

COMMISSION MEMORANDUM

TO: Honorable Mayor Dan Gelber and Members of the City Commission

FROM: Alina T. Hudak, City Manager 

DATE: April 28, 2023

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING REVISIONS TO THE FORM OF GRANT AGREEMENT TO BE EXECUTED BY ORGANIZATIONS RECEIVING GRANT AWARDS FUNDED FROM THE PROCEEDS OF THE CONTEMPLATED GENERAL OBLIGATION BOND FOR ARTS & CULTURE ISSUANCE TO INCORPORATE A CONTINGENCY FOR CERTAIN GRANTS AS WELL AS OTHER REASONABLE CHANGES REQUESTED BY GRANTEE ORGANIZATIONS; AND FURTHER, AUTHORIZING THE CITY MANAGER TO FINALIZE A GRANT AGREEMENT WITH EACH GRANTEE, WHICH AGREEMENTS SHALL INCLUDE THE AMOUNT OF GRANT AWARD AND ADDITIONAL PUBLIC BENEFITS PROVIDED BY EACH GRANTEE, AS APPROVED BY THE CITY COMMISSION; AND FURTHER, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE THE FINAL GRANT AGREEMENT WITH EACH OF THE G.O. BOND GRANTEES.

BACKGROUND

At the July 20, 2022 Commission meeting, the Mayor and Commission approved Resolution No. 2022-32261, authorizing a special election, submitting to the electorate of the City of Miami Beach the question asking whether the City shall be authorized to issue general obligation bonds, not exceeding \$159,000,000, to improve facilities for resiliency of arts and cultural institutions throughout the City (the "G.O. Bonds for Arts & Culture"), including museums, performance venues, artistic playgrounds, senior/cultural centers, botanical garden, aquatic sculpture park, and related artist/workforce housing. On November 8, 2022, the voters of the City of Miami Beach approved the issuance of \$159 million in Arts and Culture Bonds as follows:

For Bonds	15,142	64.80%
Against Bonds	8,226	35.20%

Some of the projects that will be funded by the G.O. Bonds for Arts & Culture will require the City to enter into grant agreements with the recipient cultural institutions, and at the November 16, 2022 Commission meeting, the Mayor and Commission approved Resolution No. 2022-32405 directing the Administration and City Attorney's Office to negotiate and secure public benefits for residents of the City as part of the grant agreements. By way of example, the public benefits to be secured by the City in the grant agreements could include public access requirements, discounted tickets to residents and free performances or other activations. The additional public

benefits proffered by each grantee will be considered by the Commission at its April 28, 2023 meeting.

The City Attorney's office, working with City staff that will be involved in the deployment of the G.O. Bond for Arts & Culture, prepared a form of grant to be executed by the cultural arts institutions that will receive grants funded by the G.O. Bond for Arts & Culture that was approved by bond counsel and tax counsel, and subsequently by the City Commission at its March 27, 2023 meeting pursuant to Resolution No. 2023-32523 (the "Original Grant Agreement Template").

ANALYSIS

Following the Commission's approval of the Original Grant Agreement Template, certain developments resulted in the creation of a revised grant agreement template (the "Revised Grant Agreement Template"), a copy of which is attached as Exhibit A to this Memorandum.

First, certain projects that were originally budgeted as though they would be managed by the City are instead going to be managed by grantees. As a result, the Finance and Economic Resiliency Committee recommended (1) that amounts previously budgeted for project management by the City be included in the grant awards for the New World Symphony, the Holocaust Memorial and the Miami Beach Hispanic Community Center and (2) that the owner's contingency initially budgeted for use by the City be made available to the grantee organizations for the approved scope of projects, subject to the City Manager's prior approval.

In addition, certain arts and cultural organizations that will be receiving grant awards provided comments to the Original Grant Agreement Template.

Substantive revisions to the Original Grant Agreement Template are as follows:

- The City Manager may increase the Grant Award to include a defined contingency amount if the Grantee establishes that unforeseen conditions or other factors beyond the Grantee's reasonable control have resulted in increased costs, provided, (a) the use of contingency funds must comply with all restrictions applicable to the use of Grant Award funds and (b) the contingency may not be used to alter or expand the scope of the Project. (Section 1.2)
- Grant Award funds may be used to pay for costs of project supervision by an owner's representative or by Grantee's own employees. (Section 1.5)
- The intended meaning of "design costs" has been clarified to include architectural and engineering services required to develop and submit all construction documents and other submittals (including revisions) necessary to obtain all permits for the Project, as well as all other so-called "design costs," including without limitation interior design, lighting design, sound design and landscaping design. (Section 1.5)
- The intended meaning of "accessible to the public" has been clarified to stipulate that buildings, structures or other sites in which a Project is incorporated must be "reasonably" accessible during "reasonable and customary" business hours.
- For grants of less than \$1,000,000, the requirement to maintain the Project for 25 years has been eased by the addition of language stipulating that the Grantee will not be deemed in breach if it uses its best efforts to secure the funding necessary to maintain and nevertheless fails. (Section 1.5)
- Reimbursement requests will be processed within twenty-five (25) business days instead of forty-five (45) calendar days as previously contemplated. (Section 2.5(b))
- The requirements to maintain a segregated bank account and to carry a fidelity bond have been eliminated. (Section 2.6)

- The period during which the Manager has the right to conduct an evaluation of the Grantee’s operations has been defined to begin upon commencement of construction and to continue until the date that is twenty-five (25) years following Project completion. (Section 3.1)
- Cure period for addressing concerns raised by City Manager increased from ten (10) business days to thirty (30) calendar days. (Section 3.1)
- Notation has been added to make clear that Risk Management’s determination of insurance requirements should take into account the amount of the grant award as well as other factors relevant to the Project. (Section 4.1)
- Requirement that Grantee contracts with contractors and consultants include indemnity clauses in favor of the City has been eased. (Section 4.5)
- Default remedy requiring Grantee to reimburse the grant award to the City has been limited to instances where the Grantee misuses grant funds or otherwise commits a material default. (Section 6.2)
- The form to be used for “Reimbursement Requests” has been incorporated. (Exhibit E)

CONCLUSION

The Administration recommends that the Mayor and City Commission approve the Revised Grant Agreement Template and authorize the City Manager to finalize a grant agreement with each of the G.O. Bond for Arts & Culture grantees, with each such agreement to include the grant award and additional public benefit as approved by the Commission. The Administration further recommends that the Mayor and City Commission authorize the City Manager and City Clerk to execute the final grant agreements.

Applicable Area

Is this a “Residents Right To Know” item, pursuant to City Code Section 2-17?

Does this item Utilize G.O. Bond Funds?

No

Yes

Attachment:

Exhibit A – Form of Revised G.O. Bond for Arts and Culture Grant Agreement