

**AMENDMENT NO. 5 TO THE AGREEMENT BETWEEN CITY OF MIAMI BEACH, FLORIDA AND CLEAR CHANNEL OUTDOOR, INC., A DELAWARE CORPORATION, AS ASSIGNEE, DATED OCTOBER 17, 2001, TO CONSTRUCT, OPERATE AND MAINTAIN BUS SHELTER STRUCTURES AND OTHER STREET FURNITURE THROUGHOUT THE CITY, PURSUANT TO REQUEST FOR PROPOSALS NO. 107-99/00**

This Amendment No. 5 (Amendment) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 ("Effective Date"), by and between the City of Miami Beach, Florida, a municipal corporation, organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 ("City"), and Clear Channel Outdoor, Inc., a Delaware corporation, authorized to do business in Florida, whose address is 5800 N.W. 77<sup>th</sup> Court, Miami, Florida 33166 ("Clear Channel" or "Contractor").

**RECITALS**

**WHEREAS**, on October 17, 2001 Clear Channel Adshel, Inc. ("Clear Channel Adshel"), entered into the agreement with the City to construct, operate and maintain bus shelters and other street furniture throughout the City, pursuant to Request for Proposals No. 107-99/00, with an initial term of ten (10) years and one (1) option to renew for an additional five (5) year term (the "Agreement"); and

**WHEREAS**, on September 28, 2011, the City executed Amendment No. 1 to the Agreement which, among other things, exercised the five-year renewal term provided for in the Agreement, and additionally provided for a subsequent five-year renewal option beyond October 31, 2016, at the City's discretion; and

**WHEREAS**, on December 8, 2016, the City and Clear Channel executed Amendment No. 2 to the Agreement, approving the assignment of the Agreement from Clear Channel Adshel to Clear Channel and extending the Agreement from October 31, 2016 until such time as the City enters into a new agreement for similar services (Extended Term), subject to termination by the City, for convenience, without cause and without penalty, upon thirty (30) days written notice to Clear Channel; and

**WHEREAS**, at its December 14, 2016 meeting, the City Commission adopted Resolution No. 2016-29674, approving Amendment No. 3 to the Agreement; said amendment, in material part: (1) providing for the City and Clear Channel to equally share in the cost of removing and replacing any bus shelter or bench which is required to be removed as a result of ongoing or new Roadway Construction Projects; (2) requiring a Phase Out Plan for the removal of the bus shelters and bus benches upon the expiration or termination of the Agreement; (3) clarifying the applicability of the Agreement to bus shelters and bus benches; and (4) memorializing the practice of providing the City with ad space for City promotional materials, subject to space availability; and

**WHEREAS**, on April 26, 2017, the City Commission adopted Resolution No. 2017-29820, approving Amendment No. 4 to the Agreement; said amendment approving Sanchez Arango Construction Co., as a subcontractor of Clear Channel under the Agreement; and further approving the City's fifty percent (50%) contribution toward the total cost of the removal and reinstallation of the pending construction bus shelters (as a result of previously completed or ongoing roadway construction projects which have been initiated by the City), in an amount not to exceed \$95,000; and

**WHEREAS**, Amendment No. 4 was executed by the City and Clear Channel on May 12, 2017 (the Agreement and Amendments No. 1, No. 2, No. 3 and No. 4 shall be referred to herein collectively as the "Agreement").

**NOW THEREFORE**, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Contractor hereby agree to amend the Agreement as follows:

**1. ABOVE RECITALS.**

The above recitals are true and correct and are incorporated herein as part of this Amendment.

**2. MODIFICATIONS.**

a. Section 7 is hereby deleted and replaced with the following:

**SECTION 7: TERM**

This Agreement shall commence on November 1, 2001, and shall terminate on the earlier of: (1) September 30, 2021 or (2) the execution and effective date of the new agreement by the City for construction, operation and maintenance of bus shelters and other street furniture (ITN #2020-239-KB), unless earlier terminated, as herein provided. The City will provide sixty (60) day written notice to Clear Channel prior to anticipated contract termination.

b. Subsection 8.1 is hereby deleted and replaced with the following:

8.1. In addition to erecting, installing, operating, and maintaining the Bus Shelters and/or Street Furniture contemplated by this Agreement, at its sole cost and expense, and at no cost to the City, Contractor shall also pay to the City, on a quarterly basis, a Minimum Annual Guarantee of \$130,000 (\$32,500 per quarter) plus fifty (50%) Net Revenue Sharing, effective as of October 1, 2020.

Contractor's Net Revenues shall be defined as its Gross Revenues less only a fifteen percent (15%) deduction of gross revenue agency fee, which Contractor herein represents as the standard in the industry paid to a third party for selling costs. In the event that the industry standard is less than fifteen percent (15%), this Agreement shall be automatically amended to reflect such change (and the new percentage).

The City shall receive each payment no later than the fifth day of the month succeeding the close of the quarter. The Contractor shall include with each payment, a statement of its advertising revenues from the sale of advertising, for the quarter applicable to the payment. Said statements shall be in a form acceptable to the City Manager or his designee. Any payment which Contractor is required to make to City which is not paid on or before the respective date provided for in this Agreement shall be subject to interest at the rate of twelve percent (12%) per annum, from the due date of payment until such time as payment is actually received by the City. It is also understood that any required Florida State Sales and Use Taxes, as applicable, shall be added to the Minimum Annual Guarantee payments, as set forth above, and forwarded to the City as part of said payment. It is the City's intent that it is to receive the Minimum Annual Guarantees as net,

free and clear of all costs and charges arising from or relating to Contractor's obligations pursuant to this Agreement.

c. Section 14 is hereby deleted and replaced with the following:

**SECTION 14. REMOVAL BY CONTRACTOR/TRANSFER OF OWNERSHIP OF BUS SHELTERS AND STREET FURNITURE UPON EXPIRATION AND/OR TERMINATION OF THE AGREEMENT**

Prior to end of term of this Agreement, Contractor shall, at its sole cost and expense and at no cost to the City, remove the Bus Shelters and Street Furniture set forth in Exhibit "D" and, at its sole cost and expense and at no cost to the City, return the City's right-of-way and adjacent areas associated with the locations set forth in Exhibit "D" to their original condition prior to the installation of any Bus Shelters and Street Furniture.

At the end of term of this Agreement, or otherwise upon termination of this Agreement, Contractor shall, at its sole cost and expense and at no cost to the City cause a transfer of ownership for all Street Furniture and Bus Shelters pursuant to this Agreement (except those Bus Shelters and Street Furniture described in Exhibit "D") to the City. Such transfer of ownership shall occur contemporaneously with the expiration or termination of this Agreement, and the Contractor shall transfer the Ownership of the Street Furniture and Bus Shelters to the City free of all liens and encumbrances. Notwithstanding the transfer of ownership, Clear Channel shall remain responsible for all claims, causes of actions, debts, encumbrances, or administrative action that accrued prior to the transfer of ownership.

**3. RATIFICATION.**

Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

**FOR CITY:**

**CITY OF MIAMI BEACH, FLORIDA**

**ATTEST:**

By: \_\_\_\_\_  
**Rafael E. Granado, City Clerk**

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

\_\_\_\_\_  
Date

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION  
*Rafael E. Granado* 9/4/20  
City Attorney Date

**CLEAR CHANNEL OUTDOOR, INC.**

**ATTEST:**

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

EXHIBIT D

Prior to end of term of this Agreement, Contractor shall, at its sole cost and expense and at no cost to the City, remove the Bus Shelters from locations listed below:

1. West Avenue/10 Street (southbound direction)
2. Dade Blvd/ 23 Street (westbound direction)
3. Pine Tree Drive/ 24 Street (northbound direction)
4. Pine Tree Drive/ 24 Street (southbound direction)
5. Pine Tree Drive/ 25 Street (southbound direction)
6. Sheridan Avenue/ 28 Street (northbound direction)
7. Pine Tree Drive/ 47 Street (southbound direction)
8. La Gorce Drive/ 51 Street (southbound direction)