

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: Oct. 22, 2013 [ X ] Consent [ ] Regular  
[ ] Workshop [ ] Public Hearing

Department

Submitted By: County Administration

Submitted For: Cultural Council of Palm Beach County, Inc.

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve Agreement with the Cultural Council of Palm Beach County, Inc., in the amount of \$200,000 from October 1, 2013 through September 30, 2014 for services relating to the administration of Category C – Level 1 (Small and Emerging Organizations, Children’s and Multicultural projects) cultural grant program for non-profit organizations within the County.

**Summary:** The County shall provide an amount not to exceed Two Hundred Thousand Dollars (\$200,000) to fund certain activities of non-profit organizations as determined by the Cultural Council of Palm Beach County (Council) pursuant to a process established herein and approved by County. Of the \$200,000 in County funding, up to One Hundred and Eighty Eight Thousand Dollars (\$188,000) shall be applied to Category C-Level 1 (Small and Emerging Organizations, Children’s and Multicultural projects). A portion of the remaining funds, not to exceed 10% of the total amount, may be used by the Council to administer the program. In the event any of the funds are unspent, the Council will reallocate said funds to support cultural programs in underserved areas of the County.

**Background and Justification:** At its last budget hearing in September, the Board of County Commissioners designated \$200,000 for certain programs, not tied to tourist development, that would be administered through an agreement with the Cultural Council to monitor these funds by implementing the Cultural Council Category “C-1” grant process. The Agreement provides that the Cultural Council will distribute the funds as grants to community-based non-profit cultural organizations serving county residents through cultural programs, festivals and arts education. The Council will administer the program through a process which requires a panel to review the application forms and guidelines and to evaluate the applications by recommending grant amounts through the Cultural Council board of directors.

**Attachments:**

- 1. Agreement
- 2. Exhibits

Recommended by:

  
Rena Blades, Cultural Council Date 10.11.13

Approved By:

  
Deputy County Administrator Date 10/17/13

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>200,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u><u>200,000</u></u>	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included In Current Budget?      Yes X                      No.

Budget Account No.:    Fund 0001    Department 743    Unit 7136    Object 8201

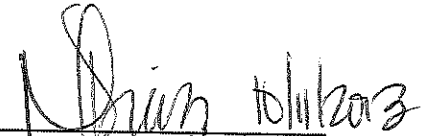
Reporting Category \_\_\_\_\_

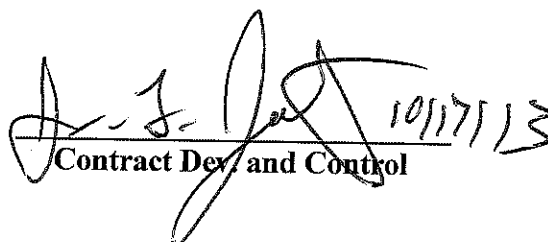
**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**C. Department Fiscal Review:**


**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Administration Comments:**

  
 \_\_\_\_\_  
 OFMB  
 10/11/13      10/11/13

  
 \_\_\_\_\_  
 Contract Dev. and Control      10/11/13

**B. Approved as to form and Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney

**C. Approved as to form and content:**

\_\_\_\_\_  
 Department Director

This summary is not to be used as a basis for payment.

## **AGREEMENT**

**THIS AGREEMENT**, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the Cultural Council of Palm Beach County, Inc., a Florida not-for-profit corporation (hereinafter referred to as "Council") whose Federal Identification Number is 59-1862336, and the Board of County Commissioners of Palm Beach County, Florida, a political subdivision of the State of Florida (hereinafter referred to as "County").

**WHEREAS**, the County has determined that it is in the best interests of the residents and visitors of Palm Beach County to support programs of small and emerging cultural organizations, children's and multicultural projects, providing entertainment and education to its residents and visitors; and

**WHEREAS**, the Council is recognized by the County as an appropriate organization to assist the County by providing services relating to cultural activities and programs; and

**WHEREAS**, the Council has established cultural development programs to assist certain cultural and community-based organizations, which do not receive tourist development tax revenues, with their cultural programs; and

**WHEREAS**, the County has determined that it will support these programs by providing funding to the Council for the provision of grants to such organizations; and

**WHEREAS**, the County and Council wish to enter into an agreement to establish the terms and conditions under which the County will provide such funding to the Council.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The purpose of this Agreement is to specify the parties' roles and obligations for the funding by County of certain cultural programs administered by the Council.
2. The County's representative and contract monitor during the term of this Agreement shall be County Administrator or designee. The Council's representative shall be the Council's CEO or designee.
3. The term of this Agreement shall commence on October 1, 2013, and shall terminate September 30, 2013. This Agreement may be renewed upon written agreement by the parties.

4. The Council shall implement and administer a cultural development grant program, Category C-I, which shall provide grants to non-profit organizations for those organizations' cultural programs as more specifically described herein and in Exhibit A (guidelines for C-I) attached hereto and made a part hereof.
5. The County shall provide an amount not to exceed Two Hundred Thousand Dollars (\$200,000) to fund certain activities of these organizations as determined by the Council pursuant to a process established herein and approved by County. Of the \$200,000 in County funding, up to One Hundred Eighty Eight Thousand Dollars (\$188,000) will be applied to Category C-Level I (Small and Emerging Organizations, Children's and Multicultural projects.) A portion of the remaining funds, not to exceed 10% of the total amount, may be used by the Council to administer the program. In the event funds are unspent, the Council will reallocate funds to support cultural programs in underserved areas of the County.
6. The Council shall administer a grant panel following guidelines developed for the implementation and administration of the 2013-2014 grants referenced in paragraphs four and five above. The guidelines shall set forth criteria for the evaluation of grant applications and award of grants. The panel shall be comprised of at least one (1) representative appointed by County Administrator or his or her designee. The Council shall prepare an application form and administer a process that shall enable the grant panel to evaluate the organizations based on the established guidelines and to make funding recommendations to the board of directors of the Council.
7. The Council shall solicit proposals from organizations which meet the following eligibility criteria:
  - a. Small and emerging non-profit cultural organizations with cultural programs targeting residents and non-profit community-based organizations which have cultural programs that are presented by, for or about multicultural populations and/or cultural programs for children in Pre K-12 within Palm Beach County.
  - b. Have completed at least one year of operation as a non-profit organization within Palm Beach County as substantiated by financial and IRS records which records organizations shall produce if so required.
  - c. Applicant does not receive "Category B" or "Category C-II "Tourist Development (bed) tax revenues for Fiscal Year 2013-2014.

d. Has submitted a completed application.

8. Upon approval of the recommendation set forth in paragraph six, the Council shall enter into an agreement with the grantees. The Council shall monitor and evaluate the activities of the grantees during the time the activity is funded. The Council shall make available to County any information obtained by the Council during the evaluation and funding periods and shall otherwise cooperate with County in providing information to County concerning the results of the programs funded.
9. The County's obligation under this Agreement shall be limited to the funding amount set forth in paragraph 5 above. The funding provided hereunder shall be used for grants to the organizations qualified through the process specified above and for reimbursement of the certain limited Council administrative costs as set forth in paragraph 5. Payments shall be made to the Council in accordance with the fiscal procedures of County as reimbursement for authorized expenditures or the provisions of goods and/or services, following the Council's determination that the expenditures have been made in accordance with the grant agreement and are appropriate for reimbursement.

Each invoice submitted by the Council shall include a reference to its authorization, shall be itemized in sufficient detail for audit thereof and shall be supported by copies of the corresponding grantee invoice or proof of receipt or performance of the goods and/or services invoiced.

It is mutually agreed that the Council shall promptly review and submit to the County invoices received in good order, and that the County shall promptly pay to the Council on a continual basis amounts properly payable under this Agreement and supported by receipted invoices submitted by the Council. County shall not pay the Council unless and until the Clerk of the Board of County Commissioners pre-audits payment invoices in accordance with law, subject to the conditions, if any, attached to said approval.

10. Availability of Records. During the term of this Agreement, Council agrees that, in addition to County, an independent auditor shall have access to, and the right to examine, any pertinent books, documents, papers and records of the Council.
11. Intellectual Property. All logos, slogans, trademarks, trade names, written copy, layout production materials, formulas, recipes, and other intellectual property created by or on behalf of the Council or the County using County funds shall be the property of County, and the Council hereby assigns to County any and all rights the Council has or may acquire in such intellectual property. Any and all revenues derived

from such use by the Council shall be applied solely to the performance of the Council's duties specified in this Agreement and any such revenue not so applied shall be remitted by the Council to the County. The Council shall take no action inconsistent with the County's rights in such intellectual property, and will take all reasonable actions, including registration of trademarks and trade names, as necessary and appropriate to protect the County's rights in such property.

12. Insurance. The Council shall not commence work under this Agreement until it has obtained the types of insurance required in this paragraph and such insurance has been approved by the County.

a. Certificate of Insurance. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Council shall furnish Certificates of Insurance to the County prior to the commencement of operations. The certificates shall name the County as an additional insured and shall clearly indicate that the Council has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County. Compliance with the foregoing requirements shall not relieve the Council of its liability and obligations under this Agreement.

b. Comprehensive General Liability Insurance. The Council shall maintain during the life of this Agreement, comprehensive general liability insurance, including contractual liability insurance, in an amount no less than \$1,000,000.00 per occurrence to protect the Council from claims for damages for bodily and personal injury, including death, as well as from claims for property damage which may arise from any operations by the Council or by anyone employed by or contracting with the Council.

c. Comprehensive Automobile Liability Insurance. The Council shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$1,000,000.00 combined single limit for bodily injury, death and property damage liability to protect the Council from claims for damages, for property damage, death and for bodily and personal injury, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles, whether the operation of such automobiles be by the Council or by anyone directly or indirectly employed or retained by Council.

- d. Worker's Compensation Insurance. The Council shall maintain during the life of this Agreement, adequate worker's compensation insurance and employers' liability insurance in at least such amounts as are required by law for all of its employees in accordance with Chapter 440, Florida Statutes.
13. Indemnification for Negligent Acts or Omissions. The Council shall indemnify, save and hold harmless County, its officers, employees, servants and agents from and against any and all claims, liabilities, losses and/or causes of actions which may arise from any negligent act or omission of the Council, its officers, employees, servants and agents in the performance of services under this Agreement, and regardless of whether such negligent act or omission of the Council was caused, occasioned or contributed to in whole or in part by the negligence of County or its officers, employees, servants or agents.
14. Additional Information. The Council further agrees to indemnify, save, hold harmless and defend the County, its officers, employees, servants and agents from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the Council not included in the paragraph above and for which the County, its officers, employees, servants, and agents are alleged to be liable.
15. Non-Discrimination. During the performance of this Agreement, the Council agrees as follows:
- a. It will not discriminate against any employee or applicant for employment upon the grounds of race, religion, color, marital status, familial status, national origin, ancestry, sex, sexual orientation, gender identity and expression, age, handicap or disability with respect to, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
  - b. It will not discriminate against any grantee, applicant, subcontractor, contractor, potential contractor or participant hereunder, upon any of the above prohibited grounds.
16. Certificate of Authority and No Conflict. The Council hereby certifies that it is legally entitled to enter into this Agreement with the County, and that it is not now and at no time will violate either directly or indirectly any provision of Chapter 112, Florida Statutes, or any other conflict of interest statute or other applicable statute.

17. Conflict of Interest. Neither the Council, nor its officers, directors, agents or employees shall acquire any interest, either directly or indirectly, which would conflict in any manner with the duties, obligations or the performance of services provided for in this Agreement. The Council shall promptly notify the County in writing of all potential conflict of interests, and specify the association, interest or other circumstance, which may appear to influence the Council, its officers, directors, agents or employees. In the event the County Attorney's Office shall determine that such association, interest or other circumstance would constitute a conflict of interest, the Council, its officers, directors, agents or employees shall take all action necessary to resolve the conflict of interest.
18. Independent Contractor. The Council is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor, and not an agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Council's sole direction, supervision and control. The Council shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Council's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as officers, employees, agents or servants of the County. The Council shall not have the power or authority to bind the County in any promise, agreement or representation unless specifically provided for in this Agreement.
19. Preservation of Records. The Council shall maintain and preserve the records, books, documents, papers and financial information pertaining to the work performed under this Agreement. The Council agrees that the County, or any of its duly authorized representatives, until the expiration of three (3) years after final payment under this Agreement or until the expiration of three (3) years after the termination of this Agreement, whichever occurs last, shall have access to, and the right to examine, any pertinent books, documents, papers and records of the Council. In the event that such audit is in progress at the expiration of the aforementioned three (3) year period, access to and the right to examine will continue until completion of such audit.
20. Public Records. The parties agree that any and all records of the Council relating to this Agreement are to be considered public records, subject to the provisions of Chapter 119, Florida Statutes. Moreover, during the term of this Agreement, County is hereby granted the power to designate any and all records of the Council public records under Chapter 119, Florida Statutes, by resolution of the Board of County



Commissioners, making such designation, regardless of whether said records are presently deemed public records.

21. Notification to County. The Council shall notify the County's representative of any Council board or executive committee meeting at which matters relating to this Agreement are scheduled to be discussed.
22. Prohibition of Assignment. The Council shall not assign, sublet, convey or transfer in whole or in part its interest in this Agreement, without the prior written consent of the County.
23. Authority to Practice. The Council hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a responsible manner. Proof of such license and approvals shall be submitted to County upon request.
24. Other Activities and Services. This Agreement shall not be construed so as to prevent the Council from being an applicant for other funds from the County for activities or services other than those carried out under the terms of this Agreement and which do not conflict with the activities or services provided for in this Agreement.
25. Public Entity Crimes. As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the Council certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).
26. Termination. The County or the Council may terminate this Agreement at any time without cause by giving the other thirty (30) days advance written notice of such termination and specifying the effective date thereof.
27. Notices. All notices required by this Agreement shall be sent by certified mail, return receipt requested, to the following:

As to County: Verdenia Baker, Deputy County Administrator  
301 North Olive Avenue, 11<sup>th</sup> Floor  
West Palm Beach, FL 33401

As to Council: Rena Blades, President and CEO  
Cultural Council of Palm Beach County, Inc.  
601 Lake Ave  
Lake Worth, FL 33460

Or such other address directed by the respective parties in writing.

28. Palm Beach County Office of the Inspector General Audit Requirements

Pursuant to Palm Beach County Code, Section 2-421 – 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to review past, present and proposed COUNTY contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the COUNTY, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

29. Entirety of Agreement. This Agreement shall constitute the whole Agreement between the parties unless otherwise amended in writing. Any failure by the County to require strict performance by the Council or any waiver by the County of any provisions of this Agreement shall not be construed as a consent or waiver of any other breach of the same or any other provision.

30. Remedies. This Contract shall be governed by the Laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or Council.

31. Regulations: Licensing Requirements. The Council shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. Council is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

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

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO TERMS  
AND CONDITIONS

Witness

By: \_\_\_\_\_  
Verdenia Baker  
Deputy County Administrator

By: \_\_\_\_\_

Witness

By: \_\_\_\_\_  
Rena Blades, President and CEO  
Cultural Council of Palm Beach County, Inc.

By: \_\_\_\_\_

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
County Attorney