

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: July 27, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB21-0454 - Lease Approval Collins Park Garage.**

APPROVAL OF THE PLANNING BOARD, BY A 4/7TH VOTE, PURSUANT TO SECTION 1.03(B)(4) OF THE CITY CHARTER, OF A LEASE AGREEMENT ("LEASE") BETWEEN THE CITY OF MIAMI BEACH ("CITY") AND MIAMI NEW DRAMA, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION (THE "TENANT"), FOR THE CITY-OWNED COLLINS PARK GARAGE LOCATED AT 340 23RD STREET (THE "PROPERTY"), FOR THE DEVELOPMENT AND OPERATION OF THE COLLINS PARK CULTURAL ARTS FACILITY FOR LIVE THEATRICAL PERFORMANCES, ANCILLARY CULTURAL ACTIVATIONS, AND THE OPERATION OF A CAFÉ, WHICH LEASE SHALL INCLUDE (1) AN INITIAL TERM OF FIVE (5) YEARS, WITH UP TO THREE (3) RENEWAL TERMS FOR A PERIOD OF FIVE (5) YEARS EACH; (2) THE CITY'S CONSTRUCTION OF THE REQUIRED BUILDOUT FOR THE PROPERTY IN AN AMOUNT NOT-TO-EXCEED \$4,750,000 ("CITY CONTRIBUTION"); (3) TENANT RESPONSIBILITY FOR DESIGN RELATED SERVICES ASSOCIATED WITH THE BUILDOUT, AT TENANT'S SOLE COST; (4) MUTUAL TERMINATION FOR CONVENIENCE IN THE EVENT THE CITY COMMISSION, IN ITS SOLE AND ABSOLUTE DISCRETION, DOES NOT BUDGET AND APPROPRIATE THE CITY CONTRIBUTION ON OR BEFORE OCTOBER 1, 2024; (5) THE REQUIREMENT FOR TENANT TO OFFER CAFÉ SUBLEASE AT MARKET RATE; AND (6) MINIMUM HOURS AND DAYS OF OPERATION TO ENSURE ACTIVATION IN THE COLLINS PARK NEIGHBORHOOD.

RECOMMENDATION

Approve the attached lease agreement.

HISTORY

On November 9, 2016, the City Commission established the Collins Park Arts District Overlay via Ordinance No. 2016-4061, in response to an expressed desire by the Collins Park Neighborhood Association to incentivize arts and entertainment-related uses. Today, the Collins Park neighborhood is home to cultural institutions including the Bass Museum of Art, the Miami City Ballet, and the Regional Library. In addition, the Collins Park neighborhood will become home to Starwood Capital's headquarters currently under construction at 2340 Collins Avenue.

The recently completed Collins Park Garage, located at 340 23rd Street, spans an entire block of 23rd Street between Park Avenue and the vacated Liberty Avenue. The Collins Park Garage is located immediately adjacent to the Miami City Ballet headquarters and the future site of the City's public-private artist and educator workforce housing project. The parking structure's ground floor includes approximately 16,000 gross sq. ft. of unfinished interior commercial space with an elevated exterior terrace providing access from the street.

On May 22, 2020, the Finance and Economic Resiliency Committee (the "FERC" or "Committee") discussed tenant programming for the unleased commercial space of the Collins Park Garage, emphasizing the importance of community engagement and neighborhood enhancement, and the possibility of using City funds to curate cultural activation.

On July 29, 2020, Miami New Drama, Inc. ("Miami New Drama" or "MIND") presented the City Commission with an unsolicited proposal to program the tenant space of the Collins Park Garage as a flexible black box studio. The City Commission directed FERC to examine the financial feasibility of the activation once MIND prepared a cost estimate and further developed its proposal.

On December 18, 2020, MIND presented FERC with an unsolicited proposal featuring a Concept Plan, which is attached in its latest, revised form as Exhibit A. In light of the fact that MIND had not yet identified any outside funding sources, the Committee recommended preparation of an RFP to solicit interest from cultural arts institutions who may offer independent financial support without relying solely on the City to subsidize construction.

On January 27, 2021, upon review of the Administration's draft RFP for the Collins Park Cultural Arts Facility and MIND's unsolicited proposal, the City Commission found that the City's best interests were served by waiving formal competitive bidding in favor of MIND's unsolicited proposal. The City Commission adopted Resolution No. 2021-31568, authorizing negotiation of a term sheet with MIND to include the following material terms:

- Miami New Drama must remain functionally located within the City of Miami Beach, with Miami Beach as its primary performance venue;
- Existing principal directors Michel Hausman, Moises Kaufman, and Nicholas Richberg must remain directly involved with Miami New Drama;
- Miami New Drama's board of directors must include voting representation by the City of Miami Beach; and
- Miami New Drama's sublease of any restaurant or retail component must be negotiated at market rates.

On March 26, 2021, the FERC reviewed a draft of the proposed term sheet and provided direction to the Administration regarding four salient issues, which subsequently were resolved by the parties and incorporated into the Term Sheet (i.e., trigger for the third renewal term; allocation of risk for construction cost overruns; minimum days of Facility operation; and allowing MIND to apply for the City's cultural arts grants in relation to programming at the Facility.)

On April 30, 2021, the FERC voted to move the item as presented for review by the City Commission, with requests for continued negotiation on two topics: (i) further development of Miami Beach-specific branding for the Facility and (ii) incorporation of a deadline for the City to identify sufficient Project funding.

On June 23, 2021, the City Commission approved Resolution 2021-31749, accepting the recommendation of the FERC, authorizing the Administration to negotiate a lease agreement consistent with the term sheet, and referring the draft lease agreement to the Planning Board for review.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) **Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

Partially Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

- (2) **Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

Consistent – The proposal will not impact the resiliency of the City with respect to sea level rise. It should be noted that the existing garage is LEED Gold Certified and the buildout for the new tenant will be required to maintain that certification.

- (3) **Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.**

Consistent – The proposal is compatible with the City's sea level rise mitigation and resiliency efforts.

ANALYSIS

MIND's Colony Theatre Management Agreement

Since 2016, Miami New Drama has successfully activated the Colony Theatre pursuant to a Management Agreement that provides an annual operating subsidy from the City ("Colony Management Agreement"). Pursuant to the terms of the Colony Management Agreement, which expires in September 2023, MIND has received a cumulative amount of \$2 million since the inception of the Colony Management Agreement in 2016.

Colony Theatre	Annual Subsidy	Annual utility reimbursement
Management Agreement (2016)	\$170,000	\$80,000
Management Agreement Amendment No. 2 (2018)	\$420,000	\$80,000

In addition, notwithstanding the City's obligations pursuant to the Colony Management Agreement, MIND receives Cultural Arts Council (CAC) grant funding that is not tied to the Colony Management Agreement nor MIND's operation at the Colony, but is available to MIND because it is a nonprofit operating within Miami Beach.

CAC grant funding FY 18/19	\$26,400
CAC grant funding FY 19/20	\$24,204
CAC grant funding FY 20/21	\$22,533
COVID-19 emergency relief grant	\$69,458

Colony Annual Benchmarks				
	Performances		Attendance	
	Required	Provided	Required	Provided
FY 18-19	150	198 (132%)	35,000	39,497 (113%)
FY 19-20	150	146 (97%)	35,000	26,407 (75%)

The Colony Theatre has been closed since March 12, 2020, which prevented the run of two major productions. MIND pivoted to virtual programming, reaching some 7,000 people online, and recently completed an acclaimed production of 7 Deadly Sins on Lincoln Road. In May 2021, the production was awarded the Drama League Award for Outstanding Interactive or Socially-Distanced Theater at the 2021 Drama League Awards. According to MIND, they are the first theater company in Florida to be nominated for and to win this award.

Term Sheet dated June 9, 2021

The Administration has negotiated a term sheet based on MIND's unsolicited proposal and as further refined by City Commission Resolution No. 2021-31568 ("Term Sheet"). Attached as Exhibit B, the Term Sheet incorporates the most recent guidance provided by the City Commission when it heard the item on June 23, 2021.

Key Lease Terms		
Tenant		Miami New Drama, Inc., a 501(c)(3) entity
Address		340 23 rd Street, Collins Park Cultural Arts Facility
Premises		Ground floor of Collins Park Garage, approximately 16,000 sq. ft. interior space plus exterior terrace areas
Commencement Date		Lease Year One commences at Temporary Certificate of Occupancy (TCO) for the Buildout Improvements
Initial Term		Five (5) years
Renewal Terms		Total of fifteen (15) years possible:

	<ul style="list-style-type: none"> · Two (2) renewal options of five (5) years each, subject to Tenant being in good standing. · Following completion of initial two (2) renewal terms, one (1) final renewal period of five (5) years, upon mutual agreement of the parties.
Rent	\$1 per year. Tenant's obligations limited to those operating expenses solely applicable to the Facility itself and Tenant shall not pay any additional common area maintenance expenses with respect to any other portion of the building.
Operating Expenses	<p>Tenant solely responsible for operational and programming expenses, including utilities, maintenance, and applicable taxes (sales taxes, use/excise taxes, personal, and ad valorem applicable to the Premises and Tenant's business) with no City funding obligation whatsoever with respect to such costs. City will have no payment obligations with respect to Operating Expenses.</p> <p>MIND to make reasonable efforts to apply for the Florida Division of Cultural Affairs Cultural Facilities Grant. Tenant, as a local cultural organization, may apply for Cultural Arts Council grants, and may pursue other grant opportunities offered by the City.</p>
Maintenance	Tenant responsible for day-to-day cleaning, maintenance, and repairs. City responsible for major building systems (HVAC, electric, fire, water, water intrusion, etc.) and the building structure, including walls, windows, and exterior. Tenant also responsible for reasonable maintenance and repairs of the exterior frontage of the Premises, i.e. the sidewalk and stairs walk-up, in a manner consistent with similarly situated commercial establishments
Cultural Center Buildout	<p>City responsible for funding of construction services, contractor selection, construction for buildout of the Premises, and procurement and/or installation of all theatrical equipment (collectively, the "Buildout Improvements" or "Project").</p> <p>Tenant responsible for selection and funding of Project design and Architect, for the City's review and reasonable approval in its proprietary capacity, and subject to Property Management's citywide design guidelines. In no event shall the City be responsible to fund any portion of design services.</p> <p>Buildout Improvements will be developed with a design-to-budget approach based upon a Budget equal to the sum of the Landlord Contribution and Tenant's Contribution.</p>

<p>City Financial Contribution</p>	<p>City's total anticipated funding and construction budget shall not exceed \$4,750,000.00. <u>While there is desire to support this Cultural Anchor, the City has not identified or budgeted a funding source for the buildout of the Facility.</u></p> <p>The parties have mutually agreed to language contained in the Term Sheet that limits the City's exposure by stipulating that construction costs may not exceed \$4.75 million. Provision of a 10% contingency of overall project costs has been included in the Term Sheet to ensure that in no event shall the use of the contingency cause for the Gross Maximum Price of \$4.75M to be exceeded, and in any such event, the City's Contractor shall be solely responsible for all costs that exceed this price, without any reimbursement from the City.</p> <p>In accordance with direction provided by the FERC, the Administration recommended that a deadline be established for October 1, 2024 in order for the City to identify all funding for the total budgetary costs associated with the Project buildout. In the event that funding is not identified, the City would not be responsible for any of its obligations under the Lease, unless future City Commission action provided otherwise.</p>
<p>Tenant Financial Contribution</p>	<p>Tenant shall be responsible for retaining and funding all design professionals, including the Architect, in the amount anticipated by Tenant to be \$250,000.00, which Tenant shall raise through grants and donations (the "Tenant's Contribution"). Tenant's Contribution shall cover payment of all design services and soft costs (architectural and/or engineering fees) and, funds permitting, the acquisition of equipment for the theatrical performance space.</p> <p>City may terminate the Agreement in the event Tenant fails to demonstrate it has secured funding for the design services and fails to contract with an Architect within 365 days following City Commission approval of the Lease. Upon securing the Tenant Contribution in the amount of \$250,000.00, MIND shall provide notice to the City when it has placed the funds into a restrictive account.</p>
<p>Uses</p>	<p>Tenant shall use the Facility solely and exclusively as a theater for its not-for-profit cultural presentations, production of live theatrical performances and uses ancillary thereto, including its administrative and business functions and rehearsal, costume and set design facilities for performances, and may activate the agreement as further provided herein with activations that are complementary and ancillary to the cultural component of the facility.</p>

Café and Concession Subleases	<ul style="list-style-type: none"> · Café sublease shall be market rate and selection of Café operator subject to City Manager approval. · Tenant may offer one (1) concession or for-profit third-party activation (i.e. Books and Books) at below market lease rates in a footprint not to exceed 250 sq.ft., subject to City Manager approval. · All other concessions (or similar for-profit activations by third parties) offered at below market rates shall be subject to City Manager's reasonable approval, limited to a term of 30 days (but up to 90 days upon City Manager approval), and ancillary and complementary to Facility's cultural programming. <p>In order to ensure continuous activation of the Facility, the City shall have the right to the assignment of all MIND's concessions, subleases and subtenants at the Facility, in the event of a default or termination of MIND.</p>
Minimum Operation	During initial two (2) years of the Term, Facility shall operate at least four (4) days per week and the Café at least six (6) days per week, during hours consistent with similar café operations within the vicinity. Following the initial two-year ramp up, minimum operation shall consist of six (6) days for the Facility and six (6) days for the café, and the Facility shall not be dark on the same day that the café is closed.
Key Individual Clause	As required in the Resolution waiving bidding, principal directors, Michel Hausmann and Nicholas Richberg must remain actively involved in the company throughout Lease Term. If any one of the key individuals leaves the company or is no longer actively involved, MIND must locate a comparable replacement within 180 days, with the reasonable approval of the City Manager, otherwise City may terminate. The parties have agreed to remove Moises Kaufman as a "Key Individual" as he is not actively involved with MIND as would be required for a Key Individual. The Administration believes that this will have little, if any, material impact on MIND's creative leadership or the ultimate success of the Facility.
Representation on Board of Directors	City Manager or designee serves as one (1) voting member on board of directors, with one (1) additional non-voting member, designated at option of the City Manager. This is an increase above the one (1) non-voting city representative on the board currently.
Extension of Colony Theater Management Agreement	Term of Management Agreement for the Colony Theatre to be extended coterminous with the Collins Park Lease Term (including renewal periods), including cross-default provision for both the Management Agreement and Lease Agreement

<p>Termination for Convenience</p>	<p>City may terminate for convenience if:</p> <ol style="list-style-type: none"> 1. City Commission, in its sole and absolute discretion, does not appropriate sufficient funds for the Buildout Improvements no later than October 1, 2024. 2. City does not obtain regulatory approvals required for the Buildout Improvements. 3. Tenant does not secure funding and enter into contract with an Architect within 365 days following Lease approval by City Commission. 4. Tenant fails to replace a Key Individual. <p>MIND may terminate for convenience if:</p> <ol style="list-style-type: none"> 1. City Commission, in its sole and absolute discretion, does not appropriate sufficient funds for the Buildout Improvements no later than October 1, 2024.
<p>Benchmark Performance Standards</p>	<p>During the first twelve (12) months following Commencement Date (such period constituting "<u>Lease Year 1</u>", with each successive twelve (12) month period thereafter constituting another "Lease Year"), Tenant shall cause the Facility to host at least:</p> <ol style="list-style-type: none"> 1. 125 cultural or community activations per year 2. 25,000 patrons per year (inclusive of virtual patrons for hybrid events) 3. 150 students per year 4. 75 seniors per year 5. 50 pro bono nonprofit/community rental hours per year 6. 500 discounted tickets provided per year <p>Benchmarks shall increase during the Initial Term as follows:</p> <ol style="list-style-type: none"> 1. <u>Lease Year 2</u>: 150 events, 30,000 patrons, 175 students, 80 seniors, 50 pro bono nonprofit/community rental hours 2. <u>Lease Year 3</u>: 175 events 35,000 people, 200 students, 85 seniors, 55 pro bono nonprofit/community rental hours 3. <u>Lease Year 4</u>: 200 events 40,000 people, 225 students, 90 seniors, 55 pro bono nonprofit/community rental hours

	<p>4. <u>Lease Year 5</u> (and thereafter including Renewal Terms): 220 events 45,000 people, 250 students, 95 seniors, 60 pro bono nonprofit/community benefit rental hours</p> <p>Prior to any renewal periods, performance benchmarks may be adjusted as mutually agreed to by the parties</p>
Community Benefit Proffer	<p>In addition to the City's Community Benefit Fund program for nonprofit rental waivers which are funded by the City, the City also has the right to use the Facility, excluding the restaurant/café, up to four (4) times per Lease Year, subject to availability and reasonable notice, for public purposes (recreational programs, public meetings, trainings, City-sponsored special events, receptions), without payment of any rental or use fee, except reimbursement by the City of Tenant's direct out-of-pocket expenses reasonably incurred</p>

Project Delivery Structure

Since MIND's original proposal, the Concept Plan featured an architectural design by Mexico-based TEN Arquitectos, whose founder, Enrique Norten, serves on MIND's board of directors. According to MIND, TEN Arquitectos has agreed to considerably reduce the cost of services to MIND, which will enable the design of a world-class cultural facility by a prominent architect at an attractive price. Given that the City is responsible for construction costs, the property is City-owned and will be leased rent free, the City would typically prefer to control all aspects of design and construction. However, considering that MIND has agreed to fund all design-related services and soft costs in furtherance of a superior facility (that the City will own and control upon lease expiration), the Administration recommends acceptance of MIND's proposed arrangement, as long as the City retains control of construction management for the Project and retains the ability to reasonably approve the design of the project. Although MIND initially requested control of construction, MIND has consented to this compromise since the City is funding the balance of hard costs. The Term Sheet provides that the City will utilize a Construction Manager at Risk with Guaranteed Maximum Price ("GMP") delivery method for the construction of the Project.

In addition to MIND's proffer to allow the City and City's construction manager's reasonable design input, with approvals at the 30%, 60% and 90% design stages, the City will also require the Tenant to include certain provisions in its Architectural/Engineering (A/E) contract that would otherwise be included in all A/E contracts to which the City is a party, i.e. the City's minimum design standards, third-party beneficiary rights, and ownership/use rights to drawings and specifications. The Term Sheet requires that MIND raise all the funds necessary for architectural services, which MIND has indicated to be approximately \$250,000. The parties have agreed that the City shall have the right to terminate the agreement if, after 12 months following Lease approval by the City Commission, MIND is unable to demonstrate that it has secured this funding.

In order to protect the City against project over-runs, the Term Sheet contemplates that the parties enter into a Guaranteed Maximum Price Agreement and the schedule of values attached thereto or contained therein (collectively, the "GMP Agreement") shall: (i) contain a contingency line item equal to ten percent (10%) of the overall project costs, and (ii) not exceed the amount of the Landlord Contribution. In no event shall the use of the contingency cause for the GMP to be

exceeded, and the City's Contractor shall be solely responsible for all costs that exceed the GMP, without any reimbursement from the City.

City Financial Contribution

To address any potential City exposure for unanticipated construction costs, the parties have mutually agreed to the City's guaranteed maximum contribution amount of \$4.75 million for the cost of construction, with assurances in the Term Sheet of (i) a contingency line item equal to ten percent (10%) of the overall Project costs, (ii) which shall not exceed the amount of the Landlord Contribution. In no event shall the use of the contingency cause for the Gross Maximum Price (GMP) be exceeded, and the City's Contractor shall be solely responsible for all costs that exceed the GMP, without any reimbursement from the City.

To avoid adverse cost overruns for which the City would be liable and to ensure that the City's contribution to the Project does not exceed the amount of the agreed Landlord Contribution (i.e., \$4,750,000.00), prior to the commencement of the Buildout Improvements, the City shall cause the City's Contractor to buy-out, at a minimum, (i) each line item of the schedule of values which exceeds \$200,000.00 (and to the extent not exceeding \$200,000.00, each major trade within the schedule of values), and (ii) eighty percent (80%) of the overall project costs (schedule of values), with the cost of such bought-out line items being consistent with the approved project budget (which shall not exceed the amount of the Landlord Contribution). In addition, if at any point during construction, the contingency amount drops below 20% of the initial contingency amount, the Furniture, Fixtures and Equipment (FFE) budget will be adjusted down to free up addition funds, to ensure that sufficient contingency funds remain available. The Administration believes these provisions are sufficient to safeguard the City from incurring unanticipated costs which are grossly in excess of that which has been agreed to in the Term Sheet. This is important considering that MIND will not cause to be created the architectural plans, which can be used to better estimate construction costs, until such time as a lease is definitively negotiated.

The foregoing considerations pertain to cost overrun contingencies which would only be implicated once the City commits the funding for the Landlord Contribution and following the commencement of construction. **At the present time, the City has not yet identified any funding sources for the \$4.75 million hard costs.** It is for this reason that the Term Sheet conditions Project performance upon the City Commission identifying a budgetary source for the entire \$4.75 million construction costs. The Administration is supportive of this unique opportunity for a celebrated resident cultural partner to further activate Collins Park, however, budgetary limitations present a crucial obstacle which must be overcome in order to proceed with the Project. In the event the City Commission, in its sole and absolute discretion, does not appropriate sufficient funds for the Buildout Improvements no later than October 1, 2024, either party may terminate the Lease for convenience.

June 23, 2021 City Commission Meeting

Notwithstanding the significant issue related to the yet-to-be identified funding for the Project, in adopting Resolution No. 2021-3174 and approving the Project's material terms, the City Commission highlighted certain outstanding issues for the parties to address including defining the specific branding to be utilized by MIND. The Administration has incorporated the direction provided by the City Commission on June 23, 2021, into the Term Sheet which now includes guidance on use of a restrictive account for the Tenant Contribution.

SUPPORTING SURVEY DATA

According to the 2019 Community Satisfaction Survey, 85.5% of the polled residents agreed that cultural activities contribute to quality of life in Miami Beach. The lease for the development and operation of a cultural arts facility within the Collins Park Garage will further the cultural activities in the Miami Beach and, as a result, resident quality of life will prosper.

FINANCIAL INFORMATION

The City's financial responsibility, discussed in the foregoing Analysis above, is \$4.75 million. MIND has 12 months to demonstrate it has raised the costs associated with the design of the Project, anticipated to be \$250,000.00, whereas the City has approximately three (3) years to identify and appropriate the funding associated with the hard costs of the Project. **At the present time, the City has not yet identified any funding sources for the \$4.75 million hard costs.**

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board approve by a 4/7th vote, pursuant to section 1.03(b)(4) of the City Charter, of a lease agreement ("Lease") between the City of Miami Beach ("City") and Miami New Drama, Inc., a Florida not-for-profit corporation (the "Tenant"), for the City-owned Collins Park Garage located at 340 23rd Street (the "Property"), for the development and operation of the Collins Park Cultural Arts Facility for live theatrical performances, ancillary cultural activations, and the operation of a café, which Lease shall include (1) an initial term of five (5) years, with up to three (3) renewal terms for a period of five (5) years each; (2) the City's construction of the required buildout for the Property in an amount not-to-exceed \$4,750,000 ("City contribution"); (3) Tenant responsibility for design related services associated with the buildout, at Tenant's sole cost; (4) mutual termination for convenience in the event the City Commission, in its sole and absolute discretion, does not budget and appropriate the City contribution on or before October 1, 2024; (5) the requirement for Tenant to offer café sublease at market rate; and (6) minimum hours and days of operation to ensure activation in the Collins Park neighborhood.