

CITY OF DELRAY BEACH




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MEMORANDUM

TO: Mayor and Commissioners

FROM: Donald B. Cooper, City Manager 

DATE: February 11, 2016

SUBJECT: Arts Garage

Background

The lease between the City and the Creative City Collaborative, Inc. (Arts Garage or AG) expires March 15, 2016. AG has requested a 10 year lease extension with option to purchase, with rent and other terms and conditions unstated. The City's options are:

1. Allow the lease to expire next month and take possession of the approximately 10,000 square feet of retail space in the Old School Square Garage. If we take possession, City's options are to lease the property to another entity, utilize the property itself or to sell the property.
2. Negotiate a new lease with the AG with or without an option to purchase property.

The City could permit the AG to occupy the property pursuant to Article 15, Section 5 *Holdover*, on a month to month basis at double the current rent. **However, this is not recommended.**

Discussion

Allowing the lease to expire (Option 1) would permit the City immediately to list the space for sale at \$2 million +/- (2.5 million less previous revenue received) to date. For reasons related to the tax exempt financing of the garage, any sale price is capped at this below market level. Alternatively, the City could lease the space at fair market rates, estimated to be between \$300,000 and \$500,000 a year, but this would result in reaching the revenue cap fairly quickly. Total future rent from all sources collected would be capped at \$2 million +/- as would the total revenue received. The cap applies to all tenants and sources of revenue (except the City or the

RE: Arts Garage
February 11, 2016
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CRA) and limits the amount of revenue we can receive until the bonds can be refinanced or defeased (2025).

By selecting option 2, the City would be continuing temporarily to subsidize the AG, in an amount dependent on the new lease terms. For example, by extending the AG lease on the current terms the City would be delaying receipt of the \$2 million, either immediately (sale scenario) or over a period of time (lease scenario). The lease could include a purchase option; over time the combination of rent received and sale proceeds could replace the delay \$2 million but the amount would subject to the cap.

Recommendation

I do not recommend a sale of the property to private party due to the requirement to sell at below market price resulting windfall at the expense of the City of Delray Beach to the buyer. If leased to private third party it is recommended that the lease should be for a period not to exceed 5 years at market rate.

If the lease to a non-profit the lease should be an annual lease to provide flexibility as to the disposition of the property. Lease rate would be determined by Commission.

DC/sy
(attachment)

DRAFT

Lessee	Begin payments	End payments	Total receipts	Comment
CRA	2/16/2012	12/18/2014	\$650,000.00	Per CRA (see <i>CRA Payments</i> tab)
CCC	2/6/2015	1/1/2016	\$10,400.04	Per lease dated Jan 20, 2015
Delray Chamber	4/29/2013	4/17/2015	\$2,480.00	Per lease dated Apr 2, 2013. For garage "fixed operating expenses".
total received			<u>\$662,880.04</u>	
Interest on 2008 taxable bonds	Dec-08	Aug-13	\$153,332.99	
Interest on 2013 taxable refunding	12/1/2013	12/1/2015	\$47,930.00	
Less net rents received			<u>\$461,617.05</u>	
Memo: 10 % of tax ex bond			\$2,463,500.00	Per CA Feb 9, 2016 memo <i>Arts Garage – Legal Review of Potential Lease of Retail Property</i>
Remaining rent capacity			<u><u>\$2,001,882.95</u></u>	Approx \$ 2.0 million vs. previously understood \$ 2.5 million

CRA Delray Beach
Account QuickReport

All Transactions

Type	Date	Num	Name	Amount
7430 · OSS Garage Retail Space Rent				
Bill	02/08/2011	36762 OSS	City of Delray Beach	50,000.00
Bill	09/30/2011		City of Delray Beach	100,000.00
Bill	02/06/2012	37563	City of Delray Beach	50,000.00
Bill	09/30/2012	2/2/12 to 9/30/12	City of Delray Beach	100,000.00
Bill	01/24/2013	38347	City of Delray Beach	50,000.00
Bill	09/30/2013	OSS Rent2/13 to 9/13	City of Delray Beach	100,000.00
Bill	01/28/2014	39069	City of Delray Beach	50,000.00
Bill	09/30/2014	OSS Garage Rent	City of Delray Beach	100,000.00
Bill	12/05/2014	39694	City of Delray Beach	50,000.00
				<u>650,000.00</u>
				<u>650,000.00</u>
				<u>650,000.00</u>
				<u>650,000.00</u>

MEMORANDUM

DATE: February 9, 2016

TO: Mayor and City Commissioners

FROM: Noel M. Pfeffer, City Attorney

SUBJECT: Arts Garage – Legal Review of Potential Lease of Retail Property

The City owns a public parking garage (the Old School Square Garage, hereinafter referred to as the “OSS Garage”) that was originally financed by tax exempt bonds in 2007. The original bonds were advance refunded in 2015. The bonds are first available to be optionally redeemed on June 1, 2025, and their final maturity date is June 1, 2035. For the past several years, the City has leased to an outside entity certain retail space within the OSS Garage, being used as The Puppetry Theatre and The Arts Garage. This memorandum addresses several concerns that have been raised regarding the legality of entering into a new lease for or selling the OSS Garage retail space. Attached as Exhibit A to this memorandum is separate memorandum prepared by Stephen D. Sanford, Esq., from the law firm of Greenberg Traurig LLP, the City’s outside bond counsel, concerning some of the complexities with respect to the outstanding bonds as they apply to the City’s options for the OSS Garage.

1. **Summary of the relevant history of the OSS Garage property.**

On September 26, 2007, the City issued tax-exempt bonds in the principal amount of \$24,635,000.00, which were used to finance and refinance certain municipal projects within the City including the OSS Garage. In 2015, the City issued tax-exempt refunding bonds to advance refund the 2007 bonds.

On January 5 2010, the City Commission first considered a request to lease the retail space within the OSS Garage. Pursuant to the lease agreement considered and approved by the City Commission at that time, the City leased the OSS Garage retail space to the CRA for the annual sum of \$150,000.00. The CRA then sublet the property, which was utilized as The Puppetry Theatre and The Arts Garage. The term of the approved CRA lease agreement commenced on February 1, 2010 and expired on January 31, 2015. According to the terms of the lease, the total rental value over the life of the agreement was \$750,000.00

On December 10, 2013, the City Commission considered and approved a contract for sale and purchase of the OSS Garage retail space (“contract”). Under the terms of the contract, the City

would sell the OSS Garage retail space to CCC for the price of \$2.5 million, with a closing date of March 15, 2016. The City would continue to lease the retail space to the CRA, under the above-described lease agreement, until its expiration on January 31, 2015. Thereafter, if the CRA did not renew the lease agreement, the City agreed to lease the retail space to CCC under the same terms and conditions until the closing date of March 15, 2016, with exception that lease payments would be the amount that was paid to the CRA for the sublet space (\$866.67 per month, or \$10,400.00 annually) as opposed to the amount that was paid by the CRA to the City (\$150,000.00 annually). Though approved by the City Commission on December 10, the contract was not executed by CCC until March 2014 and was not provided to the City Attorney's Office until April 2014.

On September 16, 2014, the City Commission considered and approved an addendum to the contract for sale and purchase of the OSS Garage retail space, whereby the time period for the City to provide survey information to CCC was extended until October 1, 2014 and the inspection period was correspondingly extended until November 15, 2014.

On January 20, 2015, the City Commission considered and approved a lease agreement with CCC for the retail space of the OSS Garage. As described above, the space was originally leased to the CRA for a period commencing on February 1, 2010 and expiring on January 31, 2010. The CRA advised the City that it would not renew the lease. Accordingly, pursuant to the terms of the contract for sale and purchase, the City agreed to lease the retail space to CCC (The Puppetry Theatre did not renew its lease) for the monthly amount of \$866.67 for a term beginning on February 1, 2015 and expiring on March 15, 2016 (the closing date under the contract). According to the terms of the lease, the total value over the life of the agreement was \$12,133.38.

The total, cumulative value of the various lease agreements approved to date for the OSS Garage retail space equals ~~\$762,133.38~~. This figure must be confirmed with the Finance Department to ensure it is the amount that was actually received by the City pursuant to the various lease agreements.

A copy of the agenda items and backup documentation for the City Commission meetings described above is available to be transmitted electronically upon request. For ease of review, it is not attached to this memorandum due to its size.

2. The legality of the current proposal for a 10 year lease for The Arts Garage.

Currently being considered is a proposal for a 10 year lease of the OSS Garage retail space to CCC for approximately \$800.00 per month. The total value of the agreement over the life of the lease is approximately \$96,000.00. Barring bond issues, which are more thoroughly explained in the accompanying memorandum by Mr. Sanford, the 10 year lease proposal is lawful under the City's current ordinances and regulations.

Section 36.12 of the City's Procurement Code, entitled "Sale, Exchange, or Lease of Real Property," is the relevant provision for consideration of the 10 year lease. Section 36.12(C) provides as follows:

*"Lease of Real Property. Prior to the City leasing any real property owned by the City for a term greater than one year (including optional renewal periods), except leasing to another governmental agency or an entity established under F.S. Section 163.01, public notice shall be given, which notice shall state the terms of the proposed lease, and the date, time, and place where the Commission shall hold the public hearing. The notice shall be published once a week for at least two (2) weeks in a newspaper of general circulation prior to the hearing."*¹

The City's Procurement Code does not require any sort of competitive solicitation prior to the Lease of Real Property. While such a solicitation may still be requested by the City Commission for policy reasons prior to any lease of property, a lease would not be invalidated under the City's Procurement Code for lack of a competitive solicitation.

Assuming that the necessary public notice, as specified above, is provided before the City Commission takes action to approve a lease of the OSS Garage retail space, the current consideration of a 10 year lease to CCC does not violate the City's Procurement Code and is therefore lawful, subject to the bond considerations more specifically addressed in the accompanying memorandum.

3. The City's legally permissible options for The Arts Garage Site.

The City is legally permitted to either sell or lease OSS Garage retail space, as long as the cumulative proceeds of such sale or lease do not exceed \$2.5 million.² As Mr. Sanford explains in the accompanying memorandum, \$2.5 million is the threshold limitation for the bonds that were issued to finance the OSS Garage and the retail space therein in order to avoid a taxable event.

The currently proposed lease to CCC for the OSS Garage retail space would not in and of itself violate \$2.5 million limitation, as the value of the lease contract would be approximately \$96,000.00 over the 10 year term of the lease agreement. Added to the cumulative value of the previously approved leases for the OSS Garage retail space, the total amount of lease payments collected by the City at the culmination of the now-under-consideration 10 year lease would be approximately \$858,133.38, well below the \$2.5 million threshold.³⁴

¹ It is important to note that Section 36.12(A), "Sale of Real Property," contains substantially the same requirements as the cited provision regarding Lease of Real Property.

² For ease of reference and consistency, the figure has been listed as \$2.5 million; however, the calculation of the figure, as explained by Mr. Sanford, is 10% of the total value of the tax exempt bonds, which is 10% of \$24,634,000.00. The exact figure is \$2,463,500.00.

³ It must be noted that any lease or sale payments of portions of the OSS Garage other than the retail space would also be included within the threshold calculation.

That being said, all final figures must be corroborated with the Finance Department as it appears that the City could not currently sell the OSS Garage retail space without accounting for previously received private payments. As a generalized example, subtracting the approximate sum of \$762,133.38 of prior rent received by the City for the OSS Garage retail space leaves a current balance of \$1,701,366.62,⁵ so as not to exceed the \$2.5 million limitation. Any lease agreement that offers an opportunity to purchase the property would need to also comply with the overall threshold limitation as identified by bond counsel.

⁴ All amounts listed in this memorandum are rough calculations. The actual amounts of total values, threshold limitations, etc. are complex accounting and tax calculations that are subject to further offsets and credits and should be calculated by the Finance Department with oversight by an accounting firm having expertise in tax-exempt financings.

⁵ See footnote 4, above.



Memorandum

TO: Noel Pfeffer, Esq., City Attorney

FROM: Stephen D. Sanford, Esq.

DATE: February 8, 2016

RE: City of Delray Beach, Florida - Old School Square Parking Garage - Retail Space

Summary Statement

For as long as the 2015 Tax-Exempt Bonds (defined below) remain outstanding, the Retail Space (as defined below) may not be sold or leased if the proceeds received therefrom exceed \$2.5 million.

Background

On September 26 2007, the City of Delray Beach, Florida (the "City") issued its Utilities Tax Revenue Bonds, Series 2007 in the principal amount of \$24,635,000 (herein, the "Original Tax-Exempt Bonds"). The Original Tax-Exempt Bonds were advance refunded last year ("2015 Tax-Exempt Bonds"). The 2015 Tax-Exempt Bonds are first available to be optionally redeemed on June 1, 2025. The final maturity date of the 2015 Tax-Exempt Bonds is June 1, 2035. The 2015 Tax-Exempt Bonds are a replacement of the Original Tax-Exempt Bonds and the same tax concerns that existed with the Original Tax-Exempt Bonds carry over to the 2015 Tax-Exempt Bonds. The net proceeds of the Original Tax-Exempt Bonds were used to finance and refinance certain municipal projects within the City including a public parking garage (herein, the "OSS Garage"). The configuration of the OSS Garage includes approximately 10,000 square feet of space on the first floor to be used for commercial and retail purposes (herein, the "Retail Space").

Under the Internal Revenue Code of 1986, as amended (the "Code"), the interest on bonds issued by a political subdivision is includable in gross income for federal income tax purposes if such bond is a "private activity bond," which is not an exempt facility bond. There is a two (2) prong test to determine if a bond is a private activity bond. The first prong is whether more than ten percent (10%) of the proceeds are being used in a trade or business. In the case of the Tax-Exempt Bonds, more than ten percent (10%) of the available proceeds is not being used for an essential governmental purpose (i.e., the Retail Space) and therefore is viewed as being used in a trade or business under the Code. The second prong of the private activity test is that more than ten percent (10%) of debt service on the bond is payable directly or indirectly by private payments. A general tax that secures bonds is an example of what would not be a private payment. Lease payments or loan installments or sale proceeds are examples of private payments. As explained below, if the Retail Space was sold for more than \$2.5 million dollars,

To: Noel Pfeffer, Esq., City Attorney
From: Stephen D. Sanford, Esq.
Date: February 8, 2016
Re: City of Delray Beach, Florida

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the excess will be treated as a private payment and that would result in the 2015 Tax-Exempt Bonds being treated under the Code as a private activity bond and in such case the interest on the 2015 Tax-Exempt Bonds will be includable in gross income for federal income tax purposes. Such change in tax status would be retroactive to the date of issuance of the 2015 Tax-Exempt Bonds and possibly retroactive to date of the Original Tax-Exempt Bonds.

If the City should lease or sell the Retail Space at fair market value, the proceeds in excess of \$2.5 million would be treated as private payments. Since we have established that there is prohibitive private use, certain actions were taken by the City to avoid there being a prohibitive private payment. As stated above, the interest on a private activity bond is subject to federal income taxes unless the bond is an exempt facility bond. If the 2015 Tax-Exempt Bonds were declared taxable, owners of such bonds would be subject to back taxes and penalties. If that should occur, the City would be sued by the Bondholders or the City would be forced into a large monetary settlement with the IRS. Examples of an exempt facility bond would be an industrial development bond, a mortgage revenue bond or a solid waste revenue bond. In the context of an exempt facility bond, Congress has determined that certain types of private activity bonds are justified even though they have all the private activity attributes. Unfortunately, a bond issued to finance commercial retail space does not fit in any category of an exempt facility bond. At the time the Original Tax-Exempt Bonds were issued and being mindful of the private activity test, the City used its own funds to finance the Retail Space. In calendar year 2008, the City reimbursed itself with the proceeds of a taxable line of credit (herein, the "Taxable Line of Credit"). The City's own funds and the proceeds from the Taxable Line of Credit are viewed as equity and therefore, the second prong of the private activity test has not been satisfied. However, this is only true if the proceeds are less than \$2.5 million. Until a decision is made regarding this matter, the Taxable Line of Credit should be renewed.

If the Retail Space was sold or leased, the proceeds would be used to retire the Taxable Line of Credit and not allocated to the 2015 Tax-Exempt Bonds. Any amount received from the disposition of the Retail Space in excess of the Taxable Line of Credit will be allocated to the 2015 Tax-Exempt Bonds and would be treated as a private payment.

Rent:

It is our understanding the City is currently receiving \$800.00 per month in rent. It is further our understanding that the City previously received an annual rent of \$150,000 for approximately five (5) years. A record of all rent received should be kept because on a cumulative basis the rent payments count toward the \$2.5 million cap. A portion of the rent equal to the interest payable on the Taxable Line of Credit would not have to be counted. All net rent received by the City while the 2015 Tax-Exempt Bonds are outstanding dramatically reduces the amount of sale proceeds the City could receive.

Tax-Exempt Bonds:

Absent waiting until the 2015 Tax-Exempt Bonds mature, any limitations on what the City could receive from the lease or sale of

To: Noel Pfeffer, Esq., City Attorney
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the Retail Space could be avoided if the 2015 Tax-Exempt Bonds were retired with the proceeds from taxable bonds. However, since the call date is June 1, 2025, a defeasance today (i.e., an advance refunding) would not eliminate the 2015 Tax-Exempt Bonds until that date. It is suggested that the City confer with its financial advisor to determine the additional interest cost by issuing taxable bonds.

Retail Space:

Subject to the limitations described herein and the suggestion described below, the ultimate use of the Retail Space should not matter. It has always been assumed that the Retail Space would be used for a non-governmental purpose.

Alternative Suggestion:

If the City or the CRA is currently using property for a governmental purpose, the City or CRA could move that operation to the Retail Space. In such event, the property currently being used could be sold. The use of the Retail Space for a governmental purpose (even if the CRA or City paid some form of rent to general fund) would not jeopardize the tax status of the 2015 Tax-Exempt Bonds. It should be kept in mind that a not-for-profit tenant is viewed as a private person under the Code and therefore a similar swap with a non-profit would not work.

Background: Questions posed by City to AG with responses received to date

1. Summary of history of the property, the sales contract and lease agreement. Including any commission action taken and the staff reports and minutes to those public meetings.

See attached City Attorney report dated 2/9/16.

Status: attached

2. Whether the current proposal for a 10 year lease with option to buy is legally permissible. Basically are we circumventing the public process given their inability to perform on the sales contract and the fact there is no extension option in lease agreement? Given the direction we are moving on the tennis stadium, how would you distinguish this request (legal question)?

See attached City Attorney report.

Status: attached

3. Bond counsel opinion letter I requested below.

See attached GreenbergTraurig memo

Status: Attached

4. Our legally permissible options for this property and pros/cons for each of these options and your recommendation for which option.

See attached GreenbergTraurig memo

Status: attached

5. The financials of the arts garage/coc since sales agreement entered into which should include how much money raised (and how and where spent) and all revenues (and how and where spent).

Responsibility: Finance

Status: Following request was made of Dan Swartz (CCC Dir. Finance & Admin) on Dec 24, 2015:

To facilitate the City's review and analysis of the financial questions the Mayor mentions, I suggest you provide me with:

- a. Three years organization-wide financial statements, including unaudited statements for your fiscal year ending Sep 30, 2015.
 - a. **Received FY 2015 unaudited statements**
- b. Available independent auditors reports for the same three year period
- c. IRS form 990 for FY 2014 (I have 2012 and 2013).
 - a. **Received FY 2014 audit report and FY 2013 compilation**
 - b. **Received forms for fiscal years beginning 2011 and ending 2014**
- d. Internal management reports that permit us to understand the relationship among your several affiliated entities / business units in Delray and Pompano (and elsewhere, if any). We are particularly interested in how you allocate revenues and expenses, given that (based on your websites) your organization's top seven staff members play the same / similar roles in both communities. An organization chart with roles and responsibilities would be helpful on this issue.
 - a. **Received description of allocation method (4 Response) and org chart (CCC Org Chart FY 2015). Developed from website staffing list (CCC Delray and Pompano staff).**
- e. Internal management reports that show program participation, revenue and expense by program and by location. Any available forecasts would be helpful.
- f. Your *pro forma* forecasts of the next three years for both the community based business units and organization-wide, in program detail.

Following supplemental information was requested of Dan Swartz (CCC Dir. Finance & Admin) on Jan 21, 2016. Response not yet received.

- a. A schedule of total contributed support raised, by source, in FY 2014, FY 2015 and FY 2016 to date. This should be a more detailed schedule than the annual line items shown in your Jan 16 letter to the Mayor. A schedule showing uses of this contributed support during the same period.
- b. Listing of the specific fund raising activities undertaken during this period, with the results of each.

6. Market lease would be for that space? Market price for the property if offered for sale?

Status: Results of informal survey

Source	Contact	Estimated fmV lease rate (NNN)	Estimated fmV sale price	Likely leasee(s) / buyer(s)
Christina Morrison	561 573-7083 ©	\$ 30 / sq ft	\$ 4 million	business incubator / retail. Subdivide but likely no more than two
Ingrid Kennemer	561 441 0967	\$ 35 - \$ 45	\$ 3.5 million	office / retail (including food market). City sell / lease entire space; let buyer take risk of subdivision. 7 units possible.
Jim Knight	756-2833©	\$ 35 - \$ 45/sq ft	\$ 5 - \$ 6 million	multiple leasees
Christian Prakas	561 929-7999 (c)	\$ 40 - \$ 50/ sq ft	\$ 5 million	multiple retail leasees
Brian Rosen				emailed Monday; will respond

Jim Knight (The Knight Group, LLC)- Work: 561-279-8601; Cell: 561-756-2833 Email:

Jim@knightgroupfl.com

Christian Prakas (Prakas & Co.) Office: 561-368-0003 Ext. 16 Cell: 561-929-7999 Email:

Christian@prakascompany.com

Ingrid Kennemer (Coastal Commercial Group)- Work: 561-441-0967; E-mail: IngridK@bellsouth.net

Brian Rosen (Marcus & Millichap Real Estate)- Work 954-245-3513 ; brian.rosen@marcusmillichap.com

Christina Morrison (Carmel Real Estate & Management) – Work: 561-921-4188 Cell: 561-573-7083

Email:

Christinadelray@gmail.com

Space is approx.	10,289	sq feet.		
Current lease rate	\$866.67	monthly =	\$10,400.04	annually

Hyothetical lease rates	\$30		\$308,670	annually
	\$35		\$360,115	
	\$40		\$411,560	
	\$45		\$463,005	
	\$50		\$514,450	

7. CRA funding to date each year.

Status: Following received from CCC Jan 29

	FY 11	FY 12	FY 13	FY 14	FY 15*
CRA Contribution	\$184,342	\$295,795	\$394,042	\$275,000	275,000

*CRA voted yesterday to withhold CCC 4th quarter funding for FY 15 till the audit for FY 15 is completed, despite the clean audit opinion for FY 14, so the total funds as of now for FY 15 is \$206,250

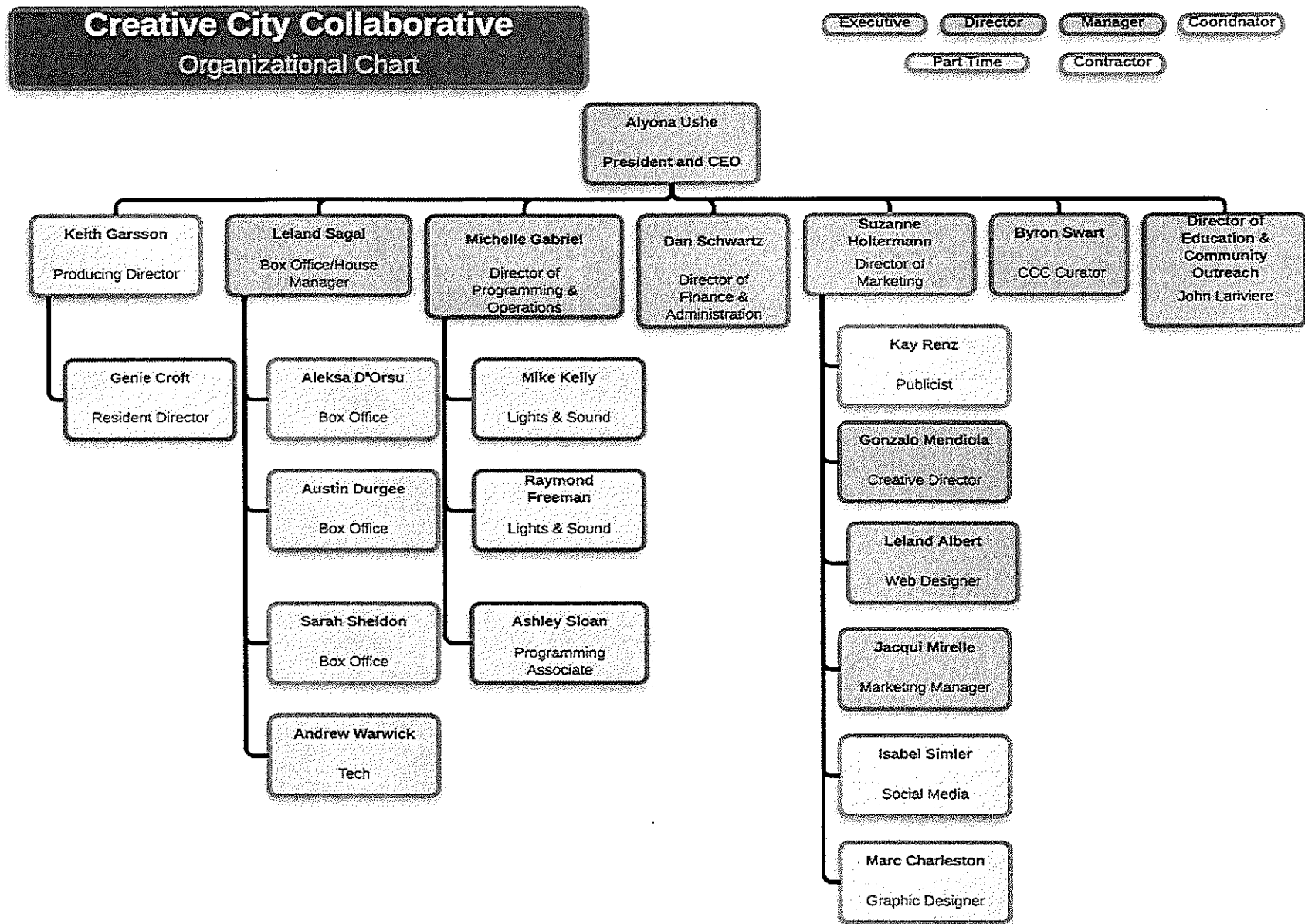
8. Salaries of the individuals running the Arts Garage/CCC.

Status: Following received from CCC Jan 29

		Other	Arts Garage	Total
Alyona Ushe	President / CEO	64,600	55,400	120,000
Michelle Gabriel	VP, Operations & Programming	55,000	10,000	65,000
Dan Schwartz	VP, Finance & Administration	54,000	21,000	75,000
Lyle Cayce	VP, Communications	55,000	30,000	85,000
Jacqui Mirrelle	AG Marketing Manager		32,000	32,000
Byron Swart	Curator	38,750	26,250	65,000
John	Director of Education/Facilities	10,000	35,000	45,000
Robert Soviero	Business Development Manager	15,000	2,000	35,000
part-time	Box Office staff	28,000	-	28,000
Graphic Designers	part time	14,040	14,040	28,080
	Wages	315,350	262,730	578,080

Followup question from the Mayor: I'm interested in redundancies. I would like to see an org chart and personnel description.

Status: See, on following pages, *CCC Org Chart FY 2015* and staffing list (*CCC Delray and Pompano staff*) developed from CCC website.



DELRAY BEACH STAFF

ALYONA ALEKSANDRA USHE, PRESIDENT/CEO & CZARINA (BOTH DB AND PB)
DAN SCHWARTZ, DIRECTOR OF FINANCE (BOTH DB AND PB)
MICHELLE GABRIEL, DIRECTOR OF PROGRAMMING AND OPERATIONS (BOTH DB AND PB)
BYRON SWART, CURATOR & ARTISTIC DIRECTOR OF CCC POMPANO BEACH (BOTH DB AND PB)
LELAND S. ALBERT JR, UI & WEB DEVELOPER (BOTH DB AND PB)
JESSICA SCHULER, CREATIVE MANAGER (BOTH DB AND PB)
MARC CHARLESTON, GRAPHIC DESIGNER (BOTH DB AND PB)

KEITH GARSSON, PRODUCING DIRECTOR, THEATRE AT ARTS GARAGE
GENIE CROFT, RESIDENT DIRECTOR, THEATRE AT ARTS GARAGE
JOHN LARIVIERE, DIRECTOR OF EDUCATION & FACILITIES
ROBERT SOVIERO, OPERATIONS AND DEVELOPMENT MANAGER
JACQUI MIRELLE, MARKETING MANAGER

POMPANO BEACH STAFF

Alyona Aleksandra Ushe, President & CEO (BOTH DB AND PB)
Dan Schwartz, Director of Finance (BOTH DB AND PB)
Michelle Gabriel, Director of Programming & Operations (BOTH DB AND PB)
Byron Swart, Artistic Director of the Cultural Art Center & Curator (BOTH DB AND PB)
Leland Albert, Designer & Web Developer (BOTH DB AND PB)
Jessica Schuler, Creative Manager (BOTH DB AND PB)
MARC CHARLESTON, GRAPHIC DESIGNER (BOTH DB AND PB)

Suzanne Holtermann, Director of Marketing
Aleksa D'Orsi, Box Office Manager

9. How the CCC was amended from a Delray Beach organization borne from the Colleta Report to take on another City (Pompano Beach) when the Colleta Report is specific to Delray and recommended the CCC be created for Delray? Who gave the CCC the authority to do that?

Status: Following received from CCC Jan 29

The mission of the CCC changed when the CRA approached the organization to identify and eventually manage the Warehouse in 2010 and then was selected to test its programming in the retail space of a parking garage. CCC is an independent 501 (c)(3) nonprofit organization. The Board of Directors approved an amendment to the bylaws and to offset overhead expenses, attract better qualified senior staff, increase its marketing and programming arm decided to pursue managing contracts outside of Delray Beach. It enabled the organization to position itself as a regional organization, able to attract better talent, leverage its marketing expenditures, and significantly grow the organization.

Following request was made of Dan Swartz (CCC Dir. Finance & Admin) on Dec 24, 2015:

To address the Mayor's governance questions, the following would be helpful:

- a. An explanation both of the strategy and implementation of your May 2014 reorganization of the former CCC of Delray Beach. Pls include an explanation of the benefits to DB and any supporting material. Among other issues, I note that the CCC of Delray Beach articles of incorporation require a two-thirds vote of the membership to approve any such amendment. It would be helpful to see the minutes of the membership meeting that included this vote and the opinion of your counsel that all was in order.
- b. An explanation both of the strategy and implementation of your expansion to Pompano, including the governance structure of the several Pompano-centric corporations Ms. Ushe formed in August and December 2015.
- c. An explanation both of the strategy you are pursuing going forward, with any supporting materials.
- d. A full list of members of the boards of your several corporations.
- e. Minutes of your 2014 and 2015 board meetings, with the board(s)' approvals of the steps taken, and to be taken, highlighted.

Status: Following additional information received from CCC Feb 1

9a. An explanation both of the strategy and implementation of your May 2014 reorganization of the former CCC of Delray Beach.

Pls include an explanation of the benefits to DB and any supporting material. Among other issues, I note that the CCC of Delray Beach articles of incorporation require a two-thirds vote of the membership to approve any such amendment. It would be helpful to see the minutes of the membership meeting that included this vote and the opinion of your counsel that all was in order.

The Creative City Collaborative of Delray Beach, Inc., a 501(c)(3) nonprofit organization, was originally created to build the cultural infrastructure that celebrates Delray Beach as a creative, authentic, and intimate City, and was originally tasked with implementing the City's cultural plan adopted by the City Commission in 2006 and CRA Plan's Arts Based Economic Development Program. The CCC was officially formed in August of 2008 but due to the downturn in economy, remained dormant until 2010 when the mission of the organization began to change with the purchase of a 15,000 square-foot warehouse by the Delray Beach CRA. The Warehouse, located at 313 NE 3rd Street in Pineapple Grove Arts District, was intended to be turned into a new art facility. As stated in the CRA 2010 Annual Report, "It is envisioned to be an all-inclusive arts incubator for visual arts, theater, dance and film. The Warehouse may include a variety of uses, including galleries, studio space, a multi-discipline performing venue, instructional programming and more. At the request of the CRA, the Collaborative is helping to identify programs that will maximize the economic impact of the facility on the Pineapple Grove Arts District and the overall Delray Beach community." The report continues to state "The CRA also partnered with the (Creative City) Collaborative to develop art programming for the 5,600 square-feet of retail space on the ground floor of the Old School Square parking garage. The Arts Garage, as it is called, will soon become a venue for visual artists, musicians, performers, film presenters and arts educators, cultivating local talent by attracting first-rate artists to the area while serving as a testing ground for future programming at the Warehouse."

The original plan for Arts Garage was to use the venue as the testing ground for an array of programming for the Warehouse, to build awareness, patron base, and a fundraising arm. The venue itself took on a life of its own and the combination of strategic planning, excellent programming, operational growth and strict management enabled the organization to exceed anyone's expectations. Thus, when the CCC found itself on the brink of losing its space in late 2012, early 2013, the community came together to keep the organization in its current location. The intimate space, although loved by all, also presents a challenge in terms of potential earned revenue stream. We expanded into Pompano to enable us to strengthen the organization and to capitalize on the new economy of scale.

Staff: This move enabled us to attract top professionals in their field. Byron Swart, CCC curator (Arts Serve), Michelle Gabrielle (Live Nation), Director of Operations, Dan Schwarts (United Methodist Church), Finance Director, and Lyle Cayce (Live Nation), VP of Communications would all be beyond our reach prior to our move.

Marketing: We are able to leverage our marketing dollar and advertise much more and in more effective major publications. Now, TV commercials on Delray's Off Broadway theater, Grammy

award musicians and art exhibitions by internationally renowned artists can be seen on major networks and our patron base is growing by leaps and bounds.

Programming: We have a much strong influence and interest from producers, presenters and other agents. Having the ability to program different size venues enables us to negotiate better contracts and enable regional talent to progress from one venue to next.

The benefits to being able to program in two counties also positions the organization as regional cultural player. It opens doors to potentially bigger donors with regional interest, strengthens our case with State funding and gives us the leverage of applying to national foundations. It's a win-win for all.

We were approached by Chris Brown from Pompano Beach CRA to respond to a RFP to manage two venues in Pompano Beach: Bailey Hotel and Ali Building. The idea was brought to the board, as outlined in August 17, 2013 Board Minutes. We were especially excited about Baily Hotel, since that would give us more leverage and specific experience in opening and running art galleries and studios. The CCC is still very interested in being considered for the management team of the Warehouse. At that meeting, the board gave instruction to proceed and respond to the RFP. Since we were not yet accepted, the board decided that no other action needed to be taken at that time.

On October 25, the CCC staff made a presentation to an independent review panel in Pompano Beach and on November 11, the CCC was selected as the designee for contract negotiations.

At the December 18, 2013 Board Meeting, the CCC Board instructed to engage Wanda Whigham as a pro-bono legal counsel to amend the CCC Bylaws and Article of Incorporations and to move forward with contract negotiations with Pompano Beach CRA.

After the CCC was selected as the top-ranked proposer for the Pompano Beach Community Redevelopment Agency's (PBCRA) "Request for Proposals for Cultural Arts Facilities Management," an email was received from the Assistant City Manager of Pompano Beach stating that "The City of Pompano Beach is interested in the possibility of entering into an agreement with CCC for the management of our amphitheater and Cultural Center based on your soon-to-be approved contract with the PBCRA. To determine whether this is a viable option for us, I am writing to request a proposal from CCC to manage both of these facilities for the City. Please let me know if CCC is interested in this potential opportunity by contacting me at your earliest convenience this week."

The email was forwarded to the Board of Directors and with a request to draft a proposal for Board's consideration. The executive committee came back with the recommendation to move forward with the draft of a proposal for Board's consideration, stating that no official action is needed since the city staff has not officially accepted the proposal.

A draft of amended Bylaws and Article of Incorporation were distributed to the CCC Board of Directors electronically. An emergency meeting was called for February 11, 2014 to access the contract with Pompano Beach CRA, and amended Bylaws and Articles of Incorporation. The Board voted unanimously to adapt amended governing documents and to sign the contract with the Pompano Beach CRA. Additional discussion took place on the pros and cons of the City Contract and the Board once again instructed the staff to move forward. The CCC made the presentation to the Pompano Beach CRA Commission and was awarded the contract.

Wanda Whigham continued to provide pro-bono legal counsel on the contract with the City of Pompano Beach. At the June 18, 2014 Board Meeting, the staff presented a draft of the City Contract for Board's approval. The Board unanimously voted to move forward. The CCC made its presentation to the City Commission and was awarded the contract in July 2014.

9b. An explanation both of the strategy and implementation of your expansion to Pompano

We found that the management capacities of Arts Garage, the Bailey Hotel and the Amp to be extremely complementary. Sharing in staff and marketing initiatives will make all venues run more effectively. In addition, the CCC was still very interested in being considered for the Warehouse, launching and running a visual arts center would give the CCC a competitive advantage.

Based on Presidents/CEO extensive experience in the arts management field, the advantages to expansion are enormous. The most obvious is the influx of funding and the reduction of CCC current overhead expenses. Human resources are the most expensive component of any arts organization and by being able to share these costs; CCC will use that revenue for additional personnel and seasoned professionals, which in return will strengthen the organization and enable it to launch new programs and initiatives.

The following rationale and strategic planning was presented to the Board of Directors at the December 2013 meeting:

Additional Funding

General:

Foundations and Government grants look at the overall budget to determine the amount awarded. By increasing the bottom line, we will automatically be eligible for bigger grants. As a multi-county organization, we will be a regional organization, opening additional opportunities to us for great support.

County & State Support:

This step will also provide us with additional leverage for further funding. Broward County provides greater opportunities for funding through its Broward County Cultural Division than does Palm Beach Cultural Council and by being in both counties we will be eligible to receive support from both. The cross county initiative will also generate additional funding from the Florida State Department of Cultural Affairs. Through the collaboration between two counties, we will be able to show a much higher impact on Florida economy and the travelling industry.

Corporate Support:

Arts Garage seating capacity limits our salability – no matter how we spin it, corporate ad will reach the maximum of 175 patrons a performance. As we consider taking on Pompano projects, we will greatly increase our appeal to potential corporate sponsors and underwriters. Not only will we reach greater amount of people but also we will be present in two different counties. Furthermore, Pompano Beach has a much greater corporate presence that will not only benefit the organization as a whole, but Arts Garage specifically.

Building a national model

Alyona reached to a number of cultural leaders including Carol Coletta (the original author of Delray Beach Cultural Plan / the Creative City Collaborative) Bill Nix, former VP of Palm Beach County Cultural Affairs, Earl Bowsorth, Director at Broward County Cultural Division and a number of her colleagues from Washington DC. None were aware of any other organization that is attempting to create cultural landscapes across counties for various municipalities but all believed it was an excellent initiative. CCC is making history and creating a viable model that can be replicated throughout the country.

Employee retention and advancement opportunities

The expansion of the organization will provide opportunities for staff to advance in their professional development. We have hit the professional development ceiling for a number of

our type A personality employees. This step will open doors to a number of current employees who would not be able to move further in the organization under its current structure both with financial compensation and professional ambition.

Build professional departments and strengthen organizational skills

By sharing overhead expenses, we will be able to allocate more funding for new staff members. Currently, our budget does not allow us to afford to hire skilled professionals in either marketing and development fields. Numerous of us wear too many hats, which makes sense in early development of an organization, but not for an entity of our size and budget. For example, I program our musical series, oversee marketing and web development, write reports and do bookkeeping. Now, we'll be able to use the additional revenue designed to offset our current expenses to hire the additional staff giving me the freedom to focus on organizational development and occasionally even get some sleep.

In addition, currently we cannot afford to hire a season director of programming. As Arts Garage reputation continues to grow and our patrons' expectations continue to expand exponentially, we need someone who knows this field inside and out. On our own, we would not have enough work or funds to justify bringing on full time programming director but with the joint projects we will be able to attract a higher caliber and notoriety of artists. I also believe that our small size prevents us from finding the right Director of Development. As we expand into numerous venues, the position becomes more viable and intriguing.

Awareness and Audience Growth

Our expansion will empower us to significantly grow our audience base. We will be able to cross promote, save on our advertising dollar and increase our advertising muscle.

The leadership of Pompano Beach CRA has made every concession that was asked of them. They eliminated the requirement of a separate board, replacing it with an advisory committee. Agreed to allow the CCC to keep the revenues, and change the time requirement from specific staff to staff and other senior staff (for example, initially they required 40% of my time and 60% of Drew's, the change was made that it is 40% of my time or senior staff; 60% of Drew's time or senior staff). That will give us the flexibility to utilize other staff as needed for both venues. I propose a different organizational structure. If the Board decides to move forward, I suggest we move to the President/CEO and Vice Presidents structure. This will enable us to appoint and hire directors for the specific venue, as the senior leaderships will continue to work on the organizational growth and development.

9.c The governance structure of the several Pompano-centric corporations Ms. Ushe formed in August and December 2015.

Since the CCC was operating in both cities under the same EIN number, the City of Pompano Beach requested that the CCC form a separate entity. Now we will be able to supply two completely separate independent audits for each municipality.

Creative City Collaborative of Pompano Beach, Inc. is an organization that is responsible for programming the Amphitheater and the new cultural center. It has a contract with the CCC, Inc. to provide personnel to meet specific goals outlying in its contract. The CCC of Pompano Beach, Inc., does not have any employees, all personnel is contracted with the CCC, Inc. Pompano Beach Arts Foundation is created to establish an endowment and raise funds to support cultural activities throughout the city, primarily in city owned facilities. Its sole purpose is the solicitation of donations, sponsorships and grants to further cultural arts within the City of Pompano Beach exclusively.

CCC role this fiscal year includes:

- ☐ Establish the foundation
- ☐ Create policies and procedures
- ☐ Determine giving mechanism
- ☐ Develop an application process
- ☐ Create review and award structure
- ☐ Establish review panels
- ☐ Build its Board of Directors
- ☐ Establish investment profile

9d. A full list of members of the boards of your several corporations.

Board of Directors: CCC of Pompano Beach & Pompano Beach Arts Foundation

Deborah Kerr, former Chair of Broward Cultural Council

Ric Green, President/CEO, Pompano Beach Chamber of Commerce

J. Stevens Cooper, GA Construction Group, Chairman/CEO

Alyona Ushe, President/CEO, CCC, Inc.

Board of Directors: CCC Inc.

Officers

Steve Michael, Chairman

Brian Rosen, Senior Vice Chair

Harold Van Arnhem, Vice Chair, Development

Adam Bankier, Treasurer

Brent Schillinger, Secretary

Board

Peter Armour (President, Arts Garage Guild)

Frank Burnside

Ronnie Dunayer

Lynn Ferguson

Kathy Freeman Costin

Pamela Goffman

Matt Gracey

Dick Lowenthal

Brent Schillinger

Alyona Ushe, President & CEO

Minutes of your 2014 and 2015 board meetings, with the board(s)' approvals of the steps taken, and to be taken, highlighted.

Provided separately.

10. What money was spent on renovations for 2015, 2014, and 2013 (and who funded this - CRA, Arts Garage, in-kind donations)?

Status: Following received from CCC Jan 29

Over \$ 100,000 in in-kind renovations in addition to ongoing improvements to equipment and facilities.

11. Capital fundraising campaign plan? How much raised to date and who was engaged to run it/raise the funds?

Status: Following received from CCC Jan 29

Capital fundraising campaigns are never announced until at least 50% of the funds are secured. CCC was only in operations for 2 1/2 years and could not secure a lead gift. Most organization our size and age struggle with raising operational and programming funds. Being task to raise funds above and beyond that for an organization our age proved impossible.

<http://www.fundraiserbasic.com/library/fruniv/108-capital-campaign-phases-part-1.html>

"The Quiet Phase

This is, in a sense, when the campaign itself begins. In this phase you will form any committees you need, solicit the top 8-10 lead gifts, and make any final adjustments to your case. Most groups are able to move through this phase in six to nine months, but it can take a year or more. The point of this phase is to raise 50-60% of the goal before announcing the campaign to the public. Once the campaign is announced, it already has a lot of momentum and there is a great deal of certainty that it will succeed. In a way, the quiet phase is your last chance to get out of the campaign without any egg on your face."