

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING RESOLUTION NO. 2023-32819, WHICH AUTHORIZED THE CITY MANAGER TO NEGOTIATE A USE AND OCCUPANCY AGREEMENT AND LEASE OF AIRSPACE OVER STATE ROAD A1A/MACARTHUR CAUSEWAY WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION ("FDOT") IN CONNECTION WITH THE CONSTRUCTION AND MAINTENANCE OF THE 5TH STREET PEDESTRIAN BRIDGE PROJECT; SAID AMENDMENT APPROVING, IN SUBSTANTIAL FORM, THE FOLLOWING AGREEMENTS: (1) A MODIFIED USE AND OCCUPANCY AGREEMENT, WHICH NOW REQUIRES THE CITY TO MAKE A MAINTENANCE DEPOSIT IN THE AMOUNT OF \$20,000.00, AS SECURITY FOR THE CITY'S ROUTINE MAINTENANCE AND REPAIR OBLIGATIONS OF THE PEDESTRIAN BRIDGES, SUBJECT TO CPI INCREASES EVERY FIVE YEARS; (2) THE FOLLOWING TWO (2) AGREEMENTS GOVERNING ANY CASH DEPOSIT TO BE HELD BY FDOT: (I) A LOCALLY FUNDED AGREEMENT, AND (II) A THREE PARTY ESCROW AGREEMENT; AND (3) A COMMUNITY AESTHETIC FEATURE AGREEMENT, WHICH MAY INCLUDE ANY RELATED MAINTENANCE BOND OR SECURITY DEPOSIT; AND FURTHER, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE ALL OF THE AGREEMENTS AND TAKE ANY ACTION AND EXECUTE ANY ADDITIONAL AGREEMENTS OR DOCUMENTS REQUIRED TO EFFECTUATE THE INTENT OF THE AGREEMENTS.

WHEREAS, on November 6, 2018, Miami Beach residents approved three ballot questions authorizing the City to issue General Obligation Bonds (GOB) to fund capital projects within the City; and

WHEREAS, among other City projects, an allocation was made towards the creation of a 5th Street Pedestrian Bridge Project, to provide for a pedestrian bridge which would serve to connect the Baywalk south of 5th Street with the area north of 5th Street ("Project"); and

WHEREAS, the Project is composed of two adjoining bridges, one which travels over and across 5th Street, which is a State of Florida road under the jurisdiction of the Florida Department of Transportation ("FDOT") ("State Road Connector"), and one which travels over and across West Avenue, which is a City road ("West Avenue Connector") (collectively, the "Pedestrian Bridges"); and

WHEREAS, since the State Road Connector crosses over an FDOT road and connects with the West Avenue Connector, a permit from FDOT is required to construct the Project; and

WHEREAS, additionally, the United States Department of Transportation, Federal Highway Administration (FHWA), requires any use of airspace above and/or below the highway's

established gradeline, lying within the approved right of way limits on a Federal Aid System, to be accomplished pursuant to a Right-of-way Use and Occupancy Agreement and lease of airspace in accordance with 23 CFR, Part 710 ("Use and Occupancy Agreement"); and

WHEREAS, on October 18, 2023, the Mayor and City Commission adopted Resolution No. 2023-32819, authorizing the City Administration to negotiate a Use and Occupancy Agreement and Lease of Airspace over State Road A1A/MacArthur Causeway ("5th Street" or "State Road") based upon a template provided by FDOT, attached to the City Commission Memorandum; and

WHEREAS, the parties proceeded to negotiate the agreements based upon the initially approved template; however, the agreement was ultimately changed to a simplified Use and Occupancy Agreement, which included the use of the air space above the State Road for the development of the Pedestrian Bridges and their related infrastructure; and

WHEREAS, during recent and final negotiations, FDOT advised that it is now requiring bonds to be secured in connection with the use of the airspace for the construction, maintenance and operation of a bridge, and would require the City to post a bond, in the amount of \$20,000.00, as security for the City's routine maintenance and repair obligations under the Use and Occupancy Agreement, with the amount being subject to CPI increases every five years; and

WHEREAS, since the posting of such bonds is not typically required from governmental entities, and while the City investigated the requirements for posting such bonds or possibly other forms of security which may be acceptable to FDOT, the City requested the option of providing such security in the form of a deposit; and

WHEREAS, in connection with the payment of a deposit, FDOT requires the execution of the following two additional agreements: (i) a Locally Funded Agreement, and (ii) a Three Party Escrow Agreement, which drafts were provided to the City on May 13, 2025 and are still subject to further review by FDOT's upper management; and

WHEREAS, additionally, in connection with the signage that will be installed on the State Road Connector, FDOT has requested that the City sign a Community Aesthetic Feature Agreement, which agreement may also include a requirement on the part of the City to post a maintenance bond or make a security deposit relating to the signage, in an amount to be determined, comparable to the security provided to FDOT in connection with the maintenance of the Pedestrian Bridges and within the City Manager's purchasing authority; and, in connection therewith, the City may also need to execute a Locally Funded Agreement and Three Party Escrow Agreement in substantially the same form as proposed for the maintenance deposit relating to the Pedestrian Bridges; and

WHEREAS, the Project has gone through a lengthy permitting process which required several layers of review and comments from FDOT, all comments have been addressed and the FDOT permit is ready to be issued; and

WHEREAS, due to the material changes to the essential terms of the Use & Occupancy Agreement and the requirement that the City execute additional agreements in connection with the Project, the Administration recommends approving, in substantial form, the following agreements: (1) a Use and Occupancy Agreement, a copy of which is attached to the City Commission Memorandum accompanying this Resolution as **Attachment "A"**; and (2) the following two (2) agreements governing any cash deposit to be held by FDOT: (i) a Locally Funded Agreement, a draft copy of which is attached to the City Commission Memorandum accompanying this Resolution as **Attachment "B"**, and (ii) a Three Party Escrow Agreement, a draft copy of which is attached to the City Commission Memorandum accompanying this Resolution as **Attachment "C"**; and (3) a Community Aesthetic Feature Agreement governing any signage to be placed on the State Road Connector, a draft copy of which is attached to the City Commission Memorandum accompanying this Resolution as **Attachment "D"**.

NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby amend Resolution No. 2023-32819, which authorized the City Manager to negotiate a Use and Occupancy Agreement and Lease of Airspace over State Road A1A/MacArthur Causeway with the Florida Department of Transportation ("FDOT") in connection with the construction and maintenance of the 5th Street Pedestrian Bridge Project; said amendment approving, in substantial form, the following agreements: (1) a modified Use and Occupancy Agreement, which now requires the City to make a maintenance deposit in the amount of \$20,000.00, as security for the City's routine maintenance and repair obligations of the Pedestrian Bridges, subject to CPI increases every five years; (2) the following two (2) agreements governing any cash deposit to be held by FDOT: (i) a Locally Funded Agreement, and (ii) a Three Party Escrow Agreement; and (3) a Community Aesthetic Feature Agreement, which may include any related maintenance bond or security deposit; and further, authorizing the City Manager to finalize and execute all of the agreements and take any action and execute any additional agreements or documents required to effectuate the intent of the agreements.

PASSED and ADOPTED this _____ day of _____ 2025.

ATTEST:

Steven Meiner, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

5/16/2025
Date