

CAPITAL PROJECT FUNDING AGREEMENT

Museum of the American Arts and Crafts Movement

THIS AGREEMENT (“Agreement”) is made and entered into as of the 2 day of October, 2017 (“Effective Date”), by and between Pinellas County, a political subdivision of the State of Florida (“County”) and The American Craftsman Museum, Inc., a Florida non-profit corporation (“ACM”) (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 ACM 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 the acquisition of land, design and construction of the statutorily eligible project/facility known as the Museum of the American Arts and Crafts Movement, including parking facilities located in St. Petersburg, Pinellas County, Florida ("Facility") set out in the Project budget described in Exhibit A attached hereto and incorporated herein by reference.

B. "Tourist Promotion Benefits" means any and all tourism promotion and/or marketing benefits provided by ACM to market/promote the destination through Visit St. Petersburg Clearwater ("VSPC") as part of the consideration for the County funding of the Project, as further described in Exhibit B attached hereto and incorporated herein by reference.

C. "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 September 30, 2020 ("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. ACM continues to own and operate the facility.

B. ACM provides to the County the Tourism Promotion Benefits.

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

D. ACM Project funding must be maintained and County must be notified immediately if those matching funds are lost or become unavailable.

E. ACM funds utilized to complete the Capital Project funded herein must be expended first before County funds are expended on the Project in accordance with the reimbursement requirements in Section 5.A.

5. COUNTY'S RESPONSIBILITIES. Upon providing documentation establishing satisfaction of the conditions precedent as required in Section 4 required by the County, the County agrees to pay Capital Project funds to ACM in the sum of not to exceed Six Million Dollars (\$6,000,000.00), from legally available Tourist Tax Revenues and from no other revenue source of the County, subject to the adjustments as provided in Section 8 herein, as follows:

A. Reimbursement Payments shall be made in annual payments of not exceeding Two Million Dollars (\$2,000,000.00) during the County's FY 2017/2018, FY 2018/2019 and FY 2019/2020 which commence on October 1 and end on September 30 of the fiscal year, upon receipt of a payment request from ACM directed to VSPC at the address set out in Section 13.A., with such documentation as required herein or by the VSPC Director. At a minimum, the payment request shall include documentation detailing (i) invoices or applications for payment which includes a detailed list of the work completed for which ACM is seeking reimbursement; (ii) proof of payment for such work; (iii) a letter from either the contractor, design professional, or an ACM officer certifying that the work for which reimbursement is sought has been completed; and (iv) written documentation received from contractor, materialmen, subcontractors or other parties verifying payment by ACM and for which reimbursement is being sought. The payment requests shall be no more frequent than quarterly after compliance with the requirements of Section 4 herein.

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 ACM.

C. The Capital Project Funds shall be paid in accordance with Section 218.70 et seq., Florida Statutes, "The Local Government Prompt Payment Act."

6. ACM'S RESPONSIBILITIES. During the Term of this Agreement, ACM 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 the Project within the Project Budget on an agreed upon date, but in any event, no later than September 30, 2020. ACM may elect to increase the Project Budget or any component part thereof with notice to the County, and shall be solely responsible for the additional costs and expenses, including any cost overruns, on the Project.

C. Provide the Tourism Promotion Program benefits for a period of twenty-two years from the completion of the Project.

D. Operate, maintain, repair, replace, and insure the Facility in a manner consistent with other comparable museums in the State of Florida.

7. RIGHT TO AUDIT.

A. All of the ACM'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 ACM 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 ACM for performance under this Agreement. The ACM 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 ACM's facilities and all necessary records in order to conduct audits in compliance with this Paragraph.

8. 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 ACM 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 ACM 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. ACM'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. ACM ceases operations of the Capital Project during the period that ACM is obligated to provide Tourism Promotion Benefits as provided in Section 6.C. herein.

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

6. ACM fails to pay taxes and/or assessments, if any, when due.

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 ACM. The County shall then have no further funding obligation under this Agreement;

2. If the County has paid any Capital Project Funds, ACM 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 ACM in the performance of its obligations under this Agreement shall constitute a consent to or waiver of any similar breach or default by ACM. The failure of the County to complain of any act or omission to act by ACM or to declare ACM in default, irrespective of how long such failure continues, shall not constitute a waiver by the County of its rights under this Agreement.

9. 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.

10. INDEMNIFICATION. ACM 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 ACM 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.

11. 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.

12. 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.

13. 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 at the email provided below:

TO THE COUNTY:
David Downing, Director
Visit St. Petersburg/Clearwater
8200 Bryan Dairy Rd., Suite 200
Largo, FL 33777
David@visitspc.com

TO THE ACM:
Thomas Magoulis, V.P.
The American Craftsman Museum
4190 Corporate Court
Palm Harbor, FL 34683
TMagoulis@museumaacm.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.

14. 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.

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

16. 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.

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

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

19. 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.

20. NO CONSTRUCTION AGAINST PREPARER OF AGREEMENT. This Agreement has been prepared by County and reviewed by ACM and its professional advisors. The County, ACM, 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.

21. 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.

22. 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.

23. FUNDING OBLIGATION. This Capital Project Funding Agreement is not a general obligation of the County. The obligations of the County as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget and appropriate sufficient funding that is required during that year from legally available Tourist Tax Revenues after funding for secured obligations, essential and necessary tourism services, and Tourist Development Taxes restricted as to use by the Plan have been budgeted and appropriated. 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.

24. INDEPENDENT CAPACITY.

A. The Parties agree that ACM 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. ACM agrees to take such steps as may be necessary to ensure that any third-party ACM 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. ACM 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.

25. 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.

26. PUBLIC RECORDS.

A. ACM acknowledges that information and data relating to its services may be public records in accordance with Chapter 119, Florida Statutes and Pinellas County Public Records Policies. ACM 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, regulations, and County policies, including but not limited to the Sec. 119.0701, Florida Statutes. Notwithstanding any other provision of this Agreement relating to compensation, ACM agrees to charge the County, and/or any third parties requesting public records only such fees allowed by

Section 119.07, Florida Statutes and County policies for locating and producing public records during the term of this Agreement.

B. If ACM has questions regarding the application of Chapter 119, Florida Statutes, to the duty to provide public records relating to this contract, contact Pinellas County Convention and Visitors Bureau (CVB/VSPC) custodian of public records at 727-464-7200, Tim@visitspc.com, or send your questions by mail to: Pinellas County Convention and Visitors Bureau, Tim Ramsberger, 8200 Bryan Dairy Rd., Suite 200, Largo, FL 33777.

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 Section 6, 7, 8, 10, 23, and 25 shall survive the termination of this agreement.

<Signature page follows>

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

WITNESSES:

THE AMERICAN CRAFTSMAN MUSEUM, INC.

Sign: Jason Fritzsch
Print: Jason Fritzsch

By: Thomas Magoulis
Thomas Magoulis, Vice President

Sign: Dawn Krause
Print: DAWN R. KRAUSE

PINELLAS COUNTY, FLORIDA,
by and through its County Administrator

By: Mark S. Woodard
Mark S. Woodard

APPROVED AS TO FORM
OFFICE OF THE COUNTY ATTORNEY

By: _____

APPROVED AS TO FORM

By: Michael A. Zas
Office of the County Attorney

EXHIBIT A

Combined Costs for the MAACM Parking Garage and Museum

MAACM Parking Garage

GarageConstructionCost:	\$6,489,650
LandAcquisition	\$4,875,000
Architectural,ProfessionalConsultantFees andCityandCounty Permitting. (Combinedfeesforgarageandmuseum)	\$4,200,000
TOTAL PARKING GARAGE COST	\$15,564,650

MAACM Museum

Data provided by:
Gilbane Building
Company 1751 Mound
Street Sarasota, Florida,
34236.

Project: Museum of the American Arts and Crafts Movement [MAACM]
Owner: The American Craftsman Museum, Inc.
Architect: Alfonso Architects

A-Substructure	\$1,580,600
B-Shell	\$18,559,681
C-Interiors	\$15,547,458
D-Services D-10 Conveying Systems D-30 Hvac & Plumbing Systems D-40 Fire Protection Systems D-50 Electrical Systems	\$14,685,859
E-Equipment	\$1,449,000
H-Site Services	\$1,285,220
TRADE COST – MUSEUM SUBTOTAL	\$53,107,818

Contingency	\$8,758,422
Bond & Insurance	\$1,249,042
CM Fee	\$4,211,508
Owners Provided GL and Builders Risk	~\$750,000
Owners Provided Services (not included in GMP)	~\$2,000,000
TOTAL COST–MUSEUM	\$70,076,790
GRAND TOTAL–GARAGE & MUSEUM	\$85,641,440

EXHIBIT B

County Tourism Benefits

The American Craftsman Museum agrees to provide the following Tourism Benefits as part of the Capital Project Funding Agreement for a period of twenty-two years from completion of the Project or as otherwise specified herein:

1. A permanent, dedicated area of the large ticket/reception desk located in the grand atrium as a “welcome center” in a location as mutually agreed to by ACM and VSPC. The center will be manned when necessary and provide printed literature to visitors and tourists seeking information on attractions, beaches, hotels, restaurants, etc. Literature to be provided by VSPC.
2. A digital interactive monitor near the entrance to the grand atrium in a location as mutually agreed to by the ACM and VSPC that would provide a looping video/film of the area promoting VSPC tourist attractions. Video and content to be provided by VSPC.
3. Permanent exterior signage at the MAACM (Museum of the American Arts and Crafts Movement) with the “tag line” St. Petersburg. The sign will be prominently located at the corner of 4th Street near the entrance to the museum.
4. Provide its second floor “event space” to VSPC for up to 12 business days, Monday through Friday, annually at no charge for the purpose of conducting various sales missions and other activities related to its mission. VSPC agrees to work with MAACM in good faith to avoid scheduling conflicts, crowd size, and to abide by all museum rules regulating the type of events, hours of operation, as well as in keeping with local laws and ordinances. VSPC shall not be required to enter into a separate contract for the event space; however when an authorized event requires food and beverage, VSPC agrees to use the museum’s catering services exclusively. Additional staffing requirements needed (i.e. security) to be negotiated in good faith with MAACM. This section to be reviewed for appropriateness on an annual basis.
5. Provide MAACM Garage’s rooftop level to VSPC up to 6 times annually for tourism related sales missions and other activities related to its mission. VSPC agrees to work with MAACM to avoid scheduling conflicts, hours of operation, crowd size, and to abide by all museum rules regulating the type of event as well as in keeping with local laws and ordinances. VSPC shall not be required to enter into a separate contract for the rooftop space; however, when an authorized event requires food and beverages, VSPC agrees to utilize the museum’s catering services exclusively. Additional staffing requirements needed for an event (i.e. security) to be negotiated in good faith with MAACM. This section to be reviewed annually.
6. Utilize the VSPC logo as a “tag line” in all of its printed advertising.
7. Include the VSPC logo on the back of all museum tickets.
8. Advertise in the VSPC Gulf to Bay magazine annually.
9. Provide joint MAACM and destination marketing campaigns and activities through social media, advertising, direct sales, public relations and/or other programs as mutually agreed to by the parties.