

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE WRITTEN RECOMMENDATION OF THE CITY MANAGER (AS SET FORTH IN THE CITY COMMISSION MEMORANDUM ACCOMPANYING THIS RESOLUTION) AND WAIVING, BY 5/7<sup>TH</sup> VOTE, THE COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY; AND APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A NEW MANAGEMENT AGREEMENT WITH THE RHYTHM FOUNDATION, INC. FOR THE MANAGEMENT OF THE CITY'S NORTH SHORE BAND SHELL, FOR A PERIOD OF FIVE (5) YEARS, WITH TWO (2) SUCCESSIVE TWO (2) YEAR RENEWAL OPTIONS, AT THE CITY'S OPTION, BASED UPON THE ESSENTIAL TERMS SET FORTH IN THIS RESOLUTION, SUBJECT TO FINAL NEGOTIATION OF THE AGREEMENT BY THE CITY ADMINISTRATION, AND SUBJECT TO LEGAL REVIEW AND FORM APPROVAL BY THE CITY ATTORNEY.

**WHEREAS**, on September 10, 2014, the Mayor and City Commission adopted Resolution Number 2014-28722, accepting the written recommendation of the City Manager pertaining to the ranking of proposals pursuant to ITN 2014-215-LR for Band Shell Management Services and authorizing the Administration to enter into negotiations with The Rhythm Foundation, Inc. as the top-ranking proposer; and

**WHEREAS**, on February 19, 2015, the City and The Rhythm Foundation, Inc. executed the Management Agreement for the management of the North Shore Band Shell (the "Agreement") for an initial term of two (2) years (which commenced retroactively on October 1, 2014) with three (3) additional one (1) year renewal terms; and

**WHEREAS**, on September 30, 2019, the Agreement is set to expire; and

**WHEREAS**, the Rhythm Foundation is a Florida, not-for-profit 501(c)3 arts organization which seeks to increase international awareness and cultural exchange through the presentation of live music and related media programming; and

**WHEREAS**, since entering into the Agreement, The Rhythm Foundation, Inc. has cemented the Band Shell as an exciting cultural anchor in the North Beach area being voted as the "Best Venue for Local Acts" in 2016 by the New Times; and

**WHEREAS**, the Rhythm Foundation, Inc. continues to present a well-rounded series of concerts, free community and civic events, cultural programs, popular music and large productions that welcomes the entire South Florida community to the Band Shell; and

**WHEREAS**, the Administration recommends keeping key components of the existing Agreement that includes:

1. The City will continue to provide up to \$45,000 annually toward the operation of the facility (the "City's Annual Contribution");
2. The Rhythm Foundation, Inc. must program the facility at a minimum of 35 events annually, including programming for the City's monthly food truck events

- and other City-sponsored events;
3. The Rhythm Foundation, Inc. must continue to use the House Sound System in connection with any events held at the facility and, at all times, the sound levels may not exceed 105dBC;
  4. Facility Hours of Operation will continue to be from 10:00 am to 10:00 pm with the City Manager having the discretion to extend the hours of operation on a case by case basis to 11:00 pm on the weekends (Friday and Saturday); and
  5. The Rhythm Foundation shall continue to provide surrounding condominiums with 30 days advance written notice when scheduled events will involve amplified sound; and

**WHEREAS**, the Administration recommends incorporating the following changes in the new Agreement:

1. An Initial Term of five years and two successive two-year Renewal Terms, at the City's option;
2. Approval of extending the hours of operation up to 12:30 am on New Year's Eve;
3. Including annual CPI adjustment (not to exceed 3%) to the City's Annual Contribution;
4. Any and all technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property purchased by The Rhythm Foundation through funds received from grants which were applied for solely by the City or in partnership with the City for use at the facility, shall remain property of the City; and
5. Including language regarding Free Charitable Use allowing for 2 occasions during the term of the contract and any renewal term, for use of the North Shore Band Shell by a qualified, charitable arts organization having been reviewed and recommended by the City's Cultural Arts Council through the rental fee waiver grant program funded by the Community Benefit Fund administered by the Tourism and Culture Development Department for live arts and cultural productions, including theater, dance, music, cabaret, opera, performance art, multi-disciplinary works and film; and

**WHEREAS**, the City Manager recommends that the Mayor and City Commission waive the formal competitive bidding requirement, by a 5/7<sup>th</sup> vote, as permitted under section 2-367(e) of the City Code, as being in the best interest of the City, and authorize the City Manager to execute a new management agreement with The Rhythm Foundation, Inc, based upon the essential terms of their existing agreement, with the modifications recommended by the Administration herein.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby accept the written recommendation of the City Manager (as set forth in the City Commission Memorandum accompanying this Resolution) and waive, by 5/7<sup>th</sup> vote, the competitive bidding requirement, finding such waiver to be in the best interest of the City; and approve and authorize the City Manager to execute a new Management Agreement with The Rhythm Foundation, Inc. for the management of the City's North Shore Band Shell, for a period of five (5) years, with two (2) successive two (2) year renewal options, at the City's option, based upon the essential terms set forth in this Resolution, subject to final negotiation of the agreement by the City Administration, and subject to legal review and form approval by the City Attorney.

**PASSED** and **ADOPTED** this 5<sup>th</sup> day of June, 2019.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

2.2.051  
\_\_\_\_\_  
City Attorney

5/29/19  
\_\_\_\_\_  
Date