

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO OUTDOOR DINING CONCESSION AGREEMENTS WITH SELECTED RESTAURANTEURS FOR THE CONTRACT TERM COMMENCING OCTOBER 1, 2024 AND TERMINATING SEPTEMBER 30, 2026, AS THE CITY MANAGER MAY DEEM APPROPRIATE, TO PROVIDE OUTDOOR FOOD AND BEVERAGE SERVICE AND CONSUMPTION ON CITY RIGHTS-OF-WAY, WITHOUT COMPETITIVE BIDDING OR ANY FURTHER ACTION OR APPROVAL OF THE CITY COMMISSION BEING NECESSARY, PROVIDED THAT SAID CONCESSION AGREEMENTS ARE SUBSTANTIALLY SIMILAR, WITH REGARD TO ALL MATERIAL TERMS AND CONDITIONS, TO THE TEMPLATE CONCESSION AGREEMENT ATTACHED HERETO AS EXHIBIT "A", AUTHORIZING THE CITY MANAGER TO NEGOTIATE CONCESSION AGREEMENTS WITH TERMS MATERIALLY DIFFERENT FROM THE APPROVED TEMPLATE TO BE INDIVIDUALLY APPROVED, IF AT ALL, BY RESOLUTION OF THE CITY COMMISSION, AND AUTHORIZING THE CITY MANAGER TO SUSPEND AND/OR TERMINATE ANY CONCESSION AGREEMENT IF HE OR SHE DEEMS IT TO BE IN THE CITY'S BEST INTEREST.

WHEREAS, the City Commission, at its June 9, 2022 meeting, passed Resolution No. 2022-32205 and created, solely in the City's proprietary capacity and not in furtherance of any regulatory function, an Outdoor Dining Concession Agreement Program ("the Program") for selected restaurants with brick-and-mortar facilities and inside seating to offer food and beverage services on the rights-of-way abutting the physical establishment; and

WHEREAS, the Program was created to serve the valid public purpose of promoting the quality of the City's iconic brand by establishing high quality outdoor food and beverage service on City property, and positively represent the City's brand by providing a public space where residents and visitors can enjoy the City's world-renowned architecture and scenic sun-drenched vistas; and

WHEREAS, the concessionaires in this Program include only the best restaurants in the City, chosen at the City Manager's sole discretion, to sell food and beverages for dining at outdoor cafés on the public rights-of way abutting a restaurant's indoor establishment; and

WHEREAS, the City Commission, in Resolution No. 2022-32205, delegated to the City Manager, or his/her designee, the authority to execute, at his/her discretion, all concession agreements, consistent with the terms of the Resolution and the template agreement attached thereto for a term of two years, commencing October 1, 2022 and ending September 30, 2024; and

WHEREAS, the City Commission, in Resolution No. 2022-32205, also authorized the City Manager to negotiate, at his/her sole discretion, concession agreements with terms materially different from the approved template, with the approval of such changes subject to approval by the City Commission; and

WHEREAS, the Program has been a great success for the City by bringing sole control of outdoor dining concessions back to the City, which was always the intent of the City Commission; and

WHEREAS, the City Commission desires to continue and extend the Outdoor Dining Concession Agreement Program for an additional two (2) year period and hereby approves the Outdoor Dining Concession Agreement template attached here as Exhibit A for the period commencing October 1, 2024 and ending September 30, 2026, for which the City Manager may negotiate amendments from time-to-time with the approval of the City Commission; and

WHEREAS, because the concession program will be available only to each restaurant abutting the public right-of-way with available space to locate the concession where the City's land-use regulations allow sidewalk cafes, the City Commission determines that the public benefit of competitive bidding for each concession agreement would not be served in this case; and

WHEREAS, in addition to updating the applicable commencement and termination dates of the concession agreement template, the City Manager has negotiated and/or proposed the following material changes to the original concession agreement template:

- Paragraph 4A (ii & iii) – Adding the 41st Street business corridor to fee exemptions.
- Paragraph 4B – Clarifying fee for parking spaces (Parklets) and include the 41st Street business corridor as an exemption.
- Paragraph 8A(i) – Adding a payment extension clause for payment if approved by City Manager or designee.
- Paragraph 41 – Removing limitation of fans during summer months for use all year. Add line allowing for use of outlets for usage other than fans through written permission from the City Manager.
- Paragraph 52 – Adding specific ADA requirements specifying seating and table requirements.
- Paragraph 58 – Extending umbrella rules used on Ocean Drive to all areas within the City for uniform enforcement.
- Paragraph 61 – Removing term allowing for stacking of chairs on the ROW outside of Lincoln Rd.
- Paragraph 71 – Clarifying specifics for Menu Board requirements stating that it must match the provided menu and clarifying that no “standalone” food specials are allowed.
- Paragraph 82 – Prohibiting vending of cigarettes, cigars and/or other tobacco or vaping products in the concession area, which was previously allowed; and

WHEREAS, notwithstanding any provision to the contrary in this resolution, nothing herein shall preclude the City Manager from seeking direction from the City Commission regarding any matter arising out of or related to the agreement, including, without limitation, any approval contemplated under the agreement (within the timeframe specified therefor) or any proposed amendment or modification to the agreement; and

WHEREAS, there shall be no change permitted to currently applicable hours for alcohol service and consumption unless approved by the City Commission; and

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 authorize the City Manager to enter into outdoor dining concession agreements with selected restaurateurs for the contract term commencing October 1, 2024 and terminating September 30, 2026, as the City Manager may deem appropriate, and consistent with the recitals set forth here, to provide outdoor food and beverage service and consumption on City rights-of-way, without competitive bidding or any further action or approval of the City Commission being necessary, provided that said concessionaire agreements are substantially similar, with regard to all material terms and conditions, to the template concessionaire agreement, authorize the City Manager to negotiate concession agreements with terms materially different from the approved template to be individually approved, if at all, by resolution of the City Commission, and authorize the City Manager to suspend and/or terminate any concession agreement if he or she deems it to be in the City's best interest.

PASSED AND ADOPTED this ____ day of _____ 2024.

ATTEST:

Mayor Steven Meiner

Rafael E. Granado, City Clerk

(Sponsored by Commissioner David Suarez)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

9/3/2024

Date
