

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RESCINDING RESOLUTION NO. 2023-32586, WHICH AUTHORIZED THE ADMINISTRATION TO NEGOTIATE A PROPOSED NON-BINDING TERM SHEET WITH CITY'S EXISTING BEACHFRONT CONCESSIONAIRE WITH RESPECT TO THE POTENTIAL MANAGEMENT OR OPERATION OF THE PROPERTY LOCATED AT 1 OCEAN DRIVE AND ADJACENT CONCESSION AREA (THE "PROPERTY"), TO BE EFFECTIVE AFTER THE EXPIRATION OF THE EXISTING LEASE AND CONCESSION AGREEMENT WITH PENROD BROTHERS, INC.; AND DIRECTING THE ADMINISTRATION TO PREPARE AND ISSUE A REQUEST FOR PROPOSALS (RFP) FOR THE MANAGEMENT OR OPERATION OF A HIGH END BEACH ESTABLISHMENT AND ANCILLARY USES ON THE PROPERTY AND ADJACENT CONCESSION AREA, IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH IN THIS RESOLUTION.

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"), as amended by Amendments No. 1-3 thereof, 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 February 25, 2004, the Mayor and City Commission waived the City's competitive bidding requirements and approved a bid waiver in favor of Penrod via 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 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, on April 28, 2023, following a unanimous recommendation by the Finance and Economic Resiliency Committee, the Mayor and Commission adopted Resolution No. 2023-32586, authorizing the Administration to negotiate a proposed non-binding term sheet with the Boucher Brothers Miami Beach, LLC 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

WHEREAS, since the April 28, 2023 City Commission meeting, the Sponsor of this Resolution, Commissioner David Richardson, learned that the Penrod's current concession agreement was approved in 2004 as a bid waiver, and that Penrod has been operating the concession area on the Property without any competitive process for nearly twenty (20) years; and

WHEREAS, based on the foregoing, Commissioner Richardson has sponsored this Resolution, to rescind Resolution No. 2023-32586, and finally provide for a competitive process with respect to the future use of the Property, after the expiration of the Penrod's current twenty-year bid waiver for the use of the entire concession area adjacent to the Property; and

WHEREAS, to the extent this Resolution involves a motion for reconsideration of the City Commission's April 28, 2023 vote, the Sponsor of this Resolution, having voted in favor of Resolution No. 2023-32586, was on the prevailing side and may therefore properly present a motion for reconsideration thereof, in accordance with the City Commission's procedural rules; and

WHEREAS, as part of this Resolution, the Mayor and City Commission further desire to direct the Administration to prepare and issue a Request for Proposals for the management or operation of a high end beach establishment and ancillary uses on the Property and the related concession area, in accordance with the requirements set forth herein, as follows:

- The RFP shall seek proposals for the management or operation of a high end beach establishment and ancillary uses on the Property, including the boundaries of the concession area currently approved pursuant to Resolution No. 2004-25506;
- The RFP shall include minimum requirements to ensure the property is managed by a qualified operator, including a requirement that proposers have at least five (5) years experience managing or operating a beach establishment, beachfront concession or similar concession;
- The RFP shall allow proposers to submit up to two (2) proposal alternates that are independent of each other, to provide proposers and the City with flexibility to consider alternative concepts or approaches for the use of the entire Property and related concession and parking areas currently allocated to the Property, as well as the financial and other terms for either a lease agreement, a concession agreement, or a combination thereof (similar to the lease/concession arrangement currently in place);

- The term of the Agreement awarded pursuant to the RFP shall commence after the expiration of the existing Lease and Concession Agreement, for a period not-to-exceed thirty (30) years;
- In view of the importance of the Property to the City, the RFP shall require all proposers to participate in a mandatory pre-bid conference;
- The RFP shall include, at a minimum, evaluation criteria relating to: (i) the scope of services and concept for the use of the Property, including the proposer's approach for the maximum utilization of the Property and compatibility with the surrounding neighborhood; (ii) experience of the proposer and the proposer's team members; (iii) qualifications, including financial capability of the proposer; (iv) past performance of proposers, including consideration of performance under City of Miami Beach contracts, if any; (v) revenue proposal and financial terms; and (vi) additional public benefits; and
- The Administration shall issue the RFP not later than June 15, 2023, with a deadline for submission of proposals not later than August 15, 2023, with the Evaluation Committee to thereafter be convened with sufficient time for the City Manager to review the deliberations of the Evaluation Committee and make a recommendation for award of the RFP at the September 13, 2023 City Commission meeting.

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 rescind Resolution No. 2023-32586, which authorized the Administration to negotiate a proposed non-binding term sheet with City's existing beachfront concessionaire with respect to the potential management or operation of the property located at 1 Ocean Drive and adjacent concession area (the "Property"), to be effective after the expiration of the existing Lease and Concession Agreement with Penrod Brothers, Inc.; and direct the Administration to prepare and issue a Request for Proposals (RFP) for the management or operation of a high end beach establishment and ancillary uses on the Property and adjacent concession area, in accordance with the requirements set forth in this Resolution.

PASSED AND ADOPTED this _____ day of _____ 2023.

ATTEST:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney *PAZ* 5-9-23
Date