

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Eric Carpenter, City Manager

DATE: June 25, 2025

TITLE: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE TO AMEND THE LEASE AGREEMENT BETWEEN THE CITY (LANDLORD) AND MIAMI NEW DRAMA, INC. (TENANT); SAID AMENDMENT, IN MATERIAL PART, TRANSFERRING FROM THE CITY TO TENANT THE RESPONSIBILITY FOR THE CONSTRUCTION OF THE IMPROVEMENTS FOR THE COLLINS PARK CULTURAL FACILITY, LOCATED IN THE CITY-OWNED COLLINS PARK GARAGE AT 340 23RD STREET; FURTHER, APPROVING THE TERM SHEET ATTACHED TO THE CITY COMMISSION MEMORANDUM ACCOMPANYING THIS RESOLUTION, CONTAINING THE ESSENTIAL TERMS OF THE AMENDMENT; AND FURTHER, AUTHORIZING THE CITY MANAGER TO NEGOTIATE THE AMENDMENT AND A CORRESPONDING GENERAL OBLIGATION BOND FOR ARTS & CULTURE ("GOBAC") GRANT AGREEMENT, CONSISTENT WITH THE TERM SHEET, WITH THE FINAL AGREEMENTS BEING SUBJECT TO THE PRIOR APPROVAL OF THE MAYOR AND CITY COMMISSION.

RECOMMENDATION

The Administration recommends that the Mayor and City Commission authorize the Administration to prepare a Lease Amendment and corresponding General Obligation Bond for Arts & Culture ("GOBAC") Grant Agreement with Miami New Drama, Inc. for the Collins Park Cultural Facility, based on the material terms outlined in the attached Term Sheet, with all final agreements subject to the approval of the City Commission.

BACKGROUND/HISTORY

Lease Approval

- January 27, 2021: The Mayor and City Commission waived competitive bidding to accept an unsolicited proposal submitted by Miami New Drama, Inc. (MiND) for approximately 16,000 square feet of ground floor space, including interior space and exterior terrace areas, in the city-owned Collins Park Garage at 340 23rd Street. The proposal outlined the development of MiND's primary performance venue and headquarters, including a 200-seat black box theater, rehearsal space, dressing rooms, and administrative offices, as well as ancillary commercial uses, including a standalone restaurant/café (the "Project").
- October 27, 2021: Resolution No. 2021-31914 approved the initial Lease Agreement between the City (Landlord) and MiND (Tenant), whereby MiND committed to independently funding its design and architectural services, while the City provided

funding and construction for buildout improvements, contingent on a \$250,000 Tenant Contribution and appropriation of a \$4.75 million Landlord Contribution.

- April 18, 2022: The Lease Agreement was executed.

Revised Funding Allocation

- November 2022: Miami Beach voters approve the GOBAC Program, which included a revised allocation of \$7.67 million to the Project, following revision of Project buildout cost estimates.
- July 26, 2023: Resolution No. 2023-32713 formally allocated \$7.67 million, satisfying the City's funding commitment under the Lease.

Lease Modification Request

- August 6, 2024: MiND submitted a request to the City Manager for material modifications to the delivery model, including transferring full responsibilities for construction management and project execution to the Tenant, as well as increasing the Landlord Contribution from \$4.75 million to \$7.604 million, aligning with the GOBAC allocation.
- September 11, 2024: the Administration recommended the Mayor and City Commission, refer the Project to the Finance and Economic Resiliency Committee (FERC) for further discussion.
- November 8, 2024: the FERC transmitted a favorable recommendation of proposed Lease modifications, including conversion of the Project's funding allocation into a GOBAC Program grant.
- November 20, 2024: In parallel with ongoing discussions on proposed Lease modifications, Resolution No. 2024-33398 approved the installation of a temporary artistic window covering. This installation, funded by the City, not only highlights MiND's performances but also enhances the exterior aesthetics of the vacant leased premises.

ANALYSIS

The following sections outline the risks, key operational safeguards, and City oversight mechanisms relevant to the proposed Lease Amendment.

Programmatic and Cultural Value

The Project is envisioned as a cornerstone activation of the Collins Park Cultural District. Anchored by MiND's arts programming, the facility is expected to drive year-round public engagement through theatrical performances, educational initiatives, and community events.

Under the executed Lease, the GOBAC allocation was intended to fund capital improvements related to the buildout of the Collins Park Cultural Facility, with the City retaining full control and oversight over Project execution.

While MiND has demonstrated success managing the programming of the Colony Theatre, development of a new cultural facility introduces different levels of operational and financial complexity. Therefore, any approval of the proposed Lease Amendment and associated Grant Agreement should be contingent upon financial safeguards, measurable performance benchmarks, and continued City oversight.

Shift in Project Delivery Model

MiND's request represents a significant shift from a city-managed construction model to one led by the Tenant. While this may ease administrative burden and potentially expedite delivery, it introduces risks commonly associated with third-party construction management, such as reduced City oversight on budgeting, construction quality, and project scheduling.

Although the G.O. Bond for Arts and Culture Program includes limited-scope grants, for example, funding theater equipment or digital upgrades, those grants do not compare in scale or complexity, and there is currently no precedent within the program for delegating full construction management responsibilities for a City-owned facility to a third-party grantee.

Accordingly, the proposed Lease Amendment and Grant Agreement would establish a precedent for capital delivery in publicly owned facilities and should be carefully evaluated for long-term implications.

Proposed City Safeguards

To mitigate risks associated with the tenant-led construction management model, the Administration and MiND jointly developed critical safeguards to preserve the City's financial and operational interests:

- execution of a Grant Agreement that incorporates provisions typically found in construction agreements, including reimbursement protocols, documentation standards, and performance expectations;
- inclusion of a cross-default clause linking the Lease and Grant Agreement to strengthen enforcement mechanisms;
- retention of City oversight rights with approvals at major design milestones (30%, 60%, 90%, and final construction drawings);
- required approval of draw requests by the City liaison, with accompanying backup documentation; and
- mandating that MiND employ a Construction Manager at Risk (CMAR) under a Guaranteed Maximum Price (GMP) contract, including cost containment and approval provisions.

Outstanding Considerations

1. Project Delivery Risk

The Administration recommends that any deviation from a City-managed delivery model undergo a thorough evaluation of the Tenant's capacity to manage scope, cost, and quality assurance. Although MiND has demonstrated a strong record in cultural programming, it has limited experience in overseeing large-scale, municipal capital improvement projects.

2. AiPP Waiver Request

MiND must request a waiver from the City's Art in Public Places (AiPP) contribution requirement. The G.O. Bond is subject to public bond covenants; accordingly, the waiver may be in the City's best interest to ensure full allocation of available resources to core Project elements.

Term Sheet

The Administration and MiND have developed a Term Sheet for a proposed Amendment to the Lease Agreement (Attachment A), which incorporates several key terms to protect the City's financial and operational interests.

Existing Lease Terms - No Change Proposed	
Lease Agreement	The Lease Agreement between the City and Tenant, dated April 18, 2022, authorized by City Commission Resolution No. 2021-31914
Tenant	Miami New Drama, Inc., a Florida not-for-profit corporation, currently operating under a Management Agreement for the Colony Theatre, which is linked to the Lease via a cross-default provision.
Premises	Approximately 16,000 square feet of ground floor interior and exterior space at the Collins Park Parking Garage, a municipal parking facility located at 340 23rd Street (the Property)
Term	<ul style="list-style-type: none"> Initial Term: 5 years, commencing on occupancy Renewal Terms: two, 5-year renewals at Tenant's option and one 5-year renewal at Landlord's option <p>Potential total Term is 20 years</p>
Mandatory Design Elements	<p>The following components are required under the Lease as essential cultural and public-facing elements of the buildout:</p> <ol style="list-style-type: none"> 1) Approximately 3,300 sq. ft., 200-seat studio theater ("<u>Theater Space</u>"), including theatrical equipment required for Tenant's use of the Premises (primary design priority). 2) Approximately 2,250 sq. ft. multifunctional lounge/bookstore activation space ("<u>Lounge Space</u>"). 3) Approximately 2,000 sq. ft. café/restaurant space ("<u>Café/Restaurant Space</u>") capable of secure, independent operation from the remainder of the Premises, regardless of whether the remainder of the Premises is open to the public; 4) Approximately 2,000 sq. ft. community education and rehearsal studio ("<u>Rehearsal Studio Space</u>"). 5) Approximately 1,700 sq. ft. administrative office space ("<u>Office Space</u>"). <p>Note: Due to spatial constraints necessary to accommodate back-of-house functions and public restrooms, the original requirement for a costume design studio has been deleted from the current design.</p>
Rent	\$1.00 annually
Operating Expenses	MiND is 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, Tenant's business, or any other business on Premises). Lease provides that City will have no payment obligation with respect to Operating Expenses.
Maintenance	<ul style="list-style-type: none"> <u>MiND</u>: day-to-day cleaning, maintenance, and repairs, including 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 <u>City</u>: major building systems (HVAC, electrical, fire, water, plumbing, water intrusion, etc.) and the building structure, including walls and exterior
Subleasing	<ul style="list-style-type: none"> Café/Restaurant Space sublease shall be market rate and selection of Café operator is subject to City Manager approval MiND may offer one (1) concession or for-profit third-party activation at below-market leasing rates in a footprint not to exceed 250 sq. ft., subject to City Manager, or designee, 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, or designee, approval), and ancillary and complementary to the facility's cultural programming.

Material Terms	<p>As required by Resolution No. 2021-31568, as a condition of waiving competitive bidding to award the Lease to MiND, the Lease incorporates the following mandatory elements:</p> <ul style="list-style-type: none"> • <u>Miami Beach Headquarters</u>: MiND must remain functionally located within the City of Miami Beach, with Miami Beach as its primary performance venue. • <u>Key Individuals</u>: Principal directors Michel Hausmann and Nicholas Richberg must remain actively involved in the company throughout Lease Term. If either of the key individuals leaves the company or is no longer actively involved, MiND must locate a comparable replacement within 180 days, with reasonable approval of the City Manager or designee, otherwise City may terminate. • <u>City Board Representation</u>: City Manager, or designee, shall serve as one (1) voting member on MiND's board of directors, with one (1) additional non-voting member, designated at the option of the City Manager. This is an increase above the existing one (1) non-voting City representative on the MiND board.
Benchmark Performance Standards	<p>During the initial 12 months following Lease Commencement Date (such period constituting "<u>Lease Year 1</u>"), with each successive twelve (12) month period thereafter constituting another "<u>Lease Year</u>"), 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; and 6) 500 discounted tickets provided per year to senior citizens. <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 patrons, 200 students, 85 seniors, 55 pro bono nonprofit/community rental hours 3) <u>Lease Year 4</u>: 200 events 40,000 patrons, 225 students, 90 seniors, 55 pro bono nonprofit/community rental hours 4) <u>Lease Year 5</u>: 220 events 45,000 patrons, 250 students, 95 seniors, 60 pro bono nonprofit/community benefit rental hours <p>Performance benchmarks may be modified during Renewal Terms, based on mutual agreement between the parties, subject to prior notice and approval.</p>

Proposed Lease Amendment: Material Terms	
Project Delivery Structure	Originally, the City was responsible for construction of the Buildout Improvements. Under the proposed Lease Amendment, the City will deliver the Premises to MiND in shell condition, and MiND will assume full responsibility for design development, permitting, and construction administration, including all financial and administrative obligations to complete the buildout.
Construction Management Model	<ul style="list-style-type: none"> • A Construction Manager at Risk (CMAR) model with a Guaranteed Maximum Price (GMP) contract is required, including cost containment provisions, contingency limits, and approval protocols. • The GMP construction contract and schedule of values, between Tenant and its CMAR, establishes a guaranteed maximum price for the Project. CMAR must bear any costs in excess of the GMP Agreement. • Project improvements, including preconstruction services, permitting, theatrical equipment and FF&E, 5% contingency allowance, and hard construction costs, must adhere to a design-to-budget approach and remain within the Guaranteed Maximum Price.
Landlord Financial Contribution	The Lease contemplated the City would provide funding for the Buildout Improvements, not to exceed \$4.75 million. The Amendment modifies the amount to \$7.604 million, commensurate with the G.O. Bond Grant appropriation for the Project. The funds will take the form of a grant and MiND will assume construction administration.
Tenant Financial Contribution	Consistent with the Lease, MiND will remain entirely responsible for all costs related to Architectural & Engineering (A&E) services, current estimated to cost no less than \$240,000.00.
Architect	MiND has provided a design services proposal from Touzet Studio and Enrique Norten/TEN Arquitectos, including consultant services for Mechanical, Electrical, and Plumbing Engineering, Acoustic Consultant, Theater Consultant, and Structural Engineer. Per the Lease, MiND is responsible for all costs related to architectural and design consultant services.
City Construction Oversight	<ul style="list-style-type: none"> • City retains approval rights of construction drawings at key milestones (30%, 60%, 90%, and Final). • Tenant must identify 20% of the Project Budget as discretionary, to allow for value engineering, as necessary. • City retains 10% of Grant funds, during construction, for contingency. • Grant disbursements to be contingent on submission of complete monthly draw requests with supporting documentation and City liaison approval.
Grant Agreement	A separate Grant Agreement, with provisions commonly found in a work letter agreement, will govern construction protocols, including requirements for performance and payment bonds and submission of monthly reimbursement draw requests with supporting documentation.

FISCAL IMPACT STATEMENT

City Financial Contribution:

- \$7.604 million in G.O. Bond Grant funding already appropriated.
- No additional contribution is proposed.
- Consistent with the original Lease, MiND remains solely responsible for all architectural and engineering (A&E) costs that exceed \$250,000. This measure ensures that any overrun beyond this threshold is borne entirely by the Tenant.

Risk Mitigation Measures:

- 10% of the Grant to be retained by the City as a contingency during construction, separate from the 5% contingency contained in the GMP Agreement.
- 20% of project scope identified as discretionary for potential value engineering.
- City retains final approval of key construction documents and disbursement drawdowns.

Does this Ordinance require a Business Impact Estimate?

(FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:

See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

CONCLUSION

The Administration recommends that, upon careful evaluation of these implications, the City Commission authorize the Administration to negotiate the Lease Amendment and associated GOBAC Grant Agreement, with MiND, in alignment with the attached Term Sheet and subject to final City Commission review and approval.

Applicable Area

South Beach

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

No

Is this item related to a G.O. Bond Project?

Yes

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? Yes

If so, specify the name of lobbyist(s) and principal(s): Miami New Drama, Inc. / Nick Richberg

Department

Economic Development

Sponsor(s)

Co-sponsor(s)

Condensed Title

Accept Rec/Amend Lease Agreement w/ Miami New Drama, 340 23rd Street. ED

Previous Action (For City Clerk Use Only)