

**AMENDMENT NO. 4 TO CONCESSION AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH, FLORIDA
AND
FIRST CLASS PARKING SYSTEMS, LLC.
TO PROVIDE VALET PARKING SERVICES AT THE FILLMORE AT THE JACKIE GLEASON
THEATER OF THE PERFORMING ARTS, MIAMI BEACH CONVENTION CENTER, AND
OTHER CITY PROPERTIES, AS MAY BE REQUIRED, PURSUANT TO REQUEST FOR
PROPOSALS (RFP) NO. 2018-11-WG**

This Amendment No. 4 ("Amendment") to the Concession Agreement, dated November 27, 2018 (Agreement), by and between the **City of Miami Beach, Florida**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (the "City"), and **First Class Parking Systems, LLC**, a Florida limited liability company, with offices at 12550 Biscayne Boulevard, Suite 207, Miami, Florida, 33181 ("Concessionaire"); is entered into this _____ day of _____, 2022:

RECITALS

WHEREAS, on July 25, 2018, the Mayor and City Commission adopted Resolution Number 2018-30399, approving the award of Request for Proposals ("RFP") No. 2018- 166-WG for Valet Parking Services on City-owned property (the "RFP") to First Class Parking System, LLC ("Concessionaire"); and

WHEREAS, on November 26, 2018, the City and Concessionaire executed the Agreement with respect to the Valet Parking Services at the Fillmore, at the Jackie Gleason Theater of the Performing Arts, Miami Beach Convention Center, and other City properties, as may be required, for an initial term of one (1) year, commencing on November 1, 2018 and ending on October 31, 2019, with four (4) additional one-year renewal terms, subject to approval of the City Manager; and

WHEREAS, on November 1, 2019, the City and Concessionaire executed Amendment No. 1 to the Agreement, approving the first one-year renewal term, beginning on November 1, 2019 and ending on October 31, 2020, and modifying the financial terms, as contemplated under the Agreement during each annual renewal term; and

WHEREAS, due to the impacts of the COVID-19/novel Coronavirus pandemic, the parties availed themselves of the force majeure provision of the Agreement, and agreed to suspend Services under the Agreement, effective April 1, 2020 ("Suspension Date"), until the effective date in which the Parking Department Director advises, in writing, that Services may resume ("Suspension Period"), which agreement is memorialized in a letter agreement dated March 27, 2020 ("Suspension Letter"); and

WHEREAS, on September 25, 2020, the City and Concessionaire executed Amendment No. 2 to the Agreement, to correct the commencement date of the Agreement to reflect October 1, 2018, and accordingly, correct the contract year to start October 1st and go through September 30th; and also to clarify Section 3.2.3 of the Agreement to clearly reflect the parties' intent (the Agreement, Amendment No. 1, the Suspension Letter and Amendment No. 2 shall be collectively referred to herein as the "Agreement"); and

WHEREAS, Amendment No. 2 also reflects that during the Suspension Period, the Venues may require valet services, on a demand basis ("Temporary Services"), and the undersigned parties agreed that Concessionaire would exclusively provide such valet services from the Effective Date of Amendment No. 2 (September 25, 2020) and continuing through and including the expiration date of the Suspension Period or January 31, 2021, whichever occurs first (Temporary Services Period); and

WHEREAS, Amendment No. 2 also amended the Agreement to reflect that during the Temporary Services Period, Concessionaire would be paying the City a monthly Concession Fee of twelve percent (12%) of the total monthly Gross Receipts (as defined in subsection 4.4) for all transactions ("Temporary Services Period Concession Fee"), payable every month by no later than the fifteenth (15th) day of the corresponding month; and that during the Temporary Services Period, the Concession Fees set forth in Section 3.2 (including the Minimum Guarantee of \$17,900 a month, the Excess Transaction Fee and Percentage of Gross Receipts) would be abated and replaced with the Temporary Services Period Concession Fee; and

WHEREAS, on January 13, 2021, the Mayor and City Commission adopted Resolution No. 2021-31543, approving the extension of the modified financial terms approved under Amendment No. 2 for the Temporary Services Period, through and including September 30, 2021 or until such time as the Convention Center bookings resume operations at the Pre-Pandemic booking levels, whichever occurs first.

WHEREAS, due to the delay in the ramp up period for the Convention Center, Concessionaire has requested that the City extend the reduced Concession Fee payments, as established in Amendment No. 3, through March 31, 2022; and

WHEREAS, on April 6, 2022, the Mayor and City Commission adopted Resolution No. _____, authorizing the City Manager to negotiate and execute Amendment No. 4 to the Agreement, retroactively approving, for the period from October 1, 2021 through March 31, 2022, the reduced Concession Fee payments, approved pursuant to Resolution No. 2021-31543, in order to address the extended financial impact upon Concessionaire, while the Miami Beach Convention Center was ramping up its operations, and resuming payment of the prepandemic amount of Concession Fees due under the Agreement, for the period from April 1, 2022 through the remainder of the contract year, September 30, 2022.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Concessionaire hereby agree to amend the Agreement as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. MODIFICATIONS.

- a. The Agreement is hereby amended to extend the Extended Temporary Services Period and modified financial terms approved under Amendment No. 3, through

and including March 31, 2022. During the Extended Temporary Services Period, Concessionaire would be permitted to exclusively provide valet services at the Venues, on a demand basis, by paying the City a monthly Concession Fee of twelve percent (12%) of the total monthly Gross Receipts (as defined in subsection 4.4) for all transactions ("Temporary Services Period Concession Fee"), payable every month by no later than the fifteenth (15th) day of the corresponding month. During the Extended Temporary Services Period, the Concession Fees set forth in Section 3.2, including the Minimum Guarantee of \$17,900 a month, the Excess Transaction Fee and Percentage of Gross Receipts, would be abated and replaced with the Temporary Services Period Concession Fee. Effective April 1, 2022 and continuing through September 30, 2022, Concessionaire will be obligated to pay the Concession Fees set forth in Section 3.2, including the Minimum Guarantee of \$17,900 a month, the Excess Transaction Fee and Percentage of Gross Receipts.

- b. A new Section 18.4, entitled "E-Verify" is hereby added to the Agreement, as follows:

18.4 E-Verify.

- a. To the extent that Concessionaire provides labor, supplies, or services under this Agreement, Concessionaire shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Concessionaire shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, Concessionaire shall expressly require any subcontractor performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract Term. If Concessionaire enters into a contract with an approved subcontractor, the subcontractor must provide the Concessionaire with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Concessionaire shall maintain a copy of such affidavit for the duration of the contract or such other extended period as may be required under this Agreement.
- b. TERMINATION RIGHTS.
1. If the City has a good faith belief that Concessionaire has knowingly violated Section 448.09(1), Florida Statutes, which prohibits any person from knowingly employing, hiring, recruiting, or referring an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States, the City shall terminate this Agreement with Concessionaire for cause, and the City shall thereafter have or owe no further obligation or liability to Concessionaire.
 2. If the City has a good faith belief that a subcontractor has knowingly violated the foregoing Subsection 18.4(a), but the Concessionaire otherwise complied with such subsection, the City will promptly notify the Concessionaire and order the Concessionaire to immediately terminate the contract with the subcontractor. Concessionaire's failure to terminate a subcontractor shall be an event of default under this Agreement, entitling City to terminate the Concessionaire's Agreement for cause.
 3. A contract terminated under the foregoing Subsection (b)(1) or (b)(2) is not in breach of contract and may not be considered as such.

4. The City or Concessionaire or a subcontractor may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (b)(1) or (b)(2) no later than 20 calendar days after the date on which the contract was terminated.
 5. If the City terminates the Agreement with Concessionaire under the foregoing Subsection (b)(1), Concessionaire may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.
 6. Concessionaire is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 18.4.
- b. A new Section 18.5, entitled “Inspector General Audit Rights” is hereby added to the Agreement as follows:

18.5 Inspector General Audit Rights.

- a. Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
- b. The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Concessionaire, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- c. Upon ten (10) days written notice to the Concessionaire, the Concessionaire shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Concessionaire its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

- d. The Inspector General shall have the right to inspect and copy all documents and records in the Concessionaire's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- e. The Concessionaire shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:
1. If this Agreement is completely or partially terminated, the Concessionaire shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 2. The Concessionaire shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- f. The provisions in this section shall apply to the Concessionaire, its officers, agents, employees, subcontractors and suppliers. The Concessionaire shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Concessionaire in connection with the performance of this Agreement.
- g. Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Concessionaire or third parties.

3. RATIFICATION.

Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In particular, none of the modifications contained in this Amendment shall be construed as a waiver or modification of the City's right to terminate the Agreement for Convenience or its right to enforce any other terms or conditions of the Agreement. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

ATTEST:

CITY OF MIAMI BEACH, FLORIDA

By: _____
Rafael E. Granado, City Clerk

Alina T. Hudak, City Manager

Date

FOR CONCESSIONAIRE:

ATTEST:

FIRST CLASS PARKING SYSTEMS, LLC

By: _____
Secretary

President

Print Name

Print Name

Date