

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE AND OF THE CITY MANAGER AND WAIVING, BY 5/7TH VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENT IN SECTION 2-367(e) OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY, AND APPROVING AN AMENDMENT TO THE FINANCIAL TERMS OF THE CONCESSION AGREEMENT BETWEEN THE CITY AND THE MARKET COMPANY, INC. FOR THE MANAGEMENT AND OPERATION OF THE LINCOLN ROAD GREEN MARKET; SAID AMENDMENT WAIVING THE MINIMUM GUARANTEE PAYMENT, IN THE AMOUNT OF \$25,000 ANNUALLY, FOR THE PERIOD COMMENCING ON OCTOBER 1, 2020 AND ENDING ON SEPTEMBER 30, 2022, IN ORDER TO ADDRESS THE FINANCIAL IMPACT OF THE COVID-19 PANDEMIC ON CONCESSIONAIRE'S OPERATIONS.

WHEREAS, the City's open-air markets serve several objectives, including enhancing the public realm and providing a community gathering place, bringing value to neighborhoods, offering economic opportunity to local vendors and businesses, and contributing to a diverse marketplace for our residents and the community; and

WHEREAS, the successful market on Lincoln Road has been under contract since 2014 and the Concession Agreement governing those markets, and any applicable renewal/extension periods, expired September 30, 2019, and thereafter entered into a month to month extension through September 30, 2020; and

WHEREAS, pursuant to RFLI 2019-318-WG, the City sought letters of interests from firms qualified to manage and operate weekly street markets open to the public, featuring vendors that provide high quality and locally produced products; and

WHEREAS, on September 16, 2020, the Mayor and City Commission adopted Resolution No. 2020-31401, authorizing the Administration to finalize negotiations with The Market Company, Inc. (Concessionaire) for the management and operation of a green market on Lincoln Road, and authorizing the City Manager to execute the Concession Agreement; and

WHEREAS, the Concessionaire's proposal included a Minimum Guarantee of \$25,000.00 (MG) per contract year, with monthly payments of 22.5% of gross receipts (PG); and

WHEREAS, in the event that the total annual PG payments are less than the MG, Concessionaire is required to pay the City the difference at the end of each contract year; and

WHEREAS, due to the COVID-19 pandemic, Concessionaire has been required to abide to the CDC guidelines, requiring social distancing, and has not been able to operate at full capacity; and

WHEREAS, the pandemic has had a material financial impact on the Concessionaire's operations, in that, Concessionaire has only been able to operate with approximately 20 vendors per market day, as opposed to 40 vendors, the approximate amount of vendors which typically operated in each market day before the occurrence of the pandemic; and

WHEREAS, based upon the impacts of the pandemic, Concessionaire is not able to comply with the proposed MG in the short term and has requested that the City waive the MG for FY 2021 and FY 2022, commencing MG payments as of October 1, 2022; and

WHEREAS, The City and Concessionaire have entered into temporary agreements, on a month to month basis, requiring Concessionaire to pay the proposed monthly PG payments, in the amount of 22.5%, without the MG requirement, pending approval by the City Commission of the waiver of the MG for the requested period; and

WHEREAS, since the financial relief period requested by Concessionaire exceeds the period of time in which COVID-19 restrictions will be in place, a bid waiver pursuant to Section 2-367(e) of the City Code would be required; and

WHEREAS, based upon the established performance record of the Concessionaire with the City and the material impact that the pandemic has had upon the Concessionaire's operations, the City Manager recommends that the Mayor and City Commission waive, by 5/7th vote, the formal competitive bidding requirement in Section 2-367(e) of the City Code, finding such waiver would be in the best interest of the City, and approve the waiver of the MG payment for the first two years of the Initial Term of the Concession Agreement; and

WHEREAS, on May 12, 2021, the Mayor and City Commission referred this item to the Finance and Economic Resiliency Committee (FERC); and

WHEREAS, on May 21, 2021, FERC recommended, by acclamation, the waiver of the MG payment for the first two years of the Initial Term of the Concession Agreement.

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 recommendation of the Finance and Economic Resiliency Committee and of the City Manager and waive, by 5/7th vote, the formal competitive bidding requirement in Section 2-367(e) of the City Code, as being in the best interest of the City, and approve an amendment to the financial terms of the Concession Agreement between the City and The Market Company, Inc. for the management and operation of the Lincoln Road Green Market; said amendment waiving the minimum guarantee payment, in the amount of \$25,000 annually, for the period commencing on October 1, 2020 and ending on September 30, 2022, in order to address the financial impact of the Covid-19 pandemic on Concessionaire's operations.

PASSED and ADOPTED this _____ day of _____ 2021.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, Secretary

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

5-24-21