

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (this "Agreement") is made and entered into by and between PINELLAS COUNTY, a political subdivision of the State of Florida, which is located at 315 Court Street, 5th Floor, Clearwater, Florida 33756, hereinafter called "the County," and PALM HARBOR MERCHANTS ASSOCIATION (PHMA), a non-profit Florida corporation in unincorporated Pinellas County, with its principal address located at 933 Florida Avenue, Palm Harbor, Florida 34683, hereinafter called "PHMA".

WITNESSETH:

WHEREAS, the County recognizes the benefits the PHMA provides the community;

WHEREAS, the PHMA has demonstrated financial need for expanded special events in the Downtown Palm Harbor Central Form Based Code District (the DISTRICT), which will benefit residents of both incorporated and unincorporated areas of the County; and

WHEREAS, the County accordingly desires to use Municipal Services Taxing Unit Grant Funds to assist the PHMA with sponsoring the expanded special events, specifically to purchase two (2) 18 KV generators, a 10'x10' branded event tent, thirty (30) barricades, a barricade storage cart and a 7'x14' enclosed trailer (the Project);

WHEREAS, the PHMA previously provided a budget and price comparison sheet, which is attached hereto and incorporated by reference herein as EXHIBIT A, reflecting the special events equipment to be purchased for the Project and the pricing for such equipment.

WHEREAS, PHMA has demonstrated financial need to purchase the special events equipment (the "Project");

WHEREAS, the Project will benefit residents of both incorporated and unincorporated areas of the County; and

WHEREAS, the County desires to use Municipal Services Taxing Unit Grant Funds to

assist PHMA with funding the Project.

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions set forth herein, the parties hereto mutually agree as follows:

1. Recitals

The recitals above are incorporated herein.

2. Funding

By September 30, 2023, PHMA shall solicit at least three quotes for the purchase of the Project materials. PHMA shall provide the County with written proof that PHMA has solicited the requisite quotes. Within thirty (30) days of receipt of such information, the County shall provide PHMA with written acceptance of same or a notice of defects per Section Twelve (12) below. Together with written acceptance, the County shall include a check payable to PHMA for the dollar amount equaling the lowest quote (“Funding”). However, under no circumstances may the Funding Amount exceed \$20,000.00.

PHMA shall utilize Funding exclusively for payment of the equipment. PHMA shall expend all Funding by September 30, 2024. After the Project is completed, PHMA shall be solely responsible for maintaining the Project, as well as any costs associated therewith. PHMA’s duty to maintain the Project shall survive termination or expiration of this Agreement.

3. Progress Reports

PHMA shall deliver written progress reports to the County by (1) March 15, 2024, for the period covering October 1, 2023 through February 28, 2024, and (2) October 15, 2024 for the period covering March 1, 2024 through September 30, 2024. Each report shall be signed by an authorized PHMA representative and include a combined financial budget and expenditure report detailing how Funding has been or will be expended. Where no Funding activity has occurred within a report period, PHMA shall provide a written explanation for such non-activity.

4. Records Retention

PHMA acknowledges that information and data it manages pursuant to this Agreement may be public records in accordance with Chapter 119, Florida Statutes, and agrees to comply therewith. PHMA shall not charge the County any special service or duplication fees under Chapter 119, Florida Statutes, should the County request public records pursuant to a public records request, audit, or otherwise. Notwithstanding the termination or expiration of this Agreement and in addition to any records retention requirements under Chapter 119, Florida Statutes, PHMA shall retain all records relating to this Agreement until at least September 30, 2028.

5. Audit

PHMA shall utilize reasonable financial procedures, including adequate supporting documents, to account for the use of Funding. Notwithstanding the termination or expiration of this Agreement, all PHMA records relating to this Agreement shall be subject to audit without prior notice by the County until September 30, 2028. A copy of the PHMA's IRS 990 form may be requested by the County at any time.

6. Appropriation Requirement

This Agreement is not a general obligation of the County. No liability shall be incurred by the County, or any department, beyond the monies budgeted and available for this purpose. If funds are not appropriated by the County for any or all of this Agreement, the County shall not be obligated to pay any sums provided pursuant to this Agreement beyond the portion for which funds are appropriated. The County agrees to promptly notify PHMA in writing of such failure of appropriation, and upon receipt of such notice, this Agreement, and all rights and obligations contained herein, shall terminate without liability or penalty to the County.

7. Conflicts of Interest

No officer, member, or employee of the County, and no member of its governing body, and no other public official of the governing body of any locality where Funding is expended who exercises any functions or responsibility in the review or approval of the undertaking or carrying out of this Agreement, shall participate in any decisions relating to this Agreement which affect his personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested; nor shall any such officer, member, or employee of the County, or any member of its governing body, or public official of the governing body, or public official of the governing body of any locality where such Funding is expended, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement, have any interest, direct, or indirect, in this Agreement or the proceeds thereof.

8. Liability

Each party agrees to be liable for its own negligence under this Agreement. Nothing herein shall be construed as a waiver of Sovereign Immunity by the County or consent by the County to be sued by third parties in any manner arising from this Agreement. PHMA acknowledges that it is an independent party and not an agent of the County.

9. Indemnification

PHMA agrees to indemnify, defend, pay the cost of defense, including attorney's fees, and hold harmless the County, its officers, employees and agents from all damages, suits, actions or claims, incurred by the County, 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 Agreement; or on account of any act or omission, neglect or misconduct of PHMA or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law or of any other laws, regulations, ordinance, order or decree; or arising

from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; except only such injury or damage as have been occasioned by the sole negligence of the County. The duty to defend under this paragraph is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of PHMA, the County and any indemnified party.

10. Compliance with Laws

PHMA shall comply with all applicable Federal, state, and local laws in the performance of this Agreement, including but not limited to laws related to Workers' Compensation, occupational safety and health, the environment, equal employment opportunity, and privacy of medical records or information.

11. Term

The term of this Agreement shall commence upon execution by both parties and, unless terminated earlier by the County in accordance with Section Twelve (12) below, expire upon receipt by PHMA of the County's written confirmation of acceptance of PHMA's second six-month report as provided in Section Three (3) above.

12. Amendment

This Agreement may be amended by mutual written agreement of the parties at any time.

13. Breach and Termination

If the County, in its reasonable discretion, determines that any deliverable due from PHMA, including but not limited to the requisite proof of quotes, construction documents for the historically appropriate front entry features and ADA elements, or either progress report, is untimely or unsatisfactory, it shall provide written notice of the defect(s) to PHMA, who shall then have thirty (30) days from receipt of said notice to cure said defect(s). If the County, in its reasonable discretion, determines that PHMA has failed to timely and satisfactorily cure the

defect(s), PHMA shall be deemed in breach of this Agreement, which shall be subject to termination in accordance with this Section Twelve (12).

Failure of PHMA to comply with any provision herein shall be considered a material breach of the Agreement. Should the County, in its reasonable discretion, determine that such a breach has occurred, this Agreement shall be subject to immediate termination by the County upon receipt of written notice of such termination by PHMA. Within thirty (30) days of receipt of such notice, PHMA shall, at the option and direction of the County as provided in such notice, refund up to the entire Funding amount paid by the County (potential maximum of \$20,000.00); this remedy is notwithstanding that the remainder of this Agreement, except as otherwise provided herein, shall terminate immediately upon receipt of such notice. Nothing herein shall prevent the County from availing itself of all available legal remedies.

14. Assignment

PHMA shall perform this Agreement. No assignment shall be allowed without the prior written consent of the County.

15. Notice

All notices, invoices, approvals, and other correspondence required by law and this Agreement shall be in writing and delivered via e-mail or USPS Certified Mail to the following respective persons. Notice shall be considered delivered when reflected by an e-mail read receipt or a certified mail delivery receipt.

County:

Pinellas County Administration
Attn: Nancy McKibben, Assistant to the County Administrator
315 Court Street
Clearwater, Florida 33756
nmckibben@pinellas.gov

Palm Harbor Merchants Association

Attn: Benjamin Nichols, President
933 Florida Avenue
Palm Harbor, Florida 34683
ben@debine.com

16. Governing Law

The laws of the State of Florida shall govern this Agreement.

17. Insurance

NA

IN WITNESS WHEREOF, the parties hereto or their lawful representatives have executed this Agreement on the day and year set forth under their signatures below:

PALM HARBOR MERCHANTS
ASSOCIATION:

PINELLAS COUNTY, FLORIDA:

By: _____
Name/Title: Benjamin Nichols
President

By: _____
Name/Title: Barry A. Burton
County Administrator

Date: _____

Date: _____

