

Service Agreement

Stationless Bike Share Services

This Bike Sharing Services Agreement (“Agreement”) is made this ____ day of ____ 2017, by and between the Town of Miami Lakes, a municipal corporation (“Town”) and Skinny Labs Inc. dba Spin (“Spin”). Town and Spin are each individually referred to as a “Party,” and collectively, the “Parties.”

Recitals

1. A goal of the Town 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 Town achieve its transportation goals, and the Town desires to make bike share services available to residents and those who work in the Town .
3. Spin proposes to operate a stationless bike share program within the Town .
4. Spin will abide by all Town ordinances and rules governing the use of public Rights 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, the Town 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 Town hereby gives Spin the revocable and non-transferrable license to utilize the Town’s Rights of Ways in order to provide bike share services within the Town . For purposes of this Agreement, the term Rights of Ways (“ROW”) refers to sidewalks, roads, and other pathways owned and maintained by the Town .The Town hereby grants Spin the 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 Town Rights of Way. The Town authorizes Spin a non-exclusive license to use the public Rights of Way solely for the purposes maintaining and offering its Bike Fleet for a stationless bike share program within the Town . Authority to utilize the Town Rights 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 Town property.
3. Permitted Use. Spin customers may use the public Rights 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 Town Rights of Way without the prior written consent of Town or private property owners.

- a. Use of the Rights of Way, and Spin's operations within the Town, shall, at a minimum: a) not adversely affect Town Rights of Way or the Town'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 Town; 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 Rights of Way.
4. Bike Parking. Spin bikes may be parked in a legal manner in Rights 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 Rights of Way. The Town, 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 Town Rights of Way.
 - a. Town makes the public Rights of Way available to Spin in an "as is" condition. Town 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. Town assumes no liability for loss or damage to Spin's bikes or other property. Spin agrees that Town is not responsible for providing security at any location where Spin's bikes are stored or located, and Spin hereby waives any claim against Town in the event Spin's bikes or other property are lost or damaged.
 - c. The Town 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 Town Rights 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 Town Rights 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 Town's Rights of Way. Should the Spin fail to repair, replace, or otherwise restore such real or personal property, Spin expressly agrees to pay Town'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 Town , its elected or appointed officials, officers, officials, employees, agents, invitees, and volunteers (collectively “Town 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 Town’s Rights of Way or occasioned wholly or in part by the entry, use, or presence upon the Town’s Rights of Way by Spin or by anyone making use of Town’s Rights 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 Town .
 - 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.
 - c. Any failure of Spin to properly maintain the Bikes and Bike Fleet, and/or any manufacturer defect, caused in whole or in part by either (i) any willful, intentional, reckless, or negligent act or omission of Spin, any subconsultant, subcontractor or any person or organization directly or indirectly employed by any of them to perform or furnish any of the services or anyone for whose acts they may be liable regardless of whether or not it is caused in part by a party indemnified hereunder and regardless of the negligence of any such indemnified party, or (ii) any willful intentional, reckless or negligent act or omission of any individual or entity not a party to this agreement.
 - d. The Parties expressly agree that these provisions shall be construed broadly, and Spin’s obligations to pay for the Town’s legal defense hereunder shall arise and be fully enforceable when Spin (or any subconsultant or any person or organization directly or indirectly employed by Spin) is alleged to have acted willfully, intentionally, recklessly o, or negligently in the performance of the services required under this Agreement. For any matters in which Spin is obligated to pay for the Town’s legal defense hereunder, Spin shall be permitted to retain counsel of its choosing for both Spin and the Town, provided that such legal counsel is reasonably acceptable to the Town, which consent shall not be un reasonably withheld.
 - e. Any failure of Spin to comply with the terms of these provisions shall be deemed a material breach of this Agreement and may subject Spin to debarment from consideration for future awards of Town Contracts pursuant to Section 17 of Ordinance 12-142 of the Town’s Municipal Code of Ordinances. This provision shall survive termination of the Agreement.
9. Insurance. Prior to beginning and continuing throughout the term of this Agreement, Spin, at sole cost and expense, shall furnish the Town with certificates of insurance evidencing that it has obtained and maintains insurance in the following amounts:
- a. Workers’ Compensation that satisfies the minimum limits as detailed in Florida Statutes..

- b. Commercial General Liability and Rights 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 Town Indemnitees as additional insureds with any Town 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 Town'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 Town Rights 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 Town Rights of Way or any portion thereof, Spin shall procure and maintain such license, permit, and/or governmental authorization throughout the term of this Agreement. Town shall reasonably cooperate with Spin, at no additional cost to Town, such that Spin can properly comply with this Section and be allowed to use Town Rights of Way as specified in Section 3, above.
- 11. Required Reports. Spin shall provide reports to the Town 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 Town 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 Town and restore all Town Rights of Way to the condition of the Town Rights 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 State of Florida 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.
18. Florida Public Records Law, Florida Statutes Chapter 119. Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Spin acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the Town in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the Town for such disclosure and/or production. Spin also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the Town. Furthermore, Spin agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.
19. Sovereign Immunity. Spin acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Spin against the Town other than claims arising out of this Agreement. Specifically, Spin acknowledges that it cannot and will not assert any claims against the Town, unless the claim is based upon a breach by the Town of this Agreement. Spin acknowledges that this Agreement in no way estops or affects the Town's exercise of its regulatory authority. In addition, the Town retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. Spin acknowledges that it has no right and will not make claim based upon any of the following:
- a. Claims based upon any alleged breach by the TOWN of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the TOWN. All obligations of the Tow are only as set forth in this Agreement;

- b. Claims based upon negligence or any tort arising out of this Agreement;
- c. Claims upon alleged acts or inaction by the Town, its commissioners, attorneys, administrators, consultants, agents, or any Town employee;
- d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the Town and Spin.

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

Town :

Town of Miami Lakes

By: _____
Gina Inguanzo, Town Clerk

By: _____
Alex Rey, Town Manager

Legal Sufficiency:

By: _____
Raul Gastesi, Town Attorney

Witness:

Signed, sealed and witnessed in the
presence of:

By: _____

As to **SPIN**:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____