

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
CITY OF NORTH MIAMI
AND
BEEFREE, LLC D/B/A FREEBEE**

THIS AGREEMENT (this “Agreement”) is made effective as of the ____ day of _____, 2023 (the “Effective Date”), by and between the **CITY OF NORTH MIAMI, FLORIDA**, a Florida municipal corporation, (the “City”), and **BEEFREE, LLC D/B/A FREEBEE**, a Florida limited liability company (the “Contractor”).

WHEREAS, the Contractor will perform mobile-based, on-demand transportation services for the City, as further described in Exhibit “A” attached hereto (the “Services”); and

WHEREAS, the City desires to engage the Contractor to perform the Services and deliverables as specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Contractor and the City agree as follows:

1. Scope of Services.

- 1.1. Contractor shall provide the Services set forth herein and in Exhibit “A” in a professional manner and in accordance with all federal, state, and local laws.
- 1.2. Contractor will provide a specified number of “Freebee” electric vehicles with full doors and windows (the “Vehicles”), in accordance with Exhibit “A”, which will be exclusively dedicated to the City for the term of this Agreement.
- 1.3. Contractor will operate the Vehicles in the City’s designated service area (“Designated Service Area”) as set forth in the map attached hereto as Exhibit “B”.
- 1.4. Contractor shall furnish all reports, documents, and information obtained pursuant to this Agreement, and recommendations during the term of this Agreement (hereinafter “Deliverables”) to the City.

2. Term/Commencement Date.

- 2.1. The term of this Agreement shall be under a one (1) year pilot program (“Initial Term”), unless earlier terminated in accordance with Paragraph 8. After the Initial Term, this Agreement may be renewed for three (3) additional one (1) year terms (“Renewal Terms”) upon mutual agreement of the Parties.

2.2.

3. Compensation and Payment.

- 3.1. The City agrees to pay the Contractor for the Services rendered in accordance with the terms set forth in Exhibit “A”, attached hereto and incorporated herein.

- 3.2. Contractor shall deliver an invoice, a long with any other reports required under this Agreement, to City no more often than once per month detailing the Services completed, ridership data, and the amount due to Contractor. Fees shall be paid in arrears each month, pursuant to City shall pay the Contractor in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the City Manager.

4. **City's Responsibilities.**

- 4.1. The City will provide four (4) parking spaces ("Designated Parking") for the Vehicles for the Term of this Agreement, at no cost to Contractor, and the Contractor shall install a charging station for the Designated Parking, at no cost to the City. Contractor shall use only the Designated Parking to park or store Vehicles.
- 4.2. City shall make available any information, documents, or other data pertinent to the Services and in possession of the City, upon written request of the Contractor.
- 4.3. Upon Contractor's request, City shall reasonably cooperate in arranging access to data or personnel as required for Contractor to perform the Services.

5. **Contractor's Responsibilities; Representations and Warranties.**

- 5.1. The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a Contractor under similar circumstances.
- 5.2. The Contractor hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State, and local laws applicable to and necessary to perform the Services for City as an independent contractor of the City.
- 5.3. The Contractor further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first-class manner.
- 5.4. The Contractor represents that is an entity validly existing and in good standing under the laws of Florida.

6. **Termination.**

- 6.1. The City Manager, without cause, may terminate this Agreement upon ninety (90) calendar days written notice to the Contractor, or immediately with cause if contractor fails to cure any breach after written notice with fourteen (14) day opportunity to cure.
- 6.2. Upon receipt of the City's written notice of termination for convenience, Contractor shall stop providing Services after ninety (90) calendar days, unless otherwise directed by the City Manager.
- 6.3. Contractor, without cause, may terminate this Agreement upon one hundred eighty (180) calendar days written notice to the City, or upon fourteen (14) calendar days written notice with cause if City fails to cure any material breach after written notice with fourteen (14) calendar days opportunity to cure.

- 6.4. The Contractor shall be paid for all Services accepted by the City Manager up to the date of termination, provided that the Contractor has first complied with the provisions of Paragraph 8.5.

7. **Insurance.**

- 7.1. Contractor shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to the City, naming the City as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents, and volunteers naming the City as additional insured. Any insurance maintained by the City shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. Notwithstanding the foregoing, should the City require any changes to Contractor's insurance obligations during this Agreement, Contractor shall have the right to terminate this Agreement with cause without penalty or further obligation if the City declines to provide Contractor with additional compensation requested by Contractor in connection with such increased premiums for insurance coverage.

7.1.1. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody, and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

7.1.2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000 for each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.

7.1.3. Business Automobile Liability with minimum limits of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

- 7.2. **Certificate of Insurance.** Certificates of Insurance shall be provided to the City, reflecting the City as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by City and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to City prior to cancellation, termination, or material alteration of said policies or insurance. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the City.

7.3. **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the City is to be specifically included as an Additional Insured for the liability of the City resulting from Services performed by or on behalf of the Contractor in performance of this Agreement. The Contractor's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to the Contractor's insurance.

7.4. **Deductibles.** The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

7.5. **Waiver of Subrogation.** The Contractor's insurance policies shall include a blanket waiver of subrogation endorsement in favor of the City.

7.6. The provisions of this section shall survive termination of this Agreement.

8. **Nondiscrimination.**

8.1. During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and will abide by all Federal and State laws regarding nondiscrimination.

9. **Attorney's Fees and Waiver of Jury Trial.**

9.1. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

9.2. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

10. **Indemnification.**

10.1. Contractor agrees to indemnify, hold harmless and defend City and their respective representatives, officers, employees, agents, elected and appointed officials, from and against all claims and liability pertaining to the use of Contractor's Vehicles and any and all other liability, claims, damages, suits, losses and expenses of any kind (including but not limited to reasonable attorneys' fees and costs, in both trial and appellate matters) associated with or arising out of any negligent or intentionally wrongful act or omission of Contractor, owner or managing agents or managing members, its agents or employees or from failure of Contractor, its agents or employees, to comply with each and every requirements of the City Code, this Agreement, or with failure of Contractor, its agents or employees, to comply with any applicable federal, state or local law, including traffic laws, or any combination of same. It is specifically understood and agreed that this indemnification clause exempts Contractor from the above obligations to the extent caused by the City's own negligent or intentionally wrongful acts or omissions, breaches of this Agreement, or obligations arising from statute or operation of law, including, but not limited to, the duty to maintain the public right of way free from dangerous conditions.

These terms shall not be construed to waive or alter any statutory or constitutional sovereign immunity rights, limitations or extend the liability provided to the City.

10.2. Nothing herein is intended to serve as a waiver of sovereign immunity by the City nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The City is subject to section 768.28, Florida Statutes, as may be amended from time to time.

10.3. The provisions of this section shall survive termination of this Agreement.

11. **Notices/Authorized Representatives.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

12. **Governing Law and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

13. **Entire Agreement/Modification/Amendment.**

13.1. This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

13.2. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

14. **Ownership and Access to Records and Audits.**

14.1. Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. The City Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the City.

14.2. Upon request from the City's custodian of public records, Contractor shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

14.3. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City.

14.4. Contractor shall notify City and label or otherwise identify any and all materials and records which would be trade secrets or proprietary information that would be exempt as defined by Florida Statutes and provide a sworn affidavit from a person with personal knowledge attesting that the exempted documents constitute trade secrets within the meaning of Section 812.081, Florida Statutes, and stating the factual basis for the same. Pursuant to Section 815.045, F.S., the City shall not disclose and shall maintain the confidentiality of any records which constitute a trade secret or proprietary information as defined by Florida Statutes.

14.5. **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.** **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS. Custodian of Records:**

15. **Severability.** If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
16. **Independent Contractor.** The Contractor and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.
17. **Compliance with Laws.** The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.
18. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.
19. **Survival of Provisions.** Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
20. **Prohibition of Contingency Fees.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working

solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

21. **Public Entity Crimes Affidavit.** Contractor shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
22. **Force Majeure.** Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, epidemic, fire, flood, hurricane or tropical storm, earthquake, explosion, pandemic, or any act of God; provided that the cause whether or not enumerated in this Section is beyond the reasonable control and without the fault or negligence of the party seeking relief under this Section.
23. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
24. **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the City requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
25. **Conflicts; Order of Priority.** This document without exhibits is referred to as the "Base Agreement." In the event of a conflict between the terms of this Agreement and any exhibits or attachments hereto, or any documents incorporated herein by reference, the conflict shall be resolved in the following order of priorities and the more stringent criteria for performance of the Services shall apply:
 - 25.1. First Priority: Base Agreement;
 - 25.2. Second Priority: Exhibit A – Proposal; and
 - 25.3. Third Priority: Exhibit B – Map.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

CITY OF NORTH MIAMI

By: _____
Rasha Cameau
City Manager

Attest:

By: _____
Vanessa Joseph
City Clerk

Approved as to form and legal sufficiency:

By: _____
Jeff P.H. Cazeau
City Attorney

Addresses for Notice:

City of North Miami
Attn: Rasha Cameau
City Manager
776 NE 125th Street
North Miami, FL 33161
305-895-9888 (telephone)
rcameau@northmiamifl.gov (email)

CONTRACTOR

By: _____
Name: Jason Spiegel
Title: Managing Partner
Entity: Beefree, LLC

Addresses for Notice:

Jason Spiegel
Managing Partner
Beefree, LLC
371 NE 61st St
Miami, FL 33137
305-330-9450(telephone)
jason@ridefreebee.com (email)

With a copy to:

Bradley F. Zappala, Esq.
Switkes & Zappala, P.A.
407 Lincoln Road, PH SE
Miami Beach, FL 33141
305-534-4757 (telephone)
305-538-5504 (facsimile)
bzappala@switkeslaw.com (email)

EXHIBIT "A"

Scope of Services

The Contractor will provide mobile-based, on-demand door-to-door transportation services ("On-Demand Services") within the area designated by the City of North Miami in Exhibit B utilizing four (4) model year 2018 or newer Tesla vehicle's that seats up to four (4) individuals at any given time (the "Vehicle"). All vehicles will be equipped with onboard cameras all trips will be recorded. In the event of an incident the recorded digital informatio will be available to the city or its designated representative.

All vehicles must meet all safety and mechanical standards established by Federal, State, County, and local law, rules, or regulations. Wheelchair-accessible vehicles shall be equipped to allow for the safe loading, securing, and travel of passengers who use wheelchairs based on the vehicle's wheelchair capacity and in compliance with the specifications and regulations set forth by the FTA for wheelchair-accessible vehicles. The wheelchair-accessible vehicles will be either lift or ramp equipped to accommodate wheelchairs and shall have a manual backup to its lift system as required by the ADA. The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails.

The terms of operating the Vehicles are as follows:

- 1) The Vehicles will be dedicated exclusively to serving individuals within the area designated by City of North Miami in Exhibit "B" attached hereto.
- 2) The Contractor will operate the Vehicles seventy (70) hours weekly in accordance with the following schedule, as may be adjusted by the City from time to time (the "Operating Hours"):
 - a) Monday: Thursday 8 am - 7 pm
 - b) Friday: 8 am – 9 pm;
 - c) Saturday: 10 am- 9 pm
 - d) Sunday: 10am - 6pm
- 3) Contractors will take all reasonable steps to limit driver break times to downtimes in service. Operating Vehicles will be staggered such that no Vehicle will operate for longer than ten (12) hours in a single day. The Operating Hours set forth herein may be reasonably adjusted from time to time by mutual written agreement of the Parties hereto.
- 4) The Contractor will operate four (4) Vehicles ("On-Demand Vehicles") within the City, which will consist of various pick-up and drop-off stops as designated by riders within the Designated Service Area at all times during the Operating Hours (weather and conditions permitting) with the exception of times when drivers are on any company-approved breaks. To the extent reasonably possible, break times should be staggered to limit the total number
- 5) As compensation for the Services, the City shall pay an annual cost per Vehicle in the amount of \$497,000, which is based on a per vehicle cost of \$131,760 minus a \$7,500 Guaranteed Advertising Revenue Discount.
- 6) The Contractor will provide drivers for the Vehicles that will communicate public service announcements as may be communicated by the City to Contractor from time to time.
- 7) The Contractor will assist the City in developing a marketing plan to encourage ridership on the Vehicles during the term of the Agreement.
- 8) Beginning with the second month of the term of the Agreement and continuing for each month of the term thereafter, Contractor will provide the City with a monthly report showing data and analytics related to ridership and operations of the Vehicles for the preceding month(s).

Contractors will provide these reports with each monthly invoice starting the second month of the term.

- 9) Contractor will have the ability to sell advertising space on the Vehicles at any time during the term, and provided Contractor is able to sell such advertising space, Contractor may enter into separate agreements with advertisers for the placement of advertising on the Vehicles. Any advertising revenue generated from the sale of advertising on the Vehicles during the Term shall be retained by the contractor in exchange for providing a \$30,000 Guaranteed Advertising Revenue Discount to the City. At any time, City may request copies of advertising agreements entered into for the placement of advertising on the Vehicles and Contractor will furnish said copies within fifteen (15) calendar days.

Map of Designated Service Area

