

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

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AMENDMENT NO. 5 TO THE AGREEMENT BETWEEN THE CITY OF MIAMI BEACH 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, WHICH AMENDMENT CONVERTS THE MONTH-TO-MONTH AGREEMENT TO A TWELVE (12) MONTH TERM; TRANSFERS THE OWNERSHIP OF THE STREET FURNITURE TO THE CITY AT THE CONCLUSION OF THE TERM; AND REVISES THE MINIMUM ANNUAL GUARANTEE FOR THE DURATION OF THE TERM; AND FURTHER AUTHORIZING THE CITY MANAGER AND THE CITY CLERK TO EXECUTE AMENDMENT NO. 5.**

**WHEREAS**, in October 2001, pursuant to Request For Proposals (RFP) No. 107-99/00, the City entered into an Agreement with Clear Channel to construct, operate and maintain bus shelters and other street furniture throughout the City (at no cost and with revenue share to the City), with an initial term of ten (10) years and one (1) option to renew for an additional five (5) year term; 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 March 9, 2016, the Mayor and City Commission adopted Resolution No. 2016-29325, accepting the recommendation of the Finance and Citywide Projects Committee to issue a RFP for the design of new iconic bus shelters (to replace Clear Channel shelters); and authorized the City Manager to extend the Agreement between the City and Clear Channel Adshel, on a month-to-month basis, terminable for convenience and without cause by the City, at its discretion, after expiration of the term of the Agreement, on October 31, 2016, so that the Clear Channel contract remains in place until a new contract for similar services is executed; 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**, on December 14, 2016, 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**, on August 7, 2019, the City issued RFP No. 2019-306-KB for a revenue sharing agreement for the construction, operation, and maintenance of new iconic bus shelters, at no cost to the City, based on 100% bus shelter design plans, specifications, and construction cost estimates prepared by the City's design consultants, however, no responses were received by the deadline; and

**WHEREAS**, as part of a separate agenda item at the September 16, 2020 City Commission meeting, the Administration is seeking approval to issue an Invitation to Negotiate (ITN) for construction, operation, and maintenance of new citywide bus shelters and other street furniture; and

**WHEREAS**, pursuant to the current agreement, Clear Channel owns all existing bus shelters and bus benches in the City, and shall, at its sole cost and expense and at no cost to the City, remove all bus shelters and street furniture erected or installed pursuant to the Agreement and return the City's rights-of-way and adjacent areas to their original condition at the end of the contract term; and

**WHEREAS**, during recent industry review meetings associated with the procurement of new bus shelters, prospective bidders stated that it is crucial that the City enable the new contractor to advertise and start generating revenue from the onset of the new agreement using the existing bus shelters owned by Clear Channel; and

**WHEREAS**, during recent negotiations, Clear Channel expressed concerns with transferring ownership of its assets to another private vendor but would be amenable to a transfer of ownership to the City; and

**WHEREAS**, while Clear Channel stated that it is ready, willing, and able to remove, at its cost, the shelters as required under the current agreement, it has agreed to transfer ownership of 95 of 103 existing bus shelters and all street furniture to the City upon contract termination, provided that the City reduces the minimum annual guarantee amount established in the current agreement by 50% from October 1, 2020 through termination of the existing agreement; and

**WHEREAS**, the remaining eight (8) bus shelters will be removed by Clear Channel at no cost to the City prior to contract termination as those units are located along corridors where transit service has been discontinued and bus shelters will not be installed in the future; and

**WHEREAS**, ownership of the existing bus shelters and all street furniture will ultimately be transferred from the City to the successful proposer for construction, operation, and maintenance of new bus shelters and other street furniture (should the new contractor selected not be Clear Channel); and

**WHEREAS**, transfer of ownership of the existing bus shelters to the City is beneficial for both parties as it: 1) ensures that bus shelters remain in place as long as possible for use by transit passengers until new bus shelters are installed by a successful proposer; 2) makes the ITN for new bus shelters more attractive because it allows for the successful proposer to immediately start advertising on existing shelters; and 3) significantly reduces the cost that Clear Channel would otherwise have to incur to remove all existing assets under the current agreement; and

**WHEREAS**, pursuant to the current agreement, Clear Channel is required to pay to the City a minimum annual guarantee of \$260,000 (\$65,000 each quarter) plus 30% net revenue sharing; and

**WHEREAS**, on April 24, 2020, Clear Channel requested that the City abate the minimum annual guarantee payments for 2020 as a result of the impact of COVID-19 on its advertising revenue stream; and

**WHEREAS**, in response, the Administration issued a Notice to Cure to Clear Channel as it was determined by the City Attorney's Office that Clear Channel does not have an option under the current agreement to decline/avoid payment to the City; and

**WHEREAS**, Clear Channel paid the minimum annual guarantee to City for the quarter ending on June 30, 2020, thus, Clear Channel is compliant with its contractual obligations at this time; and

**WHEREAS**, through negotiations, the City and Clear Channel have agreed to, effective October 1, 2020, reduce minimal annual guarantee from \$65,000/quarter to \$32,500/quarter (50% reduction) while increasing the net revenue share to the City from 30% to 50% until the end of the contract term; and

**WHEREAS**, Clear Channel agreed to keep its maintenance obligation unchanged until the end of the contract term; and

**WHEREAS**, pursuant to Amendment No. 2 executed on December 8, 2016, the current Agreement is operating on a month-to-month basis until such time as the City enters into a new agreement for similar services; and

**WHEREAS**, during negotiations, Clear Channel stated concerns with the perpetuity of the current Agreement and required that a termination date be established; and

**WHEREAS**, through negotiations, the City and Clear Channel have agreed to a contract termination date of September 30, 2021, or upon the execution of a new agreement for construction, operation, and maintenance of new bus shelters (whichever occurs first); and

**WHEREAS**, Amendment No. 5 provides for 60-day advance notification to Clear Channel for termination of the contract; and

**WHEREAS**, given that the Administration anticipates issuing an ITN for new bus shelters this month, contingent upon City Commission approval, it was determined that an extension to the current agreement of up to 12 months would provide sufficient time for the City to procure, award, and execute a contract for construction, operation, and maintenance of new citywide bus shelters and other street furniture; and

**WHEREAS**, while the City has agreed to reduce Clear Channel's minimum annual guarantee payments by 50% (annual reduction of \$130,000), the net revenue share to the City will increase from 30% to 50% for the remaining term of the contract; and

**WHEREAS**, given the COVID-19 pandemic has adversely affected Clear Channel's advertising revenue stream, the financial impact of Amendment No. 5 will be known at the end of the contract term once advertising revenues for the next 12 months are reported.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and the City Commission approve Amendment No. 5 to the Agreement between the City of Miami Beach 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, which Amendment converts the month-to-month Agreement to a twelve (12) month term; transfers the ownership of the street furniture to the City at the conclusion of the term; and revises the minimum annual guarantee for the duration of the Term; and further authorizing the City manager and the City Clerk to execute Amendment no. 5.

**PASSED AND ADOPTED** this 16<sup>th</sup> day of September 2020.

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

**ATTEST:**

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

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

R. J. [Signature] 9/4/20  
City Attorney Date