

City of Edmonton Office of the City Auditor

Investigation: Ukrainian Canadian Archives and Museum of Alberta Funding Agreement

June 4, 2019



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Objectives

We conducted our investigation in accordance with Administrative Procedure, Fraud Reporting & Investigation (A1464).

Our investigation objective was to determine if the City's two progress payments under the funding agreement with the Ukrainian Canadian Archives & Museum of Alberta (UCAMA) were appropriate.

Scope

This investigation was specific to the 2012 funding agreement between the City of Edmonton and UCAMA for the purpose of building a new Ukrainian Canadian museum.

We reviewed the documentation, controls, processes and procedures related to the funding agreement and progress reports received by the City. We also interviewed a number of individuals involved in the project.

Statement of Professional Practice

This project was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing



Investigation Summary

Why did we investigate?

On March 22, 2018, the Office of the City Auditor received an e-mail from the Director of Urban Renewal. The Director informed us that they had been provided with information alleging that the City had made a \$1 million payment - based on false information - to the Ukrainian Canadian Archives and Museum of Alberta (UCAMA) to build archives and a museum.

What did we find?

The City committed \$3 million to UCAMA to fund construction of the archives and museum. This amount was to be paid in three installments of \$1 million each based on the percentage of construction completed.

In August 2013, the City paid the initial \$1 million based on a Construction Progress Report received from UCAMA indicating that they had spent over 30 percent of the project budget.

In May 2014, the City paid the second \$1 million based on a Construction Progress Report received from UCAMA indicating they had now spent over 60 percent of the project budget.

We identified two issues related to the progress payments:

1. Reports provided to the City identified the percentage of project budget spent, not the percentage of project construction completion (as required by the contract).
2. There were no construction milestones identified in the agreement that would have allowed the City to independently assess the progress of the construction.

Based on our review of documentation and information received from two sources, we conclude that construction of the project was far enough along to warrant the City making the first \$1 million payment.

However, we did identify three additional issues with the second progress payment:

1. Two sources stated that the project was not far enough along to warrant the City making the second payment.
2. The validity of reported project costs related to two

small projects included in the second Construction Progress Report is questionable.

3. The City did not question the inclusion of the two projects on the Construction Progress Report despite limited information.

We are not able to determine if the City should have made the second payment of \$1 million because:

1. UCAMA sold both buildings and construction activity took place on both sites. Therefore, it is now difficult and costly to determine what percentage of the project UCAMA had completed at the time the City made the second progress payment.
2. The lack of additional documentation to provide support for the added costs relating to the two smaller projects.
3. Ambiguous contract terms that leave room for interpretation regarding admissible costs.

The City has not paid UCAMA the third and final payment of \$1 million due to the lack of construction progress.

What do we recommend?

Recommendation 1

Develop a standard approach for funding agreements

Work with the Law Branch to develop a standard approach to setting criteria and an accountability framework for funding agreements.

Recommendation 2

Notify provincial and federal levels of government of this investigation and its findings

Notify provincial and federal levels of government of this investigation and its findings.



Ukrainian Canadian Archives and Museum

Background

In 2003, UCAMA bought two historic properties for renovation on Jasper Avenue - the Brighton Block (also known as the Ernest Brown Block), and the Lodge Hotel (also known as the Pendennis Hotel). Both buildings are registered Municipal Historic Resources.

The Lodge Hotel was intended to be the future home of the Ukrainian Canadian Archives and Museum. The Brighton Block was designated to be a rental property that would help fund the adjacent museum.

This rendering shows a mock-up of what the front of the museum was intended to look like after construction was complete.

Source: <http://ucama.com/building-project/architectural-plans>



Initial Discussions

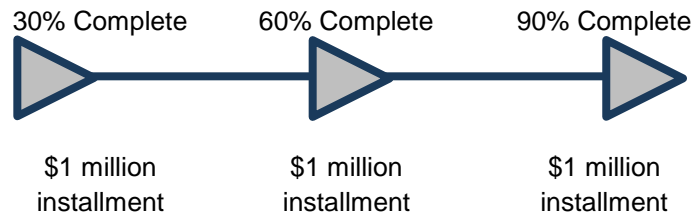
During the 2006 budget deliberations, City Council approved \$3 million to support the construction of the Ukrainian Canadian Archives and Museum of Alberta.

In 2006, the City entered into a funding agreement with UCAMA. This funding agreement required that UCAMA develop a viable business plan for the construction and operation of the Ukrainian Canadian Archives and Museum of Alberta.

This requirement, and others as per various amendments to the agreement, was not met by UCAMA. As such, the City did not provide any funding under this agreement and the agreement expired in August 2009.

Funding the Project

In 2011, UCAMA applied to the City for a renewed funding agreement. A second agreement for \$3 million was signed in February 2012. The City would pay three installments of \$1 million each based on the percentage of project construction completion on the Lodge Hotel location.



The City's funding was conditional upon the project also receiving funds from the provincial and federal governments.

UCAMA confirmed it received \$3.125 million from each of the Federal and Provincial governments. A total of \$9.25 million was committed by the three levels of government.

Project Funding

City of Edmonton	\$3 million
Province of Alberta	\$3.125 million
Government of Canada	\$3.125 million
Private donors and other sources	\$1.75 million
<hr/>	
Total project funding	\$11 million

This is an archive photo of the Ernest Brown Block (Brighton Block) and Pendennis Hotel (Lodge Hotel). Exact date unknown but after 1930.
Source: <http://ucama.com/photos/>





Project Timeline and Progress

December 2005		City Council approves \$3 million to fund construction of the Ukrainian Canadian Archives and Museum project. This involved the renovation of two properties: the Brighton Block and the Lodge Hotel.
May 2006		The first funding agreement is signed between UCAMA and the City. No funding was provided as UCAMA did not meet the requirements of the agreement.
August 2009		All existing funding agreements between UCAMA and the City expired.
February 2012		The City signed a second agreement to provide UCAMA with \$3 million to fund construction of the Ukrainian Canadian Archives and Museum at the Lodge Hotel location.
August 2013		The City paid \$1 million to UCAMA based on a construction progress report indicating that they had spent over 30 percent of their budget.
May 2014		The City paid \$1 million based on a construction progress report indicating that they had spent over 60 percent of their budget.
October 2014		The project ran out of funds and construction was halted.
June 2016		The Brighton Block was put up for sale.
October 2017		The Brighton Block sale finalized.
November 2018		The Lodge Hotel was listed as a judicial sale.
March 2019		The Lodge Hotel sale finalized.

As a result of the judicial sale, the City's Director of Urban Renewal has returned the final outstanding \$1 million dedicated to this project to the City's general funds.



Progress Payment Issues

The Office of the City Auditor, in collaboration with the City's Law Branch, and the Urban Renewal business area, reviewed the information provided by UCAMA in their Construction Progress Reports as part of this investigation.

In August 2013, the City provided UCAMA with an initial payment of \$1 million based on a Construction Progress Report from UCAMA indicating that they had spent over 30 percent of their budget.

In May 2014, the City provided UCAMA with a second payment of \$1 million based on a Construction Progress Report from UCAMA indicating that they had spent over 60 percent of their budget.

We identified two issues with the progress payments made by the City.

Progress reporting issues

Reports provided to the City did not accurately identify construction progress.

The funding agreement between the City and UCAMA indicated that the City would make three \$1 million installments based on the percentage of project completion. UCAMA was to report project completion using a Construction Progress Report.

The Construction Progress Reports received by the City identified the percentage of project budget spent, not the percentage of project completion. However, the City accepted these reports and issued both the first and second \$1 million payments based on this documentation.

No defined milestones or deliverables

The City had no clear means of independently verifying construction progress.

The scope of work described in the funding agreement consisted of nine bullet points identifying general construction activities related to the Lodge Hotel. There were no construction milestones identified in the agreement that would have allowed the City to independently assess the progress of the construction and validate the information provided by UCAMA in their Construction Progress Reports.

However, based on our review of documentation and information received from two sources, we conclude that the initial payment was valid as construction of the project was indeed more than 30 percent complete. Therefore we have no

concern with the initial payment of \$1 million.

In addition to the two points stated above, we also identified three issues specific to the second progress payment.

Construction progress overstated

Two sources state that the project was not 60 percent complete when the second payout was made.

The second Construction Progress Report provided by UCAMA indicated that they had spent 62 percent of the budget. As stated earlier, at the time the City accepted these percentages as an indication of project construction completion.

We spoke with the individual who originally reported their concerns about this project as well as an additional individual. Both individuals have construction backgrounds and in-depth knowledge of the project. Both indicated that the construction progress was not 60 percent complete when the City made the second payment in May 2014.

As UCAMA has now sold both buildings and construction activity took place on both sites, it will be difficult and costly to determine what percentage of the project was completed at the time of the second progress payment.

This picture shows the interior of the Lodge Hotel after demolition of the interior wooden structure. The basement foundation has been poured and the roof removed.

Source: Horace Oliver, Dec 2013. Retrieved from: Dec 2013 Construction Report 07, <http://ucama.com/building-project/construction-progress/>



Additional costs

Two small projects were added to the Construction Progress Report to present the project as 62% complete.

While the second Construction Progress Report provided by UCAMA indicated that they had spent 62 percent of the budget, it did so as follows:

- Standard project line-items indicated that 56 percent of the budget was spent. This would not have been sufficient to reach the City's threshold for the second payment.
- Two small projects, valued at \$1.5 million, were added to the progress report to increase budget completion to 62 percent. The progress report contained limited information on these projects.

When we asked for more information on these two smaller projects, UCAMA provided information indicating that they completed the projects in 2007 – 5 years prior to the signing of the funding agreement with the City. The funding agreement states that that construction on the project shall commence “on or before the 30th day of September 2012.” The funding agreement was signed on February 17, 2012. The terms in the funding agreement leave room for interpretation regarding whether these are admissible costs.

We also identified a second concern with the additional projects. The two projects included consultant management fees that were 28.5 percent of the value of the small projects. Since the consultant fee for the main project was reported as 5.4 percent, this raises questions as to the validity of the reported project costs. UCAMA did not provide an adequate explanation for these costs when we requested it in late 2018.

Finally, the funding agreement between UCAMA and the City provides funding for construction and renovation activities related to the Lodge Hotel only. From the information received on the two small projects it is unclear if the work was related to the Brighton Block, the Lodge Hotel, or both.

Additional costs not questioned

The City did not question the additional costs added to the Construction Progress Report.

In 2014, the City did not question the inclusion of the additional \$1.5 million on the second Construction Progress Report even though:

- In the second Construction Progress Report, the \$1.5 million in small project costs was listed separately from the main project costs, but the documentation did not include a description of the projects and/or the dates of work.
- The \$1.5 million for the two small projects was not included in the budget for the main project, or included in the first Construction Progress Report that resulted in the release of the first \$1 million payment from the City.

It is now too late to determine if the City should actually have made the second progress payment (i.e. to determine if the project was actually 60 percent complete). This is due to:

It's too late to determine if the City should have made the second progress payment.

1. UCAMA has sold both buildings and construction activity took place on both sites. Therefore, it is now difficult and costly to determine what percentage of the project UCAMA had completed at the time the City made the second progress payment.
2. There is a lack of additional documentation to provide support for the added cost.
3. The contract terms are ambiguous, this leaves room for interpretation regarding what are admissible costs.

The City has not paid UCAMA the third and final payment of \$1 million due to the lack of construction progress.

Improving Controls

We were informed that, since 2012, the City has been working on improving the terms in funding agreements for reasons unrelated to this situation. However, the changes have not been consistent for all agreements.

Examples of some of the changes include:

- Requiring a qualified third-party to prepare project progress certificates.
- Expanding audit provisions permitting greater access to project records and project premises.
- Securing an interest in the funded property until the terms of the funding agreement have been fulfilled.
- Requiring receipt of audited financial statements.

Including these changes in funding agreements will improve the management of these agreements and help reduce the risk of inappropriate progress payments.

More recently, the City has started working on developing a more standard approach to setting criteria for funding agreements and an accountability framework for funding agreements.

Conclusion and Recommendations

Conclusion

Within the limitations of the funding agreement reviewed and the investigation procedures performed, we conclude that there are opportunities for improvement of the management of funding agreements that may be applicable to other agreements as well.

These areas for improvement include:

- Ensuring clear and unambiguous wording in funding agreements.
- Ensuring proper support for and review of supporting documentation (for example: construction progress reports) to approve payment.

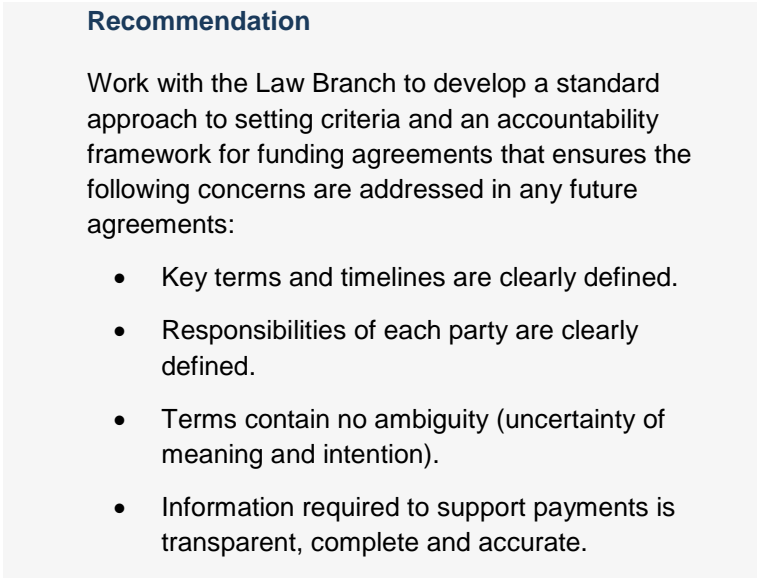
While the findings presented in this report are not necessarily indicative of a systemic problem within Economic and Environmental Sustainability Branch, they do indicate the need for a broader review of funding agreements and practices specifically related to progress report reviews.

Recommendations

The Office of the City Auditor is making two recommendations to address the issues observed during this investigation.



Recommendation 1
Develop a standard approach for funding agreements



Recommendation

Work with the Law Branch to develop a standard approach to setting criteria and an accountability framework for funding agreements that ensures the following concerns are addressed in any future agreements:

- Key terms and timelines are clearly defined.
- Responsibilities of each party are clearly defined.
- Terms contain no ambiguity (uncertainty of meaning and intention).
- Information required to support payments is transparent, complete and accurate.



Responsible party:

Branch Manager of Economic and Environmental Sustainability



Accepted by Management

Management Response

Since the funding agreement with UCAMA was executed in 2012, Management has worked with Law Branch and taken the necessary steps to ensure clear standards for criteria and accountability have been established.

A new corporate subsidy policy is being developed by Finance and Law that details terms to be included in subsidy agreements such as clear language for payment, progress report requirements, and right to audit clauses.



Implementation:

March 31, 2020

Recommendation 2
Notify provincial and federal levels of government of this investigation and its findings

Recommendation

Notify the provincial and federal levels of government of this investigation and its findings.



Responsible party:

Branch Manager of Economic and Environmental Sustainability



Accepted by Management

Management Response

The Branch Manager of Economic and Environmental Sustainability will share the report prepared by the Office of the City Auditor Investigation: Ukrainian Archives and Museum of Alberta Funding Agreement with the Minister of Culture for the Province of Alberta which is the authority that executed the grant funding agreement for both the provincial and federal grants.



Implementation:

June 28, 2019

Pictures used on front page:

1. Brighton Block – Greg Southam / Edmonton Journal.
<https://edmontonjournal.com/business/commercial-real-estate/paula-simons-ukrainian-museum-to-sell-heritage-brighton-block-to-local-developer-ken-cantor>
2. Inside Lodge Hotel, November 2014 – John Lucas / Edmonton Journal
3. <https://edmontonjournal.com/news/local-news/simons-financial-woes-halt-construction-of-ukrainian-museum>
4. Lodge Hotel – Greg Southam / Edmonton Journal.
<https://edmontonjournal.com/business/commercial-real-estate/paula-simons-ukrainian-museum-to-sell-heritage-brighton-block-to-local-developer-ken-cantor>
5. Mock-up of what the front of the museum was intended to look like after construction was complete. Source: <http://ucama.com/building-project/architectural-plans>
6. This is an archive photo of the Ernest Brown Block and Pendennis Hotel. Exact date unknown but after 1930. Source: <http://ucama.com/photos/>