

**CAPITAL PROJECT  
FUNDING AGREEMENT**

**Florida Holocaust Museum**

**THIS AGREEMENT** (“Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2020 (“Effective Date”), by and between Pinellas County, a political subdivision of the State of Florida (“County”) and the Florida Holocaust Museum, Inc., a Florida non-profit corporation (“Museum”) (collectively, the “Parties” or individually a “Party”).

**WHEREAS**, in accordance with Section 118-32 Pinellas County Code and Florida Statutes § 125.0104, the County is authorized to utilize tourist development tax revenues to fund statutorily eligible capital projects; and

**WHEREAS**, in order to equitably and consistently evaluate capital project funding requests, the County adopted Capital Project Funding Guidelines, which established both the requisite criteria, documents, studies and related financial information to be submitted by a capital funding applicant, as well as the capital project funding application and review process; and

**WHEREAS**, as part of the review and evaluation process, the County hired a consultant to review capital project funding applications and to provide a report of same to both the County and the Tourist Development Council for their consideration when evaluating capital project funding applications; and

**WHEREAS**, after due consideration of the capital project funding applications, the Consultant’s report and the recommendations of its Tourist Development Council, the County has approved the funding of certain capital projects determined to best promote tourism in Pinellas County; and

**WHEREAS**, the County, through its Board of County Commissioners agrees to provide the Museum with funding for the Capital Project, as defined herein, in the amount and in accordance with the terms and conditions described herein; and

**WHEREAS**, this agreement sets forth the rights and obligations of the Parties related to the capital project, funding, and related matters.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**1. RECITALS.** The above recitals are true and correct and are adopted as an integral part of this Agreement.

**2. DEFINITIONS.** In addition to other capitalized terms or phrases that may be defined elsewhere in this Agreement, the following capitalized terms shall have the meaning set forth as follows:

A. "Capital Project" or "Project" means that certain statutorily eligible project/facility commonly known as the Florida Holocaust Museum located in St. Petersburg, in Pinellas County, Florida and set out in the Project budget described in Exhibit A attached hereto and incorporated herein by reference.

B. "Commencement Date" means the date that Museum commences construction of the Capital Project improvements on the project site after completion of the project design and the issuance of all permits and approvals necessary to construct the Capital Project.

C. "Repayment Amount" shall mean the specific amount repayable to the County by the Museum under the circumstances of paragraph 6(F) herein, which shall be calculated as follows:

REPAYMENT AMOUNT=A x (B/C) where:

A-is the final aggregate amount of funds actually disbursed to the Museum by the County per the agreement, and

B-is the number of complete calendar months remaining per the term of the Tourism Promotion Benefits as stated in Exhibit B herein, if the circumstances of 6(F) occur, and

C- is the total number of months (60) under the term of the Tourism Promotion Benefits as stated in Exhibit B herein.

D. "Tourist Promotion Benefits" means any and all tourism, sponsorship and/or marketing benefits provided by the Museum to promote the destination, including but not limited to such Tourism Promotion Benefits as may be negotiated by County staff as part of the consideration for the County funding of the Project, as further described in Exhibit B attached hereto.

E. "Tourist Tax Revenues" means any legally available tourist tax revenues levied and collected by the County pursuant to Section 125.0104, Florida Statutes, for capital funding of the Project in accordance with the County's Tourist Development Plan.

**3. TERM.** The term of this Agreement shall commence on the Effective Date and continue in full force and effect through November 30, 2023 ("Term"), unless otherwise terminated as provided herein.

**4. CONDITIONS PRECEDENT TO CAPITAL PROJECT FUNDING.** The disbursement of, and any continued funding for the Capital Project herein, is subject to the following conditions precedent during the Term:

A. Museum continues to own and operate the Florida Holocaust Museum.

B. Museum provides to the County the Tourism Promotion Benefits as described in Exhibit B and incorporated herein by reference.

C. The Plan authorizes tourist tax revenues to be expended for such capital improvements.

D. The Commencement Date occurs no later than January 31, 2021, and the Capital Project is completed no later than April 30, 2023.

E. For projects requiring matching funds, match funds must be maintained and County must be notified immediately if those match funds are lost or become unavailable.

F. Any and all private funds utilized in a capital project funded herein, must be expended first before County funds are expended on the Capital Project.

G. Any and all match requirements, as may be applicable, have been met.

**5. COUNTY'S RESPONSIBILITIES.** Upon providing any documentation establishing satisfaction of the conditions precedent as required in Section 4, the County agrees to pay the Capital Project Funds in the sum of not to exceed Three Hundred and Fifty Thousand Dollars and No Cents (\$350,000.00) ("Capital Project Funds"), from legally available Tourist Tax Revenues and from no other revenue source of the County, payable as follows:

A. Reimbursement shall be made in a lumpsum payment after completion and occupancy of the Capital Project upon receipt of a payment request from the Museum directed to the VSPC at the address set out in Section 12.A. with such documentation as reasonably required herein or by the VSPC Director. At a minimum, the payment request shall include documentation detailing (i) the work completed that the Museum is seeking reimbursement for; (ii) proof of payment for the work; (iii) a certification from the either the contractor, design professional, or the Museum certifying the work has been completed and paid for before submittal of the payment request.

B. The County's contributions of Capital Project Funds herein shall in no event exceed any amount agreed to herein and any and all excess Project costs are the sole responsibility of the Museum.

**6. MUSEUM'S RESPONSIBILITIES.** Pursuant to this Agreement, the Museum shall:

A. Manage, supervise, oversee, pay all costs and expenses related to, and be solely responsible for completing the Project including, but not limited to securing all permits and approvals required for the Project, contracting and/or subcontracting with all third parties necessary to complete the Project, and operate the project/facility.

B. Utilize all commercially reasonable efforts to complete Project by the date set out in Section 4.D., but in any event, no later than the term of this agreement.

C. Notify County of any project cost savings or changes in scope of work that reduces Project costs as described in Exhibit A attached hereto, which will result in a reduction of the County's contribution on a pro rata basis. Museum may elect to increase the Project budget set out in Exhibit A or any component or part thereof with notice to the County, and Museum shall be solely responsible for the additional costs and expenses, including any cost overruns on the Project.

D. Provide the Tourism Promotion Benefits to the County as described in Exhibit B.

E. Cooperate with VSPC as requested to market Pinellas County Tourism.

F. Upon completion of the Capital Project herein, secure and maintain property insurance on a replacement cost basis, with limits of at least ninety percent (90%) of the replacement cost value to cover perils including, but not limited to, fire, explosion, windstorm and flood. The County shall be listed as a loss payee as the County's interest may appear. In the event of an insurable loss to the Capital Project for which the Museum uses insurance funds to rebuild the Capital Project, the County shall surrender any insurance proceeds and/or loss payee rights to the Museum. Should the Museum not rebuild the Capital Project, the County shall be afforded the benefits of the insurance proceeds as the County's interests may appear, but in no event less than the Repayment Amount. A certificate of evidence of property insurance shall be sent to Pinellas County Risk Management Department, 400 S. Ft. Harrison Ave., Clearwater, FL 33756 prior to disbursement of funds hereunder and annually thereafter. This subsection will survive the expiry or early termination of this Agreement.

## **7. DEFAULTS AND REMEDIES.**

A. Events of Default. Each of the following shall constitute an event of default (each, an "Event of Default") hereunder:

1. A breach by the Museum of any material term, covenant, obligation or agreement under this Agreement, and the continuance of such breach for a period of thirty (30) days after written notice thereof shall have been given to Museum except for a breach of those provisions described in subsection 4, 5 or 6 below, which will entitle the County to immediately exercise the available remedies;

2. Museum's voluntary filing of or consent to a petition under any bankruptcy, insolvency, or reorganization law, failure to secure the dismissal of an involuntary bankruptcy petition within 60 days of filing, or a determination by a court of competent jurisdiction that is insolvent and unable to pay its debts when due;

3. A payment request containing a material misrepresentation;

4. Museum having ceased operations of the Capital Project/ tourism facility during the Term;

5. The Tourist Tax Revenues legally available to pay this obligation are repealed or expire as provided by law.

6. Museum fails to provide the Tourism Promotion Benefits for the term as described in Exhibit B attached hereto.

7. Museum fails to pay taxes and/or assessments, if any.

B. Remedies. Upon or at any time after the occurrence of an Event of Default which has not been cured if authorized herein:

1. The County may withhold, temporarily or permanently, any or all unpaid portion of the Capital Project Funds and/or may terminate this Agreement by giving seven (7) calendar days' notice to the Museum. The County shall then have no further funding obligation under this Agreement;

2. If the County has paid any Capital Project Funds, the Museum shall repay to the County all Capital Project Funds received by it for the Project;

3. Additionally the County may exercise any right, power, or remedy as provided in law or equity pursuant to Florida law.

C. No consent or waiver, express or implied, by the County to or of any breach or default by the Museum in the performance of its obligations under this Agreement shall constitute a consent to or waiver of any similar breach or default by the Museum. The failure of the County to complain of any act or omission to act by the Museum or to declare the Museum in default, irrespective of how long such failure continues, shall not constitute a waiver by the County of its rights under this Agreement.

**8. COMPLIANCE WITH LAWS.** The Parties shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue including but not limited to applicable public records laws.

**9. INDEMNIFICATION.** Museum shall, to the extent permitted by law, protect, defend, indemnify, pay the cost of defense, and hold harmless the County, its agents, elected officials and employees from all damages, suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the construction or operation of the Project herein or its performance under the Agreement; or on account of any act or omission, neglect or misconduct of the Museum its agents, elected officials, employees, contractors, subcontractors; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; or by, or on account of, any claim or amounts received under the Workers' Compensation Law or of any other laws, by-laws, ordinance, order or decree.

**10. DUE AUTHORITY.** Each party to this Agreement represents and warrants to the other party that: (i) it has the full right and authority and has obtained all necessary approvals to enter into this Agreement; (ii) each person executing this Agreement on behalf of the party is authorized to do so; and (iii) this Agreement constitutes a valid and legally binding obligation of the party, enforceable in accordance with its terms.

**11. ASSIGNMENT.** No party to this Agreement may assign any rights or delegate any duties under this Agreement without the prior written consent of the other party.



## 12. NOTICES.

A. Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by either party shall be in writing and shall be deemed given and delivered on the date delivered in person to the authorized representative of the recipient provided below, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested, to the authorized representative of the recipient provided below, or upon the date delivered by overnight courier (signature required) or emailed to the authorized representative of the recipient provided below:

TO THE COUNTY:  
Steve Hayes  
President & CEO  
Visit St. Petersburg/Clearwater  
8200 Bryan Dairy Rd. Suite 200  
Largo, FL 33777  
Steve@visitspc.com

TO THE MUSEUM:  
Ronald Borsellino  
Director of Operations  
The Florida Holocaust Museum  
55 5<sup>th</sup> Street S.  
St. Petersburg, FL 33701  
RBorsellino@thefhm.org

B. Either party may change its authorized representative or address for receipt of notices by providing the other party with written notice of such change. The change shall become effective ten (10) days after receipt by the non-changing party of the written notice of change.

**13. WAIVER.** No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be effected only through a duly executed written modification to this Agreement.

**14. GOVERNING LAW.** This Agreement shall be construed in accordance with the Laws of the State of Florida.

**15. JURISDICTION AND VENUE.** Venue for any action brought in state court shall be in Pinellas County, Clearwater Division. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in Pinellas County, in which case the action shall be brought in that division. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

**16. BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.

**17. NO THIRD PARTY BENEFICIARY.** Persons not a party to this Agreement may not claim any benefit hereunder or as third party beneficiaries hereto.

**18. HEADINGS.** The paragraph headings are inserted herein for convenience and reference only and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.

**19. NO CONSTRUCTION AGAINST PREPARER OF AGREEMENT.** This Agreement has been prepared by County and reviewed by the Museum and its professional advisors. The County, the Museum, and their professional advisors believe that this Agreement expresses their understanding and that it should not be interpreted in favor of, or against either party merely because of their efforts in preparing it.

**20. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties and no change will be valid unless made by supplemental written agreement executed by the Parties.

**21. SEVERABILITY.** Should any paragraph or portion of any paragraph of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other paragraph or portion of this Agreement.

**22. FUNDING OBLIGATION.** This Capital Project Funding Agreement is not a general obligation of the County. It is understood by Museum that neither this Agreement nor any representation by any County employee or officer creates any obligation to appropriate or make funds available for the purposes of this Agreement beyond the fiscal year in which this Agreement is executed. No liability shall be incurred by the County, or any department thereof, beyond the funding budgeted and available for the purposes of this Agreement in the County's fiscal year. If funds are not appropriated by the County for any reason for any or all of this Agreement, the County agrees to notify Museum in writing of the failure of this appropriation, and upon receipt of this notice, this Agreement, and all rights and obligations contained therein, shall terminate without liability or penalty to the County. Notwithstanding the foregoing, the County shall not be prohibited from pledging any legally available Tourist Development Taxes for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the County pursuant to this Agreement.

**23. INDEPENDENT CAPACITY.**

A. The Parties agree that the Museum its officers, agents, and employees, in performance of this Agreement, will act in the capacity of an independent contractor and not as an officer, employee, or agent of the County. Museum agrees to take such steps as may be necessary to ensure that any third-party Museum contracts with will be deemed to be an independent contractor and will not be considered or permitted to be an agent of the County.

B. The Museum has no authority to, and shall not pledge the County's credit or make the County a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness.

**24. DAMAGES.** In no event shall either party be liable to the other (nor to any person claiming any right, title, or interest derived from, or as a successor to the agreement) for incidental, consequential, or special damages of any kind, including without limitation, lost profits, or loss of

business arising out of this funding agreement irrespective of whether the parties have advance notice of the possibility of such damage; provided however, the foregoing limitation does not apply to the indemnification obligations described in Section 9 herein.

**25. PUBLIC RECORDS.** Museum acknowledges that information and data relating to its services may be public records in accordance with Chapter 119, Florida Statutes. Museum agrees that prior to providing services it will implement policies and procedures to maintain, produce, secure, retain, and transfer public records in accordance with applicable laws and regulations, including but not limited to the Sec. 119.0701, Florida Statutes. Notwithstanding any other provision of this Agreement relating to compensation, Museum agrees to charge the County, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes for locating and producing public records during the term of this Agreement.

**26. RIGHT TO AUDIT.**

A. All of the Museum's records related to this Agreement shall be open to inspection and subject to reproduction by the County during normal working hours to the extent necessary to permit adequate evaluation and verification of any invoices for payment, or claims, submitted by the Museum pursuant to the execution of the Agreement. Such records shall include, but not be limited to, accounting records, written policies and procedures, subcontractor files, original estimates, estimating worksheets, correspondence, Change Order files (including the documentation of negotiated settlements), any supporting evidence necessary to substantiate charges related to this Agreement, and any records necessary to evaluate and verify costs as they may apply to costs associated with this Agreement.

B. For the purpose of such audits, inspections, examinations and evaluations, the County shall have access to the said records from the effective date of this Agreement, for the duration of the Work, and until thirty-six (36) months after the date of final payment by the County to the Museum for performance under this Agreement. The Museum hereby agrees to maintain said records in safe and dry storage until the end of this time period.

C. The County shall have access to the Museum's facilities and all necessary records in order to conduct audits in compliance with this Paragraph.

**27. TIME IS OF THE ESSENCE.** Time is of the essence with respect to all provisions of this agreement and attachments hereto that specify a time for performance; provided, however, that the foregoing shall not be construed to limit a party's grace period allowed herein.

**28. SURVIVAL.** The terms and obligations of Sections 6, 7, 9, 22, 24, 25, and 26 of this Agreement shall survive the termination of this Agreement.

**IN WITNESS WHEREOF,** the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

<Signature page follows>



WITNESSES:

Sign: [Signature]

Print: RONALD BORSSELLINO

Sign: [Signature]

Print: MICHAEL SIMAK

FLORIDA HOLOCAUST MUSEUM, INC.

By: [Signature]  
Elizabeth Gelman, Executive Director

ATTEST:  
KEN BURKE, CLERK OF COURT

PINELLAS COUNTY, FLORIDA, by and  
through its Board of County Commissioners

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

By: \_\_\_\_\_  
Pat Gerard, Chairperson

APPROVED AS TO FORM

By: [Signature]  
Office of the County Attorney

## EXHIBIT A

### Project Summary Budget

Land Development Expenses	\$14,000
Construction	\$1,255,000
Design	\$181,067
Legal, Administrative and Start-up	\$18,500
Tenant Interior & FF&E	\$227,500
Contingency	<u>\$165,147</u>
Total	\$1,861,214

## **EXHIBIT B**

### **Tourism Promotion Benefits**

In consideration of the tourist tax capital funding support for the Florida Holocaust Museum, the Museum shall include VSPC's logo on all Museum marketing materials for a period of five years from completion of the Project in support of promotion and marketing efforts for the destination.