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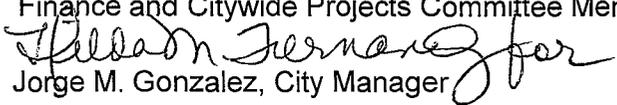


MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,
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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: 
Jorge M. Gonzalez, City Manager

DATE: October 29, 2009

SUBJECT: **DISCUSSION REGARDING A PROPOSED LEASE AGREEMENT BETWEEN THE CITY AND MYSTERY PARKS ARTS COMPANY INC. (d/b/a SOBE INSTITUTE OF THE ARTS) FOR THE USE OF THE CARL FISHER CLUBHOUSE AND LITTLE STAGE THEATER FOR A TERM NOT LESS THAN FIVE YEARS.**

BACKGROUND

The Carl Fisher Clubhouse and the Little Stage Theater are part of the 21st Street Community Center (the "Community Center"). They are located west of Washington Avenue, east of Convention Center Drive, north of the Miami Beach Convention Center, and south of Dade Boulevard on a tract of land along the Collins Canal. The Community Center is located on the southeastern portion of the site, along Washington Avenue, and houses the main offices of the Parks and Recreation Department. The Community Center site is zoned "CCC"- Convention Center District, and is part of the City Center Neighborhood. The Carl Fisher Clubhouse, designed by August (Gus) Geiger and built in 1916-1917 as part of Carl Fisher's private executive golf course, is one of the oldest buildings still standing in the City. In 1937, the Little Acorn Theater (commonly referred to as the "Little Stage Theater") designed by Robert A. Taylor, was added to the site. The adjacent bandshell was later added to the site in the 1950's. As per Resolution No. 83-17323, adopted on April 20, 1983, and City of Miami Beach Ordinance No. 84-2402, the Community Center became a designated historic preservation site. The Community Center includes all the above referenced facilities. As you know, the historic Carl Fisher Clubhouse, the adjacent Little Stage Theater and the surrounding area have been programmed for major renovations, pending the availability of funding.

Carl Fisher Clubhouse

In early 2007, representatives of Mystery Park Arts Company (d/b/a SoBe Music Institute, and SoBe Institute of the Arts, "SoBe Arts") approached the City regarding the use of the Carl Fisher Clubhouse for a summer program. In May, 2007, the City entered into a Letter Agreement with SoBe Arts for that use, with SoBe Arts incurring all costs of the program. In exchange for free use of the facility, the City required SMI to provide free/reduced fee programs for income-eligible students. Subsequently, a letter agreement for the use of the facility was issued for the 07/08 school year, with the expectation that a competitive process would be developed for a longer term tenant of the facility, as the capital project implementation was not foreseeable.

On October 17, 2007, the Mayor and City Commission approved the issuance of Request for Proposals (RFP) No. 03-07/08 for use of the Carl Fisher Clubhouse (which did not include the Little Stage Theater) to provide cultural programming for the residents of the City of Miami Beach. Subsequently, RFP No. 03-07/08 was issued on April 08, 2008, with an opening date of May 13, 2008. During this time, SMI continued to operate their program at the Carl Fisher Clubhouse.

On June 25, 2008, the Mayor and City Commission adopted Resolution No. 2008-26835, accepting the recommendation of the City Manager and authorizing the Administration to enter into negotiations with the top ranked proposer SoBe Arts for use of the Carl Fisher Clubhouse. The Administration negotiated a Lease Agreement for the Carl Fisher Clubhouse for an initial term of one (1) year commencing retroactively on September 1, 2008, and ending on August 31, 2009, with an additional one (1) year renewal term, at the City's sole discretion. SoBe Arts pays the City a base rent of \$1.00 per year and a flat monthly payment of \$500 for City CAM.

Little Stage Theater

In late 2008, SoBe Arts expressed an interest in utilizing the Little Stage Theater to expand their programming. The City Commission authorized the expenditure of funds from the overall capital project's budget to make repairs that would make the theater useable at this time, pending the larger renovation in the future. Pursuant to the limited repairs subsequently made to the Little Stage Theater by the City's Property Management Division, as approved by the City Commission and recommended by the Finance and Citywide Projects Committee, the Little Stage Theater is also now a functional facility. SoBe Arts has provided guidance as to the minimum requirements needed and provided ongoing pro bono support in order to bring the facility to a useable state.

On May 13, 2009, the City Commission approved Resolution No. 2009-27069 issuing a Letter Agreement between the City of Miami Beach and SoBe Arts for use of the Little Stage Theater, a performing arts facility that includes an assembly area, performing area and restrooms, for a period of three months and seventeen days, coterminous with the expiration of the initial term of SoBe Arts' current Lease Agreement for the adjacent Carl Fisher Clubhouse. Under the Letter Agreement, SoBe Arts currently manages and uses the Little Stage Theater for the purpose of conducting education programs (i.e. film and film workshops, theater/dance programs and arts/acting/music classes & lessons), professional performances (i.e. music concerts, lecture/demonstrations, multidisciplinary & theatrical productions), general events (i.e. community collaborations, fundraising events and student performances), and for such other related use(s) necessary to operate and maintain the program.

The Letter Agreement was developed to allow SoBe Arts to utilize and manage the space for a period of three months to provide sufficient time for further Commission discussion on the long term management and use of the theater facility. SoBe Arts currently is obligated to pay the City a monthly use fee of three hundred seventy two (\$372.00) dollars, or \$1.95 per square foot, which is commensurate with what SoBe Arts currently pays as a use fee at the Carl Fisher Clubhouse.

FINANCE AND CITYWIDE PROJECTS COMMITTEE - PREVIOUS DISCUSSION/DIRECTION:

Concurrent with the end of the first year of the lease for the Carl Fisher Clubhouse, and in anticipation of the expiration of the Letter Agreement for the Little Stage Theater, staff referred the issue of the use of the two facilities to Committee for discussion. This was necessary as SoBe Arts had approached the City requesting the option of a longer term lease based on eligibility requirements for grant programs for matching funds.

On June 25, 2009, staff presented two options for consideration by the Finance and Citywide Projects Committee (FCWPC):

- 1) to amend the current Lease Agreement for the Carl Fisher Clubhouse to include the Little Stage Theater, which would provide SoBe Arts with tenancy of both facilities through August 31, 2010, provided the City exercises the one-year renewal option currently provided for in the Lease Agreement for the Clubhouse, which would provide sufficient time for the issuance of a competitive process for the use of both facilities; or

- 2) to terminate the current Lease Agreement for the Carl Fisher Clubhouse, waive competitive bidding and issue a new Lease Agreement to SoBe Arts for both the Carl Fisher Clubhouse and

the Little Stage Theater for a term of not less than five years as requested by SoBe Arts.

The FCWPC recommended that the Letter Agreement be extended on a month-to-month basis, not to exceed six (6) months, and further directed staff to negotiate a new lease for a five (5) year term involving both the Carl Fisher Clubhouse and the Little Stage Theater. Staff was directed to work with SoBe Arts on developing performance measures/benchmarks and public benefits for inclusion in the new Lease Agreement. The approval of a five-year lease will require the waiver of competitive bidding and appraisal requirements, by 5/7^{ths} vote of the Mayor and City Commission.

PROPOSED LEASE TERMS

As directed by the Commission, staff has discussed proposed performance measures, benchmarks and public benefits with SoBe Arts to ensure that the free use of this public facility continues to provide a benefit to the community. As noted below, the performance measures for the Carl Fisher Clubhouse are consistent with those submitted and offered by SoBe Arts through the competitive process. Where noted, additional measures or public benefits are being recommended. The proposed measures/benchmarks/public benefits for the Theater have been developed with the interest of ensuring that SoBe Arts continue to use the facility to support its programming, while making available the theater to other organizations, and to the City.

- 1) Scholarships: SoBe Arts recommends re-structuring the scholarship provision to allow more flexibility so that it can also build on the number of participants that aren't necessarily need-based, and in response to the current economic situation that has impacted funding for all arts programs, and subsequently funding used for subsidies. In the alternative, they recommend that the method for quantifying this public benefit be subject to review on an annual basis and, if need be, subject to adjustment without requiring a formal amendment process.

As the percentage of scholarships (50% combined partial and full) was proposed by SoBe Arts in their initial response to the RFP, Staff does not recommend eliminating the requirement for a percentage of participants that will receive a subsidy. Notwithstanding, in light of current funding limitations, staff recommends that the scholarship requirement be adjusted to reflect a *goal* of 50% of youth participants receiving scholarship (any level of subsidy), but establish a minimum benchmark of thirty percent (30%) of participants receiving scholarships across all youth programs each term year. It is also recommended that SoBe Arts use the same sliding scale model used by the City's Parks and Recreation Department for determining scholarship level.

- 2) Miami Beach residents shall be given the opportunity to pre-register one day before open enrollment for classes;
- 3) If enrollment reaches capacity, Miami Beach resident applicants shall be wait-listed for preferential placement, in the event of any openings;
- 4) SoBe Arts to develop, for City Manager's approval, a rent schedule for third party users of the theater.
- 5) City Uses: The City will have free use of the facility, exclusive of hard costs, no less than eight (8) times per year, as such uses may be deemed by the City, and as such use days may be coordinated with SoBe Arts.
- 6) While it is understood that SoBe Arts' use of the facilities is be considered a priority use (except as may be otherwise provided for), the facility must be available to third party users, as follows:
 - a) At least twenty (20) percent of use days in any year of the lease term for the Theater will be available for rental to third party users, preferably for cultural programming purposes;
 - b) The City must approve SoBe Arts' proposed rental rates for third party users; those rental rates will provide a discount for non-profit organizations;
 - c) The rental rates and policies will be developed and provided to the City Manager for his review or approval within ninety (90) days of lease execution. These guidelines must

- include SoBe Arts' process for accepting, reviewing and approving third party facility rentals;
- d) SoBe Arts will pay the City fifteen (15%) percent of any gross revenue derived from third party use of the facilities.
 - 7) SoBe Arts to provide free quarterly programming for the Parks and Recreation Department's Teen Club; this may include introduction to music lectures, etc.;
 - 8) SoBe Arts shall develop and submit, within ninety (90) days following execution of the Lease, an operational and capital fundraising program and fundraising goals, to include potential private and grant funded opportunities. This report will be updated yearly and will include information on SoBe Arts' efforts to secure funding in the prior term year.
 - 9) Resident discount ticket program: While SoBe Arts prefers not to commit to a set discounted ticket price for Miami Beach Residents, they have proposed making available a percentage (at least 25%) of its seating during paid SoBe Arts events at a deeply discounted price and, in order to insure that Miami Beach Residents have first choice on discounted seating, they would conduct a pre-sale for residents. SoBe Arts is also looking at offering, if funding is available, a youth and senior discount (percentage to be determined) for matinee performances or events produced or coordinated by SoBe Arts.
 - 10) Level 2 background checks for all staff, as required by the City
 - 11) Hours of operation: To be determined by SoBe Arts and provided to the City Manager on an annual basis.
 - 12) Community events: SoBe Arts to produce and provide at least ten (10) free community cultural programming events open to the public each year.

The balance of the proposed base lease terms which have been agreed to between the parties include the following:

- SQUARE FOOTAGE: 5,375 total SF (Clubhouse = 3,080, Theater = 2,295)
- TERM: Five (5) years; with an option for two (2) renewals of (2) years each.
- BASE RENT: \$1.20 annually in consideration for the diverse cultural activities provided to the residents, in addition to fifteen (15%) percent of any gross revenue derived from third party use of the theater. This rent structure is similar to that used for other not-for-profit community service organizations leasing City-owned property.
- ADDITIONAL RENT: \$10,464.00 annually to offset City's operating expenses (equal to the combined amount of former "use fees" per the Lease Agreement and Letter Agreement)
- SECURITY DEPOSIT: Not applicable.
- UTILITIES: SOBE ARTS shall be responsible for all utilities not included in Additional Rent.
- CAPITAL IMPROVEMENTS: Any capital improvements must be first approved by the City, and must be coordinated with the City's Capital Improvements Office. The Tenant understands that the Master Plan for the area that includes the demised premises may impact their use of one or both of those facilities. SMI will be provided notice of any construction improvements prior to commencement

The issue of parking for staff and participants continues to be discussed and options will be presented to the Committee.

CONCLUSION

In order to finalize the proposed lease for first reading at the Commission Meeting on December 9, 2009, it is requested that the Committee provide direction on the proposed measures/benchmarks/public benefits being proposed for the lease agreement between the City and SoBe Arts.

JMG/HMF/AP/kob
Attachment