



## Cover Memorandum/Staff Report

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**File #:** 18-1107 CRA

**Agenda Date:** 7/14/2022

**Item #:** 8E.

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**TO:** CRA Board of Commissioners  
**FROM:** Kim N. Phan, Legal Advisor  
**THROUGH:** Renée A. Jadusingh, Esq., Executive Director  
**DATE:** July 14, 2022

### **FOLLOW UP - ACHIEVING GOALS USING IMPACT DRIVEN EVALUATION FUNDING AGREEMENT - OLD SCHOOL SQUARE CENTER FOR THE ARTS, INC.**

#### **Recommended Action:**

Update and Board Direction.

#### **Background:**

The CRA entered into the A-G.U.I.D.E. Funding Agreement, dated October 16, 2020, with Old School Square Center for the Arts, Inc. ("OSSCA") to provide funding to OSSCA in an amount not to exceed Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) to support OSSCA's organizational operations and for the purpose of providing community programs as specified in the A-G.U.I.D.E. documents. In the first quarter of the fiscal year 2020-2021, based on the programming information OSSCA submitted to the CRA, the CRA disbursed funds in the amount of One Hundred Eighty-Seven Thousand Five Hundred and 00/100 Dollars (\$187,500.00) to OSSCA ("Q1 Payment"). However, due to OSSCA's not completing financial audits for fiscal years 2018-2019 and 2019-2020, the CRA withheld disbursement of any additional funds under the A-G.U.I.D.E. Funding Agreement in the amount of *Five Hundred and Sixty-Two Thousand Five Hundred and 00/100 Dollars (\$562,500.00)*.

#### **Fiscal Year 2020-2021 A-G.U.I.D.E. Funding Agreement:**

At the January 25, 2022 CRA Board meeting, a detailed update was provided to the Board on the status of OSSCA's fiscal year 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 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.

At the February 22, 2022 CRA Board meeting, the Board approved the issuance of a formal written notice of deficiency(ies) and an opportunity to cure pursuant to the A-G.U.I.D.E. Funding Agreement ("Notice of Deficiencies") to OSSCA. The CRA issued the aforementioned Notice of Deficiency on February 23, 2022 and delivery was confirmed on February 24, 2022. The cure period expired on March 10, 2022. In the Notice of Deficiencies, the CRA also provided reasonable notice of the CRA's request to exercise its right to access and examine all records, books, paper, or documents relating to the funding pursuant the Funding Agreement maintained by OSSCA that reflect all expenditures of funds provided by the CRA. The CRA made a public records request pursuant to the Public Records Act as well in the Notice of Deficiencies for OSSCA's financial and accounting books, records, papers, and documents relating to any funding provided by the CRA.

At the March 22, 2022 CRA Board meeting, the Board deemed that OSSCA failed to cure the deficiency(ies) to the satisfaction of the CRA as set forth in the Notice of Deficiencies and the A-G.U.I.D.E. Funding Agreement. The Board also approved the issuance of a formal written notice to OSSCA that the A-G.U.I.D.E. Funding Agreement was immediately voided and authorized the recoupment of the funding amount allocated for fiscal year 2020-2021 and disbursed by the CRA to OSSCA for the first quarter of the fiscal year 2020-2021 in the amount of One Hundred Eighty-Seven Thousand Five Hundred and 00/100 Dollars (\$187,500.00) by issuing a fifteen (15) days demand letter.

On March 25, 2022, the CRA issued the formal written notice to OSSCA that the A-G.U.I.D.E. Funding Agreement is immediately voided and demand for the recoupment of the funding amount allocated for fiscal year 2020-2021 and disbursed by the CRA to OSSCA for the first quarter of the fiscal year 2020-2021 in the amount of One Hundred Eighty-Seven Thousand Five Hundred and 00/100 Dollars (\$187,500.00).

In a letter dated April 8, 2022, OSSCA responded to the CRA's March 25, 2022 letter by refusing to honor the terms and conditions of the A-G.U.I.D.E. Funding Agreement by failing to comply with the CRA's demand for recoupment of funds.

Accordingly, if the Board wishes to pursue the recoupment of funds pursuant to the A-G.U.I.D.E. Funding Agreement, the CRA could pursue timely legal action against OSSCA. Per section 95.11(2), Florida Statutes, a legal action on a contract has a five-year (5) statute of limitations period. Accordingly, should the CRA seek to pursue legal action against OSSCA, it must do so no later than March 10, 2027, five years from OSSCA's breach of the A-G.U.I.D.E. Funding Agreement. A legal action would entail costly litigation expenses including attorney fees, court costs, discovery costs including expert witness fees which may exceed the Q1 Payment.

*Summary:*

- First Quarter of A-G.U.I.D.E. Funding Agreement:
  - One Hundred Eighty-Seven Thousand Five Hundred and 00/100 Dollars (\$187,500.00) paid to OSSCA ("Q1 Payment").
  - CRA sends demand to OSSCA for Q1 Payment for failure to cure the deficiency(ies) and OSSCA refused to return Q1 Payment.
  - If the CRA would like to continue pursuing the Q1 Payment, the CRA could pursue legal action by March 10, 2027 at the expense of the CRA which may be costly.
  - If the CRA would like to continue its evaluation of OSSCA's records, pursuant to its prior requests and pursuant to Fla. Stat. 119.07(2)(a), depending on the scope of the documentation production sought by the CRA, the CRA can decide whether it wants to proceed with incurring the cost to duplicate such records.
- Second, Third, and Fourth Quarters of A-G.U.I.D.E. Funding Agreement:
  - OSSCA no longer pursuing *Five Hundred and Sixty-Two Thousand Five Hundred and 00/100 Dollars (\$562,500.00)*.

**Freedom of Information Act Request:**

At the February 22, 2022 CRA Board meeting, the Board approved for Staff to make governmental public records requests for additional backup information that the CRA has been unable to obtain from OSSCA.

On February 25, 2022, CRA staff submitted a Freedom of Information Act (FOIA) request to the US Small Business Administration (SBA) regarding the SBA's entire file related to OSSCA's paycheck protection program (PPP) loan application and supporting documents. A fee waiver request to the SBA was also submitted on the basis that the CRA was attempting to reconcile CRA grant funds to OSSCA and funds OSSCA received from the PPP loan and subsequent forgiveness.

On March 30, 2022, the SBA responded to the CRA's FOIA request and stated that "all loan applications are processed by a lender, not SBA. Any files regarding a specific borrower are filed and maintained with the Lender, and the Agency does not maintain those applications." A public records request was made to the Florida Department of State and the Palm Beach County Public Affairs Department relative to their grant agreements with OSSCA. Additionally, as directed by the SBA's response to our FOIA request, a FOIA request was made to the Lender, Center State Bank National Association, for the PPP SBA Loan given to OSSCA. Responses from the Florida Department of State, the Palm Beach County Public Affairs Department, and Center State Bank National Association relative to OSSCA are still pending.

*Summary:*

- On February 22, 2022 CRA Board approved the motion for Staff to make governmental public records requests for backup documentation related to OSSCA.
- CRA Staff sent governmental FOIA and public records requests to the SBA, Florida Department of State, the Palm Beach County Public Affairs Department, and Center State Bank National Association and have not received any records yet.

Since OSSCA is no longer pursuing *Five Hundred and Sixty-Two Thousand Five Hundred and 00/100 Dollars (\$562,500.00)* from the A-G.U.I.D.E. Funding Agreement, Staff would like to know the Board's position on this matter. At this time, Staff is requesting the following:

- Board direction on continuing to pursue recoupment of the Q1 Payment through legal action, which could entail costly litigation expenses in excess of Q1 Payment or reserve this option for a later time. (Statute of limitations expires on March 10, 2027.)
- Board direction on continuing to pursue its right to review and inspect OSSCA's records, including pursuant to Fla. Stat. 119.07(2)(a), to determine what records exist, and depending on the scope of the documentation production sought by the CRA, the CRA can make a determination after its inspection as to whether it wants to incur the cost and expense of proceeding with having OSSCA produce the responsive documents.
- Board direction on continuing to pursue FOIA request and obtaining other grant documents requested through public records requests.

Attachment(s): Exhibit A -FY 2020-2021 - OSSCA A-G.U.I.D.E. Funding Agreement; Exhibit B - Notice of Deficiencies, February 23, 2022; Exhibit C - OSSCA Response to Notice of Deficiencies, March 14, 2022; Exhibit D - CRA Notice Letter, March 25, 2022; Exhibit E - OSSCA Response to CRA's March 25, 2022 Letter; Exhibit F - U.S. Small Business Administration FOIA response, March 30, 2022; Exhibit G - OSSCA Chairman Letter, March 21, 2022

**CRA Attorney Review:**

N/A

**Funding Source/Financial Impact:**

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