

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 WITH RESPECT TO THE WAIVER OF THE COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY, APPROVING, BY 5/7THS VOTE, AND AUTHORIZING THE CITY ADMINISTRATION TO NEGOTIATE A PROPOSED AMENDMENT NO. 1 TO THE AMENDED AND RESTATED PUBLIC BEACHFRONT CONCESSION AGREEMENT, DATED MAY 21, 2019 (“AGREEMENT”), BETWEEN THE CITY AND BOUCHER BROTHERS MIAMI BEACH, LLC (“CONCESSIONAIRE”), FOR THE MANAGEMENT AND OPERATION OF CERTAIN PUBLIC BEACHFRONT CONCESSION AREAS; SAID AMENDMENT, IN PART, ADDING THE MANAGEMENT AND OPERATION OF THE PUBLIC BEACHFRONT CONCESSIONS LOCATED AT 21ST AND 46TH STREETS (WHICH ARE CURRENTLY MANAGED BY BOUCHER BROTHERS) TO THE SCOPE OF THE AGREEMENT AND, CONCURRENT THEREWITH, MODIFYING CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT; AND PROVIDED FURTHER, THAT THE FINAL NEGOTIATED AMENDMENT NO.1 SHALL BE BROUGHT BACK TO THE CITY COMMISSION FOR FINAL APPROVAL.**

**WHEREAS**, on May 21, 2019, the Mayor and City Commission adopted Resolution No. 2019-30829, approving an amended and restated concession agreement between the City and Boucher Brothers Miami Beach, LLC (“Concessionaire”) for an initial term of seven (7) years and six (6) months, commencing on July 1, 2019 and ending on December 31, 2026, with two (2) additional renewal options for five (5) years each (“Agreement”); and

**WHEREAS**, the Agreement provides Concessionaire the exclusive right to operate certain concessions in Lummus Park, Ocean Terrace, North Shore Open Space Park, South Pointe Park Beach and Allison Park, for the rental of beach equipment, food & beverage service, sale of beach related sundries and skin care products, and watersports equipment rentals; and

**WHEREAS**, on December 17, 2015, the Mayor and City Commission adopted Resolution No. 2015-29166, approving a public beachfront concession agreement between the City and Boucher Brothers Miami Beach 21 & 46 ST, LLC (as the highest ranked proposer, pursuant to Request for Proposals (RFP) 2015-205-WG), for the management and operation of the beachfront concessions at 21st and 46th Streets; that agreement provided for an initial term of approximately two (2) years, commencing on December 26, 2015 and ending on December 31, 2017, with three (3) additional renewal options for one (1) year each; and

**WHEREAS**, the third and final renewal period of the concession agreement for the management and operation of the 21<sup>st</sup> and 46<sup>th</sup> Street beachfront concessions is set to expire on December 31, 2020; and

**WHEREAS**, at the June 24, 2020 City Commission meeting, the Administration submitted a request for approval to issue Request for Proposals (RFP) No. 2020-145-ND for the management and operation of the beachfront concessions at 21st and 46th Streets; and

**WHEREAS**, following discussion, the Mayor and City Commission directed the Administration to consolidate vendors and agreements related to the City’s public beachfront concessions; accordingly, the Administration was directed to negotiate with Boucher Brothers to explore the possibility of incorporating the 21st and 46th Street concession locations into their Agreement for Lummus Park, Ocean Terrace, North Shore Open Space Park, South Pointe Park Beach and Allison Park; and

**WHEREAS**, following the June 24, 2020 City Commission meeting, staff had initial discussions with Boucher Brothers regarding incorporating the 21st & 46th Street concessions within the context of the Agreement; whereas at a minimum, a proposed amendment would provide, among other terms and conditions, for an increased minimum rent guarantee from \$122,000 to \$200,000 (in addition to the \$1,200,000 contained in the Agreement); releasing the \$20,833 security deposit contained in the agreement for 21<sup>st</sup> and 46<sup>th</sup> Street to the City, to be used by the City to host a beach event(s) for the benefit of Miami Beach residents; and providing a \$5,000 annual contribution to the City to be used for beach related initiatives (i.e. seaweed removal, sanitation, marketing, etc.); and

**WHEREAS**, in lieu of issuing a new competitive solicitation for concession operations at the 21<sup>st</sup> Street and 46<sup>th</sup> Street locations, and in order to incorporate the management and operation of those concessions as an amendment to the current Agreement with Boucher Brothers, a waiver of competitive bidding would be required pursuant to City Code Section 2-367(e); and

**WHEREAS**, the City Manager recommends that the Mayor and City Commission waive such formal competitive bidding requirement, finding such waiver to be in the best interest of the City and, rather than issue a new competitive solicitation for the management and operation of the 21<sup>st</sup> and 46<sup>th</sup> Street concessions, authorize the City Administration to negotiate an amendment to the Agreement with Boucher Brothers Miami Beach, LLC, with said amendment incorporating the 21<sup>st</sup> and 46<sup>th</sup> Street locations into the current Agreement (with Boucher Brothers Miami Beach, LLC); and

**WHEREAS**, at a minimum, the proposed amendment would include the business terms contained in this Resolution and, once negotiations are concluded, would be brought back to the City Commission for final approval.

**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, with respect to the waiver of the competitive bidding requirement, finding such waiver to be in the best interest of the City, and authorize, by 5/7ths vote, the Administration to negotiate a proposed Amendment No. 1 to the Amended and Restated Public Beachfront Concession Agreement, dated May 19, 2019 ("Agreement"), between the City and Boucher Brothers Miami Beach, LLC ("Concessionaire"), for the management and operation of certain public beachfront concession areas; said Amendment, in part, adding the management and operation of the public beachfront concessions located at 21<sup>st</sup> and 46<sup>th</sup> Streets and, concurrent therewith, modifying certain terms and conditions of the Agreement; and provided further, that the final negotiated Amendment No. 1 shall be brought back to the City Commission for final approval.


**PASSED and ADOPTED THIS** \_\_\_ day of \_\_\_\_\_ 2020.

**ATTEST:**

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

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

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

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

7/28/2020  
\_\_\_\_\_  
Date