

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, AT ITS APRIL 21, 2023 MEETING, TO AUTHORIZE THE ADMINISTRATION TO NEGOTIATE A PROPOSED NON-BINDING TERM SHEET WITH BOUCHER BROTHERS MIAMI BEACH, LLC (THE "BOUCHER BROTHERS") WITH RESPECT TO THE POTENTIAL MANAGEMENT OR OPERATION OF THE PROPERTY LOCATED AT 1 OCEAN DRIVE, TO BE EFFECTIVE AFTER THE EXPIRATION OF THE EXISTING LEASE AND CONCESSION AGREEMENT WITH PENROD BROTHERS, INC.; FURTHER, REQUESTING THAT THE ADMINISTRATION AND CITY ATTORNEY'S OFFICE CONSIDER, AS PART OF THE NEGOTIATIONS, WHETHER THE FOREGOING SHOULD BE ACCOMPLISHED EITHER AS AN AMENDMENT TO THE BOUCHER BROTHERS' CONCESSION AGREEMENT OR AS A STAND-ALONE AGREEMENT; AND FURTHER PROVIDING THAT THE NEGOTIATED TERM SHEET SHALL BE SUBJECT TO THE PRIOR REVIEW AND APPROVAL OF THE MAYOR AND CITY COMMISSION, TO ALLOW THE CITY COMMISSION TO DETERMINE WHETHER IT DESIRES TO PROCEED FURTHER WITH A PROPOSED MANAGEMENT AGREEMENT OR CONCESSION AGREEMENT, IN ACCORDANCE WITH SECTION 1.03(F) OF THE CITY CHARTER.

WHEREAS, on October 2, 1985, the Mayor and City Commission adopted Resolution No. 85-18223, approving a Lease between the City and Penrod Brothers, Inc. ("Penrod"), dated November 7, 1985 (the "Lease"), for the development, construction, management and operation of a restaurant facility at 1 Ocean Drive; said Lease having an initial term of twenty (20) years, with two (2) ten-year renewal terms, at Penrod's option, currently set to expire on May 6, 2026; and

WHEREAS, on October 2, 1985, the Mayor and City Commission also adopted Resolution No. 85-18222, approving a Concession Agreement, dated November 7, 1985, between the City and Penrod ("1985 Concession Agreement") for the rental of beach equipment, water recreation equipment and food and beverage service at various locations in the vicinity of the leased property, which agreement was amended several times until its expiration in 2003; and

WHEREAS, on March 7, 1988, the City and Penrod executed Amendment No. 1 to the Lease, providing for, among other hardscape and landscape improvements, the construction of a parking lot, containing 149 spaces, of which 88 would be designated for use by the Penrod's restaurant and the remaining 61 parking spaces would be developed as metered parking spaces for use by the general public; and

WHEREAS, on April 8, 1988, the City and Penrod executed Amendment No. 2 to the Lease, correcting the building footprint and legal description; and

WHEREAS, on February 25, 2004, the City and Penrod executed Amendment No. 3 to the Lease, also effective October 1, 2003, modifying the financial terms, consistent with the financial terms of the new Concession Agreement referenced more fully below; and

WHEREAS, on February 25, 2004, the Mayor and City Commission adopted Resolution No. 2004-25506, approving a new Concession Agreement between the City and Penrod for the management and operation of a concession in an area generally located east of the existing building and parking lot, providing for a minimum annual payment of 6.5% of Penrod's gross receipts, with an initial term commencing on October 1, 2003 and expiring on May 6, 2006, and an option to renew to run concurrent with the term of the Lease, which Concession Agreement is set to expire on May 6, 2026; and

WHEREAS, on November 5, 2001, pursuant to Resolution No. 2001-2646, the City entered into a new concession agreement with Boucher Brothers Miami Beach LLC, as the successful proposer pursuant to Request for Proposals (RFP) No. 22-00/01, for the operation of beachfront concessions on the beaches seaward of Lummus Park, Ocean Terrace and North Shore Open Space Park; said agreement having an initial term of five (5) years, with one five (5) year renewal term, effective through November 4, 2011; and

WHEREAS, on February 2, 2012, the City and Boucher Brothers Miami Beach, LLC entered into a Concession Agreement for the operation of the beachfront concessions seaward of Lummus Park, Ocean Terrace, North Shore Open Space Park and South Pointe Park Beach; said agreement having an initial term of five (5) years, commencing retroactively on November 5, 2011 and ending on November 4, 2016, with one renewal term of five (5) years, effective through November 4, 2021; 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 (the "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, 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 (the "Amended and Restated Agreement"), for the operation of beachfront concessions seaward of Lummus Park, Ocean Terrace and adjacent areas, North Beach Oceanside Park, South Pointe Park Beach, the 21st Street and 46th Street concession areas, and Allison Park; said 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 the option of two (2) additional consecutive renewal terms of five (5) years each, at Concessionaire's option; and

WHEREAS, on October 26, 2022, at the request of Commissioner Ricky Arriola, the Mayor and City Commission approved the referral of Item C4 L to the Finance and Economic Resiliency Committee ("FERC" or the "Committee") to discuss the upcoming expiration date of Penrod's Lease and Concession Agreement; and

WHEREAS, on January 27, 2023, the item was discussed at FERC and the Committee directed the City Administration to undertake the following actions and return to the March 31, 2023 FERC meeting: (1) engage community partners who possess a proven track record and reputable operators; (2) obtain two (2) appraisals for the property; (3) conduct a facility conditions assessment of the property; and (4) meet with neighborhood association(s) and provide a vision plan based on suggestions from the area residents; and

WHEREAS, notwithstanding the Administration's recommendation to issue a competitive solicitation with respect to the future use of the property, on April 21, 2023, the Finance Committee unanimously recommended that the City Commission authorize the Administration to negotiate a proposed non-binding term sheet with the Boucher Brothers with respect to the potential management or operation of the property located at 1 Ocean Drive, to be effective after the existing Lease and Concession Agreement with Penrod has expired (May 6, 2026); and to direct the Administration to consider, as part of the negotiations, whether the foregoing should be accomplished either as an amendment to the Boucher Brothers' existing concession agreement or as a stand-alone agreement; and

WHEREAS, upon review of the proposed terms, the City Commission would then determine whether to proceed with a management agreement or concession agreement in accordance with Section 1.03(f) of the City Charter, which provides that a management agreement or concession agreement having a term of ten (10) years or longer for the management, operation, and/or use of City-owned property, shall require the approval of a majority vote of the Planning Board and a 6/7ths vote of the City Commission.

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, at its April 21, 2023 meeting, to authorize the Administration to negotiate a proposed non-binding term sheet with Boucher Brothers Miami Beach, Llc (the "Boucher Brothers") with respect to the potential management or operation of the property located at 1 Ocean Drive, to be effective after the expiration of the existing lease and concession agreement with Penrod Brothers, Inc.; further, request that the Administration and City Attorney's Office consider, as part of the negotiations, whether the foregoing should be accomplished either as an amendment to the Boucher Brothers' concession agreement or as a stand-alone agreement; and further providing that the negotiated the term sheet shall be subject to the prior review and approval of the Mayor and City Commission, to allow the City Commission to determine whether it desires to proceed further with a proposed management agreement or concession agreement, in accordance with Section 1.03(f) of the City Charter.

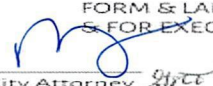
PASSED AND ADOPTED this _____ day of _____ 2023.

ATTEST:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

(Sponsored by Commissioner Ricky Arriola)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney *Shree* 4-24-23
Date