

**RIGHT-OF-WAY LICENSE AGREEMENT
WITH PHEENIX USH LLC
FOR DOCKLESS ELECTRIC MICROMOBILITY DEVICE VENDOR**

This Right-of Way License Agreement (the “Agreement”) is made and entered into on this 1st of July 2024 (the “Effective Date”) by and between the City of Ann Arbor, a Michigan municipal corporation, with offices at 301 E. Huron Street, Ann Arbor, Michigan 48104 (“City”) and Pheenix USH LLC, a Delaware limited liability company, with offices at 8605 Santa Monica Blvd, #20388, West Hollywood, California 90069 (“Licensee”) (City and Licensee each being a “Party” or collectively being the “Parties”).

WHEREAS Licensee has acquired certain Spin-branded dockless electric micromobility devices, including motorized e-scooters and e-bikes (“Micromobility Devices” or “Devices”) which had been deposited and deployed in the City of Ann Arbor by Skinny Labs, Inc. d/b/a Spin pursuant to various Right-of-Way License Agreements, and Licensee proposes to deposit and deploy these Devices in City-owned or used and regulated rights-of-way (“ROW”), for purposes of holding them out for rent or shared use;

WHEREAS the City, and the public it represents, has both regulatory and proprietary interests in its ROW;

WHEREAS the City has and exercises discretion in enforcing its interests in its ROW;

WHEREAS the City is willing to allow Licensee’s Micromobility Devices to be used and left in the ROW subject to Licensee’s agreement to and compliance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants of the Parties hereto, the City and Licensee hereby enter into this Agreement, subject to the following terms and conditions:

Section 1. Term. Unless earlier lawfully terminated, this Agreement shall commence on July 1, 2024 and expire on June 30, 2025, or when the City adopts an ordinance superseding it, whichever occurs first. This Agreement may be extended for up to two 1-year periods at the City Administrator’s discretion.

Licensee’s insurance and indemnity obligations under this Agreement shall survive expiration or termination of this Agreement.

Section 2. License. Subject to this Agreement’s terms and conditions, City grants Licensee a temporary, non-exclusive license to leave, park, or deposit (“Park”) no more than 550 combined e-bicycles, e-bikes, e-scooters, skateboards, or other small, wheeled vehicles that are not “motor vehicles” under the Michigan Vehicle Code (“Micromobility Devices”) in the ROW (the “License”). The licensed Micromobility Devices shall include at least 100 e-bicycles, and of the 550 Micromobility Devices, 250 may be licensed and

managed by the University of Michigan and 300 may be licensed and managed by the City.

Nothing in this Agreement shall be construed to grant Licensee any other rights or interests in the ROW. The License shall not be deemed or construed to create an easement, lease, fee, or any other interest, in the ROW, shall be personal to Licensee, and shall not run with the land. Licensee shall not record this Agreement or any memorandum of it. City may terminate this Agreement, as provided under its terms, without the need for court action or court order and shall not be deemed to breach the peace as a result of such termination or other exercise of self-help under this Agreement.

Section 3. Consideration. As consideration for the License and reimbursement for City's costs and expenses associated with this Agreement and the License, and in addition to any other monetary obligation it has to the City, Licensee shall pay City: (1) \$1 per day per Micromobility Device permitted by the License when operating only e-scooters, for a total of \$91,250 (based on having 250 Micromobility Devices operating in the City for 365 days), or (2) \$0.20 per day per Micromobility Device permitted by the License when also operating e-bikes, for a total of \$21,900 (based on having 250 e-scooters and 50 e-bikes operating in the City for 365 days) and, (3) any other of the City's actual direct costs paid or payable in accordance with the established accounting procedures generally used by the City and which the City uses in billing third parties for reimbursable projects ("Costs") arising from this Agreement or from Licensee's failure to comply with it. If a fee share agreement is in place with a third party (e.g. the University), the Licensee will be expected to remit payment accordingly at the direction of the City.

Additionally, Licensee will permit all City employees with an active a2gov.org email address to take five (5) free thirty (30) minute trips on a Micromobility Device each day. Licensee will neither restrict nor log the reason for such trips. City employees are responsible for paying the standard fee for additional trips per day or time over the thirty (30) minute limit per trip. To administer this program, City will provide Licensee each week with a list of active email accounts for City employees. Licensee will use such list of active email accounts for verification purposes only. Licensee is prohibited from using the list of email accounts for sale and/or marketing purposes. Notwithstanding the foregoing, Licensee may communicate with City employees regarding trips within the application.

Licensee shall, upon the City's request, provide the City with any documents or data appropriate for the City to calculate its entitlement under this section.

City may invoice Licensee for its due monetary obligations under this Agreement at intervals as City deems appropriate. Licensee shall pay such invoices within 14 days.

Section 4. Parking. Licensee shall use reasonable efforts to ensure that Micromobility Devices not in current use are parked upright, in an orderly manner, on a paved surface.

Licensee shall also use reasonable efforts to ensure that Micromobility Devices are Parked in accordance with all applicable laws, including the City's Code of Ordinances

and the state laws it incorporates by reference, including the Michigan Vehicle and Uniform Traffic Codes, as amended. Notwithstanding the foregoing, Micromobility Devices may also be Parked in sidewalk extension areas, as long as such Micromobility Devices do not obstruct the portion of the sidewalk for pedestrian travel, any ADA ramp or access point, fire hydrant, call box, or other emergency facility, or utility pole or box.

City shall provide Licensee with a parking location for Licensee's E-Cargo Vehicle (which is considered a Micromobility Device) in the Ann Ashley Parking Structure, or a reasonably equivalent location, with City's approval of such equivalent location, to facilitate Micromobility Device battery swapping and rebalancing operations using the E-Cargo Vehicle.

Licensee represents and warrants that it knows the foregoing laws.

Section 5. Operation. Licensee shall use reasonable efforts to ensure that its Micromobility Devices are operated in accordance with all applicable laws, including the City's Code of Ordinances and the state laws it incorporates by reference, including the Michigan Vehicle and Uniform Traffic Codes, as amended.

Licensee represents and warrants that it knows the foregoing laws.

Section 6. Deployment Locations. Licensee shall share Micromobility Device deployment locations with City on at least a weekly basis or upon reasonable request; City may request removal of any deployment location by notice to Licensee and Licensee shall remove such deployment locations within forty-eight (48) hours. City acknowledges that deployment locations are proprietary information of Licensee and shall not be shared publicly or with third parties without Licensee's prior written consent unless legally required to do so (e.g., FOIA request or lawful subpoena, etc).

In collaboration with City, Licensee will locate fifty (50) Micromobility Devices where City employees start trips.

Section 7. Abandonment. Licensee shall promptly recover and take custody of all abandoned Micromobility Devices.

Section 8. Markings. Licensee shall ensure that each Micromobility Devices is conspicuously marked with Licensee's unique branding, a unique serial number, and Licensee's contact information, including a 24-hour toll-free phone number and e-mail address. Licensee shall not apply any other markings to any Micromobility Device.

Section 9. Maintenance. Licensee shall maintain Micromobility Devices in a good and safe working manner and in accordance with all applicable laws, including the laws that permit their operation, and shall promptly remove from the ROW any Micromobility Devices not so maintained.

Section 10. Data Sharing. Licensee shall, upon request, provide City all data related to Micromobility Device use in the General Bike Share Feed Specifications (“GBFS”) format. Aggregated reports on system use, compliance, operations—including but not limited to parking complaints, crashes, damaged or lost Micromobility Devices—shall be provided by Licensee to City upon request. Licensee shall make available to City any information from private entities related to requests for Micromobility Devices not to be used or parked at a private location upon request.

Section 11. Insurance and Indemnity. To the fullest extent lawful, Licensee shall defend, hold harmless, and indemnify the City and its officers, affiliated entities, fiduciaries, employees, agents and contractors from and of all claims, damages, losses, expenses, including attorney fees, or suits of any nature that arise from, are related to, or that the City may be subjected to, by reason or on account of this Agreement, the License granted under it, or the Micromobility Devices, except to the extent due to the negligence or willful misconduct of City or its agents and employees.

Licensee’s contracts with users of the Micromobility Devices shall obligate users to release the City and its officers, affiliated entities, fiduciaries, employees, agents and contractors from the same claims, damages, losses, expenses, including attorney fees, and suits for which Licensee is obligated to indemnify, defend and hold the City harmless. Said contracts shall also obligate users of the Micromobility Devices to comply with all other terms of this Agreement.

Throughout the duration of this Agreement, and through any applicable period of repose or limitation, Licensee shall maintain commercial general liability insurance, with no exclusions or limiting endorsements, in the amount of at least \$10,000,000 for each occurrence of bodily injury liability or property damage liability, or both combined, \$10,000,000 general aggregate, \$10,000,000 personal and advertising injury, and \$10,000,000 products and completed operations aggregate, along with any other insurance required by law, including \$1,000,000 in motor vehicle liability insurance, including Michigan no-fault coverages, and worker’s compensation insurance. All such insurance shall be issued by insurers authorized to do business in Michigan and who carry and maintain a minimum rating assigned by AM Best & Company’s Key Rating Guide of “A-” and a minimum Financial Size Category of “V.” The foregoing required insurance shall be primary as respects to any other insurance the City may have, including its self-insured retentions, which shall not be required to contribute and shall be considered excess only. For itself and any of its insurers, Licensee waives any right of recovery against City for any damages covered by Licensee’s insurance. City shall be named an additional insured on all insurance coverages required by this Agreement and shall, without qualification, be entitled to 30-days’ written notice of any cancellation or non-renewal of the same. Licensee shall provide to the City documentation satisfactory to the City, through City-approved means (currently myCOI), demonstrating it has obtained the insurance policies, coverages, and endorsements required herein. Licensee shall add registration@mycoitracking.com to its safe sender’s list so that it will receive necessary communication from myCOI. When requested, Licensee shall provide the same documentation for its subcontractor(s) (if any).

Section 12. Local Representatives. Licensee shall designate one or more representatives who, as needed, can address any issues related to this Agreement in the City, in person, at any time, and who has authority to act on behalf of Licensee.

Section 13. Damage to City Property. To the fullest extent lawful, Licensee shall be liable to, and shall promptly reimburse, the City for any damage to City property related to or arising from the Micromobility Devices, except to the extent due to the negligence or willful misconduct of City or its agents and employees.

Section 14. Education. Licensee shall, to City's satisfaction, develop materials to instruct users of its Micromobility Devices of all applicable laws, and provisions of this Agreement, that relate to operation, and parking of these Micromobility Devices. Licensee shall not allow any use of its Micromobility Devices by third parties unless they have first reviewed these materials.

Section 15. Compliance with Laws. Licensee shall comply with all applicable laws, this Agreement, and City policies, and guarantees its employees, agents, and contractors, including independent contractors, do the same.

Section 16. Seized Micromobility Devices. The City may seize and impound any Micromobility Device that is operated, deployed, abandoned, or parked in breach of this Agreement, with or without issuing a ticket or citation. Unless City's continued possession of such Micromobility Device is necessary for evidentiary or investigatory purposes, Licensee may recover possession of any seized or impounded Micromobility Device upon Licensee's payment to the City of \$150 plus an additional \$15 per day of impoundment. Such amounts are partial reimbursement to the City for its Costs related to seizure and storage of the Micromobility Device(s), and which amounts shall be due and owing from Licensee to City even if Licensee elects not to recover possession. City shall not be liable for damages to Licensee for City's seizure or impoundment, or both, of any Micromobility Device(s). Licensee's failure to pay amounts due to the City for seizure, impoundment, and storage costs and recover possession of any Micromobility Device(s) within 90 days after the City provides Licensee written notice of impoundment and fees due and owing shall be an abandonment and forfeiture of all of Licensee's ownership rights, interests, and claims to the Micromobility Device(s) to the City, and the City may sell, transfer, or otherwise dispose of the Micromobility Device(s) in its sole discretion.

Section 17. Termination by City. Upon 3-days' written notice to Licensee, the City may terminate this Agreement, and the license for which it provides, following any breach of it by Licensee, or if City finds, in its sole discretion, that Licensee's use of the license granted under this Agreement threatens the safety and health of the City's residents and visitors. The City's rights of termination are in addition to all other rights and remedies which it may have at law or in equity.

Section 18. Notices. All notices or other correspondence or communications required by or related to this Agreement shall be in writing sent by email, and regular U.S. mail, postage prepaid, or delivered by courier to the following:

City: City of Ann Arbor
Attention: John Fournier
Deputy City Administrator
301 E. Huron Street
Ann Arbor, Michigan 48107
jfournier@a2gov.org

With a Copy to: City of Ann Arbor
Attention: Atleen Kaur
City Attorney
301 E. Huron Street
Ann Arbor, Michigan 48107
akaur@a2gov.org

Licensee: Pheenix USH LLC
Attention: Government Partnerships
8605 Santa Monica Blvd, #20388
West Hollywood, CA 90069

With a Copy to: Pheenix USH LLC
Attention: Jimmy Gilman
8605 Santa Monica Blvd, #20388
West Hollywood, CA 90069
jimmy.gilman@spin.pm

All such notices, or other correspondence or communications are effective upon transmittal or delivery. The Parties may change recipients with 10-days' written notice to all Parties.

Section 19. Modification. This Agreement shall not be amended, modified, or canceled without the written consent of the Parties.

Section 20. Headings; Construction of Agreement. The headings of each section of this Agreement are for reference only.

Section 21. Severability of Provisions. Except with respect to any indemnity, defense, hold harmless or insurance obligations of Licensee, or as otherwise specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any severable provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid

provision(s) that it cannot be presumed that the Parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the Parties.

Section 22. Assignment. Licensee shall not assign, delegate, or transfer any right or obligation under this Agreement without City's prior written approval. Any assignment, delegation or transfer made or attempted without such approval shall be void.

Section 23. Further Acts. The Parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to fulfill the terms and conditions of this Agreement.

Section 24. Binding Effect. This Agreement shall be binding upon the Parties and upon any successors in interest.

Section 25. Controlling Law. This Agreement shall be construed and governed in accordance with the laws of the State of Michigan without giving effect to Michigan's choice or conflict of law provisions. Any lawsuit arising out of or related to this Agreement, the license it grants, or the Micromobility Devices shall be filed in either the courts of Washtenaw County, Michigan, or in the United States District Court for the Eastern District of Michigan, to the general personal jurisdiction of which Licensee submits.

Section 26. Additional Remedies. If Licensee breaches any provision of this Agreement, the City may, in its discretion, cure the breach, in which case Licensee shall be liable to City for City's Costs arising from the cure. The remedies available to the Parties under this Agreement are cumulative, in addition to any given by law or equity, and, to the fullest extent lawful, may be enforced successively or concurrently. Any amounts due from Licensee but not timely paid by Licensee shall accrue interest at twelve percent (12%) per annum starting from the date when due, and such interest the Parties agree is not a penalty.

Section 27. Waiver. No consent or waiver, express or implied, by any Party to this Agreement or any breach or default by any other Party in the performance of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations hereunder. Failure on the part of any Party to complain of any act or failure to act or to declare any of the other Parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement. The Parties reserve the right to waive any term, covenant, or condition of this Agreement; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only as to the matter waived and the Parties reserve the right to exercise any and all of their rights and remedies under this Agreement irrespective of any waiver granted.

Section 28. Representations. The Parties certify that they have the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with

its terms. Licensee represents and warrants that it is the sole owner of the Micromobility Devices.

Section 29. Conflicts of Interest. Licensee represents and warrants that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Licensee or its contractors under this Agreement.

Section 30. No Partnership. The Parties are not joint venturers or partners and do not have an employer-employee or master-servant relationship. City shall not be vicariously liable for Licensee or any of the riders of its Micromobility Devices.

Section 31. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to its subject matter and supersedes all prior agreements and understanding of the Parties with respect to its subject matter. Nothing in this Agreement shall be construed to limit City's regulatory authority or waive any immunity to which the City is entitled by law.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement to be effective on the Effective Date.

PHEENIX USH, LLC

CITY OF ANN ARBOR

By: _____
Name: Brit Moller
Its: Head of Public Policy

By: _____
Milton Dohoney Jr.
Its: City Administrator

Approved as to substance:

Sue F. McCormick, Interim Public
Services Area Administrator

Approved as to form:

Atleen Kaur, City Attorney