Memorandum

MIAMI-DADE COUNTY

Date: March 10, 2015

To: Honorable Xavier L. Suarez
Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Coconut Grove Playhouse – Response to Proposed MOU

In response to your memorandum regarding "Coconut Grove Playhouse - Proposed MOU" dated March 9, 2015, it is important that we align our mutual goals for returning great theater to the Coconut Grove Playhouse. In fact, many of the issues you raised have already been considered and are reflected in the most recent revisions already made to proposed Operating and Management Agreement between the County and GableStage, and in the professional services agreement for architectural and engineering services.

The following points are offered in response to the numbered items in your memo:

1. Your position regarding maintaining the façade, configuration and size of the existing Playhouse and the "preliminary layout" you offered to provide will be shared with the County's professional architectural, engineering, and consultant team for their consideration and assessment. It is essential to leave all design options open to the expertise and creativity of the design team being recommended for the Playhouse. The design team's scope of services is to respond to the Playhouse site comprehensively which will require latitude to address such key issues as: the municipal historic designation; the limitations of the budget; the surrounding neighborhood and traffic issues; and the building program(s) of the theater(s), possible parking garage, and public spaces.

2. It is important to point out that the State of Florida is the "landlord" and the County and FIU are co-lessees. Nonetheless, your suggestion to form a new entity does not comport with the Lease between the State and the County/FIU, which does not allow an assignment of the responsibilities of the County and FIU to another entity. In my opinion, it is neither advisable nor necessary to create another level of bureaucracy to achieve your objective. It is essential to emphasize that the County and its partner, FIU, serve as the entities with oversight responsibilities as provided for in the agreements already approved by the Board of County Commissioners. The additional private sector involvement by donors and artistic consultants will be achieved through the board(s) and corresponding artistic leaders of the entity(ies) managing the buildings on the site (e.g., the board and artistic leadership of GableStage, the board and professional leadership of the Miami Parking Authority, and the board and artistic leadership of the Coconut Grove Theater Foundation). The County, along with FIU as co-lessee, is responsible for ensuring coordination and cooperation among these entities.

3. We are in agreement that long-term operating agreements will be entered into with the separate organizations to operate their portions of the site. The County-GableStage Operating and Management Agreement strictly conforms to this position (i.e., that Agreement provides GableStage with jurisdiction to operate only the 300-seat theater).

4. We are in agreement that GableStage will operate the 300-seat theater.

5. We have acknowledged the following with regard to the proposed larger theater:

    a. Our design team is charged with the responsibility of developing a masterplan to demonstrate conclusively its feasibility to fit on the site;
    b. We need to ensure that it will be fully funded, from design and construction through annual operations, by the private sector with no County funding;
    c. The Office of the County Attorney will need to review the designation of the newly formed entity as its operator and work with us on developing an operating agreement with this entity;
    d. A revision to our Lease and Business Plan with the State will be required and will need to be approved by the State, the Board of County Commissioners, and FIU to incorporate this larger theater and operating entity into the plans;
    e. When an operating agreement with this entity is brought to the Board of County Commissioners, it will be accompanied by an assessment of the private sector's ability to achieve the capital and operational fundraising necessary, the staffing plans, and viability of the board of this new corporation to manage these responsibilities successfully;
    f. We understand that Kevin Spacey may be interested in serving as an artistic consultant paid solely by this entity.

6. Design costs of <u>only</u> the 300-seat theater will be covered by County funds (through a portion of the $5 million of approved Convention Development Tax bond proceeds for the Playhouse capital project). Mike Eidson has assured me directly that he already has raised sufficient private funds (in cash on hand) to cover the cost of the design fees for the larger theater. Our proposed agreement with the design team allows the County to accept these additional private funds to cover the costs of designing the larger theater.

7. In order to comply with the terms of our Lease with the State it is essential that, at a minimum, we develop the required 300-seat theater for GableStage using the County's $20 million in secured capital funding for the Playhouse ($5 million from CDT bond proceeds and $15 million from GOB funds). We have included a provision in the County-GableStage Operating and Management Agreement that allows the County to terminate this agreement for convenience with notice any time before the substantial completion of construction of the theater (see section F.1 of the County-GableStage Operating and Management Agreement).

8. The County-GableStage Operating and Management Agreement already contains performance criteria (see principally sections C.2 and E.) and we agree that all long-term operating agreements must contain such criteria.

9. We are in agreement that all other agreements in existence, as approved by the Board of County Commissioners, shall remain in effect.

Attachment

c: Members, Board of County Commissioners
Alex Ferro, Chief of Staff, Office of the Mayor
Michael Spring, Senior Advisor, Office of the Mayor
Monica Rizo, Assistant County Attorney

MEMORANDUM
COMMISSIONER XAVIER L. SUAREZ

111 NW First Street, Suite 220 Miami, Florida 33128 Tel. (305) 375-5680 Fax (305) 372-6103

TO:	Mayor Carlos A. Gimenez	DATE:	March 9, 2015
CC:	Miami-Dade County Board of County Commissioners		
FROM:	Xavier L. Suarez Commissioner, District 7	RE:	Coconut Grove Playhouse Proposed MOU

Below please see a proposed set of parameters in the form of a Memorandum of Understanding (MOU). I believe it reflects the best elements of what you and I have discussed over the last few months as the "two-theater solution."

I would appreciate hearing back from you directly with your feedback before the Thursday hearing which I have scheduled as Chairman of the Economic Prosperity Committee. I have mentioned to Chief of Staff Alex Ferro that I am available at your convenience.

Memorandum of Understanding

WHEREAS, it is the will of the Mayor and Commission of Miami-Dade County that the Coconut Grove Playhouse should be restored to its historic glory and configuration; and

WHEREAS, the objective of historic preservation calls for a restoration that will, as close as possible, maintain the façade, configuration and size of the Coconut Grove Playhouse; and

WHEREAS, there is an opportunity to build two theaters, one in the approximate size of 300 seats and one in the approximate size of 750 seats, upon a site plan as per the attached sketch (to be sent under separate cover); and

WHEREAS, the funding necessary to build two such theaters requires that operating and management agreements be in place with those who will manage each one, as well as a master

agreement with an entity that fuses the powers of government and the private-sector donors who will fund the approximately two-thirds of the total budget needed to build the two theaters.

NOW THEREFORE, the parties agree as follows:

1. The preliminary layout attached hereto is approved in principle.

2. A new entity will be formed that includes majority representation from appointees of Miami-Dade County and Florida International University, and minority representation from the private-sector donors and artistic consultants. That entity will act as the landlord and will be governed by the Sunshine Law as well as competitive bidding rules for public entities in Florida.

3. Long-term operating agreements will be entered into with separate theater groups to operate the large theater and the small theater which will assure common use of facilities, parking and compatible schedules. In case of a legal dispute that is not amicably resolved, the two companies agree that the "landlord" is the sole and final arbiter of any *legal* disputes, with no recourse whatsoever to appeal its decisions. (It is understood that each theater group will have unfettered discretion on artistic matters.)

4. The small theater will have GableStage, Inc. or its assignee as the operator; it will have a built-in educational component, as agreed to by all the parties in its particulars.

5. The large theater will have a newly formed non-profit entity or foundation as its operator, and will have Kevin Spacey as its artistic consultant, with compensation initially to be paid to him by private contributors. It is understood that Mike Eidson, as founder of the Coconut Grove Foundation, Inc., will select its first board of directors, its initial members and will formulate its internal operating agreement.

6. Design costs of both theaters will be borne by the County from its G.O.B. funds until the end of the design phase, presently anticipated to end in about 18 months.

7. In the event that private funds are not obtained in sufficient amount to complement the county's $20 million and reach a figure sufficient to build both theaters, this MOU will be revised to account for that contingency in a way that is satisfactory to Miami-Dade County and Florida International University. In that eventuality, it is understood that no private entities will have vested rights to the mentioned operating agreements for either the large or small theaters; and no reliance should be placed by either theater group on the assurance that the long-term operating agreements will be continued as envisioned here. In other words, this is a condition precedent to the rest of the MOU.

8. The continuance of the long-term operating agreements, as envisioned here, will be subject to a condition subsequent,t which is that they will each have performance criteria, as determined jointly by Miami-Dade County and Florida International University.

9. All other agreements in existence, including those with the Miami Parking Authority and the City of Miami, remain in effect as long as they are consistent with this MOU.

Xavier L. Suarez
Miami-Dade County Commissioner
District 7