

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING RESOLUTION NO. 2020-31368, WHICH WAIVED THE FORMAL COMPETITIVE BIDDING REQUIREMENT AND AUTHORIZED THE CITY ADMINISTRATION TO NEGOTIATE 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, ADDING THE MANAGEMENT AND OPERATION OF THE PUBLIC BEACHFRONT CONCESSIONS LOCATED AT 21ST AND 46TH STREETS TO THE SCOPE OF THE AGREEMENT AND MODIFYING CERTAIN FINANCIAL TERMS OF THE AGREEMENT; SAID AMENDMENT TO THIS RESOLUTION MODIFYING THE ESSENTIAL TERMS OF AMENDMENT NO. 1 FOR BOTH AGREEMENTS IN ORDER TO ADDRESS THE IMPACT OF THE COVID-19 PANDEMIC ON CONCESSIONAIRE'S OPERATIONS, AND UPDATING MISCELLANEOUS PROVISIONS OF THE AGREEMENT; AND AUTHORIZING THE CITY MANAGER TO FINALIZE AMENDMENT NO. 1, CONSISTENT WITH THE TERMS PRESENTED HEREIN, SUBJECT TO FORM APPROVAL BY THE CITY ATTORNEY; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE AMENDMENT.

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), having 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 of 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 & 46th Street Agreement), having 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 Concessionaire had to close operations from March 2020 to June 2020 due to the imposed governmental closures necessitated by the COVID-19 pandemic; and

WHEREAS, the third and final renewal term expired on December 31, 2020, and the parties have extended, on a month to month basis, the 21st & 46th Street Agreement through July 31, 2021; and

WHEREAS, at the June 24, 2020 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 21st and 46th Streets; and

WHEREAS, during the June 24, 2020 meeting, the Mayor and City Commission directed the Administration to negotiate with Concessionaire and explore the possibility of consolidating the 21st and 46th Agreement with the Amended and Restated Agreement; 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 5/7th vote, the formal bidding requirement in Section 2-367(e) of the City Code; 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, since the July 29, 2020 meeting, Concessionaire noticed the impact that the COVID-19 pandemic continued to have on its operations and proposed the following updated essential terms for Amendment No.1:

- 1) increase the following fees to the City for the concession areas governed by both agreements:
 - displacement fees to the City increased from 25% to 30%; and
 - advertising/sponsorship fees increase from 25% to 50%; and
- 2) incorporate the 21st and 46th Street concessions into the Amended and Restated Agreement;
 - A) financial terms relating to the 21st & 46th Street concessions:
 - Minimum Guaranteed Annual Concession Fee (MG): \$122,000 (payable \$61,000 in January & \$61,000 in July);
 - MG for July 2020 waived
 - Concessionaire paid MG of \$61,000 in January, 2020 (covers January-June, 2020);
 - MG Credit of \$35,922 due to closures (March 12, 2020 – June 30, 2020);
 - MG January 2021 (\$61,000 - \$35,922 credit); and
 - MG as of January 2022 increases from \$122,000 to \$200,000; and
 - Annual Percentage of Gross Receipts (PG);
 - Abatement of PG from January 2020 through February 2021;
 - PG starting March 1, 2021 = 25% of gross receipts;
 - Releasing the \$20,833 security deposit to the City, to be used for community events; and
 - Providing a \$5,000 annual contribution to the City to be used for beach initiatives (i.e. seaweed removal, sanitation, marketing, etc.), as an additional public benefit to the \$30,000 Concessionaire already pays annually under the scope of the Amended and Restated Agreement, for a total of \$35,000 annually; and
 - B) incorporation of miscellaneous provisions relating to the 21st and 46th Street Agreement:
 - audit Findings; clarifying Sections 4.2 and 4.4:
 - From January 1, 2017 – December 31, -2020 – Sections 4.2 and 4.4 shall be interpreted as 25% of PG only applies to the portion of gross receipts which exceeds \$600,000; waiving the balance which the audit found to be due to the City, in the amount of \$128,151.72; and
 - Commencing on March 1, 2021, 25% of PG shall apply to all gross receipts; and
 - Concessionaire shall be permitted to purchase up to one (1) monthly parking pass at each of the 21st and 46th Street surface parking lots;

- Concessionaire shall have the ability to open/close the 46th Street concession area, based on demand, 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 21st Street (similar to the existing storage enclosure at 46th Street), subject to all regulatory approvals; and
- 3) Financial terms for Amended and Restated Agreement:
- A) Minimum Guaranteed Annual Concession Fee (MG): \$1,200,000, payable \$600,000 in January and \$600,000 in July:
- Concessionaire paid \$600,000 in January, 2020 (covers January-June, 2020);
 - MG Credit of \$367,000 due to closures (March 12, 2020 – June 30, 2020)
 - July, 2020 MG waived;
 - January 2021 MG (\$600,000 -\$367,000 credit); and
 - January, 2022, MG is greater of \$1,200,000 or average PG for the last 5 years of the original concession areas governed by the Amended and Restated Agreement; and
- B) Annual Percentage of Gross Receipts (PG) – varying percentages based upon certain categories:
- Abatement of PG from January 2020 through February 2021; and
 - PG resuming March 1, 2021; and

WHEREAS, the City Manager recommends amending Resolution No. 2020-31368, and authorizing the Administration to negotiate Amendment No. 1 to the Amended and Restated Agreement with Boucher Brothers Miami Beach, LLC; said amendment incorporating the 21st and 46th 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 amend Resolution No. 2020-31368, which waived the formal competitive bidding requirement and authorized the City Administration to negotiate 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, adding the management and operation of the public beachfront concessions located at 21st and 46th streets to the scope of the Agreement and modifying certain financial terms of the Agreement; said amendment to this Resolution modifying the essential terms of Amendment No. 1 for both agreements in order to address the impact of the COVID-19 pandemic on Concessionaire's operations, and updating miscellaneous provisions of the Agreement; and authorize the City Manager to finalize Amendment No. 1, consistent with the terms presented herein, subject to form approval by the City Attorney; and further authorize the Mayor and City Clerk to execute the amendment.

PASSED and ADOPTED THIS ____ day of _____ 2021.

ATTEST:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney

7-27-21
Date