

RESOLUTION NO. 23-06-54

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING A REVOCABLE LICENSE AGREEMENT WITH BEEFREE, LLC., d/b/a FREEBEE RELATED TO ELECTRIC VEHICLE CHARGING STATIONS; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Islamorada, Village of Islands (the "Village") has retained the services of BEEFREE, LLC., d/b/a Freebee ("Freebee") through the Agreement to provide no-fare local transportation utilizing electric vehicles; and

WHEREAS, the Agreement with Freebee provides that the Village shall be responsible for installation of fast chargers for the electric vehicles; and

WHEREAS, from the inception of the ridesharing program in 2018, Freebee, at its discretion, installed its vehicle chargers at businesses on Upper Matecumbe Key through separate arrangements made with those businesses and informed the Village that Freebee did not require the Village to provide a location for the installation of vehicle chargers; and

WHEREAS, in May 2021, Freebee informed the Village that the primary charging location they had utilized was no longer available for Freebee vehicle charging and requested that the Village provide a municipal location to install and utilize vehicle charging equipment; and

WHEREAS, the Village entered into a Revocable License Agreement with Freebee in July 2021 to authorize use of Village property through the term of the service agreement with Freebee; and

WHEREAS, the Village wished to enter into a Revocable License Agreement with Freebee for an additional two (2) year term; and

WHEREAS, the charging station site is an area in front of the South Plantation Key wastewater pump station adjacent to the Islamorada Administrative Center and Public Safety Headquarters at 86800 Overseas Highway as shown in a parcel map and a site map provided at Exhibit "A" of the Revocable License Agreement; and

WHEREAS, Freebee is responsible for all costs associated with the electrical costs and maintenance of the vehicle chargers; and

WHEREAS, the Village Council of Islamorada, Village of Islands (the "Village Council") desires to approve the Revocable License Agreement between Freebee and the Village and finds that approval thereof is in the best interest of the Village and its residents.

NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The above recitals are true and correct and incorporated into this Resolution by this Reference.

Section 2. **Approval of Agreement.** The Village Council hereby approves the Revocable License Agreement between BEEFREE, LLC d/b/a Freebee and the Village, a copy of which is attached as Exhibit "1," together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney.

Section 3. **Authorization of Village Officials.** The Village Manager and/or his designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Revocable License Agreement.

Section 4. **Execution of Agreement.** The Village Manager is authorized to execute the Revocable License Agreement on behalf of the Village, to execute any required agreements

and/or documents to implement the terms and conditions of the Revocable License Agreement and to execute any extensions and/or amendments to the Revocable License Agreement, subject to approval as to form and legality by the Village Attorney.

Section 5. **Effective Date.** This Resolution shall take effect immediately upon adoption.

Motion to adopt by Councilmember Mark Gregg, seconded by Councilmember Elizabeth Jolin.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Joseph B. Pinder III	<u>Yes</u>
Vice Mayor Sharon Mahoney	<u>Yes</u>
Councilman Mark Gregg	<u>Yes</u>
Councilwoman Elizabeth Jolin	<u>Yes</u>
Councilman Henry Rosenthal	<u>Yes</u>

PASSED AND ADOPTED THIS 8th DAY OF JUNE, 2023.


JOSEPH B. PINDER III, MAYOR

ATTEST:


MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS:


JOHN J. QUICK, VILLAGE ATTORNEY



REVOCABLE LICENSE AGREEMENT

This Revocable License Agreement made and entered into this 20th day of June, 2023 by and between ISLAMORADA, VILLAGE OF ISLANDS, a political subdivision of the state of Florida, hereinafter referred to as the "VILLAGE," and BEEFREE, LLC d/b/a/ Freebee, hereinafter referred to as "LICENSEE."

W I T N E S S E T H:

IN CONSIDERATION of the mutual terms, conditions, promises and covenants hereinafter contained, it is hereby agreed by and between the parties hereto as follows:

1. DESCRIPTION OF PREMISES:

VILLAGE hereby grants LICENSEE the non-exclusive right, license and privilege of using that portion of the property owned by the VILLAGE as described on Exhibit "A" ("Licensed Premises"), attached hereto and made a part hereof.

2. TERM:

This Revocable License Agreement effective on July 1, 2023, and terminates on July 1, 2025, unless otherwise extended by the mutual written agreement of the LICENSEE and the VILLAGE. VILLAGE through its Village Manager may terminate this Revocable License Agreement as provided for below in Section 12, TERMINATION.

3. COMPENSATION:

LICENSEE as total compensation payable to the VILLAGE for the use and privileges granted herein, shall at its own expense, perform the necessary improvements and tasks set forth below in Section 4 USE OF PREMISES, for as long as this Revocable License Agreement is in full force and effect.

4. USE OF PREMISES:

LICENSEE shall use and occupy the Licensed Premises for electric vehicle charging stations and other specific related uses. The Licensed Premises shall not be used for any other purpose without prior written consent of the VILLAGE through the Village Manager or designee. LICENSEE covenants that it will not, without prior written consent of the VILLAGE, permit the Licensed Premises to be used or occupied by any person, firm, entity or corporation other than LICENSEE. LICENSEE further covenants that no nuisance or hazardous trade or occupation shall be permitted or carried on, in or upon the Licensed Premises, no act shall be permitted, and nothing shall be kept in or about said Licensed Premises which will increase the risk of any hazard, fire or catastrophe, and no waste shall be permitted or committed upon, or any damage done to said Licensed Premises. LICENSEE shall not permit the Licensed Premises to be used or occupied in any manner that would violate any laws or regulations of any governmental authority.

As consideration for the license granted hereunder, LICENSEE shall perform the following:

- In consultation and coordination with Village staff, Licensee shall design, permit and construct a rocked, edged, formal parking area for four (4) spaces on the Licensed Premises.
- Install three (3) electric charging stations to coincide with three of the four parking spaces.
- Stub an electric conduit out to the fourth parking space, which could be separately metered, in case a fourth charger is ever desired for use by Freebee or the by Village for its municipal or public use.

- Install a bollard to protect the adjacent Village pump station in coordination with Village staff.
- When the charging stations are not in use by Freebee, the charging stations will be made available to the Village for its use should the Village put electric fleet vehicles into service.

5. DISCLAIMERS:

Notwithstanding anything to the contrary herein, it is expressly understood and agreed that LICENSEE's use of the Licensed Premises is "as is" and "where is" and with all faults and that VILLAGE is making no representations or warranties, whether express or implied, by operation of law or otherwise, with respect to the quality, physical condition or value of the Licensed Premises or the compliance of the Licensed Premises with applicable building or fire codes or other laws or regulations. It is further understood and agreed that VILLAGE makes no warranty of habitability, suitability, merchantability or fitness for a particular purpose. LICENSEE agrees that VILLAGE is not liable or bound by any guarantees, promises, statements, representations or information pertaining to the Licensed Premises as made or furnished by any real estate agent, broker, employee, servant or other person representing or purporting to represent VILLAGE, except as and to the extent expressly set forth herein. LICENSEE further acknowledges and agrees that LICENSEE shall assume responsibility for all costs and expenses required to cause the Licensed Premises to comply with all applicable building and fire codes, municipal ordinances and other laws, rules and regulations (including without limitation the ADA and any codes, municipal ordinance, laws rules or regulations regarding retrofitting or plumbing fixtures). LICENSEE and VILLAGE agree that the provisions of this section shall survive the termination of this Revocable License Agreement.

6. ALTERATIONS AND IMPROVEMENTS TO LICENSED PREMISES:

LICENSEE may not make any alteration, adjustment, partition, addition or improvement to the Licensed Premises or any part thereof, other than the installation of the electric vehicle charging station(s), without obtaining prior written consent of VILLAGE through its Village Manager or designee. LICENSEE, at its sole cost and expense, shall obtain all necessary permits to install the stations. All requests by LICENSEE shall be in writing and shall contain all pertinent plans and specifications. All alterations, adjustments, partitions, additions or improvements shall remain the exclusive property of VILLAGE. All such alterations or improvements shall be made at the sole cost and expense of LICENSEE. LICENSEE shall keep the Licensed Premises in a clean, safe, and sanitary condition. Upon termination or expiration of this Agreement, LICENSEE shall leave all alterations adjustments, partitions, additions or improvements made to the Licensed Premises as is, but may remove the electric vehicle charging station(s) and related equipment.

7. ASSIGNMENT OR SUBLETTING:

LICENSEE shall not assign all or any portion of the Licensed Premises during any term of this Revocable License Agreement. Should LICENSEE attempt to assign this Revocable License Agreement, then the Revocable License Agreement shall be terminated automatically by operation of this clause, without prior notice to LICENSEE.

8. DAMAGE TO PREMISES:

LICENSEE agrees that all personal property placed upon the Licensed Premises shall remain the property of LICENSEE and shall be placed upon the property at the risk of LICENSEE. LICENSEE shall give to VILLAGE, or its agent, prompt written notice by certified mail of any occurrence, incident or accident occurring on the Licensed Premises. In the event any damages should occur to the licensed premises, LICENSEE shall promptly notify VILLAGE.

9. INSPECTIONS:

VILLAGE, or its agents, or any authorized employee of said agent, may enter upon said Licensed Premises at all reasonable times and hours to examine same to determine if LICENSEE is properly maintaining the Licensed Premises to this Revocable License Agreement.

10. INDEMNIFICATION:

LICENSEE shall at all times hereafter indemnify, hold harmless and, at the Village Attorney's option, defend or pay for an attorney selected by the Village Attorney to defend VILLAGE, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of, LICENSEE, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Revocable License Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property.

In the event any lawsuit or other proceeding is brought against VILLAGE by reason of any such claim, cause of action or demand, LICENSEE shall, upon written notice from VILLAGE, resist and defend such lawsuit or proceeding by counsel satisfactory to VILLAGE or, at VILLAGE's option, pay for an attorney selected by VILLAGE Attorney to defend VILLAGE. The provisions and obligations of this section shall survive the expiration or earlier termination of this Revocable License Agreement. To the extent determined necessary by the VILLAGE, any sums due LICENSEE under this Revocable License Agreement may be retained by VILLAGE until all of VILLAGE's claims for indemnification pursuant to this Revocable License Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by VILLAGE.

11. INSURANCE:

Without limiting any of the other obligations or liabilities of LICENSEE, LICENSEE shall provide, pay for and maintain in force the insurance set forth in this section during the term of this Revocable License Agreement, and any extension thereof.

11.1 Comprehensive General Liability Insurance.

Comprehensive General Liability with minimum limits of \$1,000,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.

11.1.1 Premises and/or Operations.

11.1.2 Independent Contractors.

11.1.3 VILLAGE is to be included as an "Additional Insured" with respect to liability arising out of operations performed for VILLAGE by or on behalf of LICENSEE, acts of omissions of VILLAGE in connection with general supervision of such operation, and the ownership, maintenance, or use of the Licensed Premises.

11.1.4 Notice of Cancellation and/or Restriction. The policy(ies) must be endorsed to provide VILLAGE with thirty (30) days' notice of cancellation and/or restriction.

11.2 Workers' Compensation Insurance.

Workers' Compensation Insurance to apply for all employees in compliance with the Workers' Compensation Law of the state of Florida and all applicable federal laws. In addition, the policy(ies) must include:

11.2.1 Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) for each accident.

11.2.2 Notice of cancellation and/or restriction. The policy(ies) must be endorsed to provide VILLAGE with thirty (30) days' notice of cancellation and/or restriction.

12. TERMINATION:

12.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the VILLAGE. Termination for convenience by either party shall be effective on the termination date stated in written notice provided by either VILLAGE or LICENSEE, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the Village Manager upon such notice as the Village Manager deems appropriate under the circumstances in the event the Village Manager determines that termination is necessary to protect the public health, safety, or welfare. If VILLAGE erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

12.2 This Agreement may be terminated for cause for reasons including, but not limited to, LICENSEE's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if LICENSEE is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if LICENSEE provides a false certification submitted pursuant to Section 287.135, Florida Statutes.

12.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the VILLAGE Manager, which the VILLAGE Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

13. MAINTENANCE AND REPAIR OF LICENSED PREMISES:

Except as provided in this section, it shall be the responsibility of LICENSEE to keep the Licensed Premises clean, safe, sanitary and free from trash and debris. The upkeep and maintenance of all areas herein used by LICENSEE shall be borne by LICENSEE, and LICENSEE agrees to maintain the Licensed Premises in accordance with the terms and conditions of this Revocable License Agreement and consistent with prudent and well-reasoned maintenance procedures and techniques.

14. UTILITIES AND OTHER SERVICES:

LICENSEE shall make all arrangements for and pay timely all costs of any and all utilities it requires. VILLAGE does not guarantee that the service and/or installation of such utilities will be adequate or continuous.

15. AMENDMENTS:

No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

16. SURRENDER UPON TERMINATION:

LICENSEE shall peaceably surrender and deliver the Licensed Premises to VILLAGE, or its agents, immediately upon expiration of the license term; or after ten (10) days written notice from the VILLAGE upon termination of the Revocable License Agreement for any other reason. LICENSEE further agrees that it will leave the Licensed Premises in the condition existing at the commencement of this Revocable License Agreement, subject to the repair and maintenance obligations provided for herein. Upon termination or expiration of this Agreement, LICENSEE shall leave all alterations adjustments, partitions, additions or improvements made to the Licensed Premises "as-is" but may remove the electric vehicle charging station(s) and related equipment.

17. WAIVER:

Failure of VILLAGE to insist upon strict performance of any covenant or condition of this Revocable License Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect.

None of the conditions, covenants or provisions of this Revocable License Agreement shall be waived or modified except by the parties hereto in writing.

18. NOTICES:

Any notice or demand, which under the terms of this revocable license or by any statute or ordinance, given or made by a party hereto shall be in writing and shall be given by certified or registered mail sent to the other party at the address set forth below, or to such other address as such party may from time to time designate by notice.

Notice to VILLAGE shall be addressed to:

Ted Yates Village Manager
Village Administrative Center
86800 Overseas Highway
Islamorada, FL 33036

Notice to LICENSEE shall be addressed to:

Mr. Jason Spiegel BEEFREE, LLC
2312 N. Miami Ave
Miami, Florida 33127

19. ASSIGNMENT AND PERFORMANCE

LICENSEE is an independent contractor under this Revocable License Agreement. Services provided by LICENSEE pursuant to this Revocable License Agreement shall be subject to the supervision of LICENSEE. In providing such services, neither LICENSEE nor its agents shall act as officers, employees, or agents of VILLAGE. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Revocable License Agreement.

20. ASSIGNMENT AND PERFORMANCE

Neither this Revocable License Agreement nor any interest herein shall be assigned, transferred, or encumbered by LICENSEE.

21. CONFLICTS

Neither LICENSEE nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with LICENSEE's loyal and conscientious exercise of judgment related to its performance under this Revocable License Agreement. LICENSEE agrees that none of its officers or employees shall, during the term of this Revocable License Agreement, serve as an expert witness against VILLAGE in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of VILLAGE or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude LICENSEE or any other persons from representing themselves in any action or in any administrative or legal proceeding.

22. CONTINGENCY FEE

LICENSEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for LICENSEE, to solicit or secure this Revocable License Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for LICENSEE, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Revocable License Agreement. For a breach or violation of this provision, VILLAGE shall have the right to terminate this Revocable License Agreement without liability at its discretion, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

23. WAIVER OF BREACH AND MATERIALITY

Failure by VILLAGE to enforce any provision of this Revocable License Agreement shall not be deemed a waiver of such provision or modification of this Revocable License Agreement. A waiver of any breach of a provision of this Revocable License Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Revocable License Agreement.

VILLAGE and LICENSEE agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Revocable License Agreement and, therefore, is a material term hereof.

24. COMPLIANCE WITH LAWS

LICENSEE shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Revocable License Agreement.

25. SEVERANCE

In the event this Revocable License Agreement or a portion of this Revocable License Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless VILLAGE or LICENSEE elects to terminate this Revocable License Agreement. The election to terminate this Revocable License Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

26. JOINT PREPARATION

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Revocable License Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

27. PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Revocable License Agreement by reference and a term, statement, requirement, or provision of this Revocable License Agreement, the term, statement, requirement, or provision contained in this Revocable License Agreement shall prevail and be given effect.

28. APPLICABLE LAW AND VENUE

This Revocable License Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Venue for litigation concerning this Revocable License Agreement shall be within Monroe County, Florida.

29. PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Revocable License Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document utilizing the same formalities as this agreement.

30. MULTIPLE ORIGINALS

This Revocable License Agreement shall be executed in two (2) duplicate copies, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates under each signature: VILLAGE, signing by and through its Village Manager, attested to by its Village Clerk duly authorized to execute the same, and by the LICENSEE signing by and through its Managing Partner duly authorized officer to execute same.

ISLAMORADA, VILLAGE OF ISLANDS

By: [Signature]
Ted Yates, Village Manager

Attest:

By: [Signature]
Marne McGrath, Village Clerk

Approved as to form and legal sufficiency:

By: [Signature]
Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney

LICENSEE

By: [Signature]
Jason Spiegel, Managing Partner

Witness: [Signature]

ATTEST:

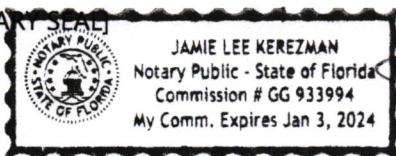
By: [Signature]
Secretary

STATE OF Florida

COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me by means of X physical presence or online notarization, this 20 day of June, 2023 by Jason Spiegel, as Managing Partner of BEEFREE, LLC d/b/a Freebee. He/She was personally known X or produced as form of identification.

[NOTARY SEAL]



Notary Public for the State of Florida

[Signature]
Name Type, Print or Stamped Jamie Lee Kerezman

My Commission expires: January 3, 2024

REVOCABLE LICENSE AGREEMENT

EXHIBIT "A" "LICENSED PREMISES"

(Description of premises licensed for installation of electric vehicle charging stations)

Leased Premises: A portion of the SW corner of the parcel owned by VILLAGE, as referenced herein and delineated on the site map below, which is hereby incorporated by reference and made a part of this Revocable License Agreement.

Property Address: 86800 Overseas Hwy, Islamorada, Florida 33036

Real Estate Number: 00093330-000100

Parcel Map:



REVOCABLE LICENSE AGREEMENT

Site Map:

