

**Audit of Lease Agreement 4721 with Miami-Dade County and
Florida International University Board of Trustees for the
Coconut Grove Playhouse Property**

Division of State Lands

Report: A-1718DEP-019

Office of Inspector General

Internal Audit Section

Florida Department of Environmental Protection

March 12, 2018

3900 Commonwealth Boulevard, MS 40
Tallahassee, Florida 32399-3000
www.dep.gov





Audit of Lease Agreement 4721 with Miami-Dade County and
Florida International University Board of Trustees for the
Coconut Grove Playhouse Property
Division of State Lands



Report: A-1718-019

Table of Contents

Scope and Objectives	1
Methodology	1
Background	1
Results and Conclusions	3
Finding and Recommendation.....	9
Division Response.....	11

Audit of Lease Agreement 4721 with Miami-Dade County and
Florida International University Board of Trustees for the
Coconut Grove Playhouse Property
Division of State Lands

Report: A-1718DEP-019

The Florida Department of Environmental Protection (Department) Office of Inspector General (OIG) conducted an audit of Lease Agreement 4721 (Lease) with Miami-Dade County (County) and Florida International University Board of Trustees (FIU) for the Coconut Grove Playhouse Property (Project). This audit was initiated at the request of the Division of State Lands (Division).

Scope and Objectives

The scope of this audit included activities specified in the Lease and the approved Business Plan from the date of execution, October 13, 2013, through January 2018. The objectives were to:

1. Determine whether the County is meeting the obligations of the Lease
2. Evaluate the County's performance under the Business Plan

Methodology

This audit was conducted in conformance with the *International Standards for the Professional Practice of Internal auditing*, published by the Institute of Internal Auditors, and under the authority of Section 20.055, Florida Statutes (F.S.). Our procedures included a review of the Lease requirements and Business Plan, as well as status reports and related correspondence information related to the Project. We obtained Project information and support documentation from the Division and the County.

Background

On October 8, 2013, the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (BOT), entered into the Lease with the County and FIU for lease of the Coconut

Audit of Lease Agreement 4721 with Miami-Dade County and
Florida International University Board of Trustees for the
Coconut Grove Playhouse Property
Division of State Lands

Report: A-1718DEP-019

Grove Playhouse Property (Property). The Business Plan provided by the County was approved under the Lease as meeting the requirement for a Land Use Plan of the Property. The Lease requires that the Property be developed consistent with the Business Plan. The Business Plan outlines the establishment of an operating agreement between the County and GableStage, Inc. for operating, programming, and maintaining the theater facility. The Business Plan also outlines a Capital Plan for the property to establish a theater and parking within the capital budget. The County approved \$20 million in bond funding for the capital expenses of the Project. This funding was based on the square footage contained in the building program and an estimated cost of \$450 per square foot for construction. Under the Capital Plan, a timetable is established with approximate time periods for each phase of capital construction. The Business Plan outlines an Operational Forecast and plan for Property Management and Development. This includes a preliminary operating forecast for a regional theater and operation of parking, site maintenance, and compatible development.

In January 2014, the County entered into an Operation Agreement with the City of Miami (City) Department of Off-Street Parking also referred to as Miami Parking Authority (MPA), for facility management services of the parking facilities. In May 2015, the County awarded a Professional Services Agreement to Arquitectonica International Corporation (Consultant) for architectural, engineering, and specialty consultant services for the Project. In April 2015, the County also awarded an Operating and Management Agreement to GableStage, Inc. for services connected with the design, construction management, and operations of the theater on the Property.

Report: A-1718DEP-019

Results and Conclusions

Project Timetable

We reviewed the terms of the Lease and representations made by the County in the Business Plan. Paragraph 18 of the Lease states, *Time is expressly declared to be of the essence of this lease.* Paragraph 40.A. of the Lease states that the *Lessee [County] shall dedicate \$20 million specifically for the capital expenses for the Coconut Grove Playhouse project and adhere to the timetable for the capital plan as set forth in the Business Plan. Failure to do so shall constitute a default under this lease.*

Under the Capital Plan, a timetable was established with approximate time periods for work under each phase. This work was *contingent on variables ranging from the time necessary for the variety of necessary governmental approvals (ranging from County contracts for architectural and construction services to municipal reviews for historic preservation, permitting, and inspections) to unforeseen existing site conditions and weather factors.* The phases and timeframes indicated in the Capital Plan as typical for capital projects included:

- *Competitive solicitation for and approval of architectural and engineering services (6 to 12 months);*
- *Planning and design phase (18 to 24 months)*
- *Competitive bidding for construction (6 to 12 months); and*
- *Permitting, construction and commissioning – this depends on what the design phase generates for the project and the response from the selected contractor for how long the construction will take; for example, work with an existing structure on the site, new construction and the integration of these elements all can impact the construction timeline (36 to 60 months).*

Audit of Lease Agreement 4721 with Miami-Dade County and
Florida International University Board of Trustees for the
Coconut Grove Playhouse Property
Division of State Lands

Report: A-1718DEP-019

Although these timeframes are approximate and contingent on the variables indicated in the Capital Plan, we reviewed representations made by the County to evaluate the understood application of this timetable. These included the following:

- The Professional Services Agreement with the Consultant for design, engineering, and specialty services of the project through the completion of construction was executed in May 2015 for a period of four years, with the authority to extend the agreement for two additional one-year periods.
- The Coconut Grove Playhouse Development Schedule dated July 21, 2015, included an end date for construction and administration of November 12, 2019.
- In May 2016, the County requested a revision in the deadlines for the second and third phases of the Project without changing the overall completion date of October 2022. This request was not approved by the BOT.
- The Coconut Grove Playhouse Status Report dated January 13, 2017, provided to the Department from the County, stated that the *project remains on target to be completed by October 2022*.
- The Coconut Grove Playhouse Development Schedule dated February 17, 2017, included an end date for construction and administration of October 15, 2022.
- The Coconut Grove Playhouse Progress Report memo to the Board of County Commissioners from the Mayor dated December 1, 2017, stated, *it should be noted that our lease with the state requires the project to be completed by the end of 2022*.
- The Coconut Grove Playhouse Development Schedule dated December 12, 2017, included an end date for construction and administration of October 14, 2022.

These representations are consistent with the timetable included in the Business Plan with the ranges and maximum dates specified in the following table. This table also includes the requested revisions to interim phases by the County in October 2016.

Audit of Lease Agreement 4721 with Miami-Dade County and
Florida International University Board of Trustees for the
Coconut Grove Playhouse Property
Division of State Lands

Report: A-1718DEP-019

Timetable Based on Phases Outlined in the Business Plan					
<i>Execution of the Lease</i>	<i>10/15/2013</i>				
	Range	Original Maximum Range Date	Revision Requested May 2016¹	Coconut Grove Development Schedule Dated 12/12/2017	Status
<i>Competitive Solicitation/Approval of Architectural and Engineering Services</i>	6-12 months	10/15/2014	-		Agreement Executed 5/15/ 2015
<i>Planning and Design Phase</i>	18-24 months	10/15/2016	11/30/2017	8/10/2018	Pending
<i>Competitive Bidding for Construction</i>	6-12 months	10/15/2017	10/15/2018	10/15/2018	Not Started
<i>Permitting, Construction, and Commissioning</i>	36-60 months	10/15/2022	10/15/2022	10/14/2022	Not Started

While the County maintains its commitment to complete the Project by October 2022, the continued delays decrease the reliability of this commitment. Whereas the estimated range for competitive solicitation and approval of the architectural and engineering services was estimated at a maximum of 12 months, the actual time to complete was 18 months. The planning and design phase, originally estimated at a maximum of 24 months, was impacted by the delay of the Professional Services Agreement execution in May 2015. The County's requested revision to complete the planning and design phase by November 2017 exceeded the original maximum estimated range for this phase, requesting a completion date spanning 28 months.

As of December 2017, the County had overseen the substantial completion of the first three phases of design development and was preparing to move to the design of construction documents. The County had also obtained approval by the City Historic and Environmental Preservation Board (HEPB) for the master plan concept. However, this approval was overturned by the City Commission on December 14, 2017.

¹ The requested revision was not approved by the BOT.

Audit of Lease Agreement 4721 with Miami-Dade County and
 Florida International University Board of Trustees for the
 Coconut Grove Playhouse Property
 Division of State Lands

Report: A-1718DEP-019

We requested documentation from the County regarding Lease and Business Plan activities, as well as clarification regarding actions taken to address these delays in support of the County’s commitment to the Project’s completion by October 2022. The documents provided included the Project Development Schedule dated July 21, 2015, and an updated Project Development Schedule dated December 12, 2017. Based on the updated schedule, the Schematic Design Documents (Phase 1B) and the Design Development (Phase 2), have been completed as of December 5, 2017. According to the County, the project is currently at the Construction Document Phase (Phase 3A), and beginning to undergo regulatory agency reviews.

Based on the updated Project Development Schedule dated December 12, 2017, the planning and design phase is projected to be completed by August 2018, the competitive bidding for construction phase is projected to be completed by October 2018, and the construction phase is projected to be completed by October 2022. However, these are not consistent with original estimates for phase durations per the table below.

Timetable Based on Business Plan and Project Development Schedule Dated December 12, 2017					
<i>Execution of the Lease</i>	<i>10/15/2013</i>				
	Range	Original Maximum Range Date	Actual Completion Dates	Scheduled Completion Date	Range for Completion per Project Development Schedule
<i>Competitive Solicitation/Approval of Architectural and Engineering Services</i>	6-12 months	10/15/2014	April 2015		
<i>Planning and Design Phase</i>	18-24 months	10/15/2016		8/10/2018	40 months ²
<i>Competitive Bidding for Construction</i>	6-12 months	10/15/2017		10/15/2018	2 months
<i>Permitting, Construction, and Commissioning</i>	36-60 months	10/15/2022		10/14/2022	48 months

² The updated range for completion spans the period between execution of the Professional Services Agreement (April 2015) and the estimated completion date for planning and design (August 2018).

Audit of Lease Agreement 4721 with Miami-Dade County and
Florida International University Board of Trustees for the
Coconut Grove Playhouse Property
Division of State Lands

Report: A-1718DEP-019

The Project Development Schedule includes anticipated completion dates for future phases with shortened durations. According to the Director for the County Department of Cultural Affairs (Director), the Project Development Schedule is updated on an ongoing basis. Given the Project delays encountered as a result of, and prior to the City Commission's decision to overturn the HEPB approval of the master plan concept on December 14, 2107, we requested the County provide clarification of any measures planned or in place that would address progress shortfalls. The Director advised that recent events were being reviewed *to assess what impacts, if any, the new conditions imposed by the City Commission may have on the Playhouse Project and any appropriate actions required by the County.*

Business Plan Components

Operating Forecast

According to the Operational Forecast/Property Management and Development section of the Business Plan, GableStage, Inc. was required to submit annual reports and financial audits to the County to demonstrate operational and fiscal responsibility. We obtained the 2016 tax form 990 for GableStage, Inc., which reported \$1,608,552 in revenues and \$1,323,739 in expenses. Of the total revenues, \$279,053 was generated from ticket revenue and concessions. The remaining sources included memberships, fundraising, grants, and other contributions.

The Business Plan states, *a full operating pro forma will be developed by GableStage with the assistance of a management consulting firm and in cooperation with the Miami-Dade Department of Cultural Affairs. This pro forma will continue to be updated throughout the planning, design and construction of the theater, initially as a 5-year operating forecast and subsequently as a detailed operating budget for the first year of operations of the theater.* Based

Audit of Lease Agreement 4721 with Miami-Dade County and
Florida International University Board of Trustees for the
Coconut Grove Playhouse Property
Division of State Lands

Report: A-1718DEP-019

on correspondence from the Director, GableStage, Inc. was working on an updated pro-forma, which was estimated to be completed in January 2018. The Director could not provide a prior pro-forma developed as referenced in the Business Plan, and indicated that the original pro-forma was the preliminary operational budget included in the Business Plan. According to the Business Plan, the preliminary operating budget was an *order of magnitude* estimate for the regional theater. As a result, the County has not provided the Department an operating pro-forma for the allocation of revenues³ or expenses of the theater since the Lease was executed in 2013.

Operation of Parking and Site Maintenance

The County entered into the Management and Operation Agreement with MPA in January 2014 for management of the on-site parking at the Property. According to the Business Plan, the decision for parking operations and site maintenance would be made based on an *approach that generates the most revenue for both the upkeep of the site (e.g. landscaping and grounds keeping, fence repairs, lighting, etc.) and for operational and programming funding support for GableStage, subject to availability of parking and other income that may result from compatible development on the site revenues*. Based on correspondence from the Director, current revenues from the operation of the parking lot are used for repair, maintenance, and security of the property. The County provided a MPA Income and Expense Report, which included total revenues of \$564,862.38 and total expenditures of \$35,853.82 since the agreement was executed.

³ The Business Plan states that “Other Revenue” is an estimate of revenue that would be generated by on-site parking.

Report: A-1718DEP-019

Funding for the Capital Plan

The County approved \$20 million in dedicated funding for capital expenses for the Project. According to the Business Plan, *A preliminary “order of magnitude” cost estimate was done by FDA [Fisher Dachs Associates] that demonstrated that the building program could be accomplished within the \$20 million of secured and available County funding. This calculation was based on the square footage contained in the building program and an estimated cost of \$450/s.f. for construction.* The County provided a Schematic Design Estimate for the theatre dated June 22, 2017. The total construction costs as of the second quarter 2018 in this estimate was \$22,050,000 for the area of 22,245 Gross Square Feet (\$991/GSF).

The County provided a Summary of Project Expenditures as of December 12, 2017. According to this summary, County expenditures for the Project totaled \$864,305.01, which included consultant payments and other costs consistent with Project planning activities.

Our Finding and Recommendation is included in the remainder of this report.

Finding and Recommendation

Finding 1: Adherence to Requirements Under the Lease

Based on the results of this audit, the County has failed to adhere to the timetable for the Capital Plan as set forth in the Business Plan and required under Paragraph 40.A. *Special Conditions* of the Lease. To date, the Project has been subject to numerous delays which are reflected in the County’s ongoing updates and adjustments to the duration and completion of phases under the Project Development Schedule. The County’s request in October 2016 for

Audit of Lease Agreement 4721 with Miami-Dade County and
Florida International University Board of Trustees for the
Coconut Grove Playhouse Property
Division of State Lands

Report: A-1718DEP-019

revision in timing for completion of phases within the Project was not approved. This request included projected completion dates for phases the County has since been unable to meet.

With the master plan concept being overturned by the City Commission, the County may be required to either redevelop the plan, or appeal the decision. Regardless of direction, the Project will be subject to further delay. While the County maintains its commitment to completion of the Project by October 2022, the continued delays and ongoing updates diminish the reliability of this commitment.

Recommendation:

We recommend the Department take necessary steps to enforce the terms of the Lease with respect to the County's failure to adhere to the timetable set forth in the Business Plan under Paragraph 40.A. *Special Conditions* of the Lease in order to ensure the Property is managed consistent with the original management concept included in the approved Business Plan.

To promote accountability, integrity, and efficiency in state government, the OIG completes audits and reviews of agency programs, activities, and functions. Our audit was conducted under the authority of Section 20.055, F.S., and in conformance with the International Standards for the Professional Practice of Internal Auditing, published by the Institute of Internal Auditors, and Principles and Standards for Offices of Inspector General, published by the Association of Inspectors General. The audit was conducted by Christine Cullen and supervised by Valerie J. Peacock.

Please address inquiries regarding this report to the OIG's Audit Director by telephone at (850) 245-3151. Copies of final reports may be viewed and downloaded via the internet at <https://floridadep.gov/oig/internal-audit/content/final-audit-reports>. Copies may also be obtained by telephone (850) 245-3151, by fax (850)245-2994, in person or by mail at Department of Environmental Protection, Office of Inspector General, 3900 Commonwealth Boulevard, Mail Station #41, Tallahassee, FL 32399.

*Valerie J. Peacock,
Director of Auditing*

*Candie M. Fuller,
Inspector General*



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

MEMORANDUM

TO: Office of Inspector General
Internal Audit Section
FROM: Callie DeHaven, Director
Division of State Lands
SUBJECT: Report A-1718DEP-019
DATE: March 8, 2018

A handwritten signature in black ink, appearing to be "Callie DeHaven", is written over the "FROM:" line of the memorandum.

On behalf of the Division of State Lands, I wish to thank DEP's Office of Inspector General for the audit report A-1718DEP-019, Audit of Lease Agreement 4721 with Miami-Dade County and Florida International University Board of Trustees for the Coconut Grove Playhouse Property.

The Division appreciates the time and effort the Audit Section spent on their research, findings and recommendations and will work diligently with the County and our Office of General Counsel to pursue a remedy.