



AGENDA REPORT
August 20, 2019

**Board Direction, Re: Brevard Cultural Alliance Contract with the Tourism
Development Office for Fiscal Year 2019-20**

SUBJECT:

Board Direction, Re: Brevard Cultural Alliance (BCA) Contract with the Tourism Development Office for Fiscal Year 2019-20

FISCAL IMPACT:

In Fiscal Year 2018-19, the BCA received:

\$205,000 from the Tourism Development Office for administration
\$100,000 from the Tourism Development Office for Community Cultural Grants
\$ 30,000 from the General Fund for the Community Cultural Grants Program
\$ 50,000 from the General Funds for the administration of the grant program and Art in Public Places

DEPT/OFFICE:

County Manager

REQUESTED ACTION:

It is requested that the Board provide direction to staff regarding the contract and funding of the Brevard Cultural Alliance for Fiscal Year 2019-2020.

SUMMARY EXPLANATION and BACKGROUND:

This item was tabled at the July 23, 2019 Board meeting to the August 20, 2019 Board Meeting.

The Tourism Development Council (TDC) at their May 22, 2019 meeting voted to recommend that the Board approve the BCA Professional Services Contract for Fiscal Year 2019-2020. The vote of the TDC was 6-3.

Under the recommendation of the TDC, the Brevard Cultural Alliance total funding will be reduced by \$255,000 to \$50,000 for securing events; supporting cultural events; and providing out-of-county advertising and marketing for events and cultural groups exclusively located within Brevard County for approved cultural tourism events, programs and initiatives with the goal of positively impacting cultural tourism within the County.

The remaining TDO funds of \$255,000 will be used for a Community Cultural grant

program under the administration of the TDC. The BCA would receive \$70,000 in General Funds in FY 2019-2020, \$20,000 for Cultural Grants and \$50,000 for administration of the grants and Art in Public Places.

After the July 23rd Board Meeting, the BCA submitted a proposal for Board consideration in that the BCA will receive the Tourism Development Tax (TDT) Cultural funds and operate Arts and Cultural Programs under contract to the Board.

Options for the Board to consider are:

1. To accept the contract and funding amount as recommended by the TDC
2. Accept the contract as recommended, but adjust the contract amount as determined by the Board
3. Modify the requirement to report the number of room nights per BCA's suggested method and fund at the TDC recommended amount of \$50,000
4. Modify the requirement to report the number of room nights per BCA's suggested method and fund as determined by the Board
5. Accept the BCA proposal to operate Arts and Cultural Programs under contract with the Board using Tourism Development Tax Cultural Funds and direct staff to bring back a proposed contract for the Board to consider
6. Other direction as determined by the Board

ATTACHMENTS:

Description

- ▢ **Brevard Cultural Alliance Professional Services Contract**
- ▢ **Brevard Cultural Alliance Professional Services Contract with BCA recommend language**
- ▢ **BCA Agreement Proposal**



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

August 21, 2019

M E M O R A N D U M

TO: Frank Abbate, County Manager

RE: Item I.1., Board Direction for Brevard Cultural Alliance Contract with the Tourism Development Office for Fiscal Year 2019-2020

The Board of County Commissioners, in regular session on August 20, 2019, directed the County Manager, or his designee, to work with the Brevard Cultural Alliance (BCA) and Liz Lamb, to negotiate a contract with the Tourism Development Office, with a maximum cap of \$275,000, and to bring it back to the Board at a future meeting for its consideration.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

cc: Tourism Development Director

**BREVARD CULTURAL ALLIANCE
PROFESSIONAL SERVICES
CONTRACT**

THIS CONTRACT is made and entered into this 23rd day of July, 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 start on October 1, 2019, and shall run for one (1) year. 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 counting day trippers and/or overnight visitors through reporting hotel or other accommodation room nights 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 the sum of \$50,000 during the term of the Contract in monthly installments.
 - (a) The total compensation to the Brevard Cultural Alliance shall be \$50,000 for securing events; supporting cultural events; and providing out-of-county

advertising and marketing for events and cultural groups exclusively located within Brevard County for approved 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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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, FLORIDA

Scott Ellis, Clerk

By: _____
Kristine Isnardi, Chair
As approved by the Board on: ___/___/___

Reviewed for legal form and content:

Assistant County Attorney

WITNESS:

BREVARD CULTURAL ALLIANCE, INC.

Signature

By: _____

Printed Name

Title: _____

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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, FLORIDA
By: _____
Scott Ellis, Clerk Kristine Isnardi, Chair
As approved by the Board on: ___/___/___

Reviewed for legal form and content:

Assistant County Attorney

WITNESS: BREVARD CULTURAL ALLIANCE, INC.
By: _____
Signature _____
Title: _____
Printed Name _____

I.1
C/B
PSC

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, FLORIDA

Scott Ellis, Clerk

By: _____
Kristine Isnardi, Chair
As approved by the Board on: ___ / ___ / ___

Reviewed for legal form and content:

Assistant County Attorney

WITNESS:

BREVARD CULTURAL ALLIANCE, INC.

Signature

By: _____

Printed Name

Title: _____

I.I.
1/1
BCA

Parties. This Agreement may be executed in counterparts, all of which, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates annotated below.

Signed, Sealed and Delivered in the presence of:

BREVARD CULTURAL ALLIANCE, INC.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: _____

By: _____
Kristine Isnardi, Chair

As approved by the Board on _____.

Date: _____

Date: _____

ATTEST:

Scott Ellis, Clerk to the Board

F.I.
CTB
BCA

Parties. This Agreement may be executed in counterparts, all of which, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates annotated below.

Signed, Sealed and Delivered in the presence of:

BREVARD CULTURAL ALLIANCE, INC.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: _____

By: _____
Kristine Isnardi, Chair

As approved by the Board on _____.

Date: _____

Date: _____

ATTEST:

Scott Ellis, Clerk to the Board

8/20/19
HANDOUT FROM
C PRITCHETT
ITEM I (4)

BCA Board Officers 2018-2019

Jim Ridenour, Chair
Colonel (Ret), USAF, GM-Dual (Ret), Marriott

Robin Fisher, Vice-Chair
State Farm Insurance

Andrea Farmer, Treasurer
Delaware North/Kennedy Space Center Visitor Complex

Karen Montas, Chair Elect
Attorney - Johnson & Montas

Andrew Weintraub, Secretary
Health First - Health Plans Vice President

BCA Board of Directors

Monica Baloga
Florida Institute of Technology

Shane Burgman
Realtor - Carpenter | Kessel

Joe Mayer
Lockheed Martin

Michael Peacock
Attorney, Morgan & Morgan

Todd Pokrywa
The Viera Company

Cordell Rolle
Rolle Information Technology, LLC

Liasons

Dicksy Chrostowski
NASA Kennedy Space Center

Jim Liesenfelt
Brevard County

Cheryl McDougall
Brevard School Board

Andrea Young
Tourist Development Council

GRANT AGREEMENT
BETWEEN BREVARD COUNTY AND
BREVARD CULTURAL ALLIANCE

THIS GRANT AGREEMENT (hereafter referred to as the "Agreement") is entered into by and between the following parties: BREVARD COUNTY, , FLORIDA, a political subdivision of the State of Florida, (hereinafter referred to as "COUNTY"), and BREVARD CULTURAL ALLIANCE, INC., a Florida nonprofit corporation with IRS 501(c) (3) status hereinafter referred to as "BCA";

RECITALS

WHEREAS, the Board of County Commissioners has assigned the County Manager and his/her designated staff to function as the designated local arts agency for the COUNTY with legal assistance from the County Attorney; and

WHEREAS, the County and the State of Florida have previously designated the BCA as the single "Local Arts Agency" to serve as the catalyst for community arts and cultural development in Brevard County; and

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

WHEREAS, the County recognizes the need for professional, county-wide cultural arts development programs that foster full participation by citizens from all walks of life, the arts sector, business, economic development and tourism interests; 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 cultural development of Brevard County that is compatible with goals and objectives of the County; and

WHEREAS, under section 265.32, Florida Statutes, the COUNTY is authorized to create a county arts council for these purposes; and

WHEREAS, the County desires to contract with the BCA for the purpose of serving as the County's primary coordinating and development agency for arts and cultural development, under the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the following covenants and provisions, the Parties agree as follows:

1. **Recitals.** The Recitals above are true and correct and incorporated by this reference.

2. **Grant.** The COUNTY agrees to provide a grant to BCA in the amount of \$255,000.00 (Two Hundred and Fifty Five Thousand Dollars and no/100). This initial grant amount is for the fiscal year beginning October 1, 2019 and ending September 30, 2020. Each year this grant is in effect, payments shall be made on a quarterly pro-rated basis on or before October 14, January 14, April 14, and July 14.

3. **OFFICE SPACE AND SUPPORT SERVICES.** In consideration of the services and arts and cultural development efforts of BCA, the County agrees to provide 2,728 square feet of office space located at 2725 Judge Fran Jamieson Way, building C, Room 307, Viera, Florida. BCA shall be authorized to utilize County internal services such as facilities management, purchasing, information and communications systems to support the operation of its programs and services.

4. **Use of Grant Funds.** The COUNTY grant funds provided to BCA shall be used exclusively for BCA's management of Brevard's Board of County Commissioner's arts and cultural programs, and

4(a) Generally. The grant funds are given to enhance the designated local arts agency's programs of work and strategic goals to;

4(a)(i). Develop Cultural Destination; by marketing and advertising the arts and cultural sector of the County and what it offers; maintaining a comprehensive online presence illustrating the broadest and most up to date cultural offer for visitors and residents; managing all of the County's arts and cultural grants programs; sourcing and reporting on data from recipients of the County's cultural grants programs which indicates both overnight and day visitors associated with such cultural events; managing the arts in public places advisory committee.

4(a)(II). Build sector sustainability; by working with elected officials, sector and community partners in delivering arts funding advocacy at local and State levels; providing assistance to sector participants by offering continuing professional development opportunities to improve offerings of art and culture in the County; commissioning economic contribution studies as tools to enhance grant bids from the cultural sector; broadcasting frequent announcements via eblasts and newsletters; devise and deliver cultural summits that position the County as a thought leader.

4(a)(III). Empower through education; by working in both formal and informal education settings to ensure the long term growth and sustainability Brevard County's cultural sector.

4(b). SCOPE OF SERVICES AND WORK PLAN. Not later than June of each year, BCA will provide the Brevard County Manager with an annualized Scope of Services Work Plan for the upcoming fiscal year detailing annual activities of BCA. This plan will be attached and incorporated to this Agreement by reference as Exhibit A for each fiscal year that this Agreement is renewed.

4(c). Notwithstanding anything herein to the contrary, the Parties agree BCA has discretion to use grant funds for administration, travel, office expenses, salaries or other expenses directly related to BCA's management of the Board of County Commissioner's arts and cultural grants program and the designated local arts agency's programs of work and strategic goals.

5. Term and Renewals. The initial term of this Agreement is one year, commencing with the fiscal year beginning on October 1, 2019 and ending on September 30, 2020. Not later than June 1st, BCA will submit its proposed annualized Scope of Work Plan for the following fiscal year, and the County Manager will review this proposal and BCA's performance under the grant before recommending renewing the grant each year. In the COUNTY's sole discretion, the County Manager may annually opt to renew this grant unilaterally at the amount in paragraph 2, incorporating the annual Scope of Work Plan for each year as Exhibit A, for additional one year renewals. To renew, not later than October 1, the County Manager will send BCA a renewal letter, attaching a copy of the incorporated annual work plan. In the event the COUNTY does not adopt an annual county budget setting aside grant funds for

BCA prior to October 1 of the upcoming renewal year, this Agreement shall be deemed terminated, without further notice required. In all cases, this agreement may not extend past September 30, 2024.

6. Public Records. The COUNTY and BCA acknowledge that BCA is a private corporation and may be subject to Florida's Public Records law for various actions undertaken as part of this Agreement and shall follow the requirements of Chapter 119, Florida Statutes, and the requirements at Exhibit "C", which is attached and incorporated by this reference.

7. Reporting Requirements. In performance of this Agreement, BCA shall keep books, records, and accounts in compliance with generally accepted accounting procedures. All documents directly relating to this Agreement shall be open to inspection by the County during regular business hours, and shall be retained by BCA for a period of five (5) years after termination of this Agreement.

a. **Public Access to Certain Reports.** BCA will post the following reports and financial documents on the website artsbrevard.org:

- (1) Annual Financial Audit
- (2) County Grant Annual Executive Report
- (3) County Grant Annual Financial Report
- (6) Organizational Chart

b. **Annual Report:** Prior to November 30th of each year this grant is in effect, in compliance with local option tourist development tax section 125.0104(5), Florida Statutes, BCA shall submit a report to the Board of County Commissioners setting forth as to the specific use of Grant funds and the specific results of the BCA's efforts on behalf of the COUNTY in developing cultural destination; building sector sustainability and empowering through education. The portion on the specific use of grant funds will include the information contained at Exhibit B.

c. **Annual Audit.** By March 1st for each year this grant is in effect, BCA agrees to provide a copy of its annual audit of its financial records and operations conducted by a certified public accountant.

d. County Grant Bi-Annual Financial Report: Prior to October 30 and April 30, on a biannual basis, BCA will furnish this additional report to the Brevard County Manager specific to the use of COUNTY Grant Funds. This Financial Report will include the information contained in Exhibit A. BCA shall report the total amount of COUNTY Grant Funds expended in the following manner:

- (1) Marketing and Communications Expenses
- (2) A list of all employees by name, and title
- (3) Total compensation paid to all employees
- (4) Individual compensation for Executive Director including:
 - i. Salary
 - ii. Bonuses
 - iii. Stipends and/or allowances
- (5) Reimbursements to each board member, respectively, by name and nature of reimbursement
- (6) A list of each event held by BCA, including the number of participants per event, and a detailed list of expenditures including, but not limited to:
 - i. Food and beverages
 - ii. Facility rental
 - iii. Production Costs
 - iv. Speakers and travel
- (7) Travel expenditures including, but not limited to
 - i. Names of travelers
 - ii. Destination
 - iii. Event/s or meetings attended
 - iv. Total travel reimbursement for each trip
- (8) Economic Contributions Study
- (9) Annual Financial Audit

8. **Effective Date; Prior Agreements Superseded; Authority.** All prior agreements between BCA and the COUNTY are superseded and rendered inoperative as the effective date of this Agreement. This Agreement is effective on the date the last Party executes the agreement below. The Parties warrant that each is possessed with all requisite lawful authority to enter into this Agreement, and the individual executing this Agreement is possessed with the authority to sign and bind the each Party, respectively. This Agreement is binding upon the successors of the

BCA works to build a vibrant and dynamic arts and cultural sector to enhance and contribute to cultural tourism, quality of life, the attraction and retention of a viable workforce, and which reflects a positive image of the community – turning a location into a destination.



EXHIBIT "A" - SCOPE OF WORK PLAN

1 Focus on Developing Cultural Destination;

Objective: communicate the competitive advantage provided by the arts and cultural sector to position Brevard County as an attractive destination.

Marketing and Communications

BCA will develop and implement data-driven marketing and communications strategies to promote Brevard County's arts and cultural attractions through the use of professional advertising, marketing and promotional services, aimed at attracting tourists to Brevard County.

- **Social Media Marketing:** As a nonprofit organization, BCA is eligible to participate in Google's ad grant program, which provides \$10,000 a month in free Google advertising. BCA will utilize the ad grant to drive web traffic to its arts and cultural calendar and capture e-mail marketing opt-ins.
- BCA will also utilize a variety of social media platforms to share compelling content that will drive interest and attendance at Brevard's museums, theatres, concerts, galleries, festivals and more.
 - **Facebook:** BCA will craft organic and advertising campaigns highlighting arts and cultural centric vacation ideas. Target demographics will include parents of school-aged children, working couples, and retirees.
 - **Instagram:** BCA will post images and video that tell stories about Brevard's arts and cultural hot spots, enticing millennials to travel to Brevard.

- Editorial: BCA will exploit editorial opportunities in regional and national travel publications, including magazines and blogs, to promote the County's arts and cultural offer.
- Search Engine Optimization (SEO): BCA will optimize its website with keyword rich content to drive website traffic and capture e-mail marketing opt-ins.
- BCA will work with Americans for the Arts, the National Endowment for the Arts, and the Florida Cultural Alliance to raise the profile of our County's sector
- Develop and maintain a comprehensive online presence illustrating up to date, countywide, cultural opportunities for visitors and residents.
- Periodically update web presence to conform to current tech standards.
- Provide up to date comprehensive event calendar.

Manage Art in Public Places Program:

Bring art to the public beyond museum walls - with the first thing arrivals see at Melbourne Airport. Contributes to the perception of a vibrant County with Countywide exhibitions which feature the work of over 225 area artists, displays more than 650 pieces of work and which over 400,000 people view.

- Manage the selection committee - ensuring the choice of exhibited work is informed by the Brevard County Code of Ordinances, Chapter 34 – civic and cultural affairs, article II. – Art in Public Places, secs. 34 - 36
- Appropriately store, handle and track committee approved artwork
- Provide insurances and legally binding artist waivers
- Curate, transport, install and reinstall temporary exhibits
- Prepare press releases to promote and publicize the program
- Effect sales on behalf of the artist [on a non-commission basis]

Collaborate with Space Coast Office of Tourism and Economic Development Commission;

- Serve as first point of contact for arts and culture with the Space Coast Office of Tourism and Space Coast Economic Development Commission

- Collaborate with the Space Coast Office of Tourism in marketing the arts and cultural offer and act as a resource for the Space Coast Office of Tourism's "familiarization" initiatives
- Serve as an arts, culture and quality of life informational resource to the Space Coast Economic Development Commission in their focus on growth in corporate investment, relocation, job creation.

2 Focus on Building Sector Sustainability

Working with elected officials, sector and community partners to deliver arts advocacy at local and State levels; working with sector participants to deliver professional development

Advocacy;

- Meet with Brevard's Legislative Delegation, in their district and in Tallahassee, to advocate for the benefits of the arts
- Collaborate with arts leaders, statewide, to advocate for arts funding

Events;

- Provide continuing professional development opportunities with capacity building workshops designed to improve the County's cultural offer
- Devise and deliver biennale Cultural Summits that position the County as a cultural thought leader
- Deliver two sector-wide networking and collaboration sessions a year

Initiatives;

- Bring performing arts organizations together through initiatives such as convening a clash diary group every 6 months, and ongoing ad hoc collaboration initiatives
- Commission economic contribution studies and make them freely available as a tool to enhance grant bids from the cultural sector

3 Focus on Managing the County's Cultural Grants

Experience and qualification are the prerequisites for successfully managing the County's cultural grant program[s]. The Mission statement is to; **foster excellence, accessibility and diversity in arts and culture for all people in Brevard County by supporting nonprofit arts and cultural organizations through general program support or specific projects; and funds private nonprofit non-arts or non-cultural organizations through specific projects...**

- BCA will manage all of the County's Arts and Cultural Grant Programs through the use of proven, specialized online software to ensure grant applications are equitable and accessible
- Provide a grant scoring rubric, and submit any significant rubric changes for Board of County Commission approval
- Convene an independent panel to evaluate grant applications and deliver a rubric scoring workshop for the panel
- Conduct annual Cultural Grants Program proposal preparation workshops to assist applicants with grant applications. And assist with technical issues during the submission process
- Ensure approved grantees provide services or goods as contained in their grant application
- Process funds for all County Cultural Grants Programs which are passed through the BCA accounts, and process payments to the selected grant recipients recommended by the selection panel and approved by the Board of County Commissioners
- Prepare quarterly reports on data from grant recipients which indicates overnight and day visitors associated with events

BCA works to build a vibrant and dynamic arts and cultural sector to enhance and contribute to cultural tourism, quality of life, the attraction and retention of a viable workforce, and which reflects a positive image of the community – turning a location into a destination.



**October 1, 2018 - March 31, 2019
Brevard County Grant
Financial Report**

	<u>GRANT FUNDS</u>
Ordinary Income/Expense	
Income	
Brevard Operational Grant	\$ 63,750.00
Pass Through Grant Funds	\$ 200,000.00
TOTAL INCOME	<u>\$ 263,750.00</u>
 Grant Expense	
Pass Through Grant Funds	\$ 200,000.00
Marketing & Communications	\$ 3,000.00
Personnel	
Salaries	\$ 48,000.00
Employment Benefits	\$ 9,120.00
Payroll & Tax	\$ 70.00
Training	\$ -
Professional Services	
Audit	\$ 2,000.00
Tax Returns and Filing	\$ -
Economic Contribution Study	\$ -
TOTAL EXPENSES YTD	<u>\$ 262,190.00</u>

EXAMPLE OF REPORT FORMAT

The mission of Brevard Cultural Alliance is to build a vibrant and dynamic arts and cultural sector integral to Brevard County's quality of life.



Bi-Annual Report

Brevard County Grant Management Report

October 1, 2018-March 31, 2019

BCA presents our Bi-Annual report on County Grant Funds expended in accordance with article 7; reporting requirements.

- (1) Website and online advertising - *none this period*
- (2) Online Software \$9,425
- (3) Marketing and Communication – *none this period*
- (4) Events; detailed expenditures, *none this period*
 - a. Food and beverages
 - b. Facility rental
 - c. Production Costs
 - d. Speakers and travel
- (5) Travel Expenditures, *none this period*
 - a. Names of travelers
 - b. Destination
 - c. Event/s or meetings attended
 - d. Total travel reimbursement for each trip
- (6) Sector Economic Impact Study - \$4,000
- (7) Annual Financial Audit - \$8,000
- (8) List all employees by name – organizational chart attached
- (9) Total Compensation paid to all employees - \$48,641
- (10) Individual Compensation paid to Executive Director - \$0.00
- (11) Reimbursements to each Board Member – *None this period*

EXAMPLE OF REPORT FORMAT

Brevard Cultural Alliance, Inc.
2725 Judge Fran Jamieson Way C-307
Viera, FL 32940

P: 321-690-6817
F: 321-690-6818

Email: info@artsbrevard.org
www.ArtsBrevard.org

Cultural Fund Budget FY 2019-2020

REVENUE:

2019-2020 Projected Tourist Tax Revenues	\$16,000,000
Cultural Fund Budget at 4%	<u>\$ 640,000</u>

EXPENDITURES:

County's Arts and Cultural Programs	\$ 365,000
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Arts and cultural programs merged into one program and managed by BCA, the Designated Local Arts Agency;

- Community County Cultural Grants Program
- Cultural Marketing Program
- Cultural Arts Program

Brevard Cultural Alliance

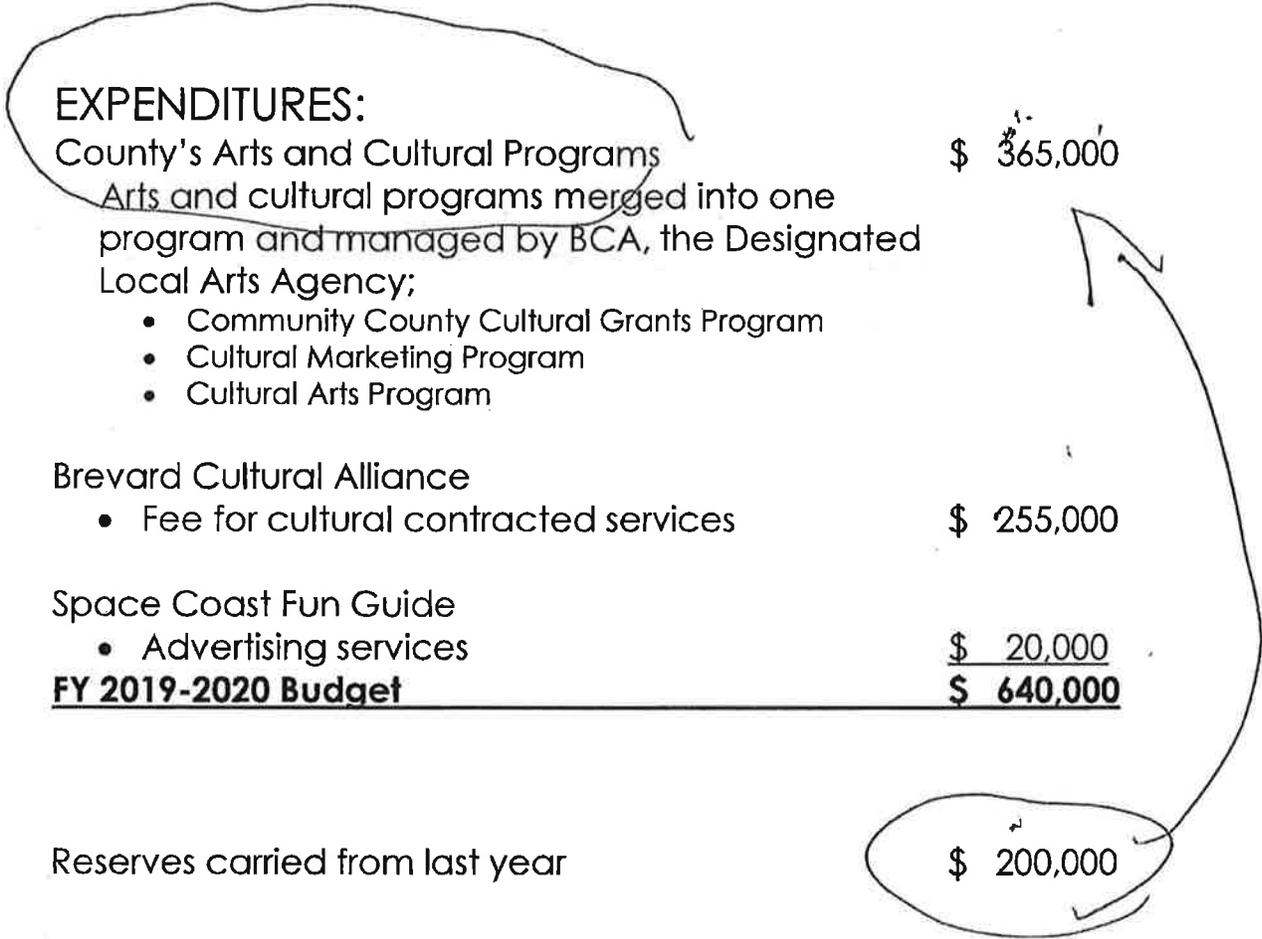
• Fee for cultural contracted services	\$ 255,000
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Space Coast Fun Guide

• Advertising services	\$ 20,000
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<u>FY 2019-2020 Budget</u>	<u>\$ 640,000</u>
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Reserves carried from last year	\$ 200,000
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PROPOSED AGREEMENT'S MEANING

- Control and oversight; the proposal means that the Board of County Commissioners will have direct control and oversight of all the County's cultural programs.
- The proposed Agreement enables BCA, as the County's Designated Local Arts Agency, to manage *all* of the County's arts and cultural programs.
- BCA is the only professional cultural organization with the experience and qualifications to provide these services – this has been their business for over 40 years.
- BCA has a track record, proven over many years, in the robust management of the County's cultural grants, in managing events, and in marketing and promoting art and culture.
- The document lays out how the Board of County Commissioners will have absolute transparency and accountability for all of the County's cultural programs.
- The fees for services are exactly the same amount that BCA has been receiving from the County, but BCA will expand upon the current work – more work for the same amount of compensation.
- The Agreement opens the way for the County to fund *all* of the arts and cultural programs, as well as the BCA fees for services, through tourism taxes – removing the need to provide funding sourced from the General Operating Fund, while the Board of County Commissioners maintains direct control and oversight throughout.
- This removes the politics and personality issues that have arisen and places the support for the arts and cultural sector where it belongs – under the control of the Board of County Commissioners.

\$205,000 County
Tourist Development

County Funding to the Local Arts Agency [funded by tourism tax]

- BCA works to advance Brevard County as a cultural destination
- Raises the program bar thru capacity building initiatives for sector constituents
- Delivers initiatives with partner cities [Titusville, Palm Bay etc.]
- Bolsters the growth and sustainability of the cultural community [advocacy tools, economic impact studies, best practice workshops].
- Manages the enrollment of the TDC Cultural Marketing Program
- Maintains a county-wide "what's on" website for *all* arts & culture – with CRM software for sector to manage their own areas.
- Engages in year round advocacy at State level, supporting the sector's grant funding requests
- Represents Brevard in partnerships with Local Arts Agencies Statewide
- Delivers high profile Cultural Summits; with recognized experts, celebrity keynote speakers, professional workshops - and opportunities for the sector and business leaders to come together. Positioning Brevard as state-wide thought leader
- Partners with Brevard Public Schools – programs responding directly to curriculum.
- Works to market and promote events county and state-wide

County General Operating
\$50,000

County General Operating
\$30,000

Tourism Development
Office \$100,000

\$10,000 allocated to
managing the Art in Public
Places Program

And

\$40,000 allocated to
managing the County's
year round County
Community Cultural Grants
Program

\$30,000 Pass through
County Cultural Grant
Program funding

*"To cultivate
excellence, accessibility
and diversity in arts and
culture for all people in
Brevard County"*

\$100,000 Pass through
County Cultural Grant
Program funding

*"To cultivate
excellence, accessibility
and diversity in arts and
culture for all people in
Brevard County"*

Currently; TOTAL BCA COMPENSATION \$205,000 + \$50,000 = \$255,000

The additional \$130,000 is Pass Through funding for the Grants Program, not for BCA



**Brevard County
Community Cultural Grants**

**BREVARD
CULTURAL
ALLIANCE**

The Brevard County Community Cultural Grant Program is managed in a robust transparent and accountable manner as illustrated here;

- BCA has submitted the Brevard County Community Cultural Grant Program guidelines for review and approval by the Board of County Commissioners and County Attorney. Any and all significant amendments have been submitted for review and approval.
- The program is run on a reimbursement basis, with the grantee required to prove expenditure was made as approved in the grant, and follows program guidelines.
- A comprehensive, approved scoring rubric is used to ensure a fair process and all grants are earned on merit; there can be no favoritism - no capricious grants can be made.
- BCA uses well proven specialist online grant application software, to ensure accessibility for applicants and for the independent scoring panel.
- As part of the process potential grant applicant organizations are invited to attend workshops to learn about the program and are encouraged to apply.
- BCA recruits grant review panelists and updates the online software with panelist information to ensure transparency.
- There is a panelist orientation meeting to guide them through working with the online software and acquaint them with the grant program's policies & procedures, and we provide technical support to the review panel throughout the process.
- BCA also provides assistance to organizations as they prepare their applications.
- We accept online grant applications through the specialist software system, review the grant applications for completeness and eligibility, and request any additional items needed from grant applicant organizations.
- BCA closes down applications on the grant deadline date, "assigns" grant applications to panelists, and manages the panelist online module for the applications to be scored.
- We monitor the progress of panelist scoring to ensure no issues arise, and compile and print out panelist scores for the "day-of meeting".
- We convene a public panel review meeting, we encourage applicants to attend, and also advise them that they may address the panel before final scores are delivered.
- We have representatives present from the accounting firm 'RSM US' to tabulate the panel scoring and calculate final scores - and what the recommended grant award will be; assuring full transparency and accountability.
- BCA prepares an agenda item request for placement and approval of the recommended grant awards on the Board of County Commissioners meeting agenda – the grants are subject to the Commissioners approval.
- We notify the grant applicants of the Board of County Commissioners decisions, and throughout the year, we collect the grantees reports and analyze the available data.

**BREVARD CULTURAL ALLIANCE
PROFESSIONAL SERVICES
CONTRACT**

THIS CONTRACT is made and entered into this 23rd day of July, 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 start on October 1, 2019, and shall run for one (1) year. 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 counting day trippers and/or overnight visitors through reporting hotel or other accommodation room nights reporting estimated numbers associated with events. Quarterly report due dates are required every three (3) months after the effective date of this agreement.

Commented [SC1]: To the extent the BCA membership is agreeable, the BCA believes it can work with its members to provide estimates of attendees with out of area zip codes from those entities with box office management systems

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 the sum of \$50,000 during the term of the Contract in monthly installments.
- (a) The total compensation to the Brevard Cultural Alliance shall be \$50,000 for securing events; supporting cultural events; and providing out-of-county

advertising and marketing for events and cultural groups exclusively located within Brevard County for approved 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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