

REQUESTED COMMISSION ACTION:

X Consent Ordinance X Resolution Consideration/ Discussion Presentation

SHORT TITLE A resolution approving and authorizing the proper city officials to execute a grant amendment request form to the agreement between the City of Pompano Beach and the State of Florida, Department of State, Division of Cultural Affairs to obtain an extension of the grant completion deadline, modify the attended scope of services and re-allocate grant funds for the Library/Cultural Center Project.

Fiscal Impact: \$500,000 Grant Funds – State of Florida, Division of Cultural Affairs

Term: The Grant Agreement Specified a completion deadline of June 1, 2016

Summary of Purpose and Why:

The attached grant amendment request form is to extend the grant completion deadline of June 1, 2016 to September 29, 2016, modify the scope of services and re-allocate the appropriated budget funds for the Library/Cultural Center Phase I Project 15-9-300-599. The City was awarded \$500,000 to assist with the construction for the Library/Cultural Center from the State of Florida, Division of Cultural Affairs in January 2015. Due to project delays it has been recommended an amendment request form be filed with the State of Florida.



This item relates to the Strategic Plan:

Great Places: Goal 2.0, Initiative 2.8 – Develop and promote cultural/heritage tourism opportunities. Great Places: Goal 7.0, Initiative 7.3 – Complete Library/Cultural Arts Center Project

- (1) Origin of request for this action: Staff initiated
(2) Primary staff contact: Mark Beaudreau, Recreation Programs Adm. Ext. 4191
(3) Expiration of contract, if applicable: Extend grant deadline to September 29, 2016
(4) Fiscal impact and source of funding: None

DEPARTMENTAL COORDINATION Parks & Recreation Finance Budget City Attorney

DATE 4-19-16 4-19-16 4-19-16 4-19-16

DEPARTMENTAL RECOMMENDATION Approve Approval

DEPARTMENTAL HEAD SIGNATURE Mark H. Beaudreau S. Ribble

Handwritten signature of the City Manager

X City Manager

ACTION TAKEN BY COMMISSION:

Table with columns for Ordinance, Resolution, and Consideration, and rows for Workshop 1st Reading and 2nd Reading.

MEMORANDUM 16-065

Date: April 18, 2016
To: Dennis Beach, City Manager
From: Mark Beaudreau, Recreation Programs Administrator *MB*
Subject: Agenda Item- Grant Amendment Request to State of Florida, Division of Cultural Affairs Phase 1 project # 15.9.300.599

Please place the attached grant amendment request form on the April 26, 2016 City Commission Agenda, to extend the grant completion deadline of June 1, 2016 to September 29, 2016, modify the scope of services and re-allocate the appropriated budget funds for the Cultural Center Phase 1 project # 15.9.300.599.

On January 13, 2015, an agreement between the City of Pompano Beach and the State of Florida, Division of Cultural Affairs was executed for a \$500,000 grant award to assist in the construction of the Cultural Center. The terms of the grant were to have a certain amount of work completed by June 1, 2016, however, this project has been complicated with the tri-agency involvement which has resulted in design specs changes (major change order) and a bout of bad weather (heavy rains and tornadoes) occurrences. In order to avoid not being able to meet the deadline, it has been recommended that the amendment request form be filed with the State of Florida.

If you require any additional information, please contact me at 954-786-4191.

MB/CK/afh



City Attorney's Communication #2016-736
April 15, 2016

TO: Mark A. Beaudreau, Recreation Programs Administrator
FROM: Fawn Powers, Assistant City Attorney
RE: Resolution – Cultural Facilities Grant Amendment Request Form

As requested, the above-referenced Resolution has been prepared and is attached at this time as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A GRANT AMENDMENT REQUEST FORM TO THE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE STATE OF FLORIDA, DEPARTMENT OF STATE, DIVISION OF CULTURAL AFFAIRS TO OBTAIN AN EXTENSION OF THE GRANT COMPLETION DEADLINE, MODIFY THE ATTENDANT SCOPE OF SERVICES AND RE-ALLOCATE GRANT FUNDS FOR THE LIBRARY CULTURAL CENTER PROJECT; PROVIDING AN EFFECTIVE DATE.

FAWN POWERS

RESOLUTION NO. 2016- _____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A GRANT AMENDMENT REQUEST FORM TO THE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE STATE OF FLORIDA, DEPARTMENT OF STATE, DIVISION OF CULTURAL AFFAIRS TO OBTAIN AN EXTENSION OF THE GRANT COMPLETION DEADLINE, MODIFY THE ATTENDANT SCOPE OF SERVICES AND RE-ALLOCATE GRANT FUNDS FOR THE LIBRARY CULTURAL CENTER PROJECT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Resolution 2015-138 dated January 13, 2015, the City Commission authorized the proper City officials to execute an Agreement between the City of Pompano Beach and the State of Florida, Department of State, Division of Cultural Affairs (the “Agreement” attached hereto and made a part hereof as Exhibit 1), which awards the City a \$500,000.00 grant to help fund construction of the Library Cultural Center Project subject to the City’s satisfactory completion of its obligations thereunder; and

WHEREAS, the Agreement expires on June 1, 2016 (the “grant completion deadline”) and the City needs additional time to provide the deliverables and meet the performance measures required to receive the balance of the grant funds awarded thereunder;

WHEREAS, the Agreement provides the City may request a modification of its provisions by timely submitting the Grant Amendment Request Form attached hereto and incorporated herein as Exhibit 2;

WHEREAS, pursuant to submittal of the Grant Amendment Request Form, the City intends to seek Division approval to extend the grant completion deadline, modify the attendant scope of services and re-allocate appropriated grant funds;

WHEREAS, the City Commission has determined that the best interests of the public will be served by seeking the aforesaid modifications pursuant to submittal of the subject Grant Amendment Request Form; now, therefore,

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That the Grant Amendment Request Form (Exhibit 2) for the Agreement between the City of Pompano Beach and the State of Florida, Department of State, Division of Cultural Affairs (Exhibit 1), is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Grant Amendment Request Form and timely submit same to the State of Florida, Department of State, Division of Cultural Affairs.

SECTION 4. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

10/15/14

**Exhibit 1
Resolution 2015-138
Grant Agreement The State of
Florida, Department of State,
Division of Cultural Affairs**

RESOLUTION NO. 2015- 138

**CITY OF POMPANO BEACH
Broward County, Florida**

**A RESOLUTION OF THE CITY COMMISSION OF THE
CITY OF POMPANO BEACH, FLORIDA, APPROVING
AND AUTHORIZING THE PROPER CITY OFFICIALS TO
EXECUTE AN AGREEMENT BETWEEN THE CITY OF
POMPANO BEACH AND THE STATE OF FLORIDA,
DEPARTMENT OF STATE, DIVISION OF CULTURAL
AFFAIRS ACCEPTING A GRANT IN THE AMOUNT OF
\$500,000.00 FOR THE LIBRARY CULTURAL CENTER
PROJECT; PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO
BEACH, FLORIDA:**

SECTION 1. That an Agreement between the City of Pompano Beach and the State of Florida, Department of State, Division of Cultural Affairs, a copy of which is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and the State of Florida, Department of State, Division of Cultural Affairs.

SECTION 4. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 13th day of January, 2015.



LAMAR FISHER, MAYOR

ATTEST:



MARY L. CHAMBERS, CITY CLERK

**AGREEMENT BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF STATE
AND
CITY OF POMPANO BEACH**

This Agreement is by and between the State of Florida, Department of State, Division of Cultural Affairs hereinafter referred to as the "Division," and the City of Pompano Beach hereinafter referred to as the "Grantee."

The Grantee has been awarded a Cultural Facilities Grant (CSFA 45.014) by the Division, grant number 15.9.300.599 for the project "Pompano Beach Cultural Center: Phase 1," in the amount of \$500,000. Funds for this grant have been appropriated in the FY 2014-2015 General Appropriations Act on line 3146A. The Division has the authority to administer this grant in accordance with Section 265.701, *Florida Statutes*.

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. **Grant Purpose.** This grant shall be used exclusively for the "Pompano Beach Cultural Center: Phase 1" project, the public purpose for which these funds were appropriated.

The Grantee shall perform the following **Scope of Work**: The City of Pompano Beach shall build a state-of-the-art, 21,980 square foot Cultural Center including performance and event space, digital media center, visual arts gallery and public/support spaces. All tasks associated with the renovation, as outlined in the Project Description (See Attachment A), will be performed by June 1, 2016. All project work will be completed under the supervision of a licensed architect or licensed contractor.

- a) The Grantee agrees to provide the following **Deliverables** and **Performance Measures** related to the Scope of Work for payments to be awarded.

Payment 1:

- The first payment will be a fixed price advance in the amount of 25% of the grant award. The items in Section 4 of the Agreement ("Required Information Needed with Return of Signed Agreement") must be submitted prior to release of this payment.

Payment 2, Deliverable/ Task 1:

- Payment 2 will be cost reimbursement. The Grantee will have completed at least 30 percent of the project prior to this payment. The performance measure documenting satisfactory completion of Deliverables will be a completed Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or its equivalent (See Appendix 1), showing at least 30 percent of the project completed.

Payment 3, Deliverable/ Task 2:

- Payment 3 will be cost reimbursement. The Grantee will have completed at least 60 percent of the project prior to this payment. The performance measure documenting satisfactory completion of Deliverables will be a completed Application and Certificate for Payment

(AIA Document G702) and Schedule of Contract Values (AIA Document G703), or its equivalent (See Appendix 1), showing at least 60 percent of the project completed.

Payment 4, Deliverable/ Task 3:

- Payment 4 will be cost reimbursement. The Grantee will have completed 100 percent of the project prior to this payment. The performance measure documenting satisfactory completion of Deliverables will be a completed Application and Certificate for Payment (AIA Document G702), Schedule of Contract Values (AIA Document G703), and a Certificate of Substantial Completion (AIA Document G704), or its equivalent (See Appendix 1), showing 100 percent of the project completed, including all retainage amounts paid. The performance measure documenting satisfactory completion of Deliverables will be submission and acceptance of a Final Cultural Facilities Report form (See Section 11) that certifies that all project funds have been expended and the project has been closed out.

b) The Grantee has provided an Estimated Project Budget (which is incorporated as part of this Agreement and entitled Attachment C). All expenditures for this agreement shall be in accordance with this budget (Attachment C).

c) **Change Orders.** Should grant expenditures exceed the budgeted grant amount for any work item by more than 20%, the Grantee shall be required to submit a proposal for revision of the Project Budget with a written explanation for the reason(s) for deviation(s) from the original Project Budget to the Division for review and written approval.

2. **Length of Agreement.** This Agreement shall begin on **July 1, 2014**, and shall end **June 1, 2016**, unless terminated in accordance with the provisions of Section 37 of this Agreement. Contract extensions will not be granted unless Grantee is able to provide substantial written justification and the Division approves such extension. The Grantee's written request for such extension must be submitted to the Division no later than thirty (30) days prior to the termination date of this Agreement.

3. **Contract Administration.** The parties are legally bound by the requirements of this agreement. Each party's contract manager, named below, will be responsible for monitoring its performance under this Agreement, and will be the official contact for each party. Any notice(s) or other communications in regard to this agreement shall be directed to or delivered to the other party's contract manager by utilizing the information below. Any change in the contact information below should be submitted in writing to the contract manager within 10 days of the change.

For the Division of Cultural Affairs:

Elsie Rogers, Grant Manager
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399
Phone: 850.245.6483
Facsimile: 850.245.6454
Email: elsie.rogers@dos.myflorida.com

For the Grantee:

Ernesto Reyes
City of Pompano Beach
Office of the City Manager
100 West Atlantic Blvd., 4th Floor
Pompano Beach, Florida 33060
Phone: 954.786.4049
Fax: 954.786.4504
Ernesto.Reyes@copbfl.com

- 4. Required Information Needed with Return of Signed Agreement.** Prior to the disbursement of the advance payment, the Grantee must provide the following with the return of the signed Agreement.
- a) Signed Grant Award Agreement which details the Scope of Work and Deliverables.
 - b) Legal Description of the Property. The Grantee has provided and attached the legal description of the property on which the cultural facility is or will be located, (which is incorporated as part of this Agreement and entitled Attachment B).
 - c) Choose to Record a Restrictive Covenant or Purchase a Surety Bond. The Grantee has provided documentation that the Restrictive Covenant has been recorded with the Clerk of the Circuit Court of the county where the property is located, or provided a Surety Bond. (See Section 20 and 21)
 - d) Corporate Nonprofit Status. The Grantee must provide a copy of the corporations' not-for-profit status and continue to maintain its not-for-profit eligibility, as a public entity or a tax-exempt Florida corporation, for the duration of the Restrictive Covenant or Surety Bond.
 - e) Historic Preservation Review. The Grantee must submit the confirmation received from the Bureau of Historic Preservation regarding the historical significance of the property. Applies if structures are 50 years or older. (See Section 22)
 - f) Submit a copy of the Grantee's Florida Substitute Form W-9. (See Section 7)
- 5. Grant Payments.** All grant payments are requested by submitting Application and Certificate for Payment (AIA Document G702) and Schedule of Contract Values (AIA Document G703), or its equivalent (See Appendix 1). The total grant award shall not exceed \$500,000 which shall be paid by the Division in consideration for the Grantee's minimum performance as set forth by the terms and conditions of this Agreement. The grant payment schedule is outlined below:
- a) The first payment will be 25% advance of the grant award.
 - b) The second payment will be cost reimbursement. Payment will be made in accordance with the completion of Deliverable 1.

- c) The third payment will be cost reimbursement. Payment will be made in accordance with the completion of Deliverable 2.
 - d) The fourth payment will be cost reimbursement. Payment will be made in accordance with the completion of the Deliverable 3.
6. **Electronic Payments.** The Grantee can choose to use electronic funds transfer (EFT) to receive grant payments. All grantees wishing to receive their award through electronic funds transfer must submit a Direct Deposit Authorization form to the Florida Department of Financial Services. If EFT has already been set up for your organization, you do not need to submit another authorization form unless you have changed bank accounts. To download this form visit <http://www.myfloridacfo.com/Division/AA/Forms/DFS-A1-26E.pdf>. This page also includes tools and information that allow you to check on payments.
7. **Florida Substitute Form W-9.** A completed Substitute Form W-9 is required from any entity that receives a payment from the State of Florida that may be subject to 1099 reporting. The Department of Financial Services (DFS) must have the correct Taxpayer Identification Number (TIN) and other related information in order to report accurate tax information to the Internal Revenue Service (IRS). To register or access a Florida Substitute Form W-9 visit <https://flivendor.myfloridacfo.com/>. **A copy of the Grantee's Florida Substitute Form W-9 must be submitted with the executed Agreement.**
8. **Amendment to Contract.** Either party may request modification of the provisions of this Agreement by submitting a Cultural Facilities Grant Amendment Request form to the Division. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement. If changes are implemented without the Division's written approval, the organization is subject to noncompliance, and the grant award is subject to reduction, partial, or complete refund to the State of Florida and termination of this agreement. The Cultural Facilities Grant Amendment Request form is available on the Division's online grant system.
9. **Financial Consequences.** The Department shall apply the following financial consequences for failure to perform the minimum level of services required by this Agreement in accordance with Sections 215.971 and 287.058, *Florida Statutes*.
- a) The full amount of the first payment (fixed price advance in the amount of 25% of the grant award) will be returned to the State of Florida if Deliverable 1 is not satisfactorily completed.
 - b) Second payment will be withheld if Deliverables are not satisfactorily completed.
 - c) Third payment will be withheld if Deliverables are not satisfactorily completed.
 - d) Fourth payment will be withheld if Deliverables are not satisfactorily completed.
10. **Encumbrance of Funds.** Encumbrance Period is between July 1, 2014 and June 30, 2015, during which state dollars must be obligated to pay for project expenses. To encumber means to have a signed contract with an architect or contractor for the expenditure of all grant and matching funds.

All grant funds must be encumbered under the terms of a binding contractual agreement by **June 30, 2015**, except as allowed below.

- a) **Extension of Encumbrance Deadline:** The encumbrance deadline indicated above may be extended by written approval of the Division. To be eligible for this extension, the Grantee must demonstrate to the Division that full encumbrance of grant funding and the required match by binding contract(s) is achievable by the end of the requested extended encumbrance period. The Grantee's written request for extension of the encumbrance deadline must be submitted to the Department no later than fifteen (15) days prior to the encumbrance deadline indicated above. The maximum extension of the encumbrance period shall be thirty (30) days.

11. Grant Reporting Requirements. The Grantee must submit the following reports to the Division, using the Cultural Facilities Progress Report form. The Cultural Facilities Progress Report form is available on the Division's website at <http://dos.myflorida.com/media/31252/culturalfacilitiesreportform.pdf>

- a) **First Project Progress Report** is due by January 31, 2015, for the period ending December 31, 2014.
- b) **Second Project Progress Report** is due by July 31, 2015, for the period ending June 30, 2015.
- c) **Third Project Progress Report** is due by January 31, 2016, for the period ending December 31, 2015.
- d) **Final Report.** The Grantee must submit a Final Report with photos of the completed project to the Division by July 15, 2016.

12. Matching Funds. Matching funds must meet the following requirements:

- a) Be directly related to the specific construction or renovation work described in the Project Description and detailed in the Estimated Project Budget.
- b) May not consist of general operating expenses as described in Section 10 of this agreement.
- c) Be clearly accounted for by documentation maintained at the Grantee's office.
- d) May not consist of state dollars from any source.
- e) May not consist of matching funds claimed for any other state grant.
- f) May have been expended prior to July 1, 2014, as long as the expenditures are clearly a part of this grant project, as described in the Project Description and detailed in the Estimated Project Budget.
- g) If the Grantee's total support and revenue for the last completed fiscal year is \$500,000 or more, the Grantee must provide not less than \$2.00 in matching funds for every \$1.00 of state funds received under this Agreement.

- h) If the Grantee's total support and revenue for the last completed fiscal year is less than \$500,000, the Grantee must provide not less than \$1.00 in matching funds for every \$1.00 of state funds received under this Agreement.
- i) Documentation of in-kind contributions must substantiate fair market value.
- j) The matching requirement for grants for Rural Economic Development Initiative (REDI) counties or communities designated in accordance with Section 288.0656, *Florida Statutes*, and approved for reduction in accordance with Section 288.06561, *Florida Statutes*, by the application deadline is \$1.00 in matching funds for every \$1.00 of state funds received under this Agreement.

13. Grant Completion Deadline. The grant completion deadline is **June 1, 2016**. The Grant Completion Deadline is the date when the project is 100% complete and all grant and matching funds have been paid out in accordance with the work described in the Scope of Work, detailed in the Estimated Project Budget. If the Grantee finds it necessary to request an extension of the Grant Completion Deadline, the extension may not exceed 120 days, unless the Grantee can demonstrate extenuating circumstances as described in Section 14 of this Agreement.

14. Extension of the Grant Completion Deadline. An extension of the completion date must be requested at least thirty (30) days prior to the end of the grant period and may not exceed 120 days, unless the Grantee can clearly demonstrate extenuating circumstances. An extenuating circumstance is one that is beyond the control of the Grantee, and one that prevents timely completion of the project such as a natural disaster, death or serious illness of the individual responsible for the completion of the project, litigation related to the project, or failure of the contractor or architect to provide the services for which they were contracted to provide. An extenuating circumstance does not include failure to read or understand the administrative requirements of a grant or failure to raise sufficient matching funds. Prior written approval is required for extensions.

15. Credit Line(s) to Acknowledge Grant Funding. All construction projects shall display a project identification sign in a prominent location at the Project site and shall maintain said sign while work is in progress. The sign must be a minimum of eight (8) square feet in area, be constructed of plywood or other durable material, and shall contain the following acknowledgment of grant assistance:

- a) "This project is sponsored in part by the Department of State, Division of Cultural Affairs, the Florida Council of Arts and Culture and the State of Florida" (Section 286.25, *Florida Statutes*).
- b) Any variation in the above specifications must receive prior approval in writing by the Department. The cost of preparation and erection of the project identification sign are allowable project costs. Routine maintenance costs of project signs are not allowable project costs.

16. Non-allowable Grant Expenditures. The Grantee agrees to expend all grant funds received under this agreement solely for the purposes for which they were authorized and appropriated. Expenditures shall be in compliance with the state guidelines for allowable project costs as outlined in the Department of Financial Services' Reference Guide for State Expenditures, which are incorporated by reference and are available online at http://www.myfloridacfo.com/aadir/reference_guide/. In addition, the following are not allowed as grant or matching expenditures:

- a) General operating expenses (including but not limited to salaries, travel, personnel, office supplies, mortgage, rent, operating overhead, indirect costs, etc.).
- b) Costs incurred in writing or submitting this grant application.
- c) Costs for lobbying or attempting to influence federal, state or local legislation, the judicial branch, or any state agency.
- d) Costs for planning, which include those for preliminary and schematic drawings, and design development documents necessary to carry out the project.
- e) Costs for bad debts, contingencies, fines and penalties, interest, and other financial costs.
- f) Costs for travel, private entertainment, food, beverages, plaques, awards, or scholarships.
- g) Projects which are restricted to private or exclusive participation, including restriction of access to programs on the basis of sex, race, religion, creed, national origin, disability, age, or marital status.
- h) Re-granting, contributions, and donations.
- i) Costs that are paid prior to the execution of the Grant Award Agreement and for which reimbursement is requested, or after June 1, 2016.

17. Unobligated and Unearned Funds and Allowable Costs. In accordance with Section 215.971, *Florida Statutes*, the Grantee shall refund to the State of Florida any balance of unobligated funds which has been advanced or paid to the Grantee. In addition, funds paid in excess of the amount to which the recipient is entitled under the terms and conditions of the agreement must be refunded to the state agency. Further, the recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period. Expenditures of state financial assistance must be in compliance with the laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the *Reference Guide for State Expenditures*.

18. Repayment. All refunds or repayments to be made to the Department under this agreement are to be made payable to the order of the "Department of State" and mailed directly to the following address: Florida Department of State, Attention: Elsie Rogers, Division of Cultural Affairs, 500 South Bronough Street Tallahassee, FL 32399. In accordance with Section 215.34(2), *Florida Statutes*, if a check or other draft is returned to the Department for collection, Recipient shall pay to the Department a service fee of \$15.00 or five percent (5%) of the face amount of the returned check or draft, whichever is greater.

19. Unrestricted Use and Access. The Grantee must maintain Unrestricted Use of the land and buildings associated with the Cultural Facility for a minimum of 10 years following the Grant Award (Grant Award means the date on which the Grant Award Agreement is fully executed).

- a) **Lease of Land and Buildings.** If the land and buildings are leased, the Division may, from time to time, require certification from the Grantee or the property owner that the lease is in full force and effect, that it has not been modified or terminated, and that the Grantee is not in default of the lease (or in the case of an owner, documentation of ownership is required). Failure to provide such certification will constitute a default hereunder, which will give the Division the

right to terminate this Agreement and demand the return of all or a part of any funds already delivered, and/or to withhold funds from subsequent grants.

- b) **Retaining Ownership of Land and Buildings.** The owner of land and building(s) must retain ownership of the land and buildings, along with improvements made to the land and building(s), for at least 10 years following the Grant Award. Exception: Land and buildings owned by the State of Florida and leased to an eligible applicant. For the purposes of this program, the applicant must not be a political subdivision of the state.

- 20. **Restrictive Covenant.** If the Grantee chooses to record a Restrictive Covenant and the facility ceases to be used as a "Cultural Facility" during the ten (10) years following the Grant Award, the grant funds must be repaid to the Division according to the Restrictive Covenant Amortization Schedule (incorporated into this Agreement and attached as Attachment D).
- 21. **Surety Bond instead of a Restrictive Covenant.** If a Surety Bond is selected by the Grantee and the facility ceases to be used as a "Cultural Facility" during the ten (10) years following the Grant Award, the grant funds must be repaid to the Division according to the Surety Bond Amortization Schedule (incorporated into this Agreement and attached as Attachment E).
- 22. **Historic Preservation Review.** If the facility that is being renovated with state funds is fifty (50) years old or older, then in accordance with Section 267.061(2)(a) and (b), *Florida Statutes*, the Grantee must submit information about the grant project to the Division of Historical Resources, Bureau of Historic Preservation ("Bureau"), so that it may determine whether the project has historic significance. Should the Bureau deem the facility to have historic significance, grant funds may only be released after the Bureau notifies the Division, in writing, that the Grantee has satisfied the Bureau's requirements. If the facility is not deemed to be of historic significance, grant funds will be released to Grantee in accordance with Section 5 of this Agreement.
- 23. **Single Audit Act.** Each grantee, other than a grantee that is a State agency, shall submit to an audit pursuant to Section 215.97, *Florida Statutes*. See Attachment F for additional information regarding this requirement.
- 24. **Retention of Accounting Records.** Financial records, supporting documents, statistical records, and all other records including electronic storage media pertinent to the Project shall be retained for a period of five (5) years after the close out of the grant. If any litigation or audit is initiated, or claim made, before the expiration of the five-year period, the records shall be retained until the litigation, audit, or claim has been resolved.
- 25. **Obligation to Provide State Access to Grant Records.** The Grantee must make all grant records of expenditures, copies of reports, books, and related documentation available to the Division or a duly authorized representative of the State of Florida for inspection at reasonable times for the purpose of making audits, examinations, excerpts, and transcripts.
- 26. **Obligation to Provide Public Access to Grant Records.** The Division reserves the right to unilaterally cancel this Agreement in the event that the Grantee refuses public access to all documents or other materials made or received by the Grantee that are subject to the provisions of

Chapter 119, *Florida Statutes*, known as the *Florida Public Records Act*. The Grantee must immediately contact the Division's Contract Manager for assistance if it receives a public records request related to this Agreement.

27. Investment of Funds Received But Not Paid Out. The Grantee may temporarily invest any or all grant funds received but not expended, in an interest bearing account pursuant to Section 216.181(16)(b), *Florida Statutes*. Interest earned on such investments should be returned to the Division quarterly, except that interest accrued less than \$100 within any quarter may be held until the next quarter when the accrued interest totals more than \$100. All interest accrued and not paid to the Division, regardless of amount, must be submitted with the Grantee's Final Cultural Facilities Report at the end of the Grant Period.

28. Noncompliance with Grant Requirements. Any applicant that has not submitted required reports or satisfied other administrative requirements for other Division of Cultural Affairs grants or grants from any other Office of Cultural, Historical, and Information Programs (OCHIP) Division will be in noncompliance status and subject to the OCHIP Grants Compliance Procedure. (OCHIP Divisions include the Division of Cultural Affairs, the Division of Historical Resources, and the Division of Library and Information Services.) Grant compliance issues must be resolved before a grant award agreement may be executed, and before grant payments for any OCHIP grant may be released.

29. Accounting Requirements. The Grantee must maintain an accounting system that provides a complete record of the use of all grant funds as follows:

- a) The accounting system must be able to specifically identify and provide audit trails that trace the receipt, maintenance, and expenditure of state funds;
- b) Accounting records must adequately identify the sources and application of funds for all grant activities and must classify and identify grant funds by using the same budget categories that were approved in the grant application. If Grantee's accounting system accumulates data in a different format than the one in the grant application, subsidiary records must document and reconcile the amounts shown in the Grantee's accounting records to those amounts reported to the Division.
- c) An interest-bearing checking account or accounts in a state or federally chartered institution may be used for revenues and expenses described in the Scope of Work and detailed in the Estimated Project Budget.
- d) The name of the account(s) must include the grant award number;
- e) The Grantee's accounting records must have effective control over and accountability for all funds, property, and other assets; and
- f) Accounting records must be supported by source documentation and be in sufficient detail to allow for a proper pre-audit and post-audit (such as invoices, bills, and canceled checks).

30. Availability of State Funds. The State of Florida's performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the Florida Legislature. In the event that the state funds upon which this Agreement is dependent are withdrawn, this Agreement will be automatically terminated and the Division shall have no further liability to the Grantee, beyond those amounts already expended prior to the termination date. Such termination will not affect the responsibility of the Grantee under this Agreement as to those funds previously distributed. In the event of a state revenue shortfall, the total grant may be reduced accordingly.

31. Independent Contractor Status of Grantee. The Grantee, if not a state agency, agrees that its officers, agents and employees, in performance of this Agreement, shall act in the capacity of independent contractors and not as officers, agents, or employees of the state. The Grantee is not entitled to accrue any benefits of state employment, including retirement benefits and any other rights or privileges connected with employment by the State of Florida.

32. Grantee's Subcontractors. The Grantee shall be responsible for all work performed and all expenses incurred in connection with this Agreement. The Grantee may subcontract, as necessary, to perform the services and to provide commodities required by this Agreement. The Division shall not be liable to any subcontractor(s) for any expenses or liabilities incurred under the Grantee's subcontract(s), and the Grantee shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under its subcontract(s). The Grantee must take the necessary steps to ensure that each of its subcontractors will be deemed to be "independent contractors" and will not be considered or permitted to be an agents, servants, joint venturers, or partners of the Division.

33. Liability. The Division will not assume any liability for the acts, omissions to act, or negligence of, the Grantee, its agents, servants, or employees; nor may the Grantee exclude liability for its own acts, omissions to act, or negligence, to the Division.

- a) The Grantee shall be responsible for claims of any nature, including but not limited to injury, death, and property damage arising out of activities related to this Agreement by the Grantee, its agents, servants, employees, and subcontractors. The Grantee shall indemnify and hold the Division harmless from any and all claims of any nature and shall investigate all such claims at its own expense. If the Grantee is governed by Section 768.28, *Florida Statutes*, it shall only be obligated in accordance with this Section.
- b) Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability, by entering into this Agreement.
- c) The Division shall not be liable for attorney fees, interest, late charges or service fees, or cost of collection related to this Agreement.
- d) The Grantee shall be responsible for all work performed and all expenses incurred in connection with the project. The Grantee may subcontract as necessary to perform the services set forth in this Agreement, including entering into subcontracts with vendors for services and commodities; provided that such subcontract has been approved in writing by the Department prior to its execution; and provided that it is understood by the Grantee that the Department shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that

the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

- 34. Strict Compliance with Laws.** The Grantee shall perform all acts required by this Agreement in strict conformity with all applicable laws and regulations of the local, state and federal law.
- 35. No Discrimination.** The Grantee may not discriminate against any employee employed under this Agreement, or against any applicant for employment because of race, religion, gender, national origin, age, handicap or marital status. The Grantee shall insert a similar provision in all of its subcontracts for services under this Agreement.
- 36. Breach of Agreement.** The Division will demand the return of grant funds already received, will withhold subsequent payments, and/or will terminate this agreement if the Grantee improperly expends and manages grant funds, fails to prepare, preserve or surrender records required by this Agreement, or otherwise violates this Agreement.
- 37. Termination of Agreement.** The Division will terminate or end this Agreement if the Grantee fails to fulfill its obligations herein. In such event, the Division will provide the Grantee a notice of its violation by letter, and shall give the Grantee fifteen (15) calendar days from the date of receipt to cure its violation. If the violation is not cured within the stated period, the Division will terminate this Agreement. The notice of violation letter shall be delivered to the Grantee's Contract Manager, personally, or mailed to his/her specified address by a method that provides proof of receipt. In the event that the Division terminates this Agreement, the Grantee will be compensated for any work completed in accordance with this Agreement, prior to the notification of termination, if the Division deems this reasonable under the circumstances. Grant funds previously advanced and not expended on work completed in accordance with this Agreement shall be returned to the Division, with interest, within thirty (30) days after termination of this Agreement. The Division does not waive any of its rights to additional damages, if grant funds are returned under this Section.
- 38. Preservation of Remedies.** No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or violation by either party under this Agreement, shall impair any such right, power or remedy of either party; nor shall such delay or omission be construed as a waiver of any such breach or default, or any similar breach or default.
- 39. Non-Assignment of Agreement.** The Grantee may not assign, sublicense nor otherwise transfer its rights, duties or obligations under this Agreement without the prior written consent of the Division, which consent shall not unreasonably be withheld. The agreement transferee must demonstrate compliance with the requirements of the project. If the Division approves a transfer of the Grantee's obligations, the Grantee shall remain liable for all work performed and all expenses incurred in connection with this Agreement. In the event the Legislature transfers the rights, duties, and obligations of the Division to another governmental entity pursuant to Section 20.06, *Florida Statutes*, or otherwise, the rights, duties, and obligations under this Agreement shall be transferred to the successor governmental agency as if it was the original party to this Agreement.
- 40. Required Procurement Procedures for Obtaining Goods and Services.** The Grantee shall provide maximum open competition when procuring goods and services related to the grant-assisted project in accordance with Section 287.057, *Florida Statutes*.

41. Conflicts of Interest. The Grantee hereby certifies that it is cognizant of the prohibition of conflicts of interest described in Sections 112.311 through 112.326, *Florida Statutes*, and affirms that it will not enter into or maintain a business or other relationship with any employee of the Department of State that would violate those provisions. The Grantee further agrees to seek authorization from the General Counsel for the Department of State prior to entering into any business or other relationship with a Department of State Employee to avoid a potential violation of those statutes.

42. Binding of Successors. This Agreement shall bind the successors, assigns and legal representatives of the Grantee and of any legal entity that succeeds to the obligations of the Division of Cultural Affairs.

43. No Employment of Unauthorized Aliens. The employment of unauthorized aliens by the Grantee is considered a violation of Section 274A (a) of the Immigration and Nationality Act. If the Grantee knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.

44. Severability. If any term or provision of the Agreement is found to be illegal and unenforceable, the remainder will remain in full force and effect, and such term or provision shall be deemed stricken.

45. Americans with Disabilities Act. All programs and facilities related to this Agreement must meet the standards of Sections 553.501-553.513, *Florida Statutes*, and the Americans with Disabilities Act of 1990.

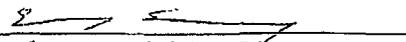
46. Governing Law. This Agreement shall be construed, performed, and enforced in all respects in accordance with the laws and rules of Florida. Venue or location for any legal action arising under this Agreement will be in Leon County, Florida.

47. Entire Agreement. The entire Agreement of the parties consists of the following documents:

- a) This Agreement
- b) Project Description (Attachment A)
- c) Legal Description of the Property (Attachment B)
- d) Estimated Project Budget (Attachment C)
- e) Recorded Restrictive Covenant and Amortization Schedule (Attachment D) or Issued Surety Bond and Amortization Schedule (Attachment E)
- f) Single Audit Act Requirements and Exhibit I (Attachment F)
- g) Schedule of Contract Values form (Appendix 1)

In acknowledgment of Grant Number 15.9.300.599 provided for from funds appropriated in the FY 2014-2015 General Appropriation Act in the amount of \$500,000, I hereby certify that I have read this entire Agreement, and will comply with all of its requirements.

Department of State:

By: 
Sandy Shaughnessy, Division Director

Grantee:

By: 
Authorizing Official for the Grantee*

Print name and title

Elsie J. Rades

Witness

2/11/2015

Date

Lamar Fisher, Mayor

Print name and title

Christine Kendel

Witness

1/16/15

Date

***If the authorizing official signing above on behalf of the grantee organization is not the chief executive officer, then another authorized official must sign below.**

On behalf of the governing body of the Grantee organization, I hereby acknowledge awareness of, and agree to comply with all of the requirements of this Grant Agreement.

See City Signature Page Attached

Signature

Typed name and title

Witness

Date

"CITY":

Witnesses:

CITY OF POMPANO BEACH

Sally J. Fischer

By: [Signature]
LAMAR FISHER
MAYOR

Shelby R. Bartholomew

By: [Signature]
DENNIS W. BEACH
CITY MANAGER

Attest:

[Signature]
MARY L. CHAMBERS
CITY CLERK

(SEAL)

Approved As To Form:

[Signature]
GORDON B. LINN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 21st day of January, 2015 by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **MARY L. CHAMBERS**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Krystal Aaron

(Name of Acknowledger Typed, Printed or Stamped)



KRYSTAL AARON
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE874885
Expires 2/14/2017

Commission Number

ATTACHMENT A

Project Description

(The project description below was extracted from the original application submitted June 2013.)

The Project

The new Pompano Beach Cultural Center will be the focal point of the "Downtown Pompano Creative Arts District" and will bring much-needed arts programming, including theater, dance, music, film and the visual arts to the north Broward County area.

The Cultural Center will be constructed in conjunction with a new Broward County Public Library on the site of the City's Civic Campus, creating a synergy of education and the arts. The Center's Digital Media components will encourage youth participation in the Cultural Arts and target younger audiences for the Cultural Center's programs.

The Cultural Arts in Pompano Beach

Centrally located on Florida's famous Gold Coast, Pompano Beach covers more than 25 square miles in northern Broward County. The City has just over 100,000 residents. Pompano Beach is located on the southeast coast of Florida, midway between Miami and West Palm Beach. Pompano Beach is the sixth largest of Broward County's 31 municipalities.

The City's economy is based on tourism, light manufacturing, retail, and high technology with 3,000 acres set aside for industrial/commercial development. Located near two international airports, several international seaports, railways and highways, Pompano Beach provides access to the global marketplace.

Currently, Cultural Arts activities in the City are programmed and coordinated through the City's Parks, Recreation, and Cultural Arts Department. Arts activities take place in community centers and recreational spaces that are generally heavily used for community programs as well as rentals such as private events, nonprofit meetings, fundraisers and celebrations.

Realizing the Vision – The Downtown Pompano Creative Arts District

In April 2010, the Pompano Beach Community Redevelopment Agency (CRA) began to identify strategies for creating a future mixed-use "Downtown Pompano" in the areas near the intersection of Dixie Highway and Atlantic Boulevard, including landscape/streetscape, public street and sidewalk improvements throughout the historic Old Pompano area/FEC Corridor, along Dr. Martin Luther King, Jr. Boulevard, and within a new "Civic Campus" proposed for the area south of Atlantic Boulevard, including City Hall.

In November 2010, the CRA Board approved the Downtown Pompano Connectivity Plan. During discussion and review, the Board expressed interest in development of new cultural components within the area. As a result, the Downtown Pompano Creative Arts District was created, and the City/CRA moved forward plans to develop a triumvirate of new art spaces– all within a one-mile area of Downtown Pompano:

- The new Pompano Beach Cultural Center/Library on the Civic Campus

- Renovation of the historic Hotel Bailey, in historic Old Pompano, as a Visual Arts Center
- Renovation of the historic Ali Building, on Dr. Martin Luther King, Jr. Boulevard, as a History and Cultural Arts Center

The City's Vision:

Pompano Beach will be a Cultural Arts destination in north Broward County, featuring innovative arts programming that includes the visual arts, music, film, theater, dance, public art, history, and historic preservation. The unique character of the Pompano Beach program will be enhanced through digital media support of and cultural education opportunities in all art disciplines.

Cultural Arts programming will be created and presented in state-of-the-art facilities for the enjoyment and enrichment of residents of and visitors to Pompano Beach, Broward County, and the greater South Florida area.

Pompano Beach Cultural Center Building Program

The recommended Pompano Beach Cultural Center Program was developed as a split-level facility of 15,967 net assignable square feet, with a total gross square footage of 21,980 sf, in response to the following:

- Information gathered from the 2011 Needs Assessment for Facilities + Cultural Program completed by Webb Management Services, Inc.
- Information gathered from the 2012 Business Plan for a Cultural Center at the Broward County Library by Webb Management Services, Inc.
- Program spaces based on List of Spaces (Scenario A) generated by Theatre Consultants Collaborative included in the Webb Management Business Plan and approved by the Pompano Beach City Commission.
- Recommendations based on site and budget considerations, opportunities, and constraints

The new Cultural Center, in conjunction with the Library, will serve as a significant catalyst for the redevelopment of a new Civic Campus, and the inclusion of the Cultural Center within the Public Library setting is an important element to compliment the programmatic needs of the Library as well as to offer a truly unique and vibrant place within Pompano Beach. Goals set forth in the Downtown Pompano Connectivity Plan will be achieved by bringing together cultural, educational and community programs that are aligned in a singular and significant setting at the heart of the community.

The "heart" of the facility is the Multi-Purpose Performance & Event Space. This space shall have the highest capacity, highest level of flexibility, and highest degree of theatrical functionality possible. This includes a flexible performance space with retractable raked seating that can be withdrawn to allow for flat floor cultural uses, seated dinner configurations, and other event uses.

A Digital Media Center will build upon and create synergy with the Library's offerings will be provided, allowing the Cultural Center to provide unique programs and a cultural destination for people of all ages and interests.

The facility's Visual Arts Gallery adjacent to the entrance to the Performance & Event space will provide for arts and other exhibitions within a featured location of the Cultural Center.

The facility will provide a high quality space exceeding those of other local venues and facilities. The technical features (including lighting, sound, and other technology) will exceed those housed in other existing local spaces. The facility shall provide a higher quality of audience amenities and experience, including arts-specific ticketing, concessions, and reserved seating.

Activities and events will also expand outside the building. In the large public plaza in front of the building, there can be, for example, concerts and street theatre held during the summertime. These will create a vibrant environment within and without the building, and will support the ambition of bringing the community together in a productive and engaging environment open to all.

ATTACHMENT B

ATTACH LEGAL DESCRIPTION OF PROPERTY

SUNYLAN UNIT 2-BUCKS RESUB OF BLK 39 37-39 B, LOTS 1 THRU 10 & TOGETHER WITH LOTS 1 THRU 22 BLK 38 OF SUNYLAN UNIT 2 10-45 B, & TOGETHER WITH VACATED PORTIONS OF SW 1ST ST, SW 1ST CT & SW 1ST TER, PER OR 43852/827, & VAC POR CYPRESS RD DESC AS BEG NE COR OF LOT 18 BLK 38, N 160.04, E 78.56, S 18.62, SW 14.34, SWLY 310, SW 10.97 W 9, NELY 22.94, N 160.61 TO POB

ATTACHMENT C

Estimated Project Budget

Budget Category	Total Cost	Match	State
Land Acquisition			\$ -
Building Acquisition			\$ -
Architectural Services	\$ 100,000		\$ -
Fees for design work, including schematic design, design development, construction documents, bidding & negotiation, and construction oversight.		\$ 100,000	\$ -
General Requirements	\$ 265,000		
Field engineering, shop drawings, allowances, construction photographs, quality control, LEED administration, temporary facilities, and waste management.		\$ 215,000	\$ 50,000
Site Construction	\$ 336,000		\$ -
Site clearing, water & sewer work, underground utilities & building services, paving & drainage work, irrigation systems, earthwork, & landscaping.		\$ 336,000	\$ -
Concrete	\$ 200,000		\$ -
Structural cast-in-place concrete for footings & miscellaneous beams, architectural site & pre-cast panels, & special concrete toppings & finishes.		\$ 200,000	\$ -
Masonry	\$ 90,000		\$ -
Concrete unit masonry and reinforced concrete unit masonry construction.		\$ 90,000	\$ -
Metals	\$ 250,000		
Structural steel, metal fabrication, steel joists and decks, metal framing, metal stairs, pipe and tube railings, gratings, and ornamental metalwork.		\$ 250,000	\$ -
Wood and Plastic	\$ 37,000		
Finish carpentry, interior architectural casework, and floor finish at Multi-Purpose Room.		\$ 7,000	\$ 30,000
Thermal and Moisture Protection	\$ 100,000		\$ -
Waterproofing, fireproofing, modified bituminous built-up roofing, metal roofing, and sealants.		\$ 100,000	\$ -
Doors and Windows	\$ 150,000		\$ -
Impact resistant aluminum storefront/curtain wall systems, hollow metal doors and frames, interior aluminum storefronts, wood doors, & door hardware.		\$ 150,000	\$ -
Finishes	\$ 500,000		
Stucco, drywall, VCT & linoleum flooring, ceramic & quarry tile, & carpet finishes throughout. Also includes acoustical wall & ceiling insulation.		\$ 400,000	\$ 100,000
Specialties	\$ 32,000		

Project signage, lockers, metal storage shelving, toilet accessories, and fire extinguishers.		\$ 2,000	\$ 30,000
Equipment	\$ 715,000		
Project passenger elevators and freight elevator.		\$ 500,000	\$ 215,000
Furnishings			\$ -
Special Construction			\$ -
Conveying Systems (Elevator)			\$ -
Mechanical	\$ 425,000		
Pumps, motors, sprinkler systems, plumbing fixtures, water heaters, HVAC controls, boilers, furnaces, air-conditioning units, chiller plant, fans, etc.		\$ 400,000	\$ 25,000
Electrical	\$ 300,000		
Wires & cables, transformers/switchgear, panel boards, fuses, disconnect switches, lighting, fire alarm & public address systems, & lighting control.		\$ 250,000	\$ 50,000
TOTAL EXPENSES	\$3,500,000	\$3,000,000	\$500,000

ATTACHMENT D

Restrictive Covenant Provisions and Amortization Schedule

1. If the Grantee chooses to record a Restrictive Covenant, the Grantee, and the property owner(s) (if the land or buildings or both are leased by the grantee), shall execute and file a Restrictive Covenant with the Clerk of the Circuit Court in the county where the property is located, prior to the date that the agreement is executed.
2. The Restrictive Covenant shall include the following provisions:
 - a) That the Restrictive Covenant shall run with title to the building(s) and the associated land and improvements funded by the grant, shall encumber them, and shall be binding upon the Grantee (and the owner(s), if different person(s), and the successors in interest), for (10) ten years from the Grant Award.
 - b) The owner(s) of the improvements made to the building(s) and associated land, funded in whole or in part by grant funds, must also execute the Restrictive Covenant. Exception: Land or buildings or both owned by the State of Florida and leased to an eligible applicant. For the purposes of this program, the applicant must not be a political subdivision of the state.
 - c) The Grantee (and owners, if different persons) shall permit the Division to inspect the Cultural Facility and associated land at all reasonable times to determine whether the Grantee is in compliance with the Grant Award Agreement and the Restrictive Covenant.
 - d) The Grantee must maintain the building(s) as a "Cultural Facility." For the purposes of this program, a "Cultural Facility" is defined as a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the foregoing for any of the cultural disciplines listed in Section 265.283(7), *Florida Statutes*. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.
 - e) The Restrictive Covenant shall also contain the following amortization schedule for repayment of grant funds, should the Grantee or owners or their successors in interest violate the Restrictive Covenant.
 - a. If the violation occurs within five (5) years following the Grant Award, 100% of the grant amount;

- b. If the violation occurs more than five (5) but less than six (6) years following the Grant Award, 80% of the grant amount;
- c. If the violation occurs more than six (6) but less than seven (7) years following the Grant Award, 65% of the grant amount;
- d. If the violation occurs more than seven (7) but less than eight (8) years following the Grant Award, 50% of the grant amount;
- e. If the violation occurs more than eight (8) but less than nine (9) years following the Grant Award, 35% of the grant amount; and
- f. If the violation occurs more than nine (9) but less than ten (10) years following the Grant Award, 20% of the grant amount.
- g) Other provisions as agreed upon by the Division and the Grantee.

ATTACHMENT E

Surety Bond and Amortization Schedule

1. Any Grantee entering into a Grant Award Agreement with the Division for the acquisition, renovation, or construction of a Cultural Facility that chooses not to record a Restrictive Covenant must purchase a 10-year Surety Bond.
2. A certified copy of the Bond Agreement must be provided to the Division prior to the execution of the Grant Award Agreement.
3. The Bond Agreement must:
 - a) Provide that the facility described in Attachment A: Scope of Work, incorporated by reference in the Grant Award Agreement, will be used as a "Cultural Facility" for (10) ten years following the Grant Award; A Cultural Facility means a building which shall be used primarily for the programming, production, presentation, exhibition or any combination of the above functions of any of the arts and cultural disciplines defined in s. 265.283(7), F.S. These disciplines include, but are not limited to music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.
 - b) Be purchased from a surety insurer authorized to do business in the Florida as a Surety;
 - c) Provide that there will be a violation of the Bond Agreement if the facility ceases to be used as a "Cultural Facility" as required by Section 265.701(4), *Florida Statutes*, within 10 years following the Grant Award, and that the surety insurer must immediately repay funds to the Division, pursuant to the following amortization schedule:
 1. If the violation occurs within three (3) years following the Grant Award, 100% of the grant amount;
 2. If the violation occurs more than three (3) but less than four (4) years following the Grant Award, 80% of the grant amount;
 3. If the violation occurs more than four (4) but less than five (5) years following the Grant Award, 70% of the grant amount;
 4. If the violation occurs more than five (5) but less than six (6) years following the Grant Award, 60% of the grant amount;
 5. If the violation occurs more than six (6) but less than seven (7) years following the Grant Award, 50% of the grant amount;

6. If the violation occurs more than seven (7) but less than eight (8) years following the Grant Award, 40% of the grant amount;
7. If the violation occurs more than eight (8) but less than nine (9) years following the Grant Award, 30% of the grant amount;
8. If the violation occurs more than nine (9) but less than ten (10) years following the Grant Award, 20% of the grant amount.

ATTACHMENT F

FEDERAL AND STATE OF FLORIDA SINGLE AUDIT ACT REQUIREMENTS

AUDIT REQUIREMENTS

The administration of resources awarded by the Department of State to the Grantee may be subject to audits and/or monitoring by the Department of State as described in this Addendum to the Grant Award Agreement.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR 2 Subpart F -- Audit Requirements, and Section 215.97, *Florida Statutes*, monitoring procedures may include, but not be limited to, on-site visits by Department of State staff, limited scope audits as defined by 2 CFR 2 §200.328, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of State. In the event the Department of State determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department of State staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization that has received federal funds awarded through the Department of State. EXHIBIT 1 to this attachment indicates whether federal resources have been awarded through the Department of State by this agreement.

2 CFR 2 §200.501 Audit Requirements

(a) *Audit required.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with 2 CFR §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee

may elect to have a program-specific audit conducted in accordance with 2 CFR §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than \$750,000.* A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section §200.330 Subrecipient and contractor determinations should be considered in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also §200.331 Requirements for pass-through entities.

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

U.S. Government Printing Office www.ecfr.gov

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2) (1), *Florida Statutes* and had received state funds awarded by the Department of State. EXHIBIT 1 to this attachment indicates whether state resources have been awarded by the Department of State by this agreement.

Section 215.97 *Florida Statutes* Single Audit Requirements

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, *Florida Statutes*; applicable rules of the Executive Office of the Governor and the Chief Financial Officer; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates state financial assistance awarded through the Department of State by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of State, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), *Florida Statutes*. This includes submission of a financial reporting package as defined by Section 215.97(2) (d), *Florida Statutes*, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, *Florida Statutes*, is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, *Florida Statutes*, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

State of Florida Department Financial Services (Chief Financial Officer)

<http://www.fldfs.com/>

State of Florida Legislature (Statutes, Legislation relating to the Florida Single Audit Act)

<http://www.leg.state.fl.us/>

PART III: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 2 §200.512 , and required by PART I of this attachment shall be submitted, when required by 2 CFR 2 §200.512, by or on behalf of the recipient directly to each of the following:

A. The Department of State at the following address:

Office of Inspector General
Florida Department of State
R. A. Gray Building, Room 114A
500 South Bronough St.
Tallahassee, FL 32399-0250

B. The Federal Audit Clearinghouse electronically at *harvester.census.gov/sac/* as designated in 2 CFR 2 §200.512.

C. Other Federal agencies and pass-through entities in accordance with 2 CFR 2 §200.513.

2. In the event that a copy of the reporting package for an audit required by PART I of this attachment and conducted in accordance with 2 CFR 2 §200.501 Audit Requirements, is not required to be submitted to the Department of State for the reasons pursuant to 2 CFR 2 §200.501, the recipient shall submit the required written notification pursuant to 2 CFR 2 §200.501 (d) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to the following:

Office of Inspector General
Florida Department of State
R. A. Gray Building, Room 114A
500 South Bronough St.
Tallahassee, FL 32399-0250

A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

3. Copies of financial reporting packages required by PART II of this attachment agreement shall be submitted by or on behalf of the recipient directly to the following:

A. The Department of State at the following address:

Office of Inspector General
Florida Department of State

R. A. Gray Building, Room 114A
500 South Bronough St.
Tallahassee, FL 32399-0250

B. The Auditor General's Office at the following address:

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Any reports, management letter, or other information required to be submitted to the Department of State pursuant to this agreement shall be submitted timely in accordance with 2 CFR 2 Subpart F—Audit Requirements, Section 215.97, *Florida Statutes*, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), *Rules of the Auditor General*, as applicable.
5. Recipients, when submitting financial reporting packages to the Department of State for audits done in accordance with 2 CFR 2 Subpart F or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), *Rules of the Auditor General*, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART IV: RECORD RETENTION

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five years from the date the audit report is issued, and shall allow the Department of State, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of State, or its designee, Chief Financial Officer, or Auditor General upon request for a period of three years from the date the audit report is issued, unless extended in writing by the Department of State.

EXHIBIT 1

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT
CONSIST OF THE FOLLOWING:

Not Applicable.

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED
PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

Not Applicable.

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT
CONSIST OF THE FOLLOWING:

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

Not Applicable.

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Florida Department of State Cultural Facilities Grants, CSFA Number 45.014
Award Amount: \$500,000

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED
PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

As contained in the Compliance Supplement to CSFA Number 45.014.

EXHIBIT 2
Division of Cultural Affairs –
Cultural Facilities Program
Grant Amendment Request Form

**DIVISION OF CULTURAL AFFAIRS - CULTURAL FACILITIES PROGRAM
GRANT AMENDMENT REQUEST FORM**

GRANT NUMBER: 15.9.300.599

Applicant: City of Pompano Beach

Project Title: Pompano Beach Cultural Center: Phase 1

Contact Person: Karen Santen

Address: 100 West Atlantic Blvd., Room 369

City: Pompano Beach State: FL Zip Code: 33060

Telephone: (954) 786-4926 Date: 4-14-2016

Permission is hereby requested to make the following change(s) in the grant referenced above:

I. PROJECT DOLLARS

** Please complete the following, citing change in actual award amount. If this amount is reduced from the amount originally granted, matching dollars should be adjusted as follows. Total confirmed matching funds must satisfy the requirements for the Grant Amount received (see program guidelines). The total cost of work must equal the total of Line A plus Line B.

A. Total Amount of Cultural Facilities Award	<u>\$500,000</u>
B. Confirmed Matching Funds to Amount Awarded (see Guidelines)	<u>\$3,000,000</u>
C. TOTAL Project Cost	<u>\$3,500,000</u>

II. PROJECT NARRATIVE

(Use specific wording as stated in original Exhibit A description or a previously approved amendment request.)

Change From: The City of Pompano Beach shall build a state-of-the-art, 21,980 square foot Cultural Center including performance and event space, digital media center, visual arts gallery and public/support spaces. All tasks associated with the renovation, as outlined in the Project Description (see attachment A), will be performed by June 1, 2016.

Change To: _____

In Phase 1, the City of Pompano Beach shall complete the shell of a state-of-the-art, 21,980 square foot Cultural Center, including structural steel work, concrete, rough electrical plumbing, mechanical systems, roof decking, and site work infrastructure.

Effect on Project: _____

This change more clearly defines what will be accomplished by the City of Pompano Beach during Phase 1.

III. PROJECT BUDGET

A. INCOME

CHANGE FROM

CHANGE TO

<hr/>	Cultural Facilities Program (this grant)	<hr/>
	<i>Matching Funds:</i>	
<hr/>	Total Private Support	<hr/>
<hr/>	Total In-kind Private Support	<hr/>
<hr/>	Total Corporate Support	<hr/>
<hr/>	Total In-kind Corporate Support	<hr/>
<hr/>	Total Local Government Support	<hr/>
<hr/>	Total In-kind Local Government Support	<hr/>
<hr/>	Applicant Cash	<hr/>
<hr/>	TOTAL PROJECT INCOME	<hr/>

B. EXPENSES

CHANGE FROM			CHANGE TO	
MATCH	STATE		MATCH	STATE
<hr/>	<hr/>	Land Acquisition	<hr/>	<hr/>
<hr/>	<hr/>	Building Acquisition	<hr/>	<hr/>
\$100,000	<hr/>	Architectural Services	\$270,000	<hr/>
\$215,000	\$50,000	General Requirements	\$440,000	\$100,000
\$336,000	<hr/>	Site Construction	\$355,000	<hr/>
\$200,000	<hr/>	Concrete	\$510,000	\$100,000
\$90,000	<hr/>	Masonry	<hr/>	<hr/>
\$250,000	<hr/>	Metals	\$600,000	\$130,000
\$7,000	\$30,000	Wood and Plastic	<hr/>	\$25,000
\$100,000	<hr/>	Thermal and Moisture Protection	\$30,000	<hr/>
\$150,000	<hr/>	Doors and Windows	\$45,000	<hr/>
\$400,000	\$100,000	Finishes	<hr/>	\$70,000
\$2,000	\$30,000	Specialties	<hr/>	<hr/>
\$500,000	\$215,000	Equipment	<hr/>	<hr/>
<hr/>	<hr/>	Furnishings	<hr/>	<hr/>
<hr/>	<hr/>	Special Construction	<hr/>	<hr/>
<hr/>	<hr/>	Conveying Systems	\$40,000	<hr/>
\$400,000	\$25,000	Mechanical	\$270,000	\$25,000
\$250,000	\$50,000	Electrical	\$440,000	\$50,000
\$3,000,000	\$500,000	TOTAL PROJECT EXPENDITURES	\$3,000,000	\$500,000
		(Should equal Total Project Income)		

IV. OTHER CHANGES (i.e., Project dates [ex: encumbrance & expenditure dates], Grant Extension Requests.)

CHANGE FROM: _____

The grant completion deadline is June 1, 2016.

CHANGE TO: _____

In accordance to Section 14, the City is requesting a 120-day extension, the new grant completion deadline will be September 29, 2016.

REASON(S) FOR CHANGE: _____

This project has been complicated with the tri-agency involvements which has resulted in design specs changes (major change orders) in addition to a bout of bad weather (heavy rains and tornadoes) occurrences.

Signature of Authorized Official

Lamar Fisher - 4-26-2016
Typed Name and Date

Mayor
Title

FOR DIVISION OF CULTURAL AFFAIRS USE ONLY

Change No. _____

Approved: Yes _____ No _____

Approved: Yes _____ No _____

Date: _____

Date: _____

Grants Officer

Director, DCA