

FUNDING AGREEMENT

This Agreement, made this ____ day of _____, 2017, between Pinellas County, a political subdivision of the State of Florida (hereinafter "County"), and Creative Pinellas, a not-for-profit corporation organized under the laws of the State of Florida, (hereinafter "Funding Recipient").

Recitals

WHEREAS, Pinellas County received funds through a settlement ("Settlement") with parties responsible for the Deepwater Horizon accident which affected the Gulf of Mexico and communities in the region including Pinellas County; and

WHEREAS, County has identified and approved projects intended to benefit the public or serves a public benefit that the Board of County Commissioners intends to be enhanced with the funding from the Settlement; and

WHEREAS, Funding Recipient is to effectuate the Arts – Traveling Sculptures/Installations project (hereinafter "Project") approved by the Board of County Commissioners via Resolution 16-90 at the December 13, 2016 meeting.

NOW THEREFORE, the Funding Recipient agrees, in exchange for the funds to be provided by the County, and as further described herein to implement the Project in accordance with the terms as described.

1. County agrees to provide up to \$500,000.00 to Funding Recipient for the Project. The Project shall consist of soliciting and selecting artist(s) to create a unique public art project that will be sited in publicly accessible locations throughout Pinellas County over a period of at least 12 months. The Project shall include project management, marketing, and all other related tasks. See exhibit A for detailed description of project activities and preliminary timeline, which will be updated upon submission and acceptance of the artist(s)' full proposals.

2. Title to the Project shall pass to the Funding Recipient upon its written final acceptance, as documented in exhibit A. The artist(s) shall retain all rights to copyright under the Copyright Act of 1976, 17 U.S. C. section 101 et seq. as the sole author(s) of the Project for the duration of the copyright. Credits (as applicable) on the unique art work or on any approved reproductions will appear as "an original art work (or from an original artwork) commissioned by

Creative Pinellas and the Pinellas County Board of County Commissioners" in addition to appropriate copyright notice containing Copyright © [artist(s) name, date of creation].

3. The County will distribute the funding to the Funding Recipient upon receipt of invoices no more frequently than semi-annually. Only one invoice reflecting funding request for all activities and accompanied by applicable documentation shall be submitted during any semi-annual period. Payment of invoices shall be in accordance with Florida Prompt Payment Act (218.70, Florida Statutes). The County shall have no other funding or other obligations related to the Project.

- a. Project Management: \$100,000 to support compensation for project management services to facilitate implementation of the Project through completion. Each invoice requesting funding for this activity shall be accompanied by documentation of expenditures since last invoice. Each invoice shall represent the estimated expenditures over the next six-month period and/or reimbursement of actual expenses incurred. Project management services expenditures incurred starting November 1, 2017, are eligible to be funded.
- b. Artist Solicitation and Selection: \$17,000 to support artist solicitation and selection process. Invoice requesting funding for this activity shall be accompanied by documentation of issuance of request for proposals. As applicable, invoice may include reimbursement of actual expenses incurred.
- c. Implementation: \$325,000 to support creation, production, and multiple placements of public art Project. First invoice requesting funding for this activity shall be accompanied by executed contract(s) with selected artist(s), to include artist(s) payment schedule(s), and documentation of expenditures from Artist Solicitation and Selection process (activity in subsection b above). Subsequent invoices shall be accompanied by documentation of payments to selected artist(s) since last invoice per installment schedule in executed contract(s) with selected artist(s). As applicable, each invoice may include reimbursement of actual expenses incurred.

- d. Marketing: \$10,000 to support marketing and promotion of the Project by Creative Pinellas. Invoice requesting reimbursement for this activity shall be accompanied by documentation of expenditures to be reimbursed.
- e. Contingency: \$48,000 may be dedicated to activities that are not defined in subsections a through d above and are necessary to implement the Project provided that total project funding does not exceed \$500,000. Funding will be provided on reimbursement basis upon receipt of invoice from Funding Recipient to County along with documentation of expenditures to be reimbursed and advance written approval of such expenditures by the Creative Pinellas Board of Directors.
- f. Funding may be re-distributed among activities defined in subsections a through e above provided that total County project funding does not exceed \$500,000. Advance written approval by the County is required for changes to amounts per activity exceeding 10% or \$10,000, whichever is higher. Re-distribution of funding of any amount shall be subject to advance written approval by the Creative Pinellas Board of Directors. Notice of such approval shall be provided to the County within thirty (30) days in accordance with paragraph 13.
- g. Final invoice shall be submitted to County no more than sixty (60) days after completion of final Project activity as documented in exhibit A. Final invoice shall include reconciliation of all funding provided by County under the terms of this agreement and associated expenditures as well as documentation of expenditures not previously provided.

4. Should the Funding Recipient fail to spend all funds provided by the County, the County shall, within sixty (60) days of receipt of final invoice, provide written notice to the Funding Recipient stating the overpayment for which the Funding Recipient shall reimburse the County within thirty (30) days.

5. Funding Recipient agrees to complete the Project within three and one-half (3.5) years from the date of execution of this agreement.

6. Funding Recipient may seek and accept additional non-County funding sources and sponsorship in support of this public art Project.

7. Funding Recipient shall, in all aspects of the Project, ensure that Funding Recipient, its employees, agents or contractors shall be compliance with all applicable laws.

8. Funding Recipient is an independent party and is not an agent of the County.

9. Should the Funding Recipient not abide by the terms outlined herein, the Funding Recipient shall be in material default of this Agreement and shall repay the County for all payments received hereunder within sixty (60) days after a Notice of Default is provided by the County in accordance with paragraph 13. Should repayment not be made in accordance herewith, the County may seek all damages allowable pursuant to law.

10. Term of this Agreement shall commence on the date of execution by both parties hereto and continue until such time the Project has been completed, or within three and one-half (3.5) years from the date of execution of this Agreement, whichever is sooner.

11. Fiscal Non-Funding. In the event that sufficient funds are not available for a subsequent fiscal year, this Agreement shall terminate on the last day of the then current fiscal year without penalty or expense to the County.

12. The County and the Funding Recipient agree to be fully responsible for their own acts of negligence, or their employees' acts of negligence when acting within the scope of their employment, and agree to be liable for any damages resulting from said negligence to the

extent permitted by Florida law, including without limitation, Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of the County's sovereign immunity. Nothing herein shall be construed as consent by the County or Funding Recipient to be sued by third parties in any manner arising out of this Agreement. To the greatest extent of applicable law, Funding Recipient agrees to indemnify and defend County, its officers, and employees against all claims of any nature whatsoever arising out of the Project.

13. This document embodies the whole agreement between the Parties. There are no promises, terms, conditions or allegations other than those contained herein and this document shall supersede all previous communications, representations and/or agreements, whether written or verbal, between the parties hereto.

14. This agreement shall be governed by the laws of the State of Florida. The Parties agree that venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in Pinellas County, Florida.

15. All notices required by law and by this Agreement to be given by one party to the other shall be in writing and shall be sent to the following respective addresses:

COUNTY: Pinellas County Office of Management & Budget
14 S. Ft. Harrison Avenue, 5th floor
Clearwater, FL 33765

FUNDING RECIPIENT: Creative Pinellas, Inc.
Barbara St. Clair, Executive Director
P.O. Box 14932
Clearwater, FL 33766-4932

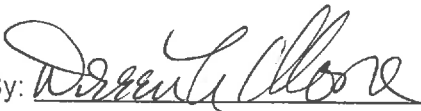
16. This Agreement may be amended or modified only by the mutual agreement of the Parties. No amendment or modification of this Agreement shall be binding unless it is in writing and signed by all Parties.

GOVERNING LAW AND DOCUMENT EXECUTION

IN WITNESS WHEREOF, the Parties hereto, governed by the laws of Florida, have caused these presents to be executed by their duly authorized officers, the day and year first above written.

Creative Pinellas, Inc.

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

By: 

Doreen Moore
President

By: _____

Janet C. Long
Chair

ATTACHMENT

Exhibit A – Detailed Project Description and Preliminary Timeline

APPROVED AS TO FORM

By: 
Office of the County Attorney