

3CC-1

PALM BEACH COUNTY

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 6/7/11 Consent Regular
 Workshop Public Hearing

Department: Tourist Development Council

Submitted By: Tourist Development Council

Submitted For: Palm Beach County Cultural Council

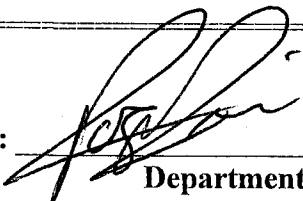
I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Interlocal Agreement among Broward, Martin, Miami-Dade, Monroe and Palm Beach Counties to provide for the continued operation of a regional cultural consortium known as The South Florida Cultural Consortium (SFCC) for a thirty year period.

Summary: This Agreement provides for the continued operation of the SFCC, a cultural organization comprised of the five South Florida counties, which began in 1985 and has continued to provide for cooperative programs for the advancement and encouragement of cultural and fine arts activities in the region. From its inception the Palm Beach County Cultural Council (PBCCC) has represented the County on the Consortium. The term of the Interlocal will begin upon the execution of the Agreement by the last of the five counties and will continue for thirty (30) years; however the county may withdraw from the Interlocal Agreement on October first of any year upon ninety (90) days advance notice.

Background and Justification: The South Florida Cultural Consortium (SFCC) was established in 1985 by four counties including Palm Beach with the purpose of cooperating on regional cultural issues and programs. In 1993 the Interlocal was amended to include the fifth county, Martin County, and has continued to operate since that time. The SFCC was the first regional group to secure a grant from the National Endowment for the Arts (NEA) for regional programming. Its most visible program to artists is the Annual Visual and Media Artist Fellowship program. The exhibition rotates among Miami-Dade, Broward, and Palm Beach Counties. It has developed a regional theater program and guide, leveraged advertising funds for regional promotion, coordinated promotion for statewide arts license tags, advocated for regional funding for the arts, provided regionally based professional development workshops, is working on a regional website to attract tourists to the area and has a recent focus with the Regional Planning Council on Sustainable Communities. This Agreement will continue the operation of the SFCC for an additional thirty (30) years under the same terms and conditions as the 1993 agreement.

Attachments:
Interlocal Agreement among Broward, Martin, Miami-Dade, Monroe and Palm Beach Counties.

Recommended by:  5/23/11
 Department Director Date

Approved By:  5/31/11
 Deputy County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|--------------|--------------|--------------|--------------|--------------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| External Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | ===== | ===== | ===== | ===== | ===== |
| # ADDITIONAL FTE POSITIONS (Cumulative | _____ | _____ | _____ | _____ | _____ |

Is Item Included In Current Budget? Yes _____ No. _____

Budget Account No.: Fund _____ Agency _____ Org. _____ Object _____
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Department Fiscal Review: *Est. Ben Lopez*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

N. Kelly Sped
OFMB
5/24-11
5/31/11

Dr. J. J. J. 5/27/11
Contract Dev. and Control
The Amendment of the item with the Cultural Council puts the financial burden in this Agreement with the Cultural Council. At the time of our review, this was not executed.

B. Legal Sufficiency:
Paul F. J. 5/31/11
Assistant County Attorney

C. Other Department Review:

Department Director

INTERLOCAL AGREEMENT AMONG
BROWARD COUNTY, MARTIN COUNTY, MIAMI-DADE COUNTY,
MONROE COUNTY AND PALM BEACH COUNTY
RELATING TO THE
SOUTH FLORIDA CULTURAL CONSORTIUM

THIS INTERLOCAL AGREEMENT ("Agreement"), entered into this _____ day of _____, 20__ among Broward County, Martin County, Miami-Dade County, Monroe County, and Palm Beach County.

WHEREAS, Broward County, Miami-Dade County, Monroe County and Palm Beach County began working together as a regional cultural consortium for specific activities known as The South Florida Cultural Consortium under an Interlocal Agreement dated April 16, 1985, as approved by the respective Boards of County Commissioners of such Counties; and

WHEREAS, Broward County, Martin County, Miami-Dade County, Monroe County, and Palm Beach County (collectively "Parties" and individually "Party") desire to continue to work together as a regional cultural consortium for specific activities as provided for by Section 163.01, Florida Statutes (as amended); and

WHEREAS, Section 163.01, Florida Statutes (as amended), also provides the authorization for the creation of a separate entity by means of an interlocal agreement; and

WHEREAS, pursuant to the initial Interlocal Agreement established through resolutions adopted by Monroe County (Resolution No. 083-1985 dated March 20, 1985), Broward County (Resolution No. 85-796 dated March 26, 1985), Palm Beach County (Resolution No. R-85-547 dated April 2, 1985) and an ordinance adopted by Miami-Dade County (Ordinance No. 85-26 and accompanying Resolution No. R-488-85 dated April 16, 1985) the South Florida Cultural Consortium was created, and amended pursuant to subsequent action by Miami-Dade County (Resolution Nos. R-1457-87, R-1216-88, R-1201-90 and R-86-93), Broward County (by action on January 26, 1988, and subsequent action on November 10, 1992, ref. Agenda Item 44B), Monroe County (Resolution No. 403-1989), Palm Beach County (Resolutions No. R-89-570 and No. R-92-13550) and Martin County (Section 16-4(D)1a of the Martin County Comprehensive Growth Management Plan); and

WHEREAS, the Parties desire to enter into this Agreement for a period of thirty (30) years commencing on the date of complete execution by all Parties, with automatic successive one-year renewals thereafter until terminated in accordance with the terms of this Agreement,

NOW THEREFORE, the Parties, in consideration of the mutual promises and covenants set forth herein, agree as follows:

1. **CONTINUATION OF CONSORTIUM**: There is hereby authorized to continue to operate, pursuant to Section 163.01, Florida Statutes (as amended from time to time), a separate entity to be known as The South Florida Cultural Consortium (hereinafter "Consortium").
2. **PURPOSE OF AGREEMENT**: The purpose of this Agreement shall be to continue the formal process for inter-county cooperation for enhancement, encouragement and public expenditures in support of culture and the arts within the counties which are members of the Consortium and with such other government or other entities with which these counties may in the future contract.
3. **TERM AND TERMINATION**: This Agreement shall be in effect for a period of thirty (30) years commencing on the date of complete execution by all Parties, with automatic successive one-year renewals until terminated in accordance with the terms of this Agreement. The Parties agree that the "Effective Date" of this Agreement shall be the date of complete execution by all Parties. Any Party may withdraw from this Agreement commencing on any October 1st by giving written notice to the other parties by the immediately preceding July 1st. If a majority of the Parties withdraws within the same one-year period, this Agreement shall be deemed terminated on September 30 of such year. Any Party may terminate its participation in this agreement at a date effective prior to the end of the fiscal year (as defined in Paragraph 7 below) by providing written notice to the other parties at least ninety (90) calendar days prior to the effective date of termination, and must fulfill all of its financial and programmatic commitments as previously adopted and approved by the Consortium and already encumbered at the time of the notice of termination. On the Effective Date, this Agreement automatically replaces and supersedes all other Interlocal agreements for this same purpose that may be in place through prior actions by the Parties.
4. **MEMBERSHIP**: The membership of the Consortium shall be composed of the volunteer board chairperson of each County's cultural agency responsible for matters relating to culture and the arts and the professional staff director of each County cultural agency or such other citizens' council professional staff member as the County Manager or County Administrator for each respective county may designate in advance in writing. Members shall serve without compensation but may

be reimbursed from Consortium funds for actual authorized expenses incurred in the discharge of their duties as provided in Paragraph 6 below, in accordance with F.S. 112.061 (as amended from time to time).

5. **MEETINGS**: The Consortium will meet no less frequently than two (2) times per year and otherwise as may be called by the Chair of the Consortium. The Consortium shall annually elect a Chair from among the members who are professional staff directors. In the event the Chair of the Consortium resigns, is terminated from his or her employment, or resigns his or her position, a new election shall be held as soon as practicable, but in no event more than one hundred eighty (180) calendar days after the effective date of such resignation or termination. Each member shall have one vote and a member must be present to exercise that vote. A quorum shall consist of at least one member from at least three counties' designated cultural agencies. Matters, except as noted in Paragraph 6 below, shall be determined by a majority vote at a duly constituted meeting. A matter may be reconsidered at the same meeting at which it was initially decided or at the next meeting of the Consortium, under the condition that the motion to reconsider must be offered by a member who voted with the majority at the initial determination. All meetings of the Consortium shall comply with the requirements of the Florida Government in the Sunshine Law, as amended from time to time.

6. **POWERS OF THE CONSORTIUM**: The Consortium shall have the following powers which may be exercised without further approval of the Parties: a) to seek and accept, in the Consortium's name, federal, state, local or private gifts, grants, assistance, funds and bequests in the furtherance of its purposes; b) to enter into contracts for commodities, goods and services; c) to expend or carry over budgeted sums to the succeeding fiscal year, provided that all expenditures shall be in accordance with federal regulations, state law and Charter, and procedures of the fiscal and administrative agent, and further provided that where those procedures require action by the Board of County Commissioners, then action by the Consortium shall be required in lieu thereof, and where those procedures require action by the County Manager or County Administrator, then action by the Chair of the Consortium shall be required in lieu thereof; d) to grant funds in accordance with a formal program or programs which it shall develop; and e) to acquire, operate, maintain, lease or sell any personal property subject to grant or other restrictions. The Consortium shall not expend or commit more funds in any fiscal year than it has received. The Consortium shall sue and be sued only in its own name. The Consortium shall solely bear all liabilities incurred as a result of formal Consortium acts and for which the Consortium is found to be liable after an appropriate

court's entry of a final judgment and the expiration of any appeals, and provided that nothing herein shall act as a waiver of sovereign immunity for the Consortium or for any Party hereto.

7. **FISCAL YEAR:** The Consortium shall maintain a "fiscal year," which begins on October 1 of each year and ends September 30th of the following year. For each fiscal year, each Consortium member shall submit to its respective governing boards of directors, and Board of County Commissioners for those Parties that are wholly public agencies, a budget request for its Consortium-related expenses pertaining to operating and capital expenditures, which request shall not be implemented until approved by its respective board(s). The Consortium budget shall be prepared in conjunction with the formal requests of the appropriate cultural agencies, councils and/or departments on official budget forms by each of the Parties for its respective County Manager or County Administrator, or its appropriate governing authority.
8. **ANNUAL FINANCIAL AND AUDIT REPORT:** Each designated Consortium member agency may submit to its respective Board of County Commissioners an annual financial report and/or annual audit prepared by the fiscal and administrative agent and reviewed by a finance officer of the agent's county, who is not a member of the Consortium. Annual reports shall consist of (a) a balance sheet; (b) a statement of revenues and expenditures; and (c) a statement of changes in fund balance. The annual report and audit for the preceding fiscal year shall be available for submission to the County Managers or County Administrators by June 30th of the following fiscal year, or upon annual publication and issuance by the respective finance or budget department of the fiscal and administrative agent's county.
9. **ANNUAL FINANCIAL COMMITMENTS:** Unless a Party withdraws from this Agreement as provided in Paragraph 3 above, each Party or its designated cultural agency shall contribute an amount each fiscal year as stated on the Consortium's approved budget to fulfill its share of the cash and in-kind match requirements of any federal, state, local or private grant funding that is obtained, subject to prior approval of the budget as stated in Paragraph 7 above. Each of the cultural agency members of the Consortium shall, on behalf of the Consortium, submit to its respective governing boards of directors, and Board of County Commissioners for those Parties that are wholly public agencies, a Consortium budget request pertaining to private and/or local government revenues needed for operating and capital expenditures, which request shall not be implemented until approved by the respective Boards, as outlined in Paragraph 7 above. Each Party, or its designated cultural agency, shall convey its approved contribution to the fiscal agent to be held in a segregated

fund/project until encumbered for expenditure by formal action of the Consortium, and duly expended to satisfy a financial obligation of the Consortium. Local match contributions and secured outside grant funds shall be divided each fiscal year to each Party through programs or services directly benefiting each Party, as determined by formal action of the Consortium. The Consortium and the Parties acknowledge and agree that adequate funds to satisfy all financial obligations and all other obligations to each other or any other party relating to the Consortium arising through the period ending on the date immediately preceding the Effective Date of this Agreement, have been encumbered and/or satisfied by such date.

10. **DESIGNATION OF FISCAL AND ADMINISTRATIVE AGENT(S)**: The Parties designate Miami-Dade County as the fiscal and administrative agent(s) for the Consortium until such time as the Parties shall designate in writing another Party to serve as either or both the fiscal and administrative agent for the Consortium. All sums due to the Consortium from any source (except the contributions of the Parties) shall be paid directly to the Consortium and reported in writing to the fiscal and administrative agent. No expenditure shall be made without formal authorization from the Consortium in accordance with the procedures, which it shall adopt, which procedures shall comply with grant guidelines or other requirements for such expenditures. Documentation of all expenditures associated with contributions of the Parties shall be maintained by each Party and provided to the fiscal and administrative agent within forty-five (45) calendar days after such expenditures by such Party. Any grant funds or other contributed funds required to be paid back as the result of an audit shall be borne solely by the Consortium and, if necessary to amass sufficient cash to issue the reimbursement, shall be paid, in accordance with a repayment plan determined by formal action of the Consortium, by the Parties within thirty (30) calendar days after receipt by such Party of the request to pay back the funds, subject to such Party's prior receipt of a copy of the audit requiring such reimbursement.
11. **EXECUTION OF AGREEMENTS**: All contracts, leases and expenditures shall be formally approved by the Consortium and signed by the Chair of the Consortium and the administrative and fiscal agent for the Consortium and, as to contracts and/or leases, shall also be signed by an attorney from the County Attorney's office of the Consortium's designated administrative agent, as noted in Paragraph 14 below.

12. **DEBT INSTRUMENTS**: The Consortium shall not borrow funds or issue debt instruments without the expressed prior written authorization of each of the Parties hereto, issued in compliance with State law.
13. **PROVISION OF SERVICES**: Employees of the Parties shall reasonably cooperate with the Consortium and shall provide such in-house services as may be available as determined in the sole discretion of the respective Party. The Consortium may engage such consultants and other service providers, as it deems necessary, and shall be solely responsible for entering into applicable written Agreements and paying for such services.
14. **LEGAL COUNSEL**: The Miami-Dade County Attorney shall furnish legal advice and representation to the Consortium at no cost. All contracts and leases to be considered by the Consortium must have been approved in writing by the Miami-Dade County Attorney's Office for form and legal sufficiency before Consortium action. A copy of all executed contracts and leases shall be forwarded to the Parties, who are responsible for forwarding them, in turn, to their respective County Attorneys, if necessary.
15. **POLICIES AND PROCEDURES**: The Consortium shall adhere to the administrative and fiscal agent's written policies and procedures relating to the acquisition of goods and services. The Consortium shall establish in writing uniform rates for the services it provides (or may provide) or literature it sells (or may sell). The Consortium shall establish in writing, through action of the Consortium's members, such rules and regulations as may be necessary in the conduct of its business.
16. **DISPOSITION OF PROPERTY**: At the complete termination of this Agreement by all Parties as stated in Paragraph 3 above, all property then held by the Consortium or in which the Consortium has an interest shall be evaluated and distributed among the Parties or sold at public auction and the proceeds distributed proportionately to the Parties, based on each Party's history of contributions in support of Consortium activities and as determined by formal action of the Consortium. Property purchased with grant funds shall be disposed of in accordance with the grant guidelines and applicable regulations.
17. **SHARING OF PROPERTY**: At the complete termination of this Agreement by all Parties, as stated in Paragraph 3 above, each Party is entitled to a proportionate share, based on its history of contributions in support of Consortium activities, of all property (or the proceeds thereof) acquired by the Consortium or in which the Consortium has an interest. Any Party terminating its

participation prior to the termination date fixed by this Agreement in Paragraph 3 above, as it may be automatically renewed from time to time, shall not be entitled to any share of any property or the proceeds thereof nor be responsible for any liabilities after the effective date of such Party's termination.

18. **INSURANCE FOR CONSORTIUM:** Throughout the period that Miami-Dade County is the designated fiscal and administrative agent, the Consortium is covered by Miami-Dade County's self-insurance program. If preferred, the Consortium may, through action of the Consortium members, purchase additional and/or alternative insurance protection.
19. **REPORTING ACTIVITIES:** Each year during the term of this Agreement, each member of the Consortium shall report to its respective governing boards of directors, and Board of County Commissioners for those Parties that are wholly public agencies, as to the most recently completed and proposed fiscal year's activities of the Consortium, on a schedule compliant with the reporting requirements as determined by each respective Party.
20. **EXECUTIVE COMMITTEE:** The Consortium may delegate to its executive committee any and all of the business of the Consortium. The executive committee shall be composed of the Chair of the Consortium and the other professional staff director members of the Consortium. The executive committee shall meet no less frequently than two (2) times during each calendar year. A quorum of the executive committee shall be three (3) members, and the Chair of the Consortium will chair the executive committee. All meetings of the executive committee shall comply with the requirements of the Florida Government in the Sunshine Law, as amended from time to time.
21. **JURISDICTION, VENUE, WAIVER OF JURY TRIAL:** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be in an appropriate state court pursuant to State law. Venue for any actions, claims, and litigation shall be in either Broward County, Martin County, Miami-Dade County, Monroe County or Palm Beach County.
22. **AMENDMENTS:** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and approved by each of the respective governing boards of directors, and Board of County Commissioners for those Parties that are wholly public agencies, and executed by the authorized representatives of each of the Parties hereto.

23. **PRIOR AGREEMENTS:** This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

24. **INDEMNIFICATION AND HOLD HARMLESS:** Subject to Florida's laws as may be amended from time to time, the Parties shall indemnify and hold harmless each Party, its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the Party or its officers, employees, agents or instrumentalities incur as a result of the negligent performance of the Agreement by the Party found to be at fault or its employees, agents, servants, partners, principals or subcontractors. This indemnification shall only be to the extent and within the limitations of Section 768.28 Florida Statutes and as may be amended from time to time, including the provisions of the Statute whereby the Party shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum stated in the mentioned statute section, or any claim or judgment or portions thereof, which when totaled with all other claims or judgments paid by the Party arising out of the same incident or occurrence, exceed the sum stated in the mentioned statute section from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the Party.

The Parties hereto acknowledge that Broward County, Martin County, Miami-Dade County, Monroe County and Palm Beach County are self-insured governmental entities that are subject to the limitations of Section 768.28, Florida Statutes and as may be amended from time to time. Each of these entities agrees that it has instituted and maintains a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provisions of Section 768.28 Florida Statutes, as may be amended from time to time, including Worker's Compensation in accordance with Chapter 440, Florida Statutes, as may be amended from time to time, including Employer's liability with a minimum of \$100,000.

25. **AUDIT RIGHT AND RETENTION OF RECORDS:** Each Party shall have the right to audit the books, records, and accounts of the Consortium and the appropriate designated fiscal and/or

administrative agent(s) that are related to this Agreement. The Consortium and the appropriate designated fiscal and/or administrative agent(s) shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. All books, records, and accounts of the Consortium (and the appropriate designated fiscal and/or administrative agent(s) related to this Agreement) shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, the Consortium and the appropriate designated fiscal and/or administrative agent(s) shall make same available at no cost to any of the Parties in written form within a reasonable time of any such request.

The Consortium and the appropriate designated fiscal and/or administrative agent(s) shall preserve and make available, at reasonable times for examination and audit by any of the Parties, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat., as amended from time to time), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after complete termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or such three (3) year period, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. The Consortium and the appropriate designated fiscal and/or administrative agent(s) shall comply with all requirements of the Florida Public Records Act; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by the Consortium and the appropriate designated fiscal and/or administrative agent(s). Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for each Party's (excluding the appropriate designated fiscal and/or administrative agent(s)'s) disallowance and recovery of any payment related to such entry.

26. **COMPLIANCE WITH LAWS:** Each Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations, as may be amended from time to time, in performing its duties, responsibilities, and obligations pursuant to this Agreement.
27. **INCORPORATION BY REFERENCE:** The truth and accuracy of each "Whereas" clause set forth above are acknowledged by the Parties.
28. **REPRESENTATION OF AUTHORITY:** Each individual executing this Agreement on behalf of a Party hereto does hereby represent and warrant that he or she is, on the date he or she signs this

Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party.

29. **MULTIPLE ORIGINALS:** Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.
30. **NOTICES:** Whenever any Party desires to give notice to the other Part(ies), such notice must be in writing, sent by certified United States Mail, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified, and simultaneously addressed and similarly transmitted to the designated fiscal and administrative agent(s) for the Consortium at the place(s) last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

FOR BROWARD COUNTY:

Ms. Mary Becht, Director
Broward Cultural Division
100 S. Andrews Avenue, 6th Floor
Fort Lauderdale, Florida 33301

FOR MARTIN COUNTY:

Ms. Nancy Turrell, Director
Arts Council of Stuart and Martin County
80 East Ocean Boulevard
Stuart, Florida 34994-2234

FOR MIAMI-DADE COUNTY:

Mr. Michael Spring, Director
Miami-Dade County Department of Cultural Affairs
111 NW First Street, Suite #625
Miami, Florida 33128

FOR MONROE COUNTY:

Ms. Elizabeth Young, Director
Florida Keys Council of the Arts
1100 Simonton Street
Key West, Florida 33040

FOR PALM BEACH COUNTY:

Ms. Rena Blades, President & CEO
Palm Beach County Cultural Council
1555 Palm Beach Lakes Blvd., #300
West Palm Beach, Florida 33401

Each party may change the name, title, and addresses of its representatives named in Paragraph 30 herein using the notices and procedures stated in Paragraph 30 herein.

31. **MISCELLANEOUS:**

- 31.1 **DOCUMENTS RETENTION:** Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the custodial responsibility of the appropriate designated fiscal and/or administrative agent on behalf of the Consortium. In the event of termination of this Agreement by any Party, copies of any reports, photographs, surveys, and other data and documents prepared by any of the Parties hereto, whether finished or unfinished, shall be delivered by such Part(ies) to the appropriate designated fiscal and/or administrative agent within seven (7) calendar days after termination of this Agreement. Such records shall be maintained in a readily accessible location for a period of at least three (3) years, and not more than five (5) years after complete termination of this Agreement, unless a longer period of time is required by law. Any compensation or payment due to any such terminating Party shall be withheld until all documents are received by the appropriate designated fiscal and/or administrative agent as provided herein.
- 31.2 **INDEPENDENT CONTRACTOR:** Each Party is an independent contractor under this Agreement. Services provided by each Party pursuant to this Agreement shall be subject to the supervision of that Party. In providing such services, none of the Parties or its agents shall act as officers, employees, or agents of the other Part(ies). No partnership, joint venture, or other joint relationship is created hereby. Each Party does not extend to the other Part(ies) or such Part(ies)'s agents any authority of any kind to bind the other Part(ies) in any respect whatsoever. The Miami-Dade County Attorney and the fiscal and/or administrative agent(s) are only authorized to act on behalf of the Consortium as a separate legal entity, except as otherwise specifically authorized.
- 31.3 **THIRD PARTY BENEFICIARIES:** None of the Part(ies) intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against any of them based upon this Agreement.

31.4 **ASSIGNMENT AND PERFORMANCE:** Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by any Party. In addition, any responsible Party shall not subcontract any portion of the work required by this Agreement, except as authorized by this Agreement.

31.4.1 Each Party represents that each person who will render services on that Party's behalf pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

31.4.2 Each Party shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of each Party's performance and all products and services provided to, or on behalf of, the other Parties shall be comparable to the best local and national standards.

31.5 **MATERIALITY AND WAIVER OF BREACH:** Each Party agrees that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

Any Party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement by such Party. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

31.6 **SEVERANCE:** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless any of the Parties elects, in writing, to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.

31.7 **JOINT PREPARATION:** Each Party acknowledges and agrees that it has sought and received whatever competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been the joint effort of each Party. The language agreed to expresses

the mutual intent of all Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against any one of the Parties relative to any of the others.

31.8 **PRIORITY OF PROVISIONS:** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 31 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 31 shall prevail and be given effect.

31.9 **CONFLICTS:** None of the Parties, nor any of their employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with such Party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

31.9.1 Each Party further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against the other Parties in any legal or administrative proceeding related to the Consortium, its activities or the performance of Consortium services, in which he, she, or such Party is not a party, unless compelled by court process. Further, each Party agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of any of the other Parties in connection with any such pending or threatened legal or administrative proceeding related to the Consortium, its activities or the performance of Consortium services, unless compelled by court process. The limitations of this section shall not preclude any Party or any persons in anyway from representing themselves as individuals, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding related or unrelated to the Consortium, its activities or the performance of Consortium services.

31.9.2 In the event any of the Parties is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, such Party

agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as such Party.

- 31.10 **NO INTEREST:** Unless required by any of the Parties' Ordinances or applicable laws, any funds that are the subject of a dispute regarding this Agreement that are not paid by the appropriate designated fiscal and/or administrative agent to the appropriate Party when claimed to be due shall not be subject to interest during the period of such dispute. All requirements inconsistent with this provision are hereby waived by each Party.

(The remainder of this page is intentionally left blank.)

INTERLOCAL AGREEMENT AMONG BROWARD COUNTY, MARTIN COUNTY, MIAMI-DADE COUNTY, MONROE COUNTY AND PALM BEACH COUNTY RELATING TO THE SOUTH FLORIDA CULTURAL CONSORTIUM:

ATTEST:

BROWARD COUNTY, by and through its
BOARD OF COUNTY COMMISSIONERS

BY _____
Mayor

On the ____ day of _____, 20 ____

Broward County Administrator, as
Ex-Officio Clerk of the Broward County
Board of County Commissioners
(SEAL)

MARTIN COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

BY _____
County Administrator

On the ____ day of _____, 20 ____

Clerk, Martin County Commission
(SEAL)

MIAMI-DADE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

On the ____ day of _____, 20 ____

BY _____
Mayor

Clerk of the Board of County Commissioners
Miami-Dade County, Florida
(SEAL)

MONROE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

BY _____
Mayor

On the ____ day of _____, 20 ____

Clerk, Monroe County Commission
(SEAL)

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

BY _____
Chair

On the ____ day of _____, 20 ____

Clerk, Palm Beach County Commission
(SEAL)

Approved for form and legal sufficiency:

Broward County Attorney's Office:
Assistant County Attorney

Martin County Attorney

Miami-Dade County Attorney

Monroe County Attorney

Palm Beach County Attorney