




Memorandum



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To: The Honorable Carlos A. Gimenez, Mayor, Miami-Dade County
The Honorable Jean Monestime, Chairman
and Members, Board of County Commissioners, Miami-Dade County

From: Mary T. Cagle, Inspector General 

Date: April 4, 2016

Subject: OIG Review of the Proposed \$45 Million Grant to the Museum of Science, Inc. (Museum) for the Completion of the Patricia and Philip Frost Museum of Science; Ref: April 5, 2016 – Agenda Item 8C1

By way of this memorandum, the Office of the Inspector General (OIG) provides observations and comments arising from our independent review of the proposed grant agreement with the Museum of Science, Inc. (Museum) to facilitate the completion of the new Patricia and Philip Frost Museum of Science (the Project). This matter is listed as Item 8C1 on the agenda for the April 5, 2016 meeting of the Board of County Commissioners (BCC). The companion items (ordinance authorizing a \$48 million bond issuance to fund the grant and the resolution authorizing \$40 million in Industrial Development Revenue Bonds for the direct purchase by Northern Trust Bank for the benefit of the Museum of Science) is listed as Agenda Item 5C and 10A1, respectively.

Our review was intended as independent due diligence to provide a level of assurance that the finances supporting the proposed financial rescue plan are feasible. The OIG interviewed representatives from the Department of Cultural Affairs (CUA), the Office of the Mayor, and the Museum. In addition, the OIG reviewed numerous documents related to the proposed financing plan to complete the construction of the new museum; these included:

- The proposed ordinance authorizing the issuance of not to exceed \$48 million Junior Special Lien Obligation Series 2016A Bonds (BCC Agenda Item 5C)
- The proposed resolution authorizing a Grant Agreement, in the amount of \$45 million for the completion of the new museum, including all exhibits (BCC Agenda Item 8C1)
- The proposed resolution authorizing issuance of Industrial Development Revenue Bonds in an amount not to exceed \$40 million benefiting the Museum of Science, Inc. (BCC Agenda Item 10A1)
- Building Better Communities General Obligation Bonds (BBC GOB) Grant Agreements 1-5 totaling \$165 million

- *Credit Memorandum & Request for Proposals from Financial Institutions for Patricia & Phillip Frost Museum of Science*, August 2015 (The Museum's initial financing proposal for \$100 million.)
- *New Frost Science Market and Operating Potential*, ConsultEcon, Inc., July 2015 (An evaluation of the market and operating potential of the new Frost Science currently under construction in Museum Park.)
- Museum pledge documents to support projected cash collections necessary to complete construction by November 2016
- Museum pledge documents provided to the Northern Trust Bank to serve as collateral for the bank loan

The OIG will not reiterate the project's background, as we believe it is adequately discussed in the April 5, 2016 Mayor's Memorandum made part of Agenda Item 8C1. However, we make one noteworthy observation as it relates to the change in the Grant Agreement language as discussed below. The remainder of this memorandum provides our comments regarding the proposed financial rescue plan and provides suggested requirements to be incorporated into the proposed agreement.

BBC GOB GRANT AGREEMENTS 1-5

The OIG reviewed the five (5) BBC GOB grant agreements that authorized the total of \$165 million to the Museum and noted that the provisions of Agreements 1 - 4 were very similar. In particular, Section 2 of those agreements states, in part:

Section 2. Amount of Funding Cycle Allocation and Payment

Schedule: A Project funding plan identifying the Funding Allocation to be funded by the County solely from BBC GOB Program proceeds and the costs to be funded by the Grantee through written project funding commitments from third parties is attached as Exhibit 1. ...

We take the phrase "written project funding commitments from third parties" to be monetary donations, pledges for future donations, or funds raised through other means. The Museum's portion of the total project cost was initially \$85 million (Agreement 1), and had increased to \$107 million by Agreement 3. It remained at \$107 million in Agreements 4 and 5.

In Agreement 5, executed on April 15, 2013, Section 2 of the Agreement was changed by significantly strengthening the Grantee's private funding requirement. Section 2 was revised to include a new subsection 2, titled *Representations of the Grantee*. The revised Section 2 now states in part:

Section 2. Funding Responsibilities:

- a. Project Funding Plan: A Project funding plan identifying the Funding Allocation to be funded by the County solely from BBC GOB Program

proceeds and the costs to be funded by the Grantee through written project funding commitments from third parties is attached as Exhibit 1. Included shall be a projected timetable for each Funding Cycle Allocation and the amount funded to date, if any.

- b. Representations of the Grantee: The Grantee **covenants and warrants that it has**, in combination with the Funding Allocation, **the amount of funding necessary for the completion of the Project**. The additional sources of funding are listed in Exhibit 1. (Emphasis added by OIG.)

The terms “covenants” and “warrants” should not be taken lightly. The inclusion of these terms in Agreement 5 (or the revision of Section 2 in the Agreement boilerplate) demonstrates a conscious effort by the County to raise the bar on the Grantee’s responsibility in coming up with the funds needed in order to complete the proposed project.

We now know that the Museum did not have the entire amount of \$107 million in cash. It also did not have that amount in pledges or other written commitments in April 2013 when Agreement 5 was executed. The Museum was well short of the amount it needed to fund its share of the Project cost. Pursuant to the new funding schedule (if approved by BCC), the Museum’s share of the Project cost will drop from the \$107 million commitment to \$94.5 million.

While we cannot go back in time to conduct the due diligence that should have occurred in or around April 2013, the OIG believes that, in order to protect the taxpayers’ investment and to ensure viability of other funding sources, future agreements of this type should require the grantee to fund cash requirements on a concurrent basis with the use of County funds.

OIG DUE DILIGENCE OF THE PROPOSED RESCUE PLAN

As it directly relates to the proposed agenda items, the County has been placed in an untenable position. After having approved the investment of \$165 million, the County is now faced with the possible cessation of construction—and the degradation of its investment—due to the Museum’s fundraising shortfalls. The County’s initial investment represented 61% of the \$270 million project. With the proposed increase of funding, the County’s investment will increase to \$210 million or 69% of the revised \$304.4 million project.¹

¹ The OIG must point out that in the total project cost of \$304,424,598 there is at least \$7,015,005 that was not previously included in Agreement 5, which showed the project cost of \$272,000,000. These are identified as: Marketing, Living Collections, Operational Transition, Financing Costs/Interest Reserve, and Other Project Costs. Excluding these costs (in order to obtain a one on one comparison) would bring the Project cost to \$297.4 million and the County’s contribution to 71%.

Subsequent to the meetings with representatives from the Office of the Mayor and the Department of Cultural Affairs, the OIG conducted similar meeting/discussions with representatives of the Northern Trust Bank and the Museum. The main purpose of the meetings was to independently validate the Non-GOB funds included in Exhibit B – PROJECT CASH FLOW contained in Agenda Item 8C1 (handwritten page 36).

Going forward there are three major sources of funds that are necessary to complete the Project. They are:

1. County CDT Grant	\$45,000,000
2. Northern Trust Bank Bonds	\$38,346,223
3. Pledges – General	\$9,432,821
Pledges – Exhibits	\$8,553,984

Sources 1 & 2 are contingent on each other. Thus, the OIG was concerned about the reliability of Source 3 (Pledges General/Exhibits) totaling \$17,986,805. This amount, almost \$18 million, needs to materialize—as cash—in order for this Project to be completed by November 2016.

- The OIG visited the Museum and reviewed relevant pledge and bank cash balance documents and is now reasonably assured that \$17,986,805 in pledges for General Capital and Exhibits will materialize by November 2016. We examined the Museum’s current cash position (i.e., what it has in the bank) and assessed the remaining pledges due to materialize by November 2016 (\$4.2 million, of which \$3.7 million are scheduled payments to be made by the Frosts).
- The OIG verified through examination of the Northern Trust Bank financing documents that the collateral identified to secure the \$40 million loan (\$38 million goes to the Project and \$2 million in financing reserve) was not duplicative of the other \$18 million in pledges that the Museum was contributing towards the final Project cost.
- The OIG verified that debt service funding for the \$48 million CDT bonds is reflected in projections for future CDT Museum operating subsidies based on current CDT revenue projections.
- Barring any catastrophic event, the OIG believes that the identified funding will be available to complete the project.

While the proposed agenda items only provide the financial support needed in order to complete construction of the Project—according to current cost projections—there is always the risk that conditions might change that adversely affect the ability of the Museum to complete the project on time and within budget. Moreover, the OIG is concerned that heavy reliance has been placed on the Museum consultant’s summary

report² (Exhibit H to Agenda Item 8C1, handwritten page 76). The OIG believes that the Museum and the County must be vigilant as to the potential impact of any variance in the factors used to determine the Museum's operating forecast. With that in mind, the OIG offers several suggestions for consideration to be incorporated into the proposed agreement:

1. Require the Museum to provide monthly construction status reports, including:
 - any and all draws from the Contingency Allowance Account
 - any change proposal or change order request that might impact the Contingency Allowance Account
 - cash balances to complete construction and finish the dedicated exhibits
2. Require the Museum to transfer any remaining balance in the Contingency Allowance Account to a capital renewal and replacement account.
3. Require the Museum to provide audited annual financial statements for the duration that the CDT bonds are outstanding.
4. Require the Museum to provide quarterly data on earned revenue factors such as turnstile counts, new and renewed memberships, event rentals, retail sales, etc., which would be compared to the Operating Forecast, with corresponding adjustments in operating expenses to mitigate any operating loss.
5. Require the museum to provide data on quarterly utility costs (particularly electricity and water/sewer charges) and insurance costs.

*These quarterly requirements could be modified to annual requirements after five years of operation.

We acknowledge that the proposed agreement contains County participation at the Board and Executive Board level. However, as the County's debt obligation for this proposed \$45 million grant stands at 20 years, we believe that these added requirements—when added to the agreement—will assist stakeholder oversight over the operations of such a heavily County-subsidized facility.

The OIG would like to thank the Office of the Mayor, the Department of Cultural Affairs, and the Museum of Science, Inc. for their cooperation during this review.

cc: Abigail Price-Williams, County Attorney
Edward Marquez, Deputy Mayor, Office of the Mayor
Michael Spring, Senior Advisor/Director, Department of Cultural Affairs
Cathy Jackson, Director, Audit and Management Services Department
Charles Anderson, Commission Auditor
Gillian Thomas, Chief Executive Officer, Frost Museum

² Exhibit H is Summary of Revenues and Operating Forecast originally prepared by ConsultEcon, Inc. in its report entitled *New Frost Science Market and Operating Potential*, dated July 2015, which was updated in January 2016 to eliminate the County's annual CDT operating subsidy, which was shown as \$2.5 million annually.