Requirements. Throughout the term of this License, at the sole cost and expense of Licensee, the following Insurance Requirements of the City, are set forth in Exhibit B. Licensee shall furnish the City with endorsements and certificates of insurance evidencing that it has obtained and maintains the required insurance.
15. Compliance with Law. Licensee, at its own cost and expense, shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities applicable to its use of the ROW and the operation of its stationless bicycle share program, including but not limited to, current laws or future laws governing operation of bicycles. If any license, permit, or other governmental authorization is required for Licensee's lawful use or occupancy of the ROW or any portion thereof, Licensee shall procure and maintain such license, permit, and/or governmental authorization throughout the term of this License. City shall reasonably cooperate with Licensee, at no additional cost to the City, such that Licensee can properly comply with this Section and be allowed to use the ROW as specified above.
16. Licensing and Taxes. Licensee will obtain any applicable transaction privilege tax license, business license, or other licenses required for doing business in the City, and provide City with a copy of the same. Licensee will report all applicable taxes when due.
17. 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 License.
18. Term. This License shall commence on [_____], (the "Commencement Date") and shall expire 6 months after the Commencement Date, unless earlier terminated upon at least thirty (30) days written notice to Licensee. Licensee may revoke this License upon at least ten (10) days written notice to the City.
19. Restoration. Upon termination or expiration of this License, Licensee shall remove all bicycles from the City and restore all ROW to the extent damaged by Licensee or its

customers' actions within thirty (30) days of a written request, or ten (10) days of notice of revocation under Section 18 above.

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

21. Applicable Law and Venue. The laws of Arizona shall govern the interpretation and enforcement of this License.

22. Counterparts. This License 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 License.

23. Notice. Provide any notice via email or certified mail to the following addresses:

To the City:

To the Licensee:

City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001
_____@flagstaffaz.gov
Phone:

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

LICENSEE

Print name: _____

Title: _____

CITY OF FLAGSTAFF

Print name: _____

Title: _____

Attest:

City Clerk

Approved as to form:

City Attorney's Office

EXHIBIT A – CUSTOMER SAFETY AGREEMENT

EXHIBIT B – INSURANCE REQUIREMENTS



EXHIBIT A

Stationless Bike Share Services Pilot Program Customer Safety Agreement

NOTE: These points should be included in SPIN's customer acceptance software.

- Riders under eighteen (18) shall wear helmets while riding a bicycle. F.C.C. § 9-05-001-0010(A).
- Bicycles shall be parked upright in the Furnishing Zone of the sidewalk. F.C.C. § 10-80.20.060., but not parked adjacent to or within:
 - Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging areas, except at existing bicycle racks;
 - A public or private driveway pursuant to F.C.C. § 9-01-001-0003(E)(3)(a)(2);
 - Street furniture that requires pedestrian access (for example – benches, parking pay stations, bus shelters, transit information signs, etc.); or
 - Twenty (20) feet of a crosswalk at an intersection. F.C.C. § 9-01-001-0003(E)(3)(a)(6).



EXHIBIT B

Stationless Bike Share Services Pilot Program Insurance Requirements

All references to Contractor shall mean Licensee:

1. In General. Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or contractors.
2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.
3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

b. Umbrella Coverage

Each Occurrence	\$8,000,000
General Aggregate	\$8,000,000

c. Automobile Liability

Any Automobile or Owned, Hired
and Non-owned Vehicles
Combined Single Limit Per Accident
for Bodily Injury & Property Damage \$1,000,000

d. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$500,000

Disease - Each Employee	\$500,000
Disease - Policy Limit	\$500,000

4. Self-Insured Retention. Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers. Contractor shall be solely responsible for any self-insured retention amounts. City at its option may require Contractor to secure payment of such self insured retention by a surety bond or irrevocable and unconditional letter of credit.

5. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:
 - a. Additional Insured. In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Contractor, including products and completed operations of the Contractor, and automobiles owned, leased, hired or borrowed by the Contractor.
 - b. Broad Form. The Contractor's insurance shall contain broad form contractual liability coverage.
 - c. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Contractor's insurance and shall not contribute to it.
 - d. Each Insured. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Not Limited. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
 - f. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Contractor for the City.

6. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Buyer listed in the original Solicitation and shall reference the Contract Number:

Attention: _____

 City of Flagstaff,
 211 W. Aspen Avenue
 Flagstaff, Arizona 86001

7. Acceptability of Insurers. Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a “Best’s” rating of not less than A: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
8. Certificates of Insurance. The Contractor shall furnish the City with endorsements and certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City project/contract number and project description shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before the Contractor commences work.
9. Policies. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City’s receipt of Contractor’s policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City’s right to insist on strict fulfillment of Contractor’s obligations under this Contract.
10. Modifications. Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City’s Attorney’s Office in consultation with the City’s Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.