

**AMENDMENT NO. 2 TO THE MANAGEMENT AGREEMENT  
BETWEEN  
CITY OF MIAMI BEACH  
AND  
MIAMI NEW DRAMA, INC.  
FOR THE MANAGEMENT OF THE COLONY THEATRE**

This **AMENDMENT NO. 2** ("Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation ("City"), having its principal office at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **MIAMI NEW DRAMA, INC.**, a Florida not-for-profit corporation ("MIND"), whose principal address is 1040 Lincoln Road, Miami Beach, FL 33139, and hereby amends the Management Agreement between City and MIND dated October 4, 2016, as amended by Amendment No. 1, to the Management Agreement, dated May 17, 2017 (collectively, the "Agreement") as follows:

**RECITALS**

**WHEREAS**, MIND is a not-for-profit 501(c)3 presenting and producing organization committed to theatrical excellence and theater-making as a means of social engagement, cultural conversation and human interaction; and

**WHEREAS**, MIND's productions include an eclectic mix of original plays, musicals, classics and world premieres, including work commissioned specifically for Miami New Drama. These productions utilize a mix of the best local, national and international talent to incubate work from scratch; and

**WHEREAS**, on September 14, 2016, the Mayor and the City Commission adopted Resolution No. 2016-29569, approving an agreement with Miami New Drama for the operation, management, maintenance and promotion of the Colony Theatre (the "Facility"); and

**WHEREAS**, on October 4, 2016, the City and Miami Theater Hub, Inc., a Florida not-for-profit corporation, d/b/a Miami New Drama entered into a Management Agreement, which provided for an annual City contribution to MIND, in the amount of \$170,000, subject to funding approval by the City Commission, plus an annual reimbursement for utility bills, in the amount not to exceed \$80,000; and

**WHEREAS**, on May 17, 2017 the Mayor and City Commission adopted Resolution No. 2017-29858, approving Amendment No. 1 to the Management Agreement to include six parking spaces at Municipal Parking Lot No. P25, located at 17<sup>th</sup> Street and Lenox Avenue, at no charge to Miami New Drama; and

**WHEREAS**, on August 29, 2017, Miami Theater Hub, Inc. changed its name to Miami New Drama, Inc., and as such, any references in the Agreement to MIND shall refer to Miami New Drama, Inc. without a reference to a fictitious name; and

**WHEREAS**, on February 22, 2018, the City submitted the Facility to condominium ownership; and

**WHEREAS**, on July 20, 2018, the Finance and Citywide Projects Committee recommended increasing the City's contribution by \$330,000, for a total annual contribution of \$500,000 (including an annual City utility contribution, in the amount not to exceed \$80,000) to MIND, subject to funding approval during each City fiscal year; and

**WHEREAS**, on October 17, 2108, the Mayor and City Commission adopted Resolution No. \_\_\_\_\_, approving Amendment No. 2 to the Agreement, increasing the City's contribution, in the annual amount of \$420,000, and maintaining the City utility contribution, in an annual amount not to exceed \$80,000, for a total annual contribution not to exceed \$500,000, subject to funding approval during each fiscal year; updating Mind's name to reflect Miami New Drama, Inc.; updating the legal description of the Facility to reflect the condominiumization process; approving the first Renewal Term, commencing on October 1, 2018 and ending September 30, 2023; modifying the performance measures to include an educational division and public outreach, which will include providing a "\$3.05 ticket program" reserving seats for first time theater-goers, 1,000 free tickets for senior centers and youth throughout Miami Beach, educational programs to accompany each production serving up to 6,400 students, a children's summer camp and workshop series, and traveling plays for schools and senior centers; and

**WHEREAS**, the City and MIND hereby acknowledge the exercise of the first renewal term, for five (5) years, commencing October 1, 2018 and ending September 30, 2023.

**NOW, THEREFORE**, the City and MIND hereby agree to amend the Management Agreement as follows:

**1. ABOVE RECITALS.**

The above recitals are true and correct and are incorporated as part of this Amendment.

**2. MODIFICATIONS.**

The Agreement is hereby modified (deleted items ~~struck through~~ and inserted items underlined) as follows:

- a. The Agreement is hereby amended to add Exhibit "A", attached hereto, which contains the legal description of the Facility.
- b. Exhibit "B" to the Agreement, "ANNUAL BENCHMARKS" is hereby deleted in its entirety and replaced with the attached Exhibit "B".
- c. The first paragraph of subsection 5.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

5.2 Required Number of Events; Continuous Operation; Conclusion of Events. In order to ensure the continuous operation of the Facility, MIND agrees to comply with the following programmatic guidelines:

- (a) Commencing on October 1, 2016, MIND shall cause at least 75 Events to be held at the Facility for each Contract Year during the Initial Term.

- (b) During the first Renewal Term, MIND shall cause at least 150 events at the Facility for Contract Years, commencing October 1, 2018 and ending September 30, 2020, serving more than 35,000 visitors per year; 175 events at the Facility for Contract Years, commencing October 1, 2020 and ending September 30, 2022, serving more than 40,000 visitors per Contract Year; and 200 events at the Facility for Contract Year, commencing on October 1, 2022 and ending on September 30, 2023, serving more than 45,000 visitors per Contract Year (and proportionately for any partial Contract Year).

MIND shall exercise its best efforts to meet the Annual Benchmarks referenced in Exhibit "B" hereto. The aforesaid Events shall be calculated by counting each separate Event in a Series. In connection with using best efforts to attain the enhanced Annual Benchmarks required during the first Renewal Term, MIND shall develop an educational division and increase public outreach.

- d. Subsection 5.2(a) is hereby renumbered as 5.2(c).
- e. Subsection 9.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

9. 1 During the first Contract Year of the Initial Term of this Agreement (From October 1, 2016 through September 30, 2017), the City will provide funding to MIND, in the amount of \$170,000.00 ("City's Contribution(s)"), payable in quarterly installments within fifteen (15) days following the end of each Quarter, with the first payment, in the amount of \$42,500.00 due October 15, 2016; \$42,500.00 due on January 15, 2017, \$42,500.00 due on April 15, 2017, and \$42,500.00 due on July 15, 2017. Thereafter, subject to funding availability and at the City's sole option and discretion, the City will provide a City Contribution, in an amount of \$170,000.00 annually, and payable quarterly, in the same manner as during the first Contract Year.

During the first Contract Year of the first Renewal Term (From October 1, 2018 through September 30, 2018), the City's Contribution will be increased to \$420,000.00 annually, payable in quarterly installments within fifteen (15) days following the end of each Quarter, with the first payment, in the amount of \$105,000.00 due October 15, 2018; \$105,000.00 due on January 15, 2019, \$105,000.00 due on April 15, 2019, and \$105,000.00 due on July 15, 2019. During the remaining Contract Years of the first Renewal Term, the City's Contribution, of \$420,000.00 annually, and payable quarterly, in the same manner as during the first Contract Year, shall be subject to approval, by the City Commission, at the City's sole option and discretion, during the City's budgetary process for each subsequent fiscal year.

MIND shall submit an invoice for each payment of such City's Contribution and also submit the corresponding reports due for that particular Quarter. The City, in its sole discretion, may condition payment of the City Contribution upon MIND providing the requisite reports under this Agreement, including, without limitation, those reports set forth in Sections 5 and 12 of this Agreement.

- f. Subsection 12.6(a) of Section 12, RECORDS, AUDITS AND REPORTS, of the Agreement is hereby amended to add the following new subsection (iv):

iv. A listing of the programs undertaken by the educational division and number of attendees served through the public outreach and educational activities.

- g. **Section 32, NOTICES, of the Agreement is hereby amended as follows:**

**Section 32. NOTICES**

All notices from the City to MIND shall be deemed duly served if mailed by registered or certified mail to MIND at the following address:

Miami New Drama  
169 East Flagler Street, PH 1040 Lincoln Road  
Miami, FL 33134-Miami Beach, FL 33139

All notices from MIND to the City shall be deemed duly served if mailed to:

City of Miami Beach  
City Manager  
1700 Convention Center Drive  
Miami Beach, Florida 33139

With copies to:

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attention: ~~Max Sklar~~, Heather Shaw, Tourism, Culture, and  
Economic Development, Acting Director

3. **RATIFICATION.**

Except as provided in this Amendment, the Agreement remains unmodified and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern. All references to the Agreement in the Agreement or in any other document referencing the Agreement shall be deemed to refer to the Agreement as amended hereby.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK)

**IN WITNESS WHEREOF**, this Amendment No. 2 to Management Agreement has been duly executed by the parties hereto as of the day and year first written above.

**Attest:**

**CITY OF MIAMI BEACH, FLORIDA**

\_\_\_\_\_  
Rafael Granado, City Clerk

\_\_\_\_\_  
Dan Gelber, Mayor

**Attest:**

**MIAMI NEW DRAMA, INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Michel Hausmann, Chief Executive Officer

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**CORPORATE SEAL**  
(affix seal here)