

MIAMI BEACH

COMMITTEE MEMORANDUM

TO: Finance and Economic Resiliency Committee Members
FROM: Eric Carpenter, City Manager
DATE: October 18, 2024
TITLE: COLLINS PARK PERFORMING ARTS CENTER NEXT STEPS

RECOMMENDATION

The Administration recommends that the Finance and Economic Resiliency Committee (FERC) provide feedback on Miami New Drama's (MiND) proposed lease modifications and recommend to the City Commission a course of action for advancing the Collins Park Performing Arts Center project.

BACKGROUND/HISTORY

On January 27, 2021, the Mayor and City Commission waived competitive bidding to accept an unsolicited proposal from Miami New Drama, Inc. (MiND) for approximately 16,000 square-feet of ground-floor space, including interior space and additional 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, which includes a 200-seat black box theater, rehearsal space, dressing rooms, and administrative offices, as well as ancillary commercial uses, such as a standalone restaurant/cafe (the "Project").

On October 27, 2021, through Resolution No. 2021-31914, the Mayor and City Commission approved a Lease Agreement between the City (Landlord) and MiND (Tenant) for the Project (**Attachment A**). Under the terms of the Lease, MiND was responsible for funding and delivering design and architectural services, while the City was obligated to fund and construct all buildout improvements. At the time, the Project was unfunded, and the Lease stipulated that MiND raise \$250,000 within 12 months, or 30 days after budget approval by the City Commission, for its design obligations (the "Tenant Contribution"). Additionally, the Lease specifies that it would not become effective until, and is subject to and contingent upon, City Commission appropriation of \$4.75 million for the buildout improvements ("Landlord Contribution") by October 1, 2024. The Lease was executed on April 18, 2022.

Initially, the Project's buildout costs were estimated at \$4.75 million. However, in 2022, the estimated costs were revised during the development of the General Obligation Bond for Arts and Culture (GOBAC) program, which resulted in a \$7.67 million allocation being earmarked for the Project. On November 8, 2022, Miami Beach residents approved the GOBAC in the amount of \$159 million, and on July 26, 2023, the City Commission approved Resolution No. 2023-32713, formally allocating \$7.67 million for the Project. This allocation satisfied the City's Lease obligation to fund the \$4.75 million Landlord Contribution.

ANALYSIS

Since February 2024, the Administration has engaged in ongoing discussions with MiND regarding the Project. Topics of discussion have included MiND's desire to alter the Project's delivery structure, the engagement of a new architectural team, and the Tenant's pending obligation to fund design services. Furthermore, the City has requested that MiND collaborate on

window coverings to enhance the aesthetics of the currently vacant space. Once the City approves the artistic design provided by MiND, the City's vendor will wrap the exterior storefront of the ground floor premises.

On August 6, 2024, MiND submitted a memorandum ("MiND Memorandum") outlining proposed modifications to the Lease (**Attachment B**). The requested modifications include:

1. **Landlord Contribution:** MiND requests revising the Lease to reflect that the City's contribution for the buildout will be the full \$7.67 million allocated from the GOBAC, instead of the original \$4.75 million.
2. **Tenant Contribution:** MiND proposes eliminating its financial obligation to contribute \$250,000 for design and architectural services. Note: Pursuant to the City's reasonable approval rights in the executed Lease, MiND has not demonstrated incorporation of the City's comments into the proposed design agreement between MiND and Touzet Studios, MiND's selected architect.
3. **Grant Fundraising Requirement:** MiND seeks to delay its obligation to apply for a Florida Division of Cultural Affairs Cultural Facilities Grant, moving this requirement to the next application cycle (date to be announced).
4. **Costume Design Studio:** MiND requests removing plans for a costume design studio from the Project's scope, i.e., the removal of "Costume Design Studio" from item #1 of Exhibit "B-2" and from the design elements on Exhibit "B-3".
5. **Construction Management:** MiND proposes taking over construction management responsibilities from the City.
6. **Termination Events:** MiND requests removing the clause that lists specific circumstances in which either party may terminate the Lease for convenience, including the City's right to terminate if MiND does not adequately replace its Key Individuals leadership.

Implications of Delegating Construction Management to MiND

Delegating construction management responsibilities from the City to MiND would, in effect, convert the \$7.67 million GOBAC allocation into a grant for a portion of those funds and a project contingency and other miscellaneous costs that remain within the City control. Currently, the GOBAC allocation is intended to fund capital improvements and infrastructure related to the buildout of the Collins Park Performing Arts Center, with the City retaining oversight and management of project execution. Transitioning this allocation into a grant would preclude the City from charging any oversight under the GOBAC program, potentially reducing the City's direct control over the Project's development. Currently, there are no City owned facilities within the GOBAC Program where project management and control are conducted exclusively by the Tenant. Three institutions have been awarded partial grants; nevertheless, in these unique circumstances, the partial grants are tied to a limited and specific scope of work involving specialty items, i.e., technology upgrades, theater equipment and projection mapping equipment.

If the FERC recommends allowing MiND to take over construction management, a grant agreement consistent with the template used for all other grantees under the GOBAC program would be prepared. To include additional protections for the City, the lease agreement could be amended to include a cross-default provision, such that a default under the grant agreement would be deemed a default under the lease agreement. There would also need to be a clear allocation for cost overruns.

Notwithstanding, conversion to a grant does raise questions about whether and to what degree the City should have management and oversight of the capital improvements at this City-owned facility. As the City is not aware of MiND having experience or a track record with managing these types of capital improvements, it is difficult to make a recommendation supporting a deviation from the existing construction management responsibilities without ensuring the City has significant oversight.

FISCAL IMPACT STATEMENT

The City Commission has already allocated \$7.67 million for the Project, which includes all soft costs, fees and contingency in addition to the originally budgeted \$4.75 million for construction. While this allocation addresses the current buildout costs, MiND's proposed amendments to the Lease, particularly the potential conversion of the G.O. Bond allocation into a grant, would impact the City's management responsibilities.

Does this Ordinance require a Business Impact Estimate? N/A
(FOR ORDINANCES ONLY)

CONCLUSION

The Administration believes the Collins Park Performing Arts Center Project represents a critical opportunity to activate the Collins Park Cultural District with dynamic cultural programming. The City has fulfilled its contractual obligations under the Lease by appropriating funds for the buildout improvements. However, MiND's proposed modifications to the Lease, including the request to convert the G.O. Bond allocation into a grant, raises questions that require the Committee's review.

The Administration requests feedback on MiND's proposed lease modifications and recommendation to the City Commission of an appropriate course of action for advancing the Collins Park Performing Arts Center project.

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? No

If so, specify the name of lobbyist(s) and principal(s):

Department

Economic Development

Sponsor(s)

Co-sponsor(s)

Condensed Title

COLLINS PARK PERFORMING ARTS CENTER NEXT STEPS