

RESOLUTION NO. 2023-089

A RESOLUTION OF THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, APPROVING AN AGREEMENT WITH BEEFREE, LLC D/B/A FREEBEE FOR ON-DEMAND TRANSPORTATION SERVICES; WAIVING COMPETITIVE BIDDING PROCEDURES; PROVIDING FOR AUTHORIZATION; AMENDING THE BUDGET FOR FISCAL YEAR 2022-2023; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, North Bay Village (the “Village”) wishes to provide additional, convenient transportation services and options to its residents and visitors; and

WHEREAS, the Village previously entered into an agreement with BeeFree, LLC d/b/a Freebee (“Freebee”) for the provision of mobile-based, on-demand, transportation services (the “Services”) within the Village; and

WHEREAS, the Village has determined that it is in the Village’s best interest to contract with Freebee to provide the Services for the benefit of the Village’s residents and visitors; and

WHEREAS, in accordance with Section 36.25(L) of the Village Code of Ordinances (the “Code”), the Village Commission has determined that the process of competitive bidding and competitive proposals for the Services is not in the best interest of the Village and desires to waive such procedures to provide the Services; and

WHEREAS, the Village Commission desires to enter into an agreement with Freebee, in substantially the form attached hereto as Exhibit “A” (“Agreement”), and authorize the Village Manager to execute all documents necessary for the Services; and

WHEREAS, on September 29, 2022, the Village Commission adopted Resolution No. 2022-79 approving the budget for fiscal year 2022-2023 (the “Budget”); and

WHEREAS, pursuant to Section 166.241, Florida Statutes, the Village Commission may amend a budget at any time within a fiscal year; and

WHEREAS, in order to provide the necessary funding for the Services and pursuant to Section 35.21 of the Village Code of Ordinances and Florida Law, the Village Commission desires to amend the Budget consistent with the staff

memorandum accompanying this resolution by authorizing the line item transfers as further provided in Exhibit “B” attached hereto and incorporated herein; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval. That the Village Commission hereby approves the Agreement with Freebee, in substantially the form attached hereto as Exhibit “A.”

Section 3. Authorization. That the Village Commission hereby authorizes the Village Manager to execute the Agreement, in substantially the form attached hereto as Exhibit “A,” subject to approval by the Village Attorney as to form, content and legal sufficiency, and to take any action which is reasonably necessary to implement the intent and purpose of this Resolution.

Section 4. Amending Budget. That the Village Commission hereby approves an amendment to the budget by authorizing the line item transfers as further provided in Exhibit “B” attached hereto and incorporated herein.

Section 5. Effective Date. That this Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by Commissioner Streitfeld who moved its adoption. The motion was seconded by Commissioner Cuk and upon being put to a vote, the vote was as follows:

Mayor Brent Latham	<u>Yes</u>
Vice Mayor Richard Chervony	<u>Yes</u>
Commissioner Goran Cuk	<u>Yes</u>
Commissioner Andy Rotondaro	<u>Yes</u>
Commissioner Rachel Streitfeld	<u>Yes</u>

PASSED AND ADOPTED on this 13th day of June, 2023.

Brent Latham

Brent Latham, Mayor

ATTEST:

Alba L. Chang

Alba L. Chang, CMC
Village Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Weiss Serota Helfman Cole & Bierman

Weiss Serota Helfman Cole & Bierman, PL
Village Attorney

EXHIBIT "A"

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
NORTH BAY VILLAGE
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 **NORTH BAY VILLAGE, FLORIDA**, a Florida municipal corporation, (the "Village"), 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 Village, as further described in Exhibit "A" attached hereto (the "Services"); and

WHEREAS, the Village 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 Village 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 Village for the term of this Agreement.
- 1.3. Contractor will operate the Vehicles in the Village'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 Village.

2. Term/Commencement Date.

- 2.1. The term of this Agreement shall be from the Effective Date through one (1) year thereafter ("Initial Term"), unless earlier terminated in accordance with Paragraph 8. After the Initial Term, this Agreement may be renewed for four (4) additional one-year terms ("Renewal Terms") upon mutual agreement of the Parties.
- 2.2. Contractor agrees that time is of the essence and Contractor shall complete the Services within the term of this Agreement, unless extended by the Village Manager in writing.

3. Compensation and Payment.

- 3.1. The Village 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, along with any other reports required under this Agreement, to Village 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 Contractor's invoice, which shall be based upon the rates set forth in Exhibit "A." The Village shall pay the Contractor in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Village Manager. Invoices submitted without the required back up material or information may result in delayed payment.

4. **Subcontractors.**

4.1. The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Services.

4.2. Contractor may only utilize the services of a particular subcontractor with the prior written approval of the Village Manager, which approval may be granted or withheld in the Village Manager's reasonable discretion.

5. **Village's Responsibilities.**

5.1. The Village will provide one (1) parking space ("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 Village. Contractor shall use only the Designated Parking to park or store Vehicles. Contractor must not park or store Vehicles in non-designated, Village-owned property, unless otherwise expressly authorized in writing by the Village.

5.2. Village shall make available any information, documents, or other data pertinent to the Services and in possession of the Village, upon written request of the Contractor.

5.3. Upon Contractor's request, Village shall reasonably cooperate in arranging for access to data or personnel as required for Contractor to perform the Services.

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

6.1. The Contractor agrees to comply with the terms and conditions of the Interlocal Agreement with Miami-Dade County (the "County") and the Village for the provision of on-demand transportation services incorporated herein by reference.

6.2. 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. If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Contractor's Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to the Services as described within this Agreement, upon written notification from the Village Manager, the Contractor shall at Contractor's sole expense, correct its Deliverables or, if during the term of this Agreement, its Services within fourteen (14) days of receiving such written notification.

6.3. 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 Village as an independent contractor of the Village.

6.4. 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.

6.5. The Contractor represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor have been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

7. **Conflict of Interest.** To avoid any conflict of interest or any appearance thereof, Contractor shall not, for the term of this Agreement, provide any Services similar to those provided pursuant to this Agreement to any private sector entities with any current or foreseeable adversarial issues in the Village. For the purposes of this section "adversarial" shall mean any issues where staff is recommending denial or denied an application for permitting or zoning, or an administrative appeal or court action wherein the Village is a party.

8. **Termination.**

8.1. The Village Manager, without cause, may terminate this Agreement upon thirty (30) 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.

8.2. Upon receipt of the Village's written notice of termination for convenience, Contractor shall stop providing Services after fourteen (14) calendar days, unless otherwise directed by the Village Manager.

8.3. Contractor, without cause, may terminate this Agreement upon one hundred eighty (180) calendar days written notice to the Village, or upon thirty (30) calendar days written notice with cause if Village fails to cure any material breach after written notice with fourteen (14) calendar days opportunity to cure.

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

8.5. The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services to the Village, in a hard copy and electronic format within fourteen (14) days from the date of written notice of the termination or expiration of this Agreement.

9. **Insurance.**

9.1. 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 Village, naming the Village 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 Village, its officials, employees,

agents, and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the Village as it deems necessary or prudent. In the event that the Village deems an increase in coverage necessary or prudent, it shall provide Contractor with a thirty (30) day written notice of any changes to insurance obligations that the Village requires. Contractor will comply with such a request prior to expiration of the notice period unless the insurance coverage is not then readily available in the national market and may request additional compensation from the Village for any increased premiums incurred as a result of any such change, accompanied by justification. Notwithstanding the foregoing, should the Village 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 Village declines to provide Contractor with additional compensation requested by Contractor in connection with such increased premiums for insurance coverage.

9.1.1. 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.

9.1.2. 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 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.

9.1.3. 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.

9.2. **Certificate of Insurance.** Certificates of Insurance shall be provided to the Village, reflecting the Village 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 Village and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to Village 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 Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is

due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.

- 9.3. **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Village is to be specifically included as an Additional Insured for the liability of the Village 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 Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- 9.4. **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.
- 9.5. **Waiver of Subrogation.** The Contractor's insurance policies shall include a blanket waiver of subrogation endorsement in favor of the Village.

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

10. **Nondiscrimination.**

- 10.1. 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.
- 10.2. Pursuant to Section 36.25(Q)(3) of the Village Code of Ordinances and in accordance with Section 9.03 of the Village Charter, the Contractor shall not engage in any discrimination in his/her/its operation on the basis of race, religion, sex, sexual orientation, place of origin, or physical handicap.
- 10.3. In accordance with Section 36.25(V)(2) of the Code of the Village, the Contractor warrants and represents that it is not currently engaged in and will not engage in a boycott. For purposes of this Section, a boycott means to blacklist, divest from, or otherwise refuse to deal with a nation or country, or to blacklist or otherwise refuse to deal with a person or entity when the action is based on race, color, religion, gender, sexual orientation, or national origin of the person or entity. The term boycott does not include a decision based upon business or economic reasons, or boycotts, embargoes, trade restrictions, or divestments that are specifically authorized or required by federal law or state law.

11. **Attorneys Fees and Waiver of Jury Trial.**

11.1. 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.

11.2. 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.

12. **Indemnification.**

12.1. Contractor shall indemnify and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Contractor's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Contractor's performance or non-performance of this Agreement. It is specifically understood and agreed that this indemnification clause exempts Contractor from the above obligations to the extent caused by Village'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.

12.2. Nothing herein is intended to serve as a waiver of sovereign immunity by the Village 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 Village is subject to section 768.28, Florida Statutes, as may be amended from time to time.

12.3. The Contractor shall indemnify and hold harmless the County, and its officers, agents employees and instrumentalities from any and all liability, claims, liabilities, losses, and causes of action, including reasonable attorneys' fees and cost of defense which the County its officers, employees, agents and instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, or relating to or resulting from the provision of transportation services by the Contractor and/or its officers, employees, agents or independent contractors. The Contractor shall be required to pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments and attorneys' fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County and the Village or their officers, employees, agents or instrumentalities as herein provided. Nothing herein shall be deemed to indemnify the County from any liability or claim arising out of the negligent performance of the County its officers, employees, agents or instrumentalities or any other related third party.

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

13. **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.
14. **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.
15. **Entire Agreement/Modification/Amendment.**
 - 15.1. 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.
 - 15.2. 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.
16. **Ownership and Access to Records and Audits.**
 - 16.1. Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which specifically and exclusively relate to Services to the Village which are conceived, developed or made by Contractor during the term of this Agreement (“Work Product”) belong to the Village.
 - 16.2. Contractor agrees to keep and maintain public records in Contractor’s possession or control in connection with Contractor’s performance under this Agreement. The Village 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 Village.
 - 16.3. Upon request from the Village’s custodian of public records, Contractor shall provide the Village 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.
 - 16.4. 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 Village.
 - 16.5. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor

shall be delivered by the Contractor to the Village Manager, at no cost to the Village, within fourteen (14) days. All such records stored electronically by Contractor shall be delivered to the Village in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

16.6. Any compensation due to Contractor shall be withheld until all records are received as provided herein.

16.7. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

16.8. Contractor shall notify Village 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 Village shall not disclose and shall maintain the confidentiality of any records which constitute a trade secret or proprietary information as defined by Florida Statutes.

16.9. **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: Alba L. Chang, CMC, Village Clerk, 1666 Kennedy Causeway, Suite 300, North Bay Village, FL 33141, Telephone number: 305-756-7171, Email: VillageClerk@nbvillage.com.**

17. **Nonassignability.** This Agreement shall not be assignable by Contractor unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications and expertise of the Contractor, and such firm's familiarity with the Village's area, circumstances and desires.

18. **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.

19. **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 Village 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.

20. **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.
21. **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.
22. **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.
23. **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.
24. **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.
25. **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, 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.
26. **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.
27. **Non-Exclusive Agreement.** The Village reserves the right to procure or acquire similar services from another provider while this Agreement is in full force and effect.
28. **Most Favored Nation.** If during the term of this Agreement, Contractor enters into an agreement with another municipality or county ("Other Governmental Entity") for the exact same quantity of goods and services excluding any Guaranteed Advertising Revenue Discount, the terms of which agreement include direct or indirect compensation to the Other Governmental Entity, then upon written request of the Village, Contractor shall negotiate and enter into a new agreement with the Village which shall include the more favorable compensation terms extended to the Other Governmental Entity. Contractor shall notify the Village within 30 days if it enters into an agreement with an Other Governmental Entity that has more favorable terms than this Agreement and the Village shall have the right to receive the more favorable terms immediately.

- 29. Termination Due To Lack of Funding.** This Agreement is subject to the condition precedents that: (i) Village funds are available, appropriated and budgeted, for the Services annually for each year of the Term; (ii) the Village secures and obtains any necessary proceeds, grants or loans for the accomplishment of the Services pursuant to any borrowing legislation adopted by the Village Commission relative to the Services; and (iii) the Village Commission enacts legislation or other necessary resolutions, which awards and authorizes the execution of this Agreement and the annual appropriation and budgeting for the Services. The Village represents to Consultant that the Village has adopted a resolution authorizing execution of this Agreement, if required by applicable law.
- 30. E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the Village requires all contractors doing business with the Village to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Village 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.
- 31. Background Checks.** Prior to the execution of this Agreement, the Consultant shall furnish the Village with a copy of a screening and background check, including a criminal background check for Consultant, its officials, agents, employees or subcontractors providing Services under this Agreement. The Consultant shall be responsible for updating the Village in writing with any additions and deletions of the individuals authorized to provide Services under this Agreement. In the event that additional individuals are authorized to perform such Services, the Consultant shall furnish the Village with a copy of a screening and background check, including a criminal background check, prior to such individual commencing such Services. It shall be in the Village Manager's complete and sole discretion as to whether the type of check and the results are acceptable. If compliance with this section is required, the Village shall select this box: .
- 32. 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:
- 32.1. First Priority: Base Agreement;
 - 32.2. Second Priority: Exhibit A – Proposal; and
 - 32.3. 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.

NORTH BAY VILLAGE

CONTRACTOR

By: _____
Dr. Ralph Rosado, PhD, AICP
Village Manager

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

Attest:

By: _____
Alba L. Chang, CMC
Village Clerk

Approved as to form and legal sufficiency:

By: _____
Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney

Addresses for Notice:

North Bay Village
Attn: Dr. Ralph Rosado, AICP
Village Manager
1666 Kennedy Causeway, 3rd Floor
North Bay Village, FL 33141
305-758-7171 (telephone)
rosado@nbvillage.com (email)

Addresses for Notice:

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

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Haydee Sera, Esq.
North Bay Village Attorney
2800 Ponce de Leon Boulevard, 12th Floor
Coral Gables, FL 33134
hsera@wsh-law.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 North Bay Village in Exhibit B utilizing one (1) model year 2018 or newer Tesla Model X vehicle that seats up to four (4) individuals at any given time (the "Vehicle").

All vehicles, including wheelchair accessible 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 North Bay Village in Exhibit "B" attached hereto.
- 2) The Contractor will operate the Vehicles sixty (60) hours weekly in accordance with the following schedule, as may be adjusted by the Village from time to time (the "Operating Hours"):
 - a) Monday: Friday 6:30 am - 4:30 pm;
 - b) Saturday: 10 am – 8 pm; and
 - c) Sunday: No Service.
- 3) Contractor 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 (10) 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 agrees that at all times during the Operating Hours, at least one (1) wheelchair-accessible Vehicle will be available to accommodate passengers upon request, and Contractor will operate any ramping systems or other available accommodation-related systems should such accommodations be requested.
- 5) The Contractor will operate one (1) Vehicle ("On-Demand Vehicles") within the Village, 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 of Vehicles out of operation at any given time during the Operating Hours.
- 6) On occasion, the Village may request the Contractor to operate outside the normal Operating Hours or increase the number of Vehicles servicing the Village in response to a special event ("Additional Services"). In such cases, the Village will request a quote for the Additional Services utilizing the hourly rates established below. In no event shall the quote utilize a rate that exceeds the maximum hourly rate established per Vehicle provided for below, unless mutually agreed upon by Village and Contractor.

- 7) As compensation for the Services, the Village shall pay an annual cost per Vehicle in the amount of \$119,812, which is based on a per vehicle cost of \$125,812 minus a \$6,000 Guaranteed Advertising Revenue Discount. Additional Services previously approved by the Village will be billed at a maximum of \$38.40 per hour per Vehicle.
- 8) The Contractor will provide drivers for the Vehicles that will communicate public service announcements as may be communicated by the Village to Contractor from time to time.
- 9) The Contractor will assist the Village in developing a marketing plan to encourage ridership on the Vehicles during the term of the Agreement, including the creation of promotional brochures at no additional cost to the Village.
- 10) Beginning with the second month of the term of the Agreement and continuing for each month of the term thereafter, Contractor will provide the Village with a monthly report showing data and analytics related to ridership and operations of the Vehicles for the preceding month(s). Contractor will provide these reports with each monthly invoice starting the second month of the term. At a minimum and in addition to any other reporting requirements required by this Agreement, the monthly report shall include data, segregated by on-demand and circulator services, relating to:
 - a) Total boardings per month;
 - b) Average weekday boardings (i.e., the number of boardings on a specific route on a typical weekday);
 - c) Average weekday net operating cost (i.e., the total route cost, minus any revenues received from riders, divided by 255 (number of weekdays in a year));
 - d) Scheduled revenue miles (i.e., the total scheduled number of miles per route per day), which should be calculated by the number of miles per roundtrip multiplied by the number of trips scheduled;
 - e) Operations and maintenance (O&M) costs, which shall include the total cost of operations and maintenance per month; and
 - f) Advertising revenue earned.
- 11) If State and local law allow for Contractor 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 \$6,000 Guaranteed Advertising Revenue Discount to the Village. At any time, Village 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.

EXHIBIT "B"

Map of Designated Service Area





NORTH BAY VILLAGE
EST. 1945

ITEM NO. 13.E

North Bay Village Recommendation Memorandum

DATE: June 13, 2023

TO: Honorable Mayor, Vice Mayor and Members of the Village Commission

FROM: Ralph Rosado, PhD, AICP, Village Manager

SPONSORED BY:

SUBJECT: A Resolution Approving an Agreement with Beefree, LLC D/B/A Freebee for On-Demand Transportation Services - *Village Manager Ralph Rosado, PhD, AICP (Director of Public Works Marlon Lobban)*

RECOMMENDATION

A RESOLUTION OF THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, APPROVING AN AGREEMENT WITH BEEFREE, LLC D/B/A FREEBEE FOR ON-DEMAND TRANSPORTATION SERVICES; WAIVING COMPETITIVE BIDDING PROCEDURES; PROVIDING FOR AUTHORIZATION; AMENDING THE BUDGET FOR FISCAL YEAR 2022-2023; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Approve a resolution authorizing a contract with Freebee to reestablish On-Demand services.

BACKGROUND AND ANALYSIS

North Bay Village has an agreement with the Miami-Dade County's Citizen Independent Transportation Trust (CITT) program to share in the gas tax collected under this program. When the program was set up 11 years ago, the legislation provided that a portion of the gas taxes collected had to go to all participating municipalities. The Interlocal Agreement provides that NBV guarantees that a minimum of 20% of our CITT funds would be used for local circulator services. The CITT Board of Directors has approved that "on-demand" ride services are eligible expenditures of the CITT funds.

In 2019 and 2020 (pre-pandemic shutdown), the Village entered into a contract with Freebee for On-Demand Transit Service to provide short trips around the Village, and trips as far as far west as Biscayne Boulevard (Miami) and as far east as Collins Avenue (Miami Beach). As

was the case then, trips will begin and/or end in North Bay Village.

To fund the Freebee contract from May 15, 2023 through September 30, 2023 (\$39,937.32), the attached Budget Amendment has been prepared to transfer the money originally budgeted for the Downtown Express, in order to fund the Freebee program. Four (4) months at \$9,984.33 per month, sixty (60) hour per week. There is a 45 day initial set up period, and the amount budgeted includes enough funding should the program be up and running in the month of June.

Transportation Fund Budget Amendment Transfer from:

Salaries & Benefits	\$39,937.32
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Transfer to:

Contract Services	\$39,937.32
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The Village requests to enter into a contract with Freebee that will allow for five (5) one (1) year renewals. It will take Freebee 45-60 days to initiate service from execution of the contract.

Operating Hours: 60 hrs/wk

Monday to Friday: 6:30 a.m. - 4:30 p.m.

Saturday: 10:00 a.m. - 8:00 p.m.

Sunday: No Service

The Village will be provide one (1) 2018 Tesla Model X Vehicle or newer

- Freebee has a separate para-transit fleet that will be summoned for riders needing wheelchair access.

On occasion, the Village may request the Contractor to operate outside the normal operating hours or increase the number of vehicles servicing the Village in response to a special event or other qualifying demands. In such cases, the Village will request a quote for the additional services utilizing the hourly rates established in the contract. In no event shall the quote utilize a rate that exceeds the maximum hourly rate established per Vehicle provided in the contract.

Pursuant to §36.25(L) of the Village Code, Best interest of Village. *The Village Commission may award a contract without sealed bidding upon a finding that the process of competitive bidding and competitive proposals is not in the best interest of the Village.*

It is recommended that the Village Commission approve a resolution and agreement with Beefree, LLC DBA Freebee for On-Demand transportation services.

Approval of this item promotes the Livability Pillar of the NBV100 Plan.

Livability

By centering on people – residents, business owners and visitors – North Bay Village will become a more attractive place to work, live and do business. The NBV100 Livability pillar puts the focus on place making in four ways:

- Prioritizing people over cars,
- Embracing the waterfront,
- Improving the quality of life, and
- Refreshing the NBV identity.

BUDGETARY/FINANCIAL IMPACT (Finance Dept.)

Transportation Fund - Transfer from Salaries & Benefits (Exhibit A) \$39,937.32 and Transfer to Contract Services (115.18.541.3136) \$39,937.32

PERSONNEL IMPACT

No Impact

ATTACHMENTS

[Resolution Approving FreeBee Agreement - with Budget Amendment 2023](#)

[Exhibit A - Freebee Agreement 2023](#)

[Exhibit B Budget Amendment Form-FreeBee 06.13.23.pdf](#)

[Freebee Car Graphic and Service Area.pdf](#)

[Freebee Previous Cost per Rider.pdf](#)

[Public Meeting Notice DBR_06.01.2023.pdf](#)

[On Demand Services Ad- Freebee 06.13.2023.pdf](#)

EXHIBIT "B"



Budget Amendment Form

Department Transportation	Date 6/13/2023
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Fund(s) to be changed: Transportation Fund

GL Account	GL Line Item	Transfer to:	Transfer from:
115.18.541.1200	Regular Salaries	\$ -	\$ 33,417.00
115.18.541.2100	FICA	\$ -	\$ 2,556.00
115.18.541.2200	Retirement Contributions	\$ -	\$ 3,964.32
115.18.541.3136	Contract Services	\$ 39,937.32	
TOTAL (Columns must be equal)		\$ 39,937.32	\$ 39,937.32

Description:

Amend the budget to allocate funds for the FreeBee program. 60 hours per week at 16 weeks (June through September 30, 2023) at \$9,984.33 per month.