

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Raul J. Aguila, Interim City Manager 

DATE: January 13, 2021

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY'S FINANCE AND ECONOMIC RESILIENCY COMMITTEE, AND APPROVING AN AMENDMENT TO THE MANAGEMENT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND LIVE NATION WORLDWIDE, INC., FOR THE OPERATION AND MANAGEMENT OF THE FILLMORE MIAMI BEACH AT THE JACKIE GLEASON THEATER, TO ACCOUNT FOR THE SIGNIFICANT ADVERSE OPERATIONAL IMPACTS ASSOCIATED WITH THE CLOSURE OF THE FACILITY SINCE MARCH, 2020 DUE TO THE COVID-19 PANDEMIC; WITH SAID AMENDMENT INCLUDING: (1) THE SUSPENSION OF LIVE NATION'S PAYMENT OBLIGATIONS UNTIL 120 DAYS AFTER THE FACILITY IS PERMITTED TO HOST EVENTS AT FULL CAPACITY; (2) A CREDIT IN THE AMOUNT OF \$900,000, REPRESENTING THE AMOUNTS PRE-PAID BY LIVE NATION THAT ARE APPLICABLE TO THE PERIOD THE FACILITY WAS CLOSED DURING THE 2019-20 FISCAL YEAR; AND (3) THE TERMS RELATING TO THE COMPLETION OF REQUIRED ESCALATOR REPAIRS AT THE FACILITY, IN THE AMOUNT OF APPROXIMATELY \$162,219.46; AND FURTHER, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER TO EXTEND THE CURRENT RENEWAL TERM OF THE AGREEMENT, WITH THE EXTENSION OF THE TERM TO CORRESPOND WITH THE PERIOD DURING WHICH THE FACILITY HAS BEEN CLOSED AND UNABLE TO HOST EVENTS DUE TO THE COVID-19 PANDEMIC; AND AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO TAKE THE NECESSARY AND APPROPRIATE STEPS TO FINALIZE THE AMENDMENT; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE AMENDMENT UPON FORM APPROVAL BY THE CITY ATTORNEY.**

RECOMMENDATION

The Administration recommends that the Mayor and City Commission adopt the Resolution

BACKGROUND

On June 22, 2007, the City entered into an management agreement (the “Agreement”) with Live Nation Worldwide, Inc. (“Live Nation”) to manage the Jackie Gleason Theater of the Performing Arts, now named and known as the Fillmore Miami Beach at the Jackie Gleason Theater (the “Fillmore” or “Venue”). The Agreement provides for an initial term of ten (10) years, commencing on June 22, 2007, and ending on August 31, 2017. The Agreement also provides for two 5-year renewal options: the initial 5-year renewal option is at the discretion of Live Nation (“First Renewal Term”); the second 5-year renewal option may be exercised upon mutual agreement of the parties (“Second Renewal Term”). In November 2016, pursuant to Section 3.2 (i) of the Agreement, Live Nation exercised the First Renewal Term, commencing on September 1, 2017 and expiring on August 31, 2022.

On December 9, 2009, the Mayor and City Commission adopted Resolution No. 2009-27278, approving Amendment No. 1 to the Agreement, which permitted Live Nation to extend hours of operation and offer liquor sales at the Venue for a trial period, subject to conditions.

On April 13, 2011, the Mayor and City Commission adopted Resolution No. 2011-27640, approving Amendment No. 2 to the Agreement, which incorporated the extended hours of operation and liquor sales for the duration of the Agreement.

Subsequently, on April 13, 2016, the Mayor and City Commission adopted Resolution No. 2016-29368, approving Amendment No. 3 to the Agreement, which established the terms on which the City may remove the “Rehearsal Hall” from the Management Agreement, should the City continue to pursue development of the Miami Beach Convention Center Hotel Project. Amendment No. 3 also established financial and operational adjustments related to Live Nation’s operation of the Venue, including establishing the Required City Distribution to be paid by Live Nation, as follows: for the first fiscal year of the First Renewal Term, the Required City Distribution amount shall be the greater of (a) \$1,222,512.00 or (b) \$1,000,000 increased by the percentage increase for the established CPI. Beginning in January 1, 2019, and on each January thereafter during the First Renewal Term, the Required City Distribution is due from Live Nation, which Required City Distribution shall be increased by a fixed amount equal to two percent (2%) of the amount in effect for the preceding fiscal year.

In January 2020, in accordance with the Agreement, Live Nation paid the Required City Distribution of \$1,106,901. Shortly thereafter, in March 2020, the COVID-19 pandemic forced Live Nation to close the doors of the Fillmore. Since its closure, Live Nation has not been able to operate the Facility as contemplated in the Agreement, and has lost 5/6 of the benefit of its \$1.1 million up front payment to the City for 2020, which it had pre-paid to the City shortly before the pandemic. Additionally, Live Nation is carrying maintenance costs of approximately \$100,000 per month for the Venue, which are fixed costs that cannot be adjusted, even though the entire Venue has been, and remains, closed.

ANALYSIS

The closure of the Fillmore due to the COVID-19 pandemic has adversely impacted Live Nation, not only locally with respect to its inability to operate the Fillmore, but nationally, as live entertainment and event production businesses are among the hardest hit by the pandemic.

Unlike many retail, restaurant, and other establishments, which have been permitted to reopen under Miami-Dade County's New Normal Guidelines, live entertainment venues hosting large gatherings have not had the ability to adjust, due to the risk such events pose of transmission.

On December 18, 2020, the Finance and Economic Resiliency Committee (FERC) discussed a proposed Amendment to the City's existing Management Agreement with Live Nation to account for the considerable operational impacts associated with the closure of the facility since March 2020. FERC recommended in favor of approving an Amendment to the Agreement, based upon the following essential terms:

- 1) The suspension of Live Nation's payment obligation until 120 days after the facility is permitted to host events at full capacity;
- 2) A credit in the amount of \$900,000, representing the amounts pre-paid by Live Nation that are applicable to the period the facility was closed during the 2019-2020 fiscal year;
- 3) The terms relating to the completion of the required escalator repairs at the facility, in the amount of approximately \$162,219.46.

In addition to the above terms, the Committee deliberated on the current renewal term and deadline to exercise the Second Renewal of the Agreement. The City Manager recommended approving Live Nation's request for an extension of the current renewal term; wherein the extension of the term corresponds with the period during which the facility has been closed and unable to host events.

CONCLUSION

In consideration of the foregoing, the Administration recommends, that the Mayor and City Commission accept the recommendation of the City's Finance and Economic Resiliency Committee, and approve an Amendment to the Management Agreement with Live Nation Worldwide, Inc., the City's operator of the Fillmore Miami Beach at the Jackie Gleason Theater, to account for the significant adverse operational impacts associated with the closure of the Facility since March, 2020 due to the COVID-19 pandemic; with said Amendment to include: (1) the suspension of Live Nation's payment obligation until 120 days after the facility is permitted to host events at full capacity; (2) a credit in the amount of \$900,000, representing the amount pre-paid by Live Nation that are applicable to the period the facility was closed during the 2019-20 fiscal year; and (3) the terms relating to the completion of required escalator repairs at the facility, in the amount of approximately \$162,219.46; and further accept the recommendation of the City Manager to approve Live Nation's request for an extension of the term for the current renewal term of the Agreement; with the extension of the term to correspond with the period during which the facility has been closed and unable to host events due to the COVID-19 pandemic; and authorize the City Manager and City Attorney to take the necessary and appropriate steps to finalize the Amendment; and further authorize the Mayor and City Clerk to execute the Amendment upon form approval by the City Attorney.