



RESOLUTION # 2020-22 A

RESOLUTION AUTHORIZING THE CITY MANAGER OR HIS/HER DESIGNEE TO ENTER INTO AN AGREEMENT WITH FREEBEE FOR A 90 DAY TRIAL TRANSIT PROGRAM AND GEO FENCING THE LIMITS OF THE TRANSIT SERVICE BETWEEN THE CITY OF WEST MIAMI AND FREEBEE, PROVIDING FOR THE FUNDING TO COME FROM THE 20% PTP REVENUE SOURCE FROM MIAMI DADE COUNTY, FURTHER COLLAPSING THE CITY'S PTP CITYWIDE LOOP JITNEY BUS SYSTEM UNTIL SEPTEMBER 30TH, 2020, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City wishes to provide ongoing free public transportation services to the citizens of the City of West Miami; and

WHEREAS, the City wishes to enter into a pilot project agreement for these transportation services with Freebee, Inc. for a period of ninety (90) days; and

WHEREAS, this project would consist of a fleet of street-legal, multi-passenger electric cars providing free, flexible transportation to the general public between points within the service area; and

WHEREAS, the City will explore the potential of a limited advertising partnership to help subsidize the costs of the service, including branding the vehicle that would provide merchants with an additional platform for the promotion of their business; and

WHEREAS, it is imperative to commence immediate repairs, and

WHEREAS, Freebee, Inc was identified by the City staff as the desired sole source provider for this service on the basis of the company's unique experience and capacity in this area.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of West Miami as follows:

Section 1. The aforementioned statements are true and correct and adopted as is fully stated herein.

Section 2. The City Mayor and City Commission hereby authorize the City Manager to enter into an agreement, a copy which is attached as Exhibit A, to provide

transportation services as described in said Exhibit A, in an amount not to exceed \$7,100.00 per month.

Section 3. This contract amount is to be funded through the 20% PTP Revenue from Miami-Dade County.

Section 4. This Resolution shall take effect immediately upon passage by the City Commission and signature of the Mayor.

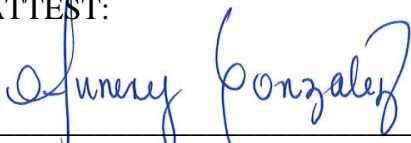
PASSED AND ADOPTED this 17th day of June 2020.

APPROVED:



RHONDA A. RODRIGUEZ, MAYOR

ATTEST:



ANNERY GONZALEZ, CITY CLERK

APPROVED AS TO FORM AND SUFFICIENCY:



JOSE A. VILLALOBOS, CITY ATTORNEY

ROLL CALL VOTE:

MAYOR RHONDA A. RODRIGUEZ	<u>Y</u>
VICE-MAYOR ERIC DIAZ-PADRON	<u>Y</u>
COMMISSIONER CANDIDA BLANCA	<u>Y</u>
COMMISSIONER JUAN M. BLANES	<u>Y</u>
COMMISSIONER LUCIANO SUAREZ	<u>ABSENT</u>

**PILOT PROGRAM
RATES AND SERVICES AGREEMENT
CITY OF WEST MIAMI**

This Pilot Program Rates and Services Agreement (“Agreement”) is made effective as of the 20th day of July, 2020 (the “Effective Date”), by and between the **CITY OF WEST MIAMI**, a Florida municipal corporation, whose principal address is 901 S.W. 62 Avenue, West Miami, Florida 33144 (hereinafter, the “CITY”), and **BEEFREE, LLC d/b/a Freebee**, a Florida limited liability company, whose principal address is 2312 N. Miami Ave., Miami, FL 33127 (hereinafter, “Beefree”).

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and for good and valuable consideration, BEEFREE and CITY (collectively, the “Parties”), intending to be legally bound, hereby agree as follows:

1. **Term.** The term of the Services set forth under this Agreement shall commence on **July 20th, 2020** and shall remain in full force and effect until **October 31st, 2020** (the “Trial Period” or “Term”), unless terminated sooner pursuant to the terms of the Agreement.

The CITY Commission will have two (2) options to extend the Term for additional periods of three (3) years each beginning upon expiration of the Trial Period, subject to BEEFREE’s agreement to such extensions. Should CITY wish to exercise its option(s) to extend the Term, it shall notify BEEFREE in writing at least sixty (60) days prior to the expiration of the preceding Term.

2. **Services.** This Agreement is limited in scope to the following services (the “Services”), which BEEFREE agrees to provide to CITY at the rates specified herein (the “Rates”):
 - a. BEEFREE will provide one (1) GEM e6 “Freebee” electric vehicle dedicated to CITY (the “Vehicle”) for the duration of the Term. The Vehicle will be wheelchair accessible.
 - b. BEEFREE will operate the Vehicle within CITY’s designated service area during CITY’s operating hours (weather and conditions permitting), except for times when drivers are on meal breaks or other short breaks approved by BEEFREE. CITY reserves the right to increase the service hours during the term of the Agreement. BEEFREE agrees that at all times during CITY’s operating hours, at least one (1) wheelchair accessible vehicle will be available to accommodate passengers upon request, and BEEFREE will operate the ramping system and secure any wheelchairs within the vehicle should such accommodations be requested.
 - c. BEEFREE will provide drivers for the Vehicle who shall be fully licensed and insured, at its own cost.
 - d. Prior to the beginning of the Term, BEEFREE will deliver to CITY one (1) fast charger for charging the Vehicle. The fast charger will remain property of BEEFREE but will remain in the CITY for purposes of charging the Vehicle throughout the Term. At the conclusion of the Term, BEEFREE shall be entitled to retake possession of the fast charger.
 - e. Prior to the beginning of the Term, BEEFREE will add CITY as an additional insured on BEEFREE’s automobile insurance policy (of at least \$1 million), on BEEFREE’s general liability policy (of at least \$3 million), and on BEEFREE’s workers’ compensation policy (of at least \$500,000), and in compliance with Florida law. CITY will remain as an additional insured on said policies throughout the Term. BEEFREE will provide CITY with Certificates of Insurance reflecting the above stated policies within ten (10) business days of written request from CITY. BEEFREE will provide not less than twenty (20) business days’ written notice to CITY before any policy or coverage is cancelled, restricted, or a material change is made.
 - f. BEEFREE will assist CITY in developing a marketing plan to encourage ridership on the Vehicle during the Term and will provide promotional brochures at no additional cost to CITY.

- g. Beginning with the second month of the Term and continuing for each month of the Term thereafter, BEEFREE will provide CITY with a monthly report showing data and analytics related to ridership in the Vehicles for the preceding month(s). BEEFREE will provide these reports within ten (10) business days of the last monthly payment due date, unless another time frame is agreed to between the Parties.
3. **Compensation & Rates.** As consideration for the Services listed above, CITY shall pay BEEFREE at the following Rates:
- a. For the one (1) XL Vehicle, CITY shall pay BEEFREE a rate of \$7,100 per month. CITY and BEEFREE agree that this rate will compensate BEEFREE for the base service of operating the Vehicle up to thirty-five (35) hours per week. Any additional hours, requested by CITY and approved by BEEFREE at its sole discretion, will be billed to CITY at a maximum of \$46.81 per hour.
4. **Payment Terms.** CITY agrees to pay the Rates in installments, as follows:
- a. First payment of **Seven Thousand One Hundred Dollars no cents (US\$7,100.00)** shall be made to BEEFREE upon execution of this Agreement, which shall apply towards the initial month of base service. Should CITY request operation of the Vehicle in excess of thirty five (35) hours per week at any time during the initial month of base service, BEEFREE will invoice the CITY once per month for all excess hours of operation fulfilled during the prior month.
- b. After the initial month of Services, BEEFREE shall invoice the CITY once per month for all Services provided during the prior month.
- c. CITY will take action to pay, reject or make partial payment on an invoice in accordance with the Florida Local Government Prompt Payment Act. All payment(s) shall be made in accordance with the State of Florida Government Prompt Payment Act.
- d. With each invoice to CITY, BEEFREE will attach a record of invoices for any advertising agreements entered into in connection with the Vehicle as backup to support any credit to CITY. However, BEEFREE shall be under no obligation to make any payment or provide any credit to CITY until such time, and only to the extent, that payment of an invoice for advertising on the Vehicle is actually received by BEEFREE.
5. **Additional Terms.**
- a. CITY's operating hours, as contemplated in Section 2.b. above, will be established in a writing agreed upon by the Parties prior to the beginning of the Term, and may be modified by subsequent written agreements of the Parties as ridership data becomes available throughout the Term. CITY reserves the right to adjust the operating hours based on actual demand, subject to BEEFREE's approval and ability to perform, which shall not be unreasonably withheld.
- b. CITY shall be responsible for installation and maintenance of the one (1) fast charger and any costs associated therewith at all times after acceptance of the delivery described in Section 2.d. above.
- c. If at any time during the Term CITY determines that a BEEFREE employee assigned to drive the Vehicles is not providing satisfactory service, CITY shall have the right to request that BEEFREE reassign and replace the driver with a BEEFREE employee who meets CITY's standards. Any such request shall be made by CITY to BEEFREE in writing and shall state the reason(s) for CITY's request in detail sufficient to apprise BEEFREE of the basis for CITY's request. BEEFREE shall act to comply with any reasonable and lawful request within seven (7) days of receiving such written notice from CITY.
- d. If at any time during the Term CITY determines that any part of a Vehicle is in disrepair, CITY shall have the right to request that BEEFREE repair or replace such part so that it meets industry standards. BEEFREE

shall repair or replace any such part identified by CITY within seven (7) days of receiving notice from CITY.

- e. BEEFREE will operate the Vehicles in CITY's designated service area as delineated in the attached map.
- f. CITY will provide two (2) covered and secured space for parking and charging the Vehicle for the duration of the Term at no cost to BEEFREE.
- g. Should local law allow for BEEFREE to sell advertising space on the Vehicles at any time during the Term, and provided BEEFREE is able to sell such advertising space, BEEFREE 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 divided equally between BEEFREE and CITY, with each entitled to 50% of advertising revenue that is generated and received by BEEFREE. CITY shall be permitted to apply its share of such revenue, if any, towards subsidizing the Rates it has agreed to pay hereunder, subject to the terms set forth in Section 4.d. above. At any time, CITY may request copies of advertising agreements entered into for the placement of advertising on the Vehicles and BEEFREE will furnish said copies within fifteen (15) business days of receipt of such a request. Nothing in this section should be deemed to constitute a guarantee that BEEFREE will sell advertising space or generate any revenue by selling advertising on the Vehicles during the Term, and CITY expressly acknowledges that no such guarantee has been made by BEEFREE.
- h. Any and all notices shall be in writing and delivered personally, or sent by certified or registered mail, postage prepaid, return receipt requested, to the address set forth below for the following contact persons for each party. Any notice so given shall be deemed received when personally delivered or three (3) business days after mailing. Any party may change the address to which notices are to be sent by giving notice of such change of address to the other party in the manner herein provided for giving notice. Notices shall be provided to the following individuals to be deemed effective:

a. CITY:

Attn: Mercedes Leon, Finance Director
City of West Miami
901 S.W. 62 Avenue
West Miami, FL 33144
(305-242-8109
MercedesL@cityofwestmiami.org

b. BEEFREE:

Attn: Jason Spiegel, M
2312 N Miami Avenue
Miami, FL 33127
(215) 370-5699
jason@ridefreebee.com

6. Termination. This Agreement, along with any addendums hereto, as may be mutually executed by the Parties from time to time, may be unilaterally terminated in any of the following manners:

(a) Termination for Cause: If either party believes that the other party has failed in any material respect to perform its obligations under this Agreement or any addendums hereto, then that party may provide notice to the other party describing the alleged failure in reasonable detail. If the alleged failure relates to a failure to pay any sum due and owing under this Agreement, the breaching party shall have fifteen (15) business days after notice of such failure to cure the breach. If the breaching party fails to cure within the specified time, then the non-breaching party may immediately terminate this Agreement for cause by providing notice to the breaching party. With respect to all other defaults, if the breaching party does not, within thirty (30) calendar days after receiving such written notice, either: (a) cure the material failure, or (b) if the breach is not one that can reasonably be cured within thirty (30) calendar days, then the non-breaching

party may terminate this Agreement, in whole or in part, for cause by providing notice to the breaching party.

(b) **Termination for Bankruptcy:** Either party shall have the immediate right to terminate this Agreement, by providing written notice to the other party, in the event: (i) the other party enters into receivership or is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors; or (ii) a substantial part of the other party's property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.

(c) **Payments Due:** The termination of this Agreement shall not release either party from its obligation to make payment of any and all amounts then or thereafter due or payable.

(d) **Continuation of Services:** BEEFREE will continue to perform Services during the notice period unless otherwise mutually agreed upon between the Parties in writing. In the event that CITY provides notice of termination and directs BEEFREE not to perform the services during the notice period, CITY agrees to pay BEEFREE an amount equal to the amount normally due to BEEFREE for the notice period. Upon termination by either party, CITY will pay BEEFREE for all services performed and charges and expenses reasonably incurred by BEEFREE in connection with the services provided under this Agreement and any addendums hereto through the date of termination.

7. **Governing Law.** This Agreement shall be construed, interpreted and governed exclusively by and pursuant to the laws of the State of Florida, without reference to any conflicts-of-laws rules or principles that may or would require the application of the law of any other jurisdiction.

8. **Venue.** The Parties agree that any controversy, disagreement, claim, dispute or other proceeding between them which relates to or arises out of this Agreement, or which is otherwise related in any manner to the relationship between the Parties, shall be subject to the exclusive jurisdiction and venue of the United States District Court for the Southern District of Florida located in Miami-Dade County, Florida, or, in the event that such Federal Court does not have subject matter jurisdiction over such proceeding, in the courts of the State of Florida located in Miami-Dade County, Florida. Each party irrevocably waives any right that it may have to a trial by jury in connection with any dispute arising out of or in connection with this Agreement and any addendums hereto.

9. **Severability.** If, at any time, any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability of the remaining provisions shall in no way be affected or impaired thereby. The invalid provision shall be replaced by a valid one which achieves to the extent possible the original purpose and commercial goal of the invalid provision.

10. **Indemnification.** BEEFREE agrees to indemnify, defend and hold CITY its parents, affiliates, subsidiaries, principals, officers, and agents, harmless against any claims, suits, actions, or demands (including but not limited to any damages, reasonable attorneys' fees and costs) arising out of allegations that BEEFREE's advertising content or the use of such advertising content in or in connection with the services provided hereunder infringe upon any intellectual property right of any third party. BEEFREE also agrees to indemnify, defend, and hold CITY, its parents, affiliates, subsidiaries, principals, officers, and agents, harmless against any claims, suits, actions, or demands (including but not limited to any damages, reasonable attorneys' fees and costs) based on damage caused to property or based on injury and/or death of persons, including for product liability, arising out of any unlawful, willful, negligent or reckless acts or omissions by BEEFREE.

11. **Force Majeure.** BEEFREE shall not be liable to CITY for non-performance or delay in performance of any of its obligations under this Agreement and any addendum(s) hereto due to acts of God, war, civil commotion, embargo, strikes, fire, theft, delay in delivery of services of sub-contractors or sub-suppliers, shortage of labor or materials, compliance with any regulation or directive of any national, state or local government, or any department or agency thereof, epidemic, pandemic, hurricane, tropical storm, inclement weather, earthquake or any other similar unforeseen event or act of God (whether or not similar in nature to those specified) which are outside the reasonable control of BEEFREE.

12. **Assignment.** This Agreement shall not be assignable by either party, in whole or in part, without the written consent of the other party, which consent shall not be unreasonably withheld or denied.

13. **Construction and Interpretation.** The rule requiring construction or interpretation against the drafter is waived. This Agreement and any addendums hereto shall be deemed as if they were drafted by both Parties in a mutual effort.

14. **Entire Agreement.** This Agreement forms the entire agreement between the Parties relating to the subject matter hereof. Except as otherwise agreed in this Agreement, all amendments and modifications to this Agreement shall be made by a written document executed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the date last written below.

Attest:

CITY OF WEST MIAMI

By: Annery Gonzalez
Annery Gonzalez, CITY Clerk
7/20/2020

By: Mercedes León
Mercedes León, Finance Director

Legal Sufficiency:

By: 1/9/ Jose A. Villalobos
Jose A. Villalobos, CITY Attorney

Witness:

As to **BEEFREE:**

Signed, sealed and witnessed in the presence of:

By: [Signature]

By: [Signature]

Name: Jason Spisak

Title: Managing Partner Facility