

**CAPITAL PROJECT
FUNDING AGREEMENT**

Clearwater Marine Aquarium

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 Clearwater Marine Aquarium, Inc., a Florida non-profit corporation (“CMA”) (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 CMA 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 improvements to that certain statutorily eligible project/facility commonly known as the Clearwater Marine Aquarium ("Facility") located in Clearwater, Pinellas County, Florida 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, including but not limited to such use 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 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 payment of the capital project funding as described herein, but no later than September 30, 2020 ("Term"), unless otherwise terminated as provided herein or extended by mutual written agreement of the parties.

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. CMA continues to own and operate the Clearwater Marine Aquarium.

B. CMA provides to the County the Tourism Promotion Benefits as required herein.

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

D. The Capital Project is completed no later than September 30, 2020.

E. CMA matching funds must be maintained and County must be notified immediately if those matching funds are lost or become unavailable.

5. COUNTY'S RESPONSIBILITIES. Upon providing documentation as specifically set forth in subparagraph (A) below establishing satisfaction of the conditions precedent as required in Section 4 required by the County, the County agrees to pay to CMA Capital Project funds in the sum of not to exceed Twenty-Six Million Dollars and No Cents (\$26,000,000.00) 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 Thirteen Million Dollars and No Cents (\$13,000,000.00) during the County's FY 2017/2018 and FY 2018/2019 which commence on October 1 and end on September 30 of the fiscal year, upon receipt of a written payment request from CMA directed to the 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 CMA is seeking reimbursement; (ii) proof of payment for such work; (iii) a letter from either the contractor, design professional, or CMA 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 CMA and for which reimbursement is being sought. The payment requests shall be no more frequent than quarterly.

B. 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 CMA.

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

D. The County's obligations under this Agreement shall cease and the Agreement shall terminate with no further obligation to the County for payments hereunder in the event the Tourist Tax Revenues pledged herein are repealed or expire as a matter of law.

6. CMA'S RESPONSIBILITIES. During the Term of this Agreement, the CMA 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 operating 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 the term of this agreement. CMA 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. Upon the termination of this Agreement notify the County of any project cost savings or changes in scope of work that reduced the project costs and to reimburse the County on a pro rata basis.

D. Provide the Tourism Promotion Program benefits as provided in Exhibit B.

E. Operate, maintain, repair, replace, and insure the Facility in a manner consistent with other comparable aquariums in the United States.

7. RIGHT TO AUDIT.

A. All of the CMA'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 CMA 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 CMA for performance under this Agreement. The CMA 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 CMA'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 CMA 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 CMA except for a breach of those provisions described in subsection 3 or 4 below, which will entitle the County to immediately exercise the available remedies;

2. CMA'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. CMA ceases operations of the Capital Project or Facility during the Term.

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

2. If the County has paid any Capital Project funds, CMA 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 CMA in the performance of its obligations under this Agreement shall constitute a consent to or waiver of any similar breach or default by CMA. The failure of the County to complain of any act or omission to act by CMA or to declare CMA 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. CMA 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 CMA, 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 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 CMA:
Frank Dame, COO
Clearwater Marine Aquarium
249 Windward Passage
Clearwater, FL 33767
FDame@cmaquarium.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. 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 CMA and its professional advisors. The County, CMA, 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. The Agreement is not a general obligation of the County. It is understood that neither this Agreement nor any representation by any County employee or officer creates any obligation to appropriate or make monies available for the purpose of the Agreement beyond the fiscal year in which this Agreement is executed. 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, after reasonable notice to CMA, 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 CMA 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.

23. INDEPENDENT CAPACITY.

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

A. CMA 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. CMA 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, CMA 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 CMA 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.

26. 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.

27. SURVIVAL. The terms and obligations of Section 6, 7, 8, 10, 22, and 24 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:

CLEARWATER MARINE AQUARIUM, INC.

Sign: Karen Jubrail, CFO
Print: KAREN JUBRAIL

By: [Signature]
Printed name: FRANK L. DAME, EVP/COO

Sign: [Signature]
Print: Syler Rowland

PINELLAS COUNTY, FLORIDA,
by and through its County Administrator

By: [Signature]
Mark S. Woodard

APPROVED AS TO FORM
OFFICE OF THE COUNTY ATTORNEY

By: _____

APPROVED AS TO FORM

By: [Signature]
Office of the County Attorney

EXHIBIT A

CMA Capital Funding Project Budget

Total Project Cost	\$64,082,918
 Phase 1: Pre-Construction, Architectural & Parking Garage	
Owners rep for Pre Construction and Phase I Parking Garage	\$ 206,000
Civil Engineering Documents	\$ 64,500
Additional Civil Engineering Fees (Fisher 5/17)	\$ 12,000
Architectural fees 1/0 to Fisher	\$ 512,400
Architectural fees paid to 1/0	\$ 146,655
Structural Construction Documents	\$ 250,000
Electrical Construction Documents	\$ 185,000
Mechanical & Plumbing Construction Documents	\$ 150,000
Landscaping Design and Document Allowance	\$ 15,000
Geotechnical Services	\$ 12,970
Life Support engineering (Satchell Engineering)	\$ 101,450
Interior design fees	\$ 400,000
Permitting and Impact Fees (Estimated)	\$ 250,000
Parking Consultants (Walker)	\$ 8,000
Pre-Construction Total	\$ 2,313,975
 Phase 1 Parking Garage (223 spaces)	
Parking Garage Budget Phase 1	\$ 7,462,073
Site Work Allocation	\$ 1,502,773
Demo and Drive Allowance	\$ 450,000
Guaranteed Maximum Price (GPM) Increase	\$ 29,486
General Conditions, Direct Costs, Contingency, Insurance Fee	\$ 1,375,452
Sub Total	\$ 10,819,784
Total Pre-Construction, Const. Management & Phase 1 Parking Garage Construction (completed)	\$ 13,133,759
 Phase 2: Dolphin, Main building, Phase 2 Parking Demo, & Site Work	
Construction Management (Owner's Rep for Phase 2)	\$ 180,000
Dolphin, Main building, 3rd floor TI, Demo, & site work for Phase 2	\$ 40,607,273
2nd floor Interior Buildout for Education	\$ 514,761
Garage Phase 2 & Event Space Shell	\$ 4,232,502
4th floor Interior Buildout, Theater, Dolphin Tale Exhibit, Event Space	\$ 2,306,161
Exhibit Build Out	\$ 1,000,000
Phase 2 Sub Total	\$ 48,840,697
 Phase 3: Improvement to Old Facility	
Lower Mangrove/Old Pelican exhibit	\$ 241,969
Phase 3 Improvements to Old Facility Sub Total	\$ 241,969
Total Project Cost	\$ 62,216,425
3% Owner Contingency	\$ 1,866,493
Grand Total	\$ 64,082,918

Note: Project Cost does not include FF&E or Capital Campaign expenses

EXHIBIT B

In consideration of the tourist tax capital funding support for the Clearwater Marine Aquarium, CMA shall at a minimum provide the following Tourism Promotion Benefits to support promotion and marketing efforts for the destination:

A. Permanent signage located where guests enter the CMA guest space in a location in close proximity to the guest ticketing line which includes an acknowledgement of the capital contribution by including "...presented by Visit St. Petersburg Clearwater" or similar language, and which is designed to connect VSPC directly to the CMA guest experience and brand. The final location shall be mutually agreed to by the CMA and VSPC Director. VSPC shall be responsible for the signage cost, design and type (digital or static), subject to the approval of the CMA, which approval shall not be unreasonably withheld.

B. A location for a permanent standalone kiosk of approximately 15 feet of wall space in the main entry area as mutually agreed upon. The kiosk size shall be consistent with the size of other CMA kiosks. VSPC will be responsible for the costs associated with the kiosk, and utilize the kiosk for destination promotions and marketing, including collateral, interactive digital messaging and other technology, that may be updated or changed from time-to-time.

C. Permanent placement of the VSPC logo on all tickets or ticketing items (except for third party vendor tickets that prohibit placement on the ticket by agreement with the CMA) including hard copy, digital, wristbands or any other form of future guest admission tickets or passes. CMA reserves the right to include a third party logo on the wristbands.

D. Joint CMA and destination promotion and marketing campaigns and activities through social media, advertising, direct sales, public relations and/or other programs as mutually agreed to by the parties.

E. The parties shall meet periodically to update the Tourism Promotion Benefits as new technologies and marketing platforms are available to promote the destination as mutually agreed to by the parties hereto.