

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

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, WAIVING, BY 5/7<sup>TH</sup> VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY, AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 1 TO THE AMENDED AND RESTATED CONCESSION AGREEMENT, DATED MAY 21, 2019 (AGREEMENT), BETWEEN THE CITY AND BOUCHER BROTHERS MIAMI BEACH, LLC (CONCESSIONAIRE), FOR THE MANAGEMENT AND OPERATION OF PUBLIC BEACHFRONT CONCESSIONS, BASED UPON THE ESSENTIAL TERMS SET FORTH IN THIS RESOLUTION; 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 MIAMI BEACH 21 & 46 ST, LLC) TO THE SCOPE OF THE AGREEMENT, MODIFYING THE FINANCIAL TERMS OF BOTH AGREEMENTS IN ORDER TO ADDRESS THE IMPACT THAT THE COVID-19 PANDEMIC HAS HAD ON THE CONCESSIONAIRE'S OPERATIONS, AND UPDATING MISCELLANEOUS PROVISIONS OF THE AGREEMENT.

**WHEREAS**, on May 21, 2019, pursuant to Resolution No. 2019-30829, the City and Boucher Brothers Miami Beach, LLC (Concessionaire) executed an Amended and Restated Concession Agreement (Amended and Restated Agreement), for the exclusive right to operate beachfront concessions in Lummus Park, Ocean Terrace, North Shore Open Space Park and South Pointe Park Beach, 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; and

**WHEREAS**, on December 17, 2015, pursuant to Resolution No. 2015-29166, the City entered into a Concession Agreement with Boucher Brothers Miami Beach 21 & 46 St, LLC, (21 & 46<sup>th</sup> Streets Agreement) for the exclusive right to operate concession areas east of Collins Avenue, near 21<sup>st</sup> and 46<sup>th</sup> Street, for an initial term commencing on December 26, 2015 and ending on December 31, 2017, with three (3) additional one-year renewal options, , which third and final renewal period expired on December 31, 2020; and

**WHEREAS**, on January 2020, in accordance with the Amended and Restated Agreement, Boucher Brothers paid half (\$600,000) of the required Minimum Guarantee (MG) due to the City of \$1,200,000, but did not pay the remaining half; and in accordance with the 21 & 46 Streets Agreement, paid half (\$61,000) of the \$122,000 MG due to the City, but did not pay the remaining half; and

**WHEREAS**, Boucher Brothers is also required to pay annual percentage of gross receipts (PG) received during each calendar year for both agreements, as follows:

- 1) Amended and Restated Agreement: the following percentages of all categories as delineated in Subsection 4.1 of the Agreement, to the extent they exceed the MG:

<b>Concessionaire Services</b>	<b>PG</b>
Food and Beverage Sales	15%
Beach-related Sundries/Skin Care	20%
Beach Equipment Rentals	20%
Team Building Events Fees	25%
Advertising/Sponsorships Fees	50%
City Displacement Fee	30%

- 2) 21 & 46<sup>th</sup> Streets Agreement: 20.33% of gross sales receipts up to \$600,000 annually, and 25% of gross sales receipts that exceed \$600,000; and

**WHEREAS**, in March 2020, the COVID-19 pandemic forced Boucher Brothers to close operations on the City's beaches until June 2020; and

**WHEREAS**, at the June 24, 2020 City Commission meeting, the Administration submitted a request for approval to issue Request for Proposals (RFP) 2020-145-ND for the management and operation of the beachfront concessions at 21<sup>st</sup> and 46<sup>th</sup> Streets; and

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

**WHEREAS**, on July 29, 2020, the Mayor and City Commission adopted Resolution No. 2020-31368, accepting the written recommendation of the City Manager to waive, by 5/7 vote, the formal bidding requirement, as being in the best interest of the City; and further authorized the Administration to finalize negotiations with Boucher Brothers and bring back to City Commission Amendment No. 1 for final approval; and

**WHEREAS**, Boucher Brothers has since requested changes to the proposed terms for Amendment No. 1, to account for the significant impact caused by the COVID-19 pandemic upon their operations, as follows:

- 1) incorporating the scope of the 21<sup>st</sup> and 46<sup>th</sup> Streets Agreement within the Amended and Restated Agreement, with the term of the agreements running concurrently;
- 2) amending the Concession Fees of the 21<sup>st</sup> and 46<sup>th</sup> Streets Agreement to provide COVID-19 temporary financial assistance, as follows:
  - A) MG credit, March 2020 – June 2020, \$32,922;
  - B) MG abatement July 2020 – December 2020, \$61,000; and
  - C) PG payment January 2021 – end of term, 25% of gross receipts for month; and
- 3) amending the Concession Fees of the Amended and Restated Agreement to provide COVID-19 temporary financial assistance, as follows:
  - A) MG credit March 2020 – June 2020, \$367,000; and
  - B) MG abatement July 2020 - December 2020, \$600,000; and

**WHEREAS**, the Amendment shall also include the following provisions: Concessionaire shall be permitted to purchase, at the then current rate, up to one (1) monthly parking pass at each of the 21<sup>st</sup> and 46<sup>th</sup> Streets surface parking lots; Concessionaire shall have the ability to open/close the 46<sup>th</sup> Street concession area, based on demand, and subject to the prior written approval of the City Manager (or designee); and Concessionaire shall have the right to install a fenced storage enclosure at 21<sup>st</sup> Street (similar to the existing storage enclosure at 46<sup>th</sup> Street), subject to all regulatory approvals; and

**WHEREAS**, in addition to the above terms, Amendment No. 1 would clarify language pertaining to Section 4.2 of the 21<sup>st</sup> and 46<sup>th</sup> Streets Agreement, relating to the calculation of the PG payment, based upon an Internal Audit report, and add other miscellaneous provisions that are included currently in similar agreements, such as Inspector General audit rights and E-Verify provisions; and

**WHEREAS**, based upon the foregoing, and as more particularly set forth in the City Commission Memorandum Accompanying this Resolution, the City Manager recommends waiving, by 5/7<sup>th</sup> vote, the formal competitive bidding requirement in Section 2-367(e) of the City Code and authorizing the Mayor and City Clerk to execute Amendment No. 1 to the Amended and Restated Agreement with Boucher Brothers Miami Beach, LLC; said amendment incorporating the 21<sup>st</sup> and 46<sup>th</sup> Street locations into the Amended and Restated Agreement, modifying the financial terms, based upon the foregoing essential terms in order to address the impact that the COVID-19 pandemic has had on the Concessionaire's operations and updating other miscellaneous provisions.

**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 waive, by 5/7<sup>th</sup> vote, the formal competitive bidding requirement in Section 2-367(e) of the City Code and authorize the Mayor and City Clerk to execute Amendment No. 1 to the Amended and Restated Concession Agreement, dated May 21, 2019 (Agreement), between the City and Boucher Brothers Miami Beach, LLC (Concessionaire), for the management and operation of public beachfront concessions, based upon the essential terms set forth in this Resolution; 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 Miami Beach 21 & 46 St, LLC) to the scope of the Agreement, modifying the financial terms of both agreements in order to address the impact that the COVID-19 pandemic has had on the Concessionaire's operations, and updating miscellaneous provisions of the Agreement.

**PASSED and ADOPTED THIS** \_\_\_ day of \_\_\_\_\_ 2021.

**ATTEST:**

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

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

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

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

6-16-21  
\_\_\_\_\_  
Date