



Cover Memorandum/Staff Report

File #: 18-1002 CRA

Agenda Date: 2/22/2022

Item #: 8C.

TO: CRA Board of Commissioners
FROM: Alexina Jeannite, Community Engagement Director
THROUGH: Renée A. Jadusingh, Esq., Executive Director
DATE: February 22, 2022

NOTICE OF DEFICIENCY(IES) - ACHIEVING GOALS USING IMPACT DRIVEN EVALUATION FUNDING AGREEMENT - OLD SCHOOL SQUARE CENTER FOR THE ARTS, INC.

Recommended Action:

Approve the following:

- 1) Issue the Old School Square Center for the Arts, Inc. ("OSSCA or OSS") a formal written notice of deficiency(ies) and opportunity to cure pursuant to the Achieving Goals Using Impact Driven Evaluation ("A-G.U.I.D.E.") Funding Agreement ("Notice of Deficiencies"); and
- 2) Issue the OSSCA reasonable notice for the Delray Beach Community Redevelopment Agency ("CRA") to access and examine all records, books, papers, or documents relating to the funding provided pursuant to the A-G.U.I.D.E. Funding Agreement; and
- 3) Should OSSCA fail to cure the deficiency(ies) to the satisfaction of the CRA, within fourteen (14) days from receipt of the Notice of Deficiencies, CRA Staff shall then issue written notice to OSSCA that the A-G.U.I.D.E. Funding Agreement is deemed immediately voided and notice that the CRA is entitled to recoup the portion of funds the CRA allocated and/or already disbursed to OSSCA pursuant to the A-G.U.I.D.E. Funding Agreement; and
- 4) The CRA's Chair, Executive Director and legal counsel may execute any and all related documents and take all necessary action to facilitate the above action(s).

Background:

During the January 25, 2022 CRA Regular Board meeting, a detailed update was provided to the Board on the status of OSSCA's FY 2020-2021 A-G.U.I.D.E. Funding Agreement. The update summarized OSSCA's failure to provide the CRA with information and documentation previously requested and deemed necessary by the CRA. The Board was also updated that the information and documentation provided by OSSCA to date, is insufficient and does not allow the CRA to fully evaluate OSSCA's performance, financial status, to determine if the funds are being expended in accordance with their A-G.U.I.D.E. application and A-G.U.I.D.E. Funding Agreement.

A-G.U.I.D.E. General Information

The purpose of the A-G.U.I.D.E. Funding Assistance Program is to assist select nonprofit organizations, located in a City of Delray Beach or CRA owned building(s), whose programs and services align with and further advance the CRA's mission and address the "Overall Needs" defined in the CRA's Community Redevelopment Plan and A-G.U.I.D.E. Guidelines.

Organizations meeting the following criteria are eligible to apply for A-G.U.I.D.E. funding:

- Mission consistent with the mission of the CRA
- Classified as tax-exempt under IRS 501(c)(3)
- In good standing with the State of Florida
- Housed in City- or CRA-owned facilities located in the CRA district
- Serves residents of the CRA district and/or visitors that come to the district to participate in funded programs, projects, and events
- Demonstrated commitment by Board of Directors to purpose and accountability for CRA funds.

Historically, A-G.U.I.D.E. Nonprofit Partners have focused on providing programs and services centered on affordable housing, economic and businesses development, and recreation and cultural facilities. Per the A-G.U.I.D.E. Guidelines, "CRA support for Nonprofit Partners that have received funding in prior years will not be increased ... and in fact funding may be decreased, according to the availability of funds and the quality of their applications relative to these guidelines." See A-G.U.I.D.E. Guidelines, page 5.

Notice of Deficiency(ies):

Paragraph 5 of the A-G.U.I.D.E. Funding Agreement states:

5. In the event the OSS does not expend funds in accordance with its approved A-GUIDE funding application, attached as Exhibit "B", the CRA shall provide written notice to the OSS of such deficiency (ies), and the OSS shall have fourteen (14) days from receipt of the notice to cure the deficiency(ies) to the satisfaction of the CRA. Should the OSS fail to cure such deficiency(ies) to the satisfaction of the CRA, the CRA shall be entitled to recoup the portion of the Funding Amount allocated and/or already disbursed to the OSS, under the terms of this Agreement. The CRA shall have sole and absolute discretion with respect to the determination as to whether OSS is expending funds in accordance with its approved A-GUIDE funding application.

Accordingly, pursuant to the terms and conditions of the A-G.U.I.D.E. Funding Agreement, if the CRA determines that OSSCA has not expended funds in accordance with its funding application, the CRA shall provide OSSCA written notice of the deficiency(ies) and fourteen (14) days to cure the deficiency(ies) to the satisfaction of the CRA. Should OSSCA fail to cure such deficiency(ies) to the satisfaction of the CRA, the CRA is entitled to recoup the portion of funds the CRA allocated and/or already disbursed to OSSCA.

Additionally, paragraph 12 of the A-G.U.I.D.E. Funding Agreement states:

12. If the CRA determines pursuant to the A-GUIDE Logic Model and Evaluation Plan that the OSS is not achieving the stated impacts and outcomes, or is otherwise not furthering the CRA's goals and objectives, the CRA shall provide written notice to the OSS of such deficiency(ies), and the OSS shall have fourteen (14) days from receipt of the notice to cure the deficiency(ies) to the satisfaction of the CRA. Should the OSS fail to cure such deficiency(ies) to the satisfaction of the CRA, the CRA Board has the right to void the Agreement immediately after delivery of written notice to OSS. The CRA's Board shall have sole and absolute discretion with respect to the determination as to whether OSS is filling the CRA's goals and objectives.

Therefore, pursuant to the terms and conditions of the A-G.U.I.D.E. Funding Agreement, if the CRA determines that OSSCA is not achieving the stated impacts, outcomes, or is otherwise not furthering the CRA's goals and objectives in accordance with the A-G.U.I.D.E. Logic Model and Evaluation Plan, the CRA shall provide OSSCA written notice of the deficiency(ies) and fourteen (14) days to cure the deficiency(ies) to the satisfaction of the CRA. After delivery of written notice, should OSSCA fail to cure such deficiency(ies) to the satisfaction of the CRA, the CRA has the right to immediately void the A-G.U.I.D.E. Funding Agreement.

Furthermore, paragraph 8 of the A-G.U.I.D.E. Funding Agreement states:

8. The OSS hereby gives the CRA, through any authorized representative, upon reasonable notice, access to and the right to examine all records, books, papers, or documents relating to the funding provided pursuant to this Agreement. The OSS hereby agrees to maintain books, records and documents in accordance with accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by the CRA under this Agreement in accordance with the Florida Public Record Laws as provided in Chapter 119, Florida Statutes, as may be amended from time to time. The OSS hereby agrees that if it has caused any funds to be expended in violation of this Agreement, it shall be responsible to refund such monies in full to the CRA, or if this Agreement is still in force, any subsequent request for payment shall be withheld by the CRA.

Pursuant to the terms and conditions of the A-G.U.I.D.E. Funding Agreement, upon reasonable notice, the CRA is entitled to access and examine all OSSCA records, books, papers, or documents related to the funding provided under the A-G.U.I.D.E. Funding Agreement, OSSCA is required to maintain all such information and documentation in accordance with the Florida Public Records Laws. Additionally, the OSSCA must refund to the CRA any funds expended in violation of the A-G.U.I.D.E. Funding Agreement.

Also, paragraph 14 of the A-G.U.I.D.E. Funding Agreement states:

14. PUBLIC RECORDS. OSS shall comply with the applicable provisions of Chapter 119, Florida Statutes. Specifically, OSS shall:

- (a) Keep and maintain public records required by the CRA to perform under this Agreement.
- (b) Upon request from the CRA's custodian of public records, provide the CRA with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the OSS does not transfer the records to the CRA.
- (d) Upon completion of this Agreement, transfer, at no cost, to the public agency all public records in possession of the OSS or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the CRA upon completion of the Agreement, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the OSS keeps and maintains public records upon completion of the Agreement, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the CRA's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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Pursuant to the terms and conditions of the A-G.U.I.D.E. Funding Agreement, OSSCA must comply with the Public Records Act under Chapter 119, Florida Statutes and provide the CRA with public records upon request.

To date, OSSCA has not provided the CRA with information and documentation requested and OSSCA has provided insufficient information deemed by the CRA as necessary to fully evaluate OSSCA's performance, financial status, and to determine if the funds are being expended in accordance with the A-G.U.I.D.E. funding application and A-G.U.I.D.E. Funding Agreement.

At this time, pursuant to the A-G.U.I.D.E. Funding Agreement, OSSCA's continued failure to provide the CRA with the requested information and documentation and the insufficient information the OSSCA has provided constitutes a deficiency. Staff is requesting Board approval for the following:

- 1) Issue the OSSCA a formal written notice of deficiency(ies) and opportunity to cure pursuant to the A-G.U.I.D.E. Funding Agreement; and
- 2) Issue the OSSCA reasonable notice for the CRA to access and examine all records, books, papers, or documents relating to the funding provided pursuant to the A-G.U.I.D.E. Funding Agreement; and
- 3) Should OSSCA fail to cure the deficiency(ies) to the satisfaction of the CRA, within fourteen (14) days from receipt of the Notice of Deficiencies, CRA Staff shall then issue written notice to the OSSCA that the A-G.U.I.D.E. Funding Agreement is deemed immediately voided and notice that the CRA is entitled to recoup the portion of funds the CRA allocated and/or already disbursed to OSSCA pursuant to the A-G.U.I.D.E. Funding Agreement; and
- 4) The CRA's Chair, Executive Director and legal counsel may execute any and all related documents and take all necessary action to facilitate the above action(s).

Attachment(s): Exhibit A - OSSCA Funding History; Exhibit B -Fiscal Sustainability Forecast 2017-2020; Exhibit C - Fiscal Sustainability Forecast 2020-2023; Exhibit D - August 25, 2020 CRA Board Meeting Minutes Excerpt; Exhibit E - City of Delray Beach Internal Audit Report: #21-02 Old School Square Lease Complaint; Exhibit F - City Lease Internal Audit Presentation; Exhibit G- FY 2020-2021 - OSSCA A-G.U.I.D.E. Funding Agreement

CRA Attorney Review:

N/A

Funding Source/Financial Impact:

Funding previously allocated from General Ledger #7376 - A-GUIDE Funding.