



AGENDA REPORT
May 30, 2019

Staff Direction, Re: Brevard Cultural Alliance Contract, FY18-19

SUBJECT:

Direction regarding a one year contract with the Brevard Cultural Alliance utilizing Tourism Development Tax funding.

FISCAL IMPACT:

Allocation of remaining \$105,000 to the BCA from the Cultural Events Fund 1446.

DEPT/OFFICE:

Tourism Development

REQUESTED ACTION:

It is requested that the Board provide staff direction regarding the remaining funding of the Brevard Cultural Alliance for FY18-19.

SUMMARY EXPLANATION and BACKGROUND:

The Tourism Development Council has funded the Brevard Cultural Alliance (BCA) \$205,000 for administrative expenses, marketing, website and Cultural Summit for a number of years. However, there was never a contract between the Tourism Development Office (TDO) and BCA regarding the disbursement of funds and the functions that the BCA must perform to continue to receive the Tourism funding.

At the September 27, 2018 Tourism Development Council (TDC) meeting, the TDC instructed the TDO and the BCA to develop a contract for FY18-19 and no later than FY19-20. When the County Manager's Office was requested to release payment to the BCA in late 2018, the County Manager's Office instructed that only \$100,000 of the \$205,000 could be released until a contract was agreed to and executed. The County Manager subsequently met with the BCA Director and informed of this arrangement on February 1, 2019. The BCA Director stated he understood and accepted that arrangement.

The TDO and the BCA have been in negotiations for a contract to begin no later than FY19-20. A draft agreement was submitted to the BCA in May and the BCA requested a number of changes. The TDC will be discussing the FY19-20 contract at the May 22, 2019 TDC meeting.

Staff is requesting direction on the remaining current Fiscal Year funding of the BCA and the related contract:

1. Defer BCA contract negotiations for the current fiscal year to the Tourism Development Council.
2. Utilize the FY19-20 contract adopted by the TDC for the FY18-19 contract with BCA.
3. Accept the contract for this fiscal year with BCA's recommended changes to the TDC FY 19-20 contract.
4. Authorize the payment of the remaining \$105,000 budgeted to the BCA for FY18-19 without a contract.
5. Modify the draft contract before the Board, pursuant to Board direction, and submit to the TDC and/or the BCA for their consideration and input before the contract comes back to the Board for approval.

CLERK TO THE BOARD INSTRUCTIONS:

Return one certified copy of the agreement to Tourism Development Office

ATTACHMENTS:

Description

- **Draft Brevard Cultural Alliance Professional Services Contract for FY19-20**
- **FY 19 BCA Agreement strikethrough**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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Tammy.Rowe@brevardclerk.us

May 30, 2019

MEMORANDUM

TO: Peter Crannis, Tourism Development Director

RE: Item J.2., Staff Direction for Brevard Cultural Alliance Contract, FY 18-19

The Board of County Commissioners, in regular session on May 30, 2019, allocated \$105,000 to Brevard Cultural Alliance without conditions for the remainder of this Fiscal Year.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cmw

cc: Finance

**BREVARD CULTURAL ALLIANCE
PROFESSIONAL SERVICES
CONTRACT**

THIS CONTRACT is made and entered into this ___ day of _____, 2019, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as the “County,” and the BREVARD CULTURAL ALLIANCE, INC., a Florida nonprofit corporation with IRS 501(c)(3) status, hereinafter referred to as the “Brevard Cultural Alliance.”

WITNESSETH:

WHEREAS, the County desires, on behalf of the residents and business community of Brevard County, Florida, to improve the quality of life within Brevard County through the promotion of, expansion of, and increased accessibility to the arts and cultural resources; and

WHEREAS, the County encourages the attraction of new, and the retention of existing, fine and folk artists, crafts persons, cultural events, artistic, historical, scientific, and cultural sector providers and their offerings; and

WHEREAS, the County supports the development of Brevard County as a cultural and tourist destination; and

WHEREAS, the County and the State of Florida have previously designated the Brevard Cultural Alliance as the County’s designated “Local Arts Agency” to serve as the catalyst for community and cultural development in Brevard County; and

WHEREAS, the Brevard Cultural Alliance will use tourism development tax funds to promote cultural tourism in Brevard County in various ways through out-of-county advertising and marketing including but not limited to supporting cultural tourism events, programs and initiatives and providing administrative services to positively impact cultural tourism in Brevard County; and

WHEREAS, the County wishes to contract with the Brevard Cultural Alliance for the purposes of encouraging, growing, and promoting tourism in Brevard County; and

WHEREAS, the Brevard Cultural Alliance is willing and able to render services for the scope of services set forth in the Scope of Work as outlined in Section 2 herein, and under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. **TERM.** The term of this Contract shall be effective from the date approved by the Brevard County Board of County Commissioners for the remaining services provided

in Fiscal Year 2019 through September 30, 2019. This Contract may be renewed on an annual basis by written agreement of the parties and subject to any yearly budget allocation recommended by the Tourist Development Council and approved and adopted by the Board of County Commissioners. The County Manager, or his/her designee, shall have the authority to execute any renewal agreements, including, but not limited to, any yearly budget allocation as approved by the Board.

2. SCOPE OF SERVICES. The Brevard Cultural Alliance hereby agrees to use its best efforts to achieve the following tasks on behalf of the County:
 - (a) The Brevard Cultural Alliance shall be responsible for using best endeavors to monitor and coordinate efforts to ensure cultural events and art events grow and promote tourism in Brevard County. All Brevard Cultural Alliance staff efforts for which tourism development tax funds are expended under this Contract must be exclusively to the benefit of Brevard County.
 - (b) In order to confirm tourism is being promoted and grown in Brevard County, the Brevard Cultural Alliance shall adopt and implement internal standards and performance measures for identifying the best use of the tourist development tax funds allocated to the Brevard Cultural Alliance.
 - (c) An economic contribution study will be required every other year to ensure tourist development tax funds allocated for the Brevard Cultural Alliance to use under this Contract, and any amendments thereto, are being spent efficiently and effectively to grow and promote tourism in Brevard County.
 - (d) The Brevard Cultural Alliance shall provide a mid-year report and final report demonstrating the effectiveness of all out-of-County advertising and marketing and administrative support provided to all cultural tourism events, programs, and initiatives. The mid-year report is due on April 30; the final report is due on November 30.
 - (e) Quarterly reports are required of the Brevard Cultural Alliance demonstrating the effectiveness of all out-of-county advertising and marketing and administrative support provided to all cultural tourism events, programs, and initiatives by reporting estimated numbers associated with events. Quarterly report due dates are required every three (3) months after the effective date of this agreement.
3. COMPENSATION. In consideration of the programs and management services to be provided during the term of this Contract, the County hereby agrees to pay the Brevard Cultural Alliance an additional sum of \$105,000 during the term of this Contract in monthly installments. (The Brevard Cultural Alliance has already received \$100,000 in Fiscal Year 2019. This Contract provides an additional \$105,000.00 for a total sum of \$205,000.00 in Fiscal Year 2019.

- (a) The total additional compensation to the Brevard Cultural Alliance shall be \$105,000 for supporting cultural events; and providing out-of-county advertising and marketing for events and cultural groups exclusively located within Brevard County for cultural tourism events, programs and initiatives with the goal of positively impacting cultural tourism within the County.
- (b) The Brevard Cultural Alliance shall be reimbursed by the Tourist Development Office upon receipt of the appropriate invoice itemizing where and how the tourist development tax funds have been spent.

4. TERMINATION.

- (a) For Convenience: Either party may terminate this Contract by providing sixty (60) days written notice to the other party.
- (b) For Cause: If the County determines that the Brevard Cultural Alliance has failed in any material respect to fulfill the obligations found in this Contract, the County shall give the Brevard Cultural Alliance a written notice of any deficiency and by allowing the Brevard Cultural Alliance thirty (30) business days to correct the deficiency. If the Brevard Cultural Alliance fails to correct the deficiency within this time, the County shall have the option to immediately terminate this Contract at the expiration of the thirty (30) business day time period. Any of the following items shall be considered material failures under this Contract:
 - i. If the Brevard Cultural Alliance should be adjudged bankrupt.
 - ii. If the Brevard Cultural Alliance should refuse or fail to provide the services contemplated by this Contract unless an extension of time is provided.
 - iii. If the Brevard Cultural Alliance disregards laws, ordinance, or instructions from the County or is otherwise found to have substantially violated a provision of this Contract.
- (c) Compensation upon Termination: In the event this Contract is terminated pursuant to this section, unless otherwise agreed upon by the County, the Brevard Cultural Alliance shall only receive payment for work satisfactorily completed prior to the termination date.

5. INDEPENDENT CONTRACTORS. The parties to this Contract, their employees and agents, are independent contractors and not employees or agents of each other. Nothing in this Contract shall be interpreted to establish any relationship other than that of independent contractors during and after the term of this Contract. The Brevard Cultural Alliance agrees that it shall be responsible for all acts and omissions of its subcontractors to the same extent the Brevard Cultural Alliance would be responsible if committed directly by the Brevard Cultural Alliance. The Brevard Cultural Alliance is solely responsible for compliance with all labor, health care, and

tax laws pertaining to the Brevard Cultural Alliance, its officers, agents, and employees. Nothing in this Contract shall be deemed or construed to create a joint venture, partnership, agency, or employee/employer relationship between the parties for any purpose, including, but not limited to, taxes or employee benefits. Each party will be solely responsible for the payment of all taxes and insurance for its employees and business operations.

6. **SUBCONTRACTORS.** The Brevard Cultural Alliance, its subcontractors, subconsultants, agents, servants, or employees agree to be bound by the terms and conditions of this Contract and any agreements for work performed in accordance with this Contract must incorporate the terms of this Contract.

7. **INSURANCE.** The Brevard Cultural Alliance shall procure and maintain during the life of this Contract insurance of the types and subject to the limits set forth below. The Brevard Cultural Alliance shall also provide the County with evidence of this insurance in the form of Certificates of Insurance which shall be subject to the County's approval for adequacy. The County shall be an additional insured on policies with respect to all claims arising out of the work performed under this Contract. The County shall be an additional insured and shall receive the same notification rights that are provided to the first named insured with respect to cancellation and/or nonrenewal. The Brevard Cultural Alliance is responsible for ensuring that any subcontractors or subconsultants used to complete the work outlined in this Contract comply with all the insurance requirements contained herein. At its own expense, the Brevard Cultural Alliance shall keep in force and at all times maintain during the term of this Agreement the following minimum levels of insurance:
 - (a) **General Liability Insurance:** General Liability Insurance issued by responsible insurance companies as outlined in subsection (d) below, with combined single limits of not less than one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
 - (b) **Automobile Liability Insurance** to include coverage for all owned, non-owned and rented vehicles with a minimum of \$1,000,000 combined single limit for each occurrence.
 - (c) **Workers' Compensation Coverage:** Full and complete Workers' Compensation Coverage, as required by State of Florida law, shall be provided.
 - (d) **Directors and Officers Liability Coverage:** Directors and Officers liability coverage with minimum limits of one million dollars (\$1,000,000.00) per occurrence.

- (e) Fiduciary Coverage (Employee Theft Insurance or a Fidelity Bond) in the minimum amount of \$500,000.
- (f) The County, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds for any and all liability arising out of the Brevard Cultural Alliance's performance of this contract, or out of automobiles owned, leased, hired, or borrowed by the Brevard Cultural Alliance. The coverage shall contain no special limitations on scope of protection offered to the County, its officers, employees, agents, and/or volunteers.

Each policy, except those for Worker's Compensation, must include an additional insured endorsement in favor of the County on the original policy and all renewals or replacements during the term of this Agreement. Brevard Cultural Alliance must maintain any policy or coverage written on a claims-made basis in force until the third anniversary of the expiration of this Agreement.

The County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action if replacement insurance meeting the requirements and specifications therein cannot be obtained. All insurance policies shall be issued by responsible companies who are licensed and authorized under the laws of the State of Florida.

8. INDEMNIFICATION. The Brevard Cultural Alliance shall indemnify and hold harmless the County, its officers, officials, employees, agents, and volunteers from and against all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting from the performance of its work under this Contract, where such claim, damage, loss or expense is caused, in whole or in part, by the act or omission of the Brevard Cultural Alliance, or anyone directly or indirectly employed by the Brevard Cultural Alliance. The parties acknowledge specific consideration has been exchanged for this provision. The County's indemnity and liability obligations hereunder shall be subject to the County's common law right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing in this Contract is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall constitute a waiver of the County's sovereign immunity.

The Brevard Cultural Alliance, without exception, shall also indemnify and hold harmless the County, its officers, officials, employees, agents, and volunteers from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or item manufactured by the Brevard Cultural Alliance.

9. CONFLICT OF INTEREST. Notwithstanding agreements already in place, the Brevard Cultural Alliance represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder.
The Brevard Cultural Alliance shall notify the County in writing by certified mail of all potential conflicts of interest which may influence or appear to influence the Brevard Cultural Alliance's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest, or circumstance, the nature of work that the Brevard Cultural Alliance may undertake and request an opinion from the County as to whether the circumstances would, in the opinion of the County, constitute a conflict of interest if entered into by the Brevard Cultural Alliance. The County agrees to notify the Brevard Cultural Alliance within thirty (30) days of its opinion.
10. CONTRACT ADMINISTRATION. The County Manager, or his/her designee, shall provide budget oversight, performance monitoring and administration of this Contract.
11. NOTICE. Notice under this Contract shall be given to the County by mailing written notice, postage prepaid, to the County Manager's Office, 2725 Judge Fran Jamieson Way, Building C, 3rd Floor, Viera, Florida 32940; and notice shall be given to the Brevard Cultural Alliance by mailing written notice, postage prepaid, to the Chair of the Brevard Cultural Alliance, Brevard Cultural Alliance, Inc., 2725 Judge Fran Jamieson Way, C-307, Viera, Florida 32940.
12. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY). The Brevard Cultural Alliance:
 - (a) Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Brevard Cultural Alliance during the term of the contract; and
 - (b) Shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of

all new employees hired by the subcontractor during the term of this Contract;
and

- (c) Agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the Brevard Cultural Alliance's enrollment in the program. This includes maintaining a copy of proof of the Brevard Cultural Alliance's and subcontractors' enrollment in the E-Verify program.

Compliance with the terms of this section is made an express condition of this Contract and the COUNTY may treat a failure to comply as a material breach of this Contract.

A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E verify program, the contractor hires or employs a person who is not eligible for employment.

Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

- 13. AMENDMENTS OR MODIFICATIONS. No alterations, amendments, deletions, or waivers of the provisions of this Contract shall be binding on either party unless reduced to writing and signed by a duly authorized representative of the County and the Brevard Cultural Alliance. If the parties elect to make any changes to the Scope of Work, the County shall initiate a contract amendment and the Brevard Cultural Alliance shall not commence work on any such change until such written amendment is signed by both parties.
- 14. ASSIGNMENT. The County and the Brevard Cultural Alliance each bind itself and its successors, legal representatives, and assigns to the other party to this Contract, and to the partners, successors, legal representatives, and assigns of such other party, and in respect to all covenants of this Contract; and neither the County nor the Brevard Cultural Alliance shall assign nor transfer their interest in this Contract without prior written consent of the other party. The County may elect to compensate the Brevard Cultural Alliance for unfinished work product, provided it is in a form that is sufficiently documented and organized to provide for subsequent utilization in completion of the work product.
- 15. PUBLIC RECORDS. Both parties understand that the County is subject to the provisions of Chapter 119, Florida Statutes, and other applicable Florida Statutes. the Brevard Cultural Alliance is responsible for maintaining public records in accordance

with Florida law. If the materials provided by either party do not fall under a specific statutory exemption under Florida or federal law, then the materials will have to be provided to anyone making a public records request. The Brevard Cultural Alliance is responsible for identifying what information, if any, it deems is exempt under Florida or federal law, and for specifying what statute exempts said information. Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the Brevard Cultural Alliance to the County which the Brevard Cultural Alliance maintains are exempt or confidential from inspection or production, then the Brevard Cultural Alliance shall hire and compensate attorney(s) who shall represent the interests of the County as well as the Brevard Cultural Alliance in defending such action. The Brevard Cultural Alliance shall also pay any costs to defend such action and shall pay any costs and attorneys' fees, which may be awarded pursuant to Chapter 119, Florida Statutes.

IF THE BREVARD CULTURAL ALLIANCE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BREVARD CULTURAL ALLIANCE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (321)633-2090; BY EMAIL AT PUBLICRECORDSREQUEST@BREVARDFL.GOV; OR BY MAIL TO 2725 JUDGE FRAN JAMIESON WAY, BLDG C, SUITE 308, ATTN: PUBLIC RECORDS COORDINATOR, VIERA, FL, 32940.

16. RIGHT TO AUDIT RECORDS. In performance of this Contract, the Contractor shall keep books, records, and accounts of all activities related to the Contract, in compliance with generally accepted accounting procedures. All documents, papers, books, records, and accounts made or received by the Brevard Cultural Alliance in conjunction with the Agreement and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative and shall be retained by the Brevard Cultural Alliance for a period of three (3) years after termination of this Contract, unless such records are exempt from Section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes. All records or documents created by the Brevard Cultural Alliance or provided to the Brevard Cultural Alliance by the County in connection with the activities or services provided herein are public records unless exempt/confidential and the Brevard Cultural Alliance agrees to comply with any request for such public records made in accordance with Chapter 119, Florida Statutes.

17. UNAUTHORIZED ALIEN WORKERS. Brevard County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) (Section 274A(e) of the Immigration and Nationality Act). The County shall consider the Brevard Cultural Alliance intentional employment of unauthorized aliens as grounds for immediate termination of this Contract.
18. FEDERAL TAX ID NUMBER. The Brevard Cultural Alliance shall provide to the County its Federal Tax ID Number.
19. PUBLIC ENTITY CRIMES. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list.
20. CONSTRUCTION. The parties hereby acknowledge that they fully reviewed this Contract, its attachments and had the opportunity to consult with legal counsel of their choice, and that this Contract shall not be construed against any party as if they were the drafter of this Contract.
21. GOVERNING LAW. The laws of the State of Florida shall govern the validity of this Contract, its interpretation and performance, and any other claims related thereto. Venue for any legal action brought by any party to this Contract to interpret, construe, or enforce this Contract shall be in a court of competent jurisdiction in and for Brevard County, Florida.
22. FORCE MAJEURE. Any delay in the performance by either party hereto of its obligations hereunder shall be excused when such delay in performance is due to any cause or event of any nature whatsoever beyond the reasonable control of such party, including, without limitation, any act of God; any fire, flood, or weather condition; any computer virus, work, denial of service attack; any earthquake; any act of a public enemy, war, insurrection, riot, explosion, or strike; provided, that written

notice thereof must be given by such party to the other within twenty (20) days after occurrence of such cause or event.

23. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings contained in this Contract are for convenience and reference only and in no way define, describe, extend or limit the scope and/or intent of this Contract, nor the intent of any provisions thereof.
24. WAIVER. No waiver by the County of any provision in this Contract shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach, or any other provision or enforcement thereof. County's consent to or approval of any act by the Brevard Cultural Alliance requiring consent or approval shall not be deemed to render unnecessary the obtaining of County's consent to or approval of any subsequent act by the Brevard Cultural Alliance requiring consent or approval, whether or not similar to the act so consented to or approved.
25. COMPLIANCE WITH LAWS. The Brevard Cultural Alliance, its employees, subcontractors, or assigns, shall comply with all applicable federal, State, and local laws and regulations relating to the performance of this Contract. The County undertakes no duty to ensure compliance, but will attempt to advise the Brevard Cultural Alliance, upon request, as to any such laws of which it has present knowledge.
26. ATTORNEY'S FEES. In the event a dispute arises out of this Contract, each side shall be responsible for their own respective attorney's fees.
27. SEVERABILITY. If any of the provisions contained in this Contract are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

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J.2.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY

Scott Ellis, Clerk

Approved by the Board on: 5 / 30 / 19

Reviewed for legal form and content:

Assistant County Attorney

WITNESS:

BREVARD CULTURAL ALLIANCE, INC.

Signature

By: _____

Printed Name

Title: _____

Signature

Printed Name

Clean copy
with BCA
Changes

XX NO SIGNATURES
REG. CONTRACT NOT APPROVED