

**CITY OF GAINESVILLE, FLORIDA CONTRACT FOR
MOBILITY PLAN CONSULTING SERVICES**

This **CONTRACT** ("CONTRACT") made and entered into between the CITY OF GAINESVILLE, FLORIDA, a municipal corporation ("CITY") and NUE URBAN CONCEPTS, LLC d.b.a. as THE MOBILITY COHORT ("FIRM"), with its principle place of business at 747 SW 2nd Ave, Suite #190, Gainesville, Florida, individually referred to as "Party" or collectively as "Parties," respectively.

WHEREAS, CITY is desirous of appointing FIRM to provide professional consulting services related to the mobility plan solicitation; and

WHEREAS, the FIRM is willing and capable of performing such services.

NOW, THEREFORE, CITY and FIRM agree as follows:

1. SCOPE OF SERVICES

The services to be provided by the FIRM are as follows (the "SERVICES"):

The FIRM shall provide professional consulting services related to the negotiations of Task Orders based on FIRM's proposal attached as Exhibit A. Additional services beyond those in Exhibit A must be agreed to writing by both parties and embodied in a Task Order or Change Order.

2. ORDER OF PRECEDENCE

In the event of conflict or inconsistency in the Contract Documents, the order of precedence for interpretation shall be the order in which the Contract Documents are listed below. Conflict or inconsistency within a particular contract document shall be resolved by having the more specific reference to the matter prevail.

- (a) Task Orders
- (b) Modifications to this Contract
- (c) This Contract
- (d) City's solicitation: "Request for Proposal - #MOBX-230063-DS – Mobility Plan"
- (e) FIRM's response to the solicitation: dated 31 JUL 2023

3. TERM

This **CONTRACT** shall be effective upon the last signature of the parties (the "Effective Date") and shall expire on December 31, 2024. At the end of the **CONTRACT** term, upon satisfactory performance by the FIRM, the parties may negotiate to extend the **CONTRACT** for up to one (1) additional one (1) year period.

4. COMPENSATION/PAYMENT

The City will not pay more than \$299,950.00 for consulting services. No additional payment will be made to The FIRM except for additional Work or materials stated on a valid change order or task order, and issued by CITY prior to the performance of the added Work or delivery of additional materials. A task order or change order may be issued without invalidating the Contract, if (1) made in writing, (2) signed by the authorized representative(s), and (3) accepted by FIRM. Such change shall include the following: change orders that constitute changes to (1) the general scope of Work, (2) the schedule, (3) administrative procedures not affecting the conditions of the Contract, or (4) the Contract price.

If travel is required, travel expenses of the Consultants will be paid according to the CITY's travel policies. Consultants whose office base is in Gainesville may not charge for travel.

The FIRM shall submit a monthly timesheet and invoice to the CITY on or before the fifteenth (15th) day of each month immediately following the month in which the services were provided. Each invoice shall describe with reasonable detail the services performed during the billing period. The FIRM shall give such additional backup and documentation as requested by the CITY to verify the services rendered and invoice amounts. FIRM shall not submit more than one invoice per thirty (30) day period. Upon CITY approval, the invoice will be processed for payment.

The CITY will make payment to the FIRM within thirty (30) days after receipt of the invoice by the CITY. The CITY may withhold payment due to failure by the FIRM to perform in accordance with this CONTRACT. The CITY shall notify the FIRM of any unsatisfactory performance as soon as practicable so that, if possible, it can be corrected without delaying payment. The FIRM shall be paid via electronic funds transfer (EFT).

5. PROJECT TEAM

FIRM shall perform the services in a professional manner compared to like professionals. FIRM shall staff the projects with qualified individuals at FIRM's discretion as required to carry out and perform the Scope of Services of this Contract; in the event any such personnel discontinue employment with FIRM, FIRM shall promptly replace such personnel on FIRM's project team with individuals approved by CITY, in writing, which approval will not be unreasonably withheld. FIRM's project team members shall not be employees of or have any personal fiscal relationship with any employees or officials of the CITY. Failure of FIRM for any reason to staff the project under this Contract with qualified personnel to the extent necessary to perform the services required skillfully and promptly shall be cause for termination of this Contract.

6. TERMINATION FOR CONVENIENCE

This agreement may be terminated for any reason by either party upon thirty (30) days written notice to the other party. After the termination date, FIRM shall stop all work in connection with this Contract. In the event of such termination for convenience, FIRM's recovery against CITY shall be limited to that portion of the services provided through the date of termination.

7. TERMINATION FOR CAUSE

CITY may terminate this Contract for cause if FIRM materially breaches this Contract by:

- (a) refusing, failing or being unable to properly manage or perform;
- (b) refusing, failing or being unable to perform the Work pursuant to this Contract with sufficient numbers of workers, properly skilled workers, proper materials to maintain applicable schedules;
- (c) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
- (d) refusing, failing or being unable to substantially perform pursuant to the terms of this Contract as determined by CITY, or as otherwise defined elsewhere herein; and/or
- (e) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between CITY and FIRM.

8. DEFAULT

If FIRM should be adjudged as bankrupt, or make a general assignment for the benefit of its creditor(s), or if a receiver should be appointed for FIRM, or if there is persistent or repeated refusal or failure to supply sufficient properly skilled workforce or proper materials, or if FIRM should refuse or fail to make payment to persons supplying labor or materials for the Work pursuant to this Contract, or persistently disregards instructions of CITY, or fails to observe or perform or is guilty of a substantial violation of any provision of the Contract documents, then CITY, after serving at least ten (10) calendar days prior written notice to FIRM of its intent to terminate and such default should continue un-remedied for a period of ten (10) calendar days, may terminate the Contract without prejudice to any other rights or remedies and take possession of the Work; and CITY may take possession of and utilize in completing the Work such materials, appliances, equipment as may be on the site of the Work and necessary therefore. FIRM will be liable to CITY for any damages resulting from such default.

9. DELAY

Notwithstanding the completion schedule, CITY has the right to delay performance for up to three (3) consecutive months as necessary or desirable and such delay will not be deemed a breach of Contract, but the performance schedule will be extended for a period equivalent to the time lost by reason of CITY's delay. Such extension of time will be FIRM's sole and exclusive remedy for such delay.

If the project is stopped or delayed for more than three (3) consecutive months and CITY or FIRM elects to terminate the Contract because of such delay, or if such stoppage or delay is due to actions taken by CITY within its control, then FIRM's sole and exclusive remedy under the Contract will be reimbursement for costs reasonably expended in preparation for or in performance of the Contract. None of the aforementioned costs will be interpreted to include home office overhead expenses or other expenses not directly attributable to performance of the Contract. FIRM is not entitled to make any other claim, whether in breach of Contract or in tort for damages resulting in such delay.

10. FORCE MAJEURE

No Party to this Contract shall be liable for any default or delay in the performance of its obligations under this Contract due to an act of God or other event to the extent that: (a) the non-performing Party is without fault in causing such default or delay; and (b) such default or delay could not have been prevented by reasonable precautions. Such causes include, but are not limited to: acts of civil or military authority (including but not limited to courts of administrative agencies); acts of God; war; terrorist attacks; riot; insurrection; inability of CITY to secure approval; validation or sale of bonds; inability of CITY or Supplier to obtain any required permits, licenses or zoning; blockades; embargoes; sabotage; epidemics; fires; hurricanes, tornados, floods; or strikes.

In the event of any delay resulting from such causes, the time for performance of each of the Parties hereunder (including the payment of invoices if such event actually prevents payment) shall be extended for a period of time reasonably necessary to overcome the effect of such delay. Any negotiated delivery dates established during or after a Force Majeure event will always be discussed and negotiated if additional delays are expected.

In the event of any delay or nonperformance resulting from such cause, the Party affected will promptly notify the other Party in writing of the nature, cause, date of commencement, and the anticipated impact of such delay or nonperformance. Such written notice, including change orders, will indicate the extent, if any, to which is anticipated that any delivery or completion date will be affected.

11. DISPUTES

If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within 20 business days after giving of notice. If the dispute is not resolved within 30 business days after giving notice, or such later date as may be mutually agreed, the Parties will submit the dispute to a mediator. The Parties shall mutually agree to the mediator and the costs of the mediator will be born equally by both parties. The venue for mediation and any subsequent litigation shall be in Alachua County, Florida.

FIRM shall be an independent consultant and as such shall not be entitled to any right or benefit to which CITY employees are or may be entitled to by reason of employment. FIRM shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the FIRM in the full performance of this CONTRACT.

12. INDEMNIFICATION

FIRM shall be fully liable for the actions of its agents, employees, partners, or subcontractors and fully indemnifies, defends, and holds harmless the City of Gainesville, its elected officials, its officers, agents, and employees, from any such suits, actions, damages, and/or costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by FIRM, its agents, employees, partners, or subcontractor.

13. LIMITATION OF CITY'S LIABILITY

To the fullest extent permitted by law, CITY shall not be liable to FIRM for any incidental, consequential, punitive, exemplary or indirect damages, lost profits, revenue or other business interruption damages, including but not limited to, loss of use of equipment or facility.

14. SOVEREIGN IMMUNITY

Nothing in this CONTRACT shall be interpreted as a waiver of the CITY's sovereign immunity as granted under Section 768.28 Florida Statutes.

15. TIMELINESS

The CITY and FIRM agree time is of the essence in the performance of work and that work under this CONTRACT is required to be performed in an expeditious manner and with the standard of care reasonably expected of like professionals performing these duties.

16. VALIDITY

If any provision of this CONTRACT is contrary to, prohibited by, or deemed invalid by applicable law, rules or regulations of any jurisdiction in which it is sought to be enforced, then such provision shall be deemed inapplicable and omitted and shall not invalidate the remaining provisions of this CONTRACT.

17. INSURANCE

The FIRM shall provide the CITY with proof of insurance in the amounts stated below:

Worker's Compensation Insurance providing coverage in compliance with Chapter 440, Florida Statutes.

Commercial General Liability, \$1,000,000 combined single limit for bodily injury and property damage

Professional Liability Insurance in the amount of \$1,000,000 per occurrence (combined single limit for bodily injury and property damage).

Public Liability Insurance (other than automobile) consisting of broad form comprehensive general liability insurance including contractual coverage \$1,000,000 per occurrence (combined single limit for bodily injury and property damage). The City shall be an additional insured on

such Public Liability Insurance and the FIRM shall provide copies of endorsements naming the City as additional insured.

Automobile Liability Insurance Property Damage \$500,000 per occurrence (combined single limit for bodily injury and property damage).

18. COMPLIANCE WITH LAWS

The FIRM shall comply with all laws, ordinances, and regulations applicable to the services contemplated herein, including those applicable to conflict of interest. The FIRM is presumed to be familiar with all Federal, State and local laws, ordinances, codes, and regulations that may in any way affect the SERVICES offered and performed.

19. RECORDS/AUDIT

The FIRM shall maintain records sufficient to document the SERVICES performed pursuant to this CONTRACT. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the CITY. These records shall be kept for a minimum of three (3) years after completion of the CONTRACT. Records which relate to any litigation, appeals or settlements of claims arising from performance under this CONTRACT shall be made available until a final disposition has been made of such litigation, appeals, or claims.

20. FLORIDA PUBLIC RECORDS ACT

Florida has a very broad public records law. By entering into this CONTRACT with the CITY, the FIRM acknowledges they will comply with the Florida Public Records Act (Chapter 119, Florida Statutes). If FIRM is either a “contractor” as defined in Section 119.0701(1)(a), Florida Statutes, or an “agency” as defined in Section 119.011(2), Florida Statutes, FIRM shall:

- (a) Keep and maintain public records, as defined in Section 119.011(12) of the Florida Statutes, required by CITY to perform the service.
- (b) Upon request from CITY’s custodian of public records, provide the public agency 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 in this chapter or as otherwise provided by law.
- (c) 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 contract term and following completion of the contract if the FIRM does not transfer the records to CITY.
- (d) Upon completion of the contract, transfer, at no cost, to CITY all public records in possession of the FIRM or keep and maintain public records required by CITY to perform the service. If the FIRM transfers all public records to CITY upon completion of the contract, the FIRM shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the FIRM keeps and maintains public records upon completion of the contract, the FIRM shall meet all applicable requirements for retaining public records. All records stored electronically

must be provided to CITY, upon request from CITY's custodian of public records, in a format that is compatible with the information technology systems of CITY.

- (e) IF THE FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY CUSTODIAN OF PUBLIC RECORDS, CLERK OF COURTS, PO. BOX 490 STATION 19, GAINESVILLE FL 32627.

Failure to comply with the Florida Public Records Act, including failure to provide a public record upon request, is a breach of this CONTRACT. CITY may pursue all remedies for breach of this CONTRACT.

21. DISCLOSURE AND CONFIDENTIALITY

Florida's Public Records Law, Chapter 119, Florida Statutes, includes numerous exemptions to the general requirement to disclose information to the public in response to a public record's request. Exemptions are found in various provisions of the Florida Statutes, including but not limited to Section 119.071, Florida Statutes (General exemptions from inspection or copying of public records), and Section 119.0713, Florida Statutes (Local government agency exemptions from inspection or copying of public records). Section 815.045, Florida Statutes (Trade secret information), provides that trade secret information as defined in Section 812.081, Florida Statutes (Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty) is confidential and exempt from disclosure because it is a felony to disclose such records. The Parties understand and agree that Florida's Public Records Law is very broad and that documents claimed by a Party to be confidential and exempt from public disclosure pursuant to the Public Records Law may in fact not be deemed such by a court of law. Accordingly, the following provisions shall apply:

- (1) Identifying Trade Secret or Otherwise Confidential and Exempt Information.

For any records or portions thereof that FIRM claims to be Trade Secret or otherwise confidential and exempt from public disclosure under the Public Records Law, FIRM shall:

- a. Specifically identify the records or specific portions thereof that are confidential and exempt and reference the particular Florida Statute that grants such status. Provide one redacted copy of the record and one copy of the record with the confidential and exempt information highlighted. FIRM shall take care to redact only the confidential and exempt information within a record.
 - b. Provide an affidavit or similar type of evidence that describes and supports the basis for FIRM's claim that the information is confidential and exempt from public disclosure.
- (2) Request for Trade Secret or Otherwise Confidential and Exempt Information.
- a. In the event CITY receives a public records request for a record with information labeled by FIRM as Trade Secret or otherwise as confidential and

- exempt, CITY will provide the public record requester with the redacted copy of the record and will notify FIRM of the public records request.
- b. However and notwithstanding the above, in the event that CITY in its sole discretion finds no basis for FIRM's claim that certain information is Trade Secret or otherwise confidential and exempt under Florida's Public Records Law, then CITY shall notify FIRM in writing of such conclusion and provide FIRM a reasonable amount of time to file for declaratory action requesting a court of law to deem the requested information as Trade Secret or otherwise as confidential and exempt under Florida's Public Records Law. If FIRM fails to file for declaratory action within the reasonable amount of time provided, then CITY will disclose the information requested.
 - c. If a public records lawsuit is filed against CITY requesting public disclosure of the information labeled by FIRM as Trade Secret or otherwise as confidential and exempt, CITY shall notify FIRM and FIRM shall intervene in the lawsuit to defend the nondisclosure of such information under Florida's Public Records Law.
 - d. FIRM hereby indemnifies and holds CITY, its officers and employees harmless from any and all liabilities, damages, losses, and costs of any kind and nature, including but not limited to attorney's fees, that arise from or are in any way connected with FIRM's claim that any information it provided to CITY is Trade Secret or otherwise confidential and exempt from public disclosure under Florida's Public Records Law.

"Work Product" may include creative work which may lead to programs, intellectual properties, computer software, computer programs, codes, text, hypertext, designs, and/or any other work products associated with or arising directly out of the performance of the Work.

22. DISCRIMINATION PROHIBITION

FIRM shall not discriminate on the basis of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability or gender identity, or other unlawful forms of discrimination in the performance of this Contract. FIRM understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of the Contract. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

23. VERIFICATION OF EMPLOYEES

Section 448.095, Florida Statute states the statute shall be construed in a manner so as to be fully consistent with any applicable federal laws or regulations. The FIRM shall (1) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the FIRM during the term of the contract; and (2) shall expressly require any subcontractors performing work or providing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

Alternatively, FIRM shall provide proof that one of the exceptions to the E-Verify federal FIRM rule applies.

24. LIVING WAGE ORDINANCE

The Living Wage Ordinance applies to this Contract. The definitions, terms and conditions of the city's living wage requirements set forth in Division 2 of Article IX of Chapter 2 of the City's Code of Ordinances shall apply to this agreement. These requirements include that the service FIRM/subcontractor: shall pay a living wage to each covered employee during the term of this agreement, including any extension(s) to this agreement; shall maintain records sufficient to demonstrate compliance with the living wage requirements; shall not discharge, reduce the compensation of, or otherwise retaliate against any covered employee for filing a complaint, participating in any proceedings or otherwise asserting the requirement to pay a living wage; shall cooperate with any city audit, or investigation concerning compliance with or a reported violation of the living wage requirements, including providing all requested documentation. Failure to comply with the City's living wage requirements shall be a material breach of this agreement, enforceable by the city through all rights and remedies at law and equity.

25. NONEXCLUSIVE CONTRACT

Nothing in this Contract shall be construed to prohibit the CITY from awarding, authorizing, or directing work to be performed, whether identified in this Agreement or otherwise, to firms other than FIRM.

26. MODIFICATION AND WAIVER

The provisions of this Contract may only be modified or waived in writing signed by all the Parties. No course of dealing shall be deemed a waiver of rights or a modification of this contract. The failure of any Party to exercise any right in this contract shall not be considered a waiver of such right. No waiver of a provision of the contract shall apply to any other portion of the contract. A waiver on one occasion shall not be deemed to be a waiver on other occasions.

27. ASSIGNMENT / SUBCONTRACTING

Neither party will assign or transfer any interest in the contract without prior written consent of the other party.

FIRM shall perform all the services, and none of the work or services under this Contract shall be subcontracted without prior written approval of the CITY. It is understood that subcontractors presented as part of a team in FIRM's Proposal or for any individual project are considered approved by the CITY.

28. SUCCESSORS AND ASSIGNS

The parties each bind the other and their respective successors and assigns in all respects to all the terms, conditions, covenants, and provisions of this contract.

29. SEVERABILITY

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and

obligations of the Parties shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

30. NONEXCLUSIVE REMEDIES

Except as expressly set forth in this Contract, the exercise by either Party of any of its remedies under this Contract shall be without prejudice to its other remedies under this Contract or otherwise.

31. ADVERTISING

FIRM shall not publicly disseminate any information concerning the Contract without prior written approval from CITY, including but not limited to, mentioning the Contract in a press release or other promotional material, identifying CITY as a reference, or otherwise linking FIRM's name and either a description of the Contract or the name of the City in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

32. GOVERNING LAW, VENUE, ATTORNEY'S FEES, AND WAIVER OF RIGHT TO JURY TRIAL

This Contract shall be construed pursuant to the laws of Florida and may not be construed more strictly against one party than against the other. In the event of any legal proceedings arising from or related to this Contract: (1) venue for any state or federal legal proceedings shall be in Alachua County Florida; (2) each Party shall bear its own attorneys' fees except to the extent that FIRM agrees to indemnify CITY as provided in this Contract, including any appeals; and (3) for civil proceedings, the Parties hereby waive the right to jury trial.

33. CONTACT PERSONS / NOTICES

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and (1) delivered in person; (2) sent by certified, return receipt requested, United States Mail to the address, below; or (3) sent by email to the email address, below, and the sender receives a read receipt or an acknowledgment that recipient has received the email. If the sender receives an automated message that the email has not been delivered, the email does not constitute notice.

The parties hereto designate the following persons and addresses to be contacted regarding the performance of the CONTRACT and for the giving of notices pursuant to the CONTRACT.

CITY

City of Gainesville
PO Box 490
Gainesville, FL 32627
Email: leistnerdl@gainesvillefl.gov
Attn: Debbie Leistner

FIRM

NUE Urban Concepts LLC
747 SW 2nd Ave, Suite #190
Gainesville, FL 32601
Email:
Attn: [REDACTED]

34. ENTIRE CONTRACT and AMENDMENTS

This CONTRACT constitutes the entire CONTRACT between the parties. Any amendments shall be in writing and executed by all parties prior to becoming effective.

IN WITNESS WHEREOF, the parties hereto have executed this CONTRACT the day and year written below.

CITY OF GAINESVILLE

NUE URBAN CONCEPTS LLC

Cynthia W. Curry
City Manager
Date: _____

Print Name:
Title:
Date: _____

APPROVED AS TO FORM AND LEGALITY

Katherine Mockler, Assistant City Attorney

EXHIBIT A