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Internal Audit Report: #21-02 Old School Square Lease Compliance

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To: The Mayor and City Commission
From: Julia Davidyan, Internal Auditor
Re: Old School Square Lease Compliance
Date: September 8, 2021

Audit Authority & Statement of Independence

The Internal Audit function is administratively and operationally independent of the programs and departments it audits, both in appearance and in fact. The Internal Auditor is accountable to the Delray Beach City Commission in accordance with the City's Charter Sections 4.10-4.11. Although the Internal Auditor reports exclusively to the City Commission, she shall review any matter related to city business upon request of the majority of the City Commission or the City Manager.

This performance audit was conducted at the direction of the City Commission, as given on July 13, 2021.

Performance Audit Overview

The United States Government Accountability Office (GAO) promulgates government generally accepted auditing standards (GAGAS) that provide a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and help improve government operations.

Performance audits are audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against the criteria. Such audits include objective analysis to assist management and those charged with governance in using the information to improve program performance and facilitate decision making by parties with responsibility to oversee or initiate corrective action and contribute to enhanced public accountability. Performance audit objectives vary widely and include compliance and current status or program condition.

Compliance with Governmental Auditing Standards

This limited-scope performance audit was conducted in accordance with GAGAS. These standards require that the internal auditor plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the conclusions based on the audit objectives. The resulting analysis presented herein is believed to provide a reasonable basis for the conclusion based on the audit objective.

Audit Objective

The objective of this limited-scope performance audit was to determine whether Old School Square Center for the Art, Inc. (OSS) complied with the eight reporting commitments of Article 6.1. (a-h) of the Lease Agreement between the City of Delray Beach and OSS entered into as of the 1st of December, 2016 (the Lease).¹

¹ The reporting commitments establish the criteria for the compliance audit.

Audit Scope & Methodology

As part of this audit, Internal Audit reviewed the reporting commitments listed in Article 6.1. of the Lease. Records were requested from OSS and subsequently analyzed in order to establish compliance with each reporting commitment. Article 25.1. addresses *record keeping*, and *audit of the books* terms of the Lease such that:

“Lessee, at all times during the term of this Lease, will keep proper books of record and account in which full, true and correct entries will be made of its transactions with respect to the operation of the Premises in accordance with generally accepted accounting practices, consistently applied, and which will properly and correctly reflect all items of income and expense in connection with the operation of the Premises.”

“...Any inspection or audit of the books and records of Lessee or the procuring of documents verifying financial and other information, by or on behalf of Lessor, shall be for Lessor’s verification of Lessee’s operation of the Premises, and shall not constitute any assumption of responsibility or liability by Landlord to Lessee or anyone else with regard to the condition, maintenance, or operation of the Premises, nor relieve Lessee of any of Lessee’s obligations.”²

Furthermore, since OSS has not responded to any further requests for information or inquires after August 11, 2021, additional records were obtained from the Delray Beach Community Redevelopment Agency (CRA) in an attempt to identify such that would bring OSS into compliance with select commitments of Article 6.1. Pertinent best practices for nonprofit organizations and guidance on proper financial reporting was further researched.

Conclusion

Based on the limited-scope performance audit conducted (compliance objective), it is concluded that, in the aggregate, OSS is not in compliance with Article 6.1. of the Lease. Appendix A provides for the detailed analysis of OSS reporting commitments and the compliance audit results. Recommendations to enhance financial record-keeping and reporting transparency are provided in commitments 6.1.b and 6.1.c.

Distribution of Report

This report is intended for the information and use of the Mayor and City Commission, management, and others within the City of Delray Beach. However, the report is a matter of public record and its distribution is not limited.

Sincerely,



Julia Davidyan, DBA, CPA, CGAP
City Internal Auditor

² Refer to Appendix B for pertinent excerpts from the Lease.

Appendix A: Analysis of OSS Lease Reporting Commitments and Compliance Audit Results

Reporting Commitment (Article 6.1):	OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease)				
<p>a. Three (3) year Strategic Plan (updated annually), "...which shall confirm Lessee has operated and is operating the Premises in compliance with its Operating Commitments."</p>	FY(17-18); Due 9/1/2017	FY(18-19); Due 9/1/2018	FY(19-20); Due 9/1/2019	FY(20-21); Due 9/1/2020	FY(21-22); Due 9/1/2021
<i>Files Received?</i>	Yes: 2016-2019 Strategic Planning Cycle PowerPoint Presentation	No (Annual update not provided)	No (Annual update not provided)**	No (There is no strategic plan covering the year 2020 in the planning cycles)	Yes: 2021-2023 Strategic Planning Cycle PowerPoint Presentation
<i>Complies?</i>	No*	No*	No*	No*	No*
<p>Conclusion: Unless other documents exist (e.g., board meeting notes, strategic planning notes) that would supplement what was provided by OSS, the current reporting period and prior years are not deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.a.</p>					

Notes:

* The PowerPoint presentations provided (2016-2019; 2021-2023) contain *Situational* and *SWOT* analyses but stop short of an industry standard strategic plan (with organization-wide measurable goals and objectives to be able to compare to actual results, performance, from year-to-year, and for purposes of reporting commitment 6.1.h. - semi-annual reporting).³

For this reason, there appears to be no clear progression from the 2016-2019 planning cycle to the 2021-2023 planning cycle via annual updates that would have revealed, for instance, when was the capital improvement of the Crest Theater introduced as an objective or goal of OSS.

** Although a PDF file dated May 8, 2019, was provided, it appears identical to the 2016-2019 PowerPoint presentation and contains no annotation indicative of an annual update. OSS COO, Holland Ryan, indicated verbally on 8/10/21 that these files are "all he had."

³ Sample components of a strategic plan for a nonprofit organization can be found here:

https://www.brighterstrategies.com/wp-content/uploads/2017/11/StrategicPlanning_2017.pdf

Reporting Commitment (Article 6.1):	OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease)				
<p data-bbox="111 217 548 391">b. Annual Budget, "...which shall confirm OSS has operated and is operating the premises in compliance with the Operating Commitments..."</p> <p data-bbox="359 448 562 477"><i>Files Received?</i></p> <p data-bbox="428 553 562 583"><i>Complies?</i></p>	<p data-bbox="632 261 806 326">FY(17-18); Due 9/1/2017</p> <p data-bbox="688 448 743 477">Yes</p> <p data-bbox="688 553 743 583">No*</p>	<p data-bbox="911 261 1085 326">FY(18-19); Due 9/1/2018</p> <p data-bbox="968 448 1022 477">Yes</p> <p data-bbox="968 553 1022 583">No*</p>	<p data-bbox="1199 261 1373 326">FY(19-20); Due 9/1/2019</p> <p data-bbox="1255 448 1310 477">Yes</p> <p data-bbox="1255 553 1310 583">No*</p>	<p data-bbox="1493 261 1667 326">FY(20-21); Due 9/1/2020</p> <p data-bbox="1549 448 1604 477">Yes</p> <p data-bbox="1549 553 1604 583">No*</p>	<p data-bbox="1772 261 1946 326">FY(21-22); Due 9/1/2021</p> <p data-bbox="1829 448 1883 477">Yes</p> <p data-bbox="1829 553 1883 583">No**</p>
<p data-bbox="111 594 1986 686">Conclusion: Unless other documents exist (e.g., Capital Improvements Budget, Organization-wide Budget and narrative) that would supplement what was provided by OSS for CRA funding purposes, the current reporting period and prior years are not deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.b.</p>					

Notes:

* The budget information provided are the CRA Budget files and narratives. At a first glance, these budgets include the Organization’s operating budget in terms of income and expenses components (separately presented), and Programing that is CRA specific, as well as brief narrative. However, since the intent of such budgets is for purposes of CRA funding (which cannot exceed 25% of an organization’s total operating budget), a close examination of the content revealed that the narratives were for the CRA-funded program components only, and not the Organization as a whole. Thus, if one wanted to understand the background for a certain income or expense components for OSS as a whole, such information would not be available in these CRA Budget files. Narratives or budget notes are instrumental to understanding an organization’s budget as they document the underlying rationale behind the budget numbers.⁴ In addition, a sperate narrative or budget for capital improvements (which is considered to be part of the Organizational budget) was not provided.

** In addition, it appears that the FY 2021-2022 annual and FY 2020-2021 quarterly budget reports (CRA reporting that provided the budget to actual comparison) may be incomplete or inaccurate. Below are notable examples and recommendations to enhance accuracy and transparency of reporting:

1. The FY 2021-2022 Combined Budget file, and quarterly reports (FY 2020-2021), do not account for the major and ongoing capital improvement (Crest Theater renovation). It is noted that in prior budget cycles, capital improvement expenses were listed as a line item (although left blank) on the same type of file. The supporting donor contribution for this project was also not identified as a source of income in the FY 2021-2022 Combined Budget file, only in certain quarters. Per inquiry with Mr. Ryan and Ms. Lawrence (OSS CFO), it was relayed that the Crest Theater capital improvement is accounted for differently now, in a separate construction budget. As such, a request was made to obtain this separate construction budget (income source and expenses), as it should be part of the annual budget packet of the Organization to confirm compliance with this lease requirement. As of the date of this report, no such information has been provided by OSS. Thus, it remains unknown what was the budgeted expense

⁴ Best practices in nonprofit are provided by the Association of Nonprofit Accountants and Finance Professionals: <https://www.anafp.org/Best-Practices-in-Nonprofit-Budgeting> Additionally, a sample budget narrative is provided here: <https://rcfdenver.org/wp-content/uploads/2017/05/Sample-Budget-Narrative.pdf>

and supporting income for this capital improvement. It is recommended for OSS to include in their budget packet all budgets (operating and capital) that are prepared for the Organization, along with the supporting narrative to enhance transparency and accountability to the public and those providing outside funding.

2. The FY 2021-2022 Combined Budget file and quarterly budget-to-actual reports (FY 2020-2021) appear to present incomplete or inaccurate actual year-to-date expense data pertaining to payroll. In this specific instance, where FY (2020-2021) year-to-date is 10/1/20 through 5/31/21, the payroll expense totals of \$370,845.96 and fringe benefits of \$33,755.82 appear identical to the already reported amounts in the FY (2020-2021) year-to-date, that is 10/1/20 through 3/31/21 quarterly budget reports. It appears unreasonable for actual payroll totals not to change between 3/31/21 and 5/31/21, unless the 5/31/21 column header date was mislabeled. In addition, the \$370,845.86 payroll expense for 10/1/20 through 3/31/21 on the quarterly budget report appears at odds with the *Statement of Activities* ('Profit & Loss' OSS ledger report printed on 06/19/21) for 10/1/21 through 3/31/21 that lists \$430,783.89 as *Payroll Expense* (Account #500). It is recommended for OSS to review the completeness and accuracy of the reporting in year-over-year and quarter-over-quarter reports in order to enhance transparency and accountability to the public and those providing outside funding, such as the CRA.
3. Public records indicate that during FY 2020-2021 (on May 6, 2021), OSS had their first draw Paycheck Protection Program (PPP) loan in the amount of \$309,709 forgiven. The proper accounting treatment of OSS's loan forgiveness would follow the Financial Accounting Standards Board (FASB) respective *Accounting Standards Codification* (ASC) and recognize a net gain (a line item such as *Other Income on Nontaxable PPP Loan Forgiveness*) on the OSS *Statement of Activities*, since OSS has previously accounted for the PPP loan issuance as a long term liability (on the *Statement of Financial Position*).⁵ From a transparency perspective, it would have been prudent of OSS to acknowledge this substantial loan forgiveness pertaining to FY 2020-2021 covered expenses when providing the Combined Budget reporting and funding application as of May, 2021, for FY 2021-2022 (especially since on March 12 of 2021, the Small Business Administration (SBA) approved a second draw PPP loan in the amount of \$283,095 to OSS).
 - It appears the PPP loan was only discussed following a question from a CRA Board member at the August 25, 2020 CRA Board meeting. Responding to this question, Ms. Eadon (OSS CEO at the time) stated that OSS "...had received a PPP loan, and those funds were about ready to run out." Based on the figures reported in the quarterly FY 2020-2021 budget to actual reports, and the commentary from Ms. Eadon, it appears that OSS may have inadvertently "double dipped" payroll expenses incurred or used the PPP loan funding for other purposes in excess of the percentage designated by the SBA. "Double dipping" is defined as being reimbursed twice for the same expense.⁶ Under this scenario, OSS would have reported to the SBA for PPP loan forgiveness purposes at least some of the payroll expense incurred, which CRA funding had already covered (as part of Program A). Such CRA covered payroll expenses should have been subtracted from total payroll expenses to avoid "double-dipping." The PPP loan was approved on April 15 of 2020, thus starting the maximum covered period of 24 weeks. In order to obtain forgiveness, at least 60% (\$185,825.40) of the \$309,709 loan amount needed to be spent on payroll related expenses.

⁵ See ASC 405-20, *Extinguishments of Liabilities* and ASC 470-50, and *Debt Modification and Extinguishments* as discussed in Technical Guide issued by the AICPA: <https://www.aicpa.org/content/dam/aicpa/interestareas/frc/downloadabledocuments/tqa-sections/tqa-section-3200-18.pdf>

⁶ See *Navigating the Interaction Between the Use of PPP Loan Proceeds, PPP Forgiveness and Restricted Funding*, published by the FMA (Fiscal Strength for Nonprofits): <https://fmaonline.net/wp-content/uploads/2021/02/Navigating-the-Interaction-Between-PPP-and-Restricted-Funding-Sources-Revised-2-2-21.pdf>

The ‘Profit & Loss’ reports provided to the CRA by OSS do not identify separately PPP covered expenses vs. not. Thus, the table below provides for the actual quarterly payroll expenses for the Organization (with payroll taxes and fringe benefits added together) as reported by OSS to the CRA in the budget reports of the respective quarters, with any assumptions made outlined in the corresponding notes. After properly subtracting CRA funded payroll expenses (as per the Q3 OSS detail report outlining use of Program A funding), it appears the required 60% use of PPP towards payroll is not met, thus pointing to a possible “double-dipping.” It is recommended that nonprofits keep separate ledger accounts or utilize other mechanisms to ensure they avoid “double-dipping,” especially if planning to apply for forgiveness of the second draw PPP. See helpful tips provided by the FMA in footnote 6.

	OSS FY 19-20 (Q3) APR 2020 - JUN 2020	OSS FY 19-20 (Q4) JUL 2020 - SEP 2020	26 Week Total*	
Payroll (inclusive of taxes & fringe benefits**)	164,391.00	193,082.05		
Less: CRA reimbursement as part of Program A***	<u>97,099.00</u>	<u>97,099.00</u>		
Remaining Expense:	<u>67,292.00</u>	<u>95,983.05</u>	163,275.05*	PPP Forgiveness Eligible*
			185,825.40	Minimum required (60% of \$309,709 Loan)

* The total count of weeks starting from 4/1/2020 to 9/30/2020 was 26 weeks. The covered period for PPP loan forgiveness period is capped at 24 weeks and starts on the date the loan is funded (4/15/2020) or the first payroll cycle thereafter. Thus, regardless of the inclusion of the payroll in the first two weeks of April or a shift in two weeks to start payroll expense accumulation from 4/15/2020, the entire covered period falls within Q3-Q4, and suggests that perhaps the \$163,275.05 should likely be adjusted to an even lower PPP eligible expense. In addition, this calculation also does not adjust down for any excess payroll of annual salaries that exceed \$100,000 that need to be excluded. An email from the OSS Finance Director to the CRA stated that as of August 27, 2020, OSS had 7 full-time employees while the rest of the staff remained on furlough. Prior quarterly reporting suggests staff was placed on furlough on or around March 14, 2020. As such, the payroll and fringe totals above, assuming the 7 FTE headcount, suggest there may be a need to review any salaries exceeding \$100,000 annually that would require adjustments for purposes of the PPP loan eligibility.

** It is noted that the fringe benefits total included in the above payroll totals was an identical expense amount in both quarters. That would appear unlikely since the payroll expense did change, thus suggesting the corresponding fringe amount should have changed as well.

*** The quarterly CRA funding/reimbursement total of \$97,009 that went towards payroll and fringe benefits was obtained from the OSS ‘Q3 Detail 8.06.2020’ file detailing the breakdown per department and program and totaled the \$187,500 quarterly CRA funding for all expense line-items listed. The same amount was assumed for Q4 as no such file was available for Q4 of FY 19-20.

Reporting Commitment (Article 6.1):	OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease)			
<p>c [1]. Annual Audit Report (including management letters (ML), and responses to management letters, if any)</p> <p style="text-align: right;"><i>Files Received?</i></p> <p style="text-align: right;"><i>Complies?</i></p>	<p>FY(16-17); Due 3/29/2018</p> <p>9/30/17 Audit Report: Yes ML: Yes</p> <p style="text-align: center;">Yes</p>	<p>FY(17-18); Due 3/29/2019</p> <p>9/30/18 Audit Report: Yes ML: Yes*</p> <p style="text-align: center;">Yes</p>	<p>FY(18-19); Due 3/28/2020</p> <p>9/30/19 Audit Report: Yes ML: Yes*</p> <p style="text-align: center;">Yes</p>	<p>FY(19-20); Due 3/29/2021</p> <p>9/30/20 Audit Report: No ML: No</p> <p style="text-align: center;">No**</p>
<p>Conclusion: The current reporting period is not deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.c.[1].</p>				

Notes:

* The 9/30/18 and 9/30/19 management letters (ML) each noted a significant deficiency related to asset and liability account reconciliations (pledges receivables, split interest agreements, accumulated depreciation, and capital lease liability accounts). Management's response was also the same in both years and indicated, "While recent changes in senior management delayed the otherwise routine completion of these accounting functions, Management is now able to prioritize the completion of timely and accurate reconciliations of all such account balances." It is recommended that OSS's management pay closer attention to account reconciliations, specifically since the same accounts have been highlighted by two different CPA firms during the respective audits to be lacking such reconciliations.

** The FY 19-20 audit is ongoing as of the date of this report.

In lieu of the FY 19-20 audited financials, a review of the most recent *Statement of Net Position* ('Balance Sheet' per OSS ledger) reports available, was conducted. Specifically, an attempt was made to identify the capital improvement project temporary restricted contribution (based on major gift) as well as the PPP loans (long-term liabilities). It was noted that the format and presentation of account details and labels appearing on the 'Balance Sheet' was at times inconsistent, as outlined in the examples below, thus recommendations were made to enhance comparability from period-to-period and overall transparency of reporting, especially during periods when audited financial statements are delayed or unavailable:

1. In reviewing presentations, files, letters, narratives and quarterly or other updates from OSS, many referred to the Crest Theater renovation, its progress, or the major private donation. However, the files contain inconsistent information and unfortunately, no record made available as of the date of this report had clearly identified when or in what amount was the donation actually made.
 - o For instance, an OSS PowerPoint presentation from July 2019, stated the following: "Finalizing plans for a \$1.6M to renovation to the interior of the Crest Theatre, a \$900,000 private donation was received to being the project, a fundraising campaign has started to raise the remaining." No such donation amount was identified as restricted funds in the audited financial statements as of 9/30/2019.
 - o The FY 2021-2022 CRA funding application submitted by OSS on 5/21/21 stated that "...Our renovation project has started and is projected to be finalized in August of 2021 with the support of a restricted private \$1.SM [sic] gift..." This "SM" typo after the \$1, remains unresolved.

- There was a *Major Gift* line item in the amount of \$900,000 listed on the Q2 FY 2020-2021 (Jan.-March. 2021) quarterly reporting to the CRA, which also coincided with a similar amount of *Other Income* listed on the OSS ‘Profit and Loss’ report that provided activity from October 2020 through March 2021. This line item remained on the quarterly report for Q3 (April – June of 2021). However, the FY 2021-2022 budget file, submitted to the CRA on 5/21/21, and which identifies year-to-date (2021) actual income and expenses, this *Major Gift* line item and amount were removed and no longer listed anywhere within that budget report.
- Finally, a letter from the donor Margaret Blume dated August 30, 2021, identifies \$2.4 million as total funding (for both the 2017 Cornell and the 2021 Crest renovations). In the letter the donor states “Be advised that money that I donated for the completion of the Crest Theater project is no longer available. This gift will no longer be serving the purpose for which it was intended.” It is unclear how the donation could no longer be available if it was contributed to the OSS and the project was ongoing.⁷ The accounting for donor-imposed restrictions on gifts and contributions is discussed next.

Because contribution of funds towards the Crest renovation gifted to OSS stipulates a restriction (temporarily, while the capital improvement project is ongoing) it is considered an asset with a donor-imposed restriction, and should be reflected on the Balance Sheet as such.⁸ When donations are restricted, nonprofits must keep records that show donors’ intents and it is a best practice to then regularly review those records to track progress toward the release of those restrictions (presumably as the construction progresses). The most recent Balance Sheet available as of 3/31/21 (printed on 5/21/21 for the CRA funding application) does not reflect or identify any restricted assets (for instance a separate bank account or fund), restricted fund balance, nor separately labeled account for this major donation. However, other detail pertaining to very small and insignificant assets and liabilities is described in detail, for instance account# 134400 *Bulk Mail Postage Account* with a balance of \$23.11 as of 3/31/21 within *Other Assets*. In reviewing a similar Balance Sheet as of September 30, 2018, one could identify substantially more detail in sections such as *Fixed Assets* and fund balance restrictions (*Equity: Unrestricted Fund Balance* and *Temp. Restricted Fund Balance*). Also in the past, the June 30, 2017 OSS Balance Sheet identified a separate cash account titled *Cornell Renovation Fund* to distinguish between any operating, petty cash and other cash funds. Thus, it appears that OSS has the tools necessary to produce transparent financial reporting with applicable account detail and should be doing so for the benefit of accountability of any fund restrictions that would be of interest to donors and other funding partners.

2. The same most recent Balance Sheet available (as of March 31, 2021; printed on May 21, 2021) did not include the second PPP loan in the amount of \$286,095 that was approved by the SBA during the month of March (on March 12, 2021, per public records). Accrual basis of accounting requires recording of the cash or receivable and the corresponding liability as of the report date (3/31/21).⁹ Instead, the Balance Sheet only showed the first PPP loan (\$309,709) and EIDL loan (\$49,900), totaling \$359,609.00 in the category of *Long-Term Liabilities*. On an earlier Balance Sheet report (May 30, 2020) one could identify the specific PPP loan in the amount of \$309,709 listed under Account # 210001 *PPP Loan*. However, on later reports the loan details account was hidden and combined in total as *Long-Term Liabilities*.¹⁰ Thus, it appears that OSS has the ability to produce transparent financial reporting and should be doing so for the benefit of accountability to its funding partners and the public.

⁷ According to an internal City email dated 8/2/21 from Missie Barletto, Public Works Director, “Bill [Mr. Bill Branning, OSS Board Member] says that the full amount of the construction funding is sitting in a bank account under OSS name now.”

⁸ See ASC 985-605 *Non-for-Profit Entities*.

⁹ See ASC 470 *Debt*.

¹⁰ For instance, the Balance Sheet as of September 30, 2020, and December 31, 2020 showed the total *Long-Term Liabilities* of \$359,609.00, after the “May 30, 2020 [sic]” presented \$309,709.00. One would have had to identify the addition of the \$49,000 as the newly issued EIDL loan during June of 2020 based on public records because it was not listed with detailed account annotation on the financial report.

Reporting Commitment (Article 6.1):	OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease)			
<p>c [2]. IRS Form 990, 990-T</p> <p><i>Files Received?</i></p> <p><i>Complies?</i></p>	<p>FY(16-17); Due 3/29/2018</p> <p>2016 Form 990: Yes; 2016 Form 990-T: Yes</p> <p>Yes</p>	<p>FY(17-18); Due 3/29/2019</p> <p>2017 Form 990: Yes; 2017 Form 990-T: Yes</p> <p>Yes</p>	<p>FY(18-19); Due 3/28/2020</p> <p>2018 Form 990: Yes; 2018 Form 990-T: No*</p> <p>No*</p>	<p>FY(19-20); Due 3/29/2021</p> <p>2019 Form 990: No; 2019 Form 990-T: No</p> <p>No**</p>
<p>Conclusion: The current reporting period and one prior year are not deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.c.[2].</p>				

Notes:

* According to public records, the Internal Revenue Service (IRS) Form 990-T (*Exempt Organization Business Income Tax Return*) has not been filed for FY 18-19 as of the date of this report. The note on the 2018 IRS Form 990 filed on 3/20/2021 stated: “The organization will file Form 990-T upon completion of the audit of the financial statements for fiscal year ended September 30, 2019. The organization estimates zero tax due with the 2018 Form 990-T.” Because the Form 990 was filed prior to the completion of the financial audit, an amended Form 990 will likely be needed as well.

** As of the date of this report, OSS has not provided any status update on anticipated filing of IRS Form 990 (*Return of Organization Exempt from Income Tax*) for FY 19-20. The six-month extension granted by the IRS has expired on 8/16/2021. Although it is best and preferred to file Form 990 once audited financials are available (in this case such are not available for OSS FY ending 9/30/2020), it is not required as per the Form 990 instructions. Compiled or trial-balance data could be used for purposes of timely Form 990 filing, in order to avoid late filing and potential penalties. It appears the Form 990 will be filed late for a second year in a row based on the current information known.¹¹

¹¹ Annual Form 990 requirements can be reviewed here: <https://www.irs.gov/pub/irs-pdf/p4839.pdf>

Reporting Commitment (Article 6.1):	OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease)				
<p>d. Annual Report (or a CRA A-Guide Report is deemed acceptable per 6.1.h: "...(i) a description of the principal activities, programs and services offered and provided; and (ii) the number of persons (adults and children) who participated,"</p> <p style="text-align: right;"><i>Files Received?</i></p> <p style="text-align: right;"><i>Complies?</i></p>	<p>FY(16-17); Due 12/29/2017</p> <p>Yes</p> <p>Yes</p>	<p>FY(17-18); Due 12/29/2018</p> <p>Yes</p> <p>Yes</p>	<p>FY(18-19); Due 12/30/2019</p> <p>Yes</p> <p>Yes</p>	<p>FY(19-20); Due 12/29/2020</p> <p>Yes</p> <p>Yes</p>	<p>FY(20-21); Due 12/29/2021</p> <p>Yes- FY 20-21: Q1, Q2, Q3</p> <p>Yes- pending Q4 provided when due</p>
<p>Conclusion: The current reporting period (pending FY 20-21, Q4 reporting) and prior years are deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.d.</p>					

Reporting Commitment (Article 6.1):	OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease)				
<p>e. Written Statement: "...Describing efforts and results to improve diversity of the OSS Board of Directors..." and programs offered.</p> <p style="text-align: right;"><i>Files Received?</i></p> <p style="text-align: right;"><i>Complies?</i></p>	FY(17-18); Due 9/1/2017	FY(18-19); Due 9/1/2018	FY(19-20); Due 9/1/2019	FY(20-21); Due 9/1/2020	FY(21-22); Due 9/1/2021
	No	No	No	Yes	No
	No	No	No	Yes*	No**
<p>Conclusion: The current reporting period and several prior years are not deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.e.</p>					

Notes:
 * The diversity Board policy and reporting was not completed prior to the year 2020-2021 year, as per email dated 8/10/21 from Mr. Ryan, OSS COO.
 ** No reporting update for FY 21-22 has been received as of the date of this report.

Reporting Commitment (Article 6.1):	OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease)				
<p>f. Written Statement (or a CRA A-Guide Report is deemed acceptable per 6.1.h:</p> <p>"Describing cooperation, participation, and collaboration with other organizations within the City."</p> <p style="text-align: center;"><i>Files Received?</i></p> <p style="text-align: right;"><i>Complies?</i></p>	<p style="text-align: center;">FY(16-17); Due 12/29/2017</p> <p style="text-align: center;">Yes: List of partnerships*</p> <p style="text-align: center;">No*</p>	<p style="text-align: center;">FY(17-18); Due 12/29/2018</p> <p style="text-align: center;">Yes: FY 17/18 quarterly reports*</p> <p style="text-align: center;">No*</p>	<p style="text-align: center;">FY(18-19); Due 12/30/2019</p> <p style="text-align: center;">Yes: List of partnerships*</p> <p style="text-align: center;">No*</p>	<p style="text-align: center;">FY(19-20); Due 12/29/2020</p> <p style="text-align: center;">Yes: List of partnerships*</p> <p style="text-align: center;">No*</p>	<p style="text-align: center;">FY(20-21); Due 12/29/2021</p> <p style="text-align: center;">Yes: List of partnerships*</p> <p style="text-align: center;">Not due yet**</p>
<p>Conclusion: The current reporting period (FY 19-20,) and prior years are not deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.f. Future reporting (FY 20-21) is not due until 12/29/21.</p>					

Notes:

* The files provided or identified within the CRA applications and quarterly reporting were a listing of partner names but contained no written statement describing the cooperation as per this lease item. Quarterly reports for FY 17/18 identified an additional listing of event or partnership dates and the number of participants, but no written description of the cooperation, as outlined in the lease commitment was found.

** Additional information pertaining to this item could be reviewed to bring OSS to potential compliance by the due date.

Reporting Commitment (Article 6.1):	Submission Due Dates (as per the Lease)				
<p>g. Semi-Annual Reports providing: (i) activities/programs/services; (ii) status of funding for the activities/programs/services, and maintenance & operation of the Premises; (iii) the number of persons who participated; and (iv) a written statement re: status on meeting the goals and objectives from the strategic plans and the Operating Commitments (which were not met, with appropriate explanation).</p> <p style="text-align: right;"><i>Files Received?</i></p> <p style="text-align: right;"><i>Complies?</i></p>	Due 1/1/17; 7/1/17	Due 1/1/18; 7/1/18	Due 1/1/19; 7/1/19	Due 1/1/20; 7/1/20	Due 1/1/21; 7/1/21
	Yes	Yes	Yes	Yes	Yes
	No*	No*	No*	No*	No*
<p>Conclusion: The current reporting period and prior years are not deemed to be in compliance with the lease terms as provided in reporting commitments 6.1.g.</p>					

Notes:
 * The files provided, which Mr. Ryan (OSS COO) believed address this item, were the CRA program reports (acceptable for commitments 6.1.d. and 6.1.f., as noted in 6.1.h.). Although this commitment does not state it could be substituted for CRA reporting, the reports provided appear to address components (i), (ii), and (iii). However, component (iv), which relates to the written statement regarding the status of goals and objectives from the strategic plan is missing. As stated in the notes for reporting commitment 6.1.a., supra, the strategic planning documentation does not provide for the organization’s goals and outcomes.

Appendix B: Excerpt of Pertinent Articles of the OSS Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as "**Lease**") is made and entered into as of the 1st day of December, 2016, (the "**Effective Date**") by and between the City of Delray Beach, a Florida Municipal Corporation (hereinafter referred to as "**Lessor**", "**City**", or "**Landlord**") and Old School Square Center for the Arts, Inc., a Florida not-for-profit corporation, (hereinafter referred to as "**Tenant**" or "**Lessee**").

ARTICLE V - OPERATING COMMITMENTS

5.1. **Operating Commitments.** Lessee acknowledges that the Lessor desires to lease the Premises to Lessee in substantial reliance on the level of programming services that Lessee has previously provided under the Prior Lease, and those Lessee has represented that Lessee will provide on the Premises, including the staff necessary to provide such programming ("**Operating Commitments**"). The Operating Commitments include programming services that support Lessee's mission and that meet certain performance standards and are more particularly described in **Exhibit "B"** attached hereto.

5.2. **Diversity.** Lessee commits to provide diverse, high-quality, enriching entertainment and educational experiences for all residents of Delray Beach. Lessee is further committed to assuring that the experience Lessee provides and the manner in which Lessee conducts its business are reflective of the diversity of the residents of the City.

5.3. **Cultural Community Center.** It is mutually agreed that a condition for the granting of this Lease is the active and continuous use of the Premises as a high-quality cultural community center and gathering place by Lessee (except for failure of use caused by reason of wars, strikes, riots, civil commotion, acts of public enemies and acts of God) for the purpose herein described, in that said use provides a needed public service and provides additional employment and other benefits to the general economy of the area.

ARTICLE VI - REPORTING COMMITMENTS

6.1. **Operating Commitments.** Lessee acknowledges that the amount of Annual Base Rent is nominal and Lessor has agreed to lease the Premises to Lessee in consideration of Lessee's Operating Commitments. To ensure that Lessee complies with its Operating Commitments, Lessee has the following reporting and document production obligations (hereinafter "**Reporting Commitments**"):

a. Not less than **thirty (30)** days prior to the commencement of each fiscal year of Lessee during the term of this Lease, Lessee's three (3) year strategic plan (updated annually) which shall confirm Lessee has operated and is operating the Premises in compliance with its Operating Commitments;

b. Not less than **thirty (30)** days prior to the commencement of each fiscal year of Lessee during the term of this Lease, Lessee's annual budget for the Lessee's next fiscal year which shall confirm that Lessee is operating and shall operate the Premises in compliance with the Operating Commitments;

c. Not more than **One hundred and eighty (180)** days after the end of each fiscal year of Lessee during the term of this Lease, an annual audit of Lessee's business operations, including management letters, and responses to management letters, if any, and Lessee's annual income tax returns (IRS Form 990, 990-T or then current equivalent), which shall confirm Lessee has operated and is operating the Premises in compliance with the Operating Commitments;

d. Lessee shall submit annual reports to the City in form reasonably acceptable to the City, within **ninety (90)** days after Lessee's fiscal year-end which reports shall include the following: (i) a description of the principal activities, programs and services offered and provided by Lessee at the Premises during the immediate preceding fiscal year time period; and (ii) the number of persons (adults and children) who participated in Lessee's activities and programs during the immediate preceding year;

e. Not less than thirty (30) days prior to the commencement of each fiscal year of Tenant during the term of this Lease, Tenant's written statement signed by Tenant which describes Tenant's efforts and results to improve diversity on Tenant's Board of Directors, that the Tenant is committed to providing diverse, high quality, enriching entertainment and educational experiences for all of City's residents and to assuring that the experience Tenant provides and the manner in which Tenant conducts its business are reflective of the diversity of the City's residents;

f. No more than ninety (90) days after the end of each fiscal year of Tenant during the term of this Lease, Tenant's written statement signed by Tenant which describes cooperation, participation, and collaboration with other organizations within the City;

g. Tenant shall submit semi-annual reports to the City in form reasonably acceptable to the City, commencing on January 1, 2017, and continuing thereafter on the first

ARTICLE XXV - RECORDS

25.1. **Records.** Lessee, at all times during the term of this Lease, will keep proper books of record and account in which full, true and correct entries will be made of its transactions with respect to the operation of the Premises in accordance with generally accepted accounting practices, consistently applied, and which will properly and correctly reflect all items of income and expense in connection with the operation of the Premises. Lessor will have the right from time to time during normal business hours and upon reasonable notice to Lessee to examine all such books, records and accounts at Lessee's office or at the office of such other person as maintains them, and to make such copies or extracts as Lessor may reasonably be required in order for Lessor to comply with any agreement, ordinance, law or regulation regarding the use of the Premises and operation of the Premises, which shall at Lessor's sole costs and expense. Lessee will furnish to Lessor, at Lessee's expense, all evidence which Lessor may from time to time reasonably request as to the accuracy and validity of or compliance with all Lessee's obligations under this Lease. Any inspection or audit of the books and records of Lessee or the procuring of documents verifying financial and other information, by or on behalf of Lessor, shall be for Lessor's verification of Lessee's operation of the Premises, and shall not constitute any assumption of responsibility or liability by Landlord to Lessee or anyone else with regard to the condition, maintenance or operation of the Premises, nor relieve Lessee of any of Lessee's obligations.

25.2. **Funding Agreement.** If at any time during the term of this Lease, Lessee is a party to a funding agreement, or grant, or it is the recipient of a conditional gift (collectively a "**Funding Agreement**"), Lessee shall timely comply with all of the terms and conditions of the Funding Agreement.