

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 HISTORICAL SOCIETY, INC. (PHHS), dba Palm Harbor Museum (PHM), a non-profit Florida corporation in unincorporated Pinellas County, with its principal address located at 2043 Curlew Road, Palm Harbor, Florida 34683, hereinafter called "PHHS".

WITNESSETH:

WHEREAS, the County owns the premises located at 2043 Curlew Road, Palm Harbor, Florida (the "Premises");

WHEREAS, the County has a lease agreement with PHHS dated September 23, 2014, which allows PHHS to occupy the Premises and operate it as a public museum;

WHEREAS, Resolution 96-52 establishes the Palm Harbor Museum (the "Museum") on the Premises and recognizes PHHS as the O&M entity for same:

WHEREAS, the County enjoys a mutually beneficial relationship with PHHS and recognizes the benefits that PHHS provides the community;

WHEREAS, the County desires to help PHHS promote fulfill its mission: To collect, preserve, interpret, and share the heritage of the Palm Harbor area,

WHEREAS, PHHS has demonstrated financial need to replace the front entry door to the Palm Harbor Museum with historically appropriate entry features and Americans with Disabilities (ADA) elements (the "Project");

WHEREAS, the Project will require the services of a Registered Architect from the County's approved professional services consultant list who is recognized for their experience in historic preservation, to provide the construction documents for the historically appropriate

front entry features and ADA elements (the “Architect”);

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 PHHS 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, PHHS shall solicit (1) a proposal for professional services from the Architect and, (2) at least three quotes for the purchase of the Project materials. PHHS shall provide the County with written proof that PHHS has solicited the requisite quotes; and a written proposal of professional services for the Project. Within thirty (30) days of receipt of such information, the County shall provide PHHS 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 PHHS for the dollar amount equaling the lowest quote (“Funding”). However, under no circumstances may the Funding Amount exceed \$20,000.00.

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

3. Progress Reports

PHHS 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 PHHS 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, PHHS shall provide a written explanation for such non-activity.

4. Records Retention

PHHS 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. PHHS 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, PHHS shall retain all records relating to this Agreement until at least September 30, 2028.

5. Audit

PHHS 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 PHHS records relating to this Agreement shall be subject to audit without prior notice by the County until September 30, 2028. A copy of the PHHS'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 PHHS 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. PHHS acknowledges that it is an independent party and not an agent of the County.

9. Compliance with Laws

PHHS 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.

10. 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 PHHS of the County's written confirmation of acceptance of PHHS's second six-month report as provided in Section Three (3) above.

11. Amendment

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

12. Breach and Termination

If the County, in its reasonable discretion, determines that any deliverable due from PHHS, 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 PHHS, 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 PHHS has failed to timely and satisfactorily cure the defect(s), PHHS shall be deemed in breach of this Agreement, which shall be subject to termination in accordance with this Section Twelve (12).

Failure of PHHS 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 PHHS. Within thirty (30) days of receipt of such notice, PHHS 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.

13. Assignment

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

14. 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@pinellascounty.org

Palm Harbor Historical Society, Inc.:

Palm Harbor Historical Society
Attn: Robert Fortner, President
2043 Curlew Road
Palm Harbor, Florida 34683
unityphrev@gmail.com

15. Governing Law

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

16. Insurance

PHHS shall provide insurance coverage and limits as shown on Attachment A:

Insurance Requirements attached.

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 HISTORICAL SOCIETY:

By: _____

Name/Title: Robert Fortner
President

Date: _____

PINELLAS COUNTY, FLORIDA:

By: _____

Name/Title: Barry A. Burton
County Administrator

Date: _____

APPROVED AS TO FORM

By: Donald S. Crowell
Office of the County Attorney

Attachment A: Insurance Requirements

Notice: The PHHS must provide a certificate of insurance and endorsement in accordance with the insurance requirements listed below.

The PHHS shall obtain and maintain, and require any sub-contractors to obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth. For projects with a Completed Operations exposure, Contractor shall maintain coverage and provide evidence of insurance for two (2) years beyond final acceptance. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and have an AM Best rating of A- VIII or better.

- a) The PHHSs current Certificate(s) of Insurance in accordance with the insurance requirements listed below. If PHHS does not currently meet insurance requirements from their broker or agent that any required insurance not provided at that time of execution will be in place prior to commencement of work.
- b) Prior to commencement of work, PHHS shall email certificate that is compliant with the insurance requirements to InsuranceCerts@Pinellascounty.org. The Certificate(s) of Insurance shall be signed by authorized representatives of the insurance companies shown on the Certificate(s). **A copy of the endorsement(s) referenced in paragraph d) for Additional Insured shall be attached to the certificate(s) referenced in this paragraph.**
- c) No work shall commence at any project site unless and until the required Certificate(s) of Insurance are received and approved by the County. Approval by the County of any Certificate(s) of Insurance does not constitute verification by the County that the

insurance requirements have been satisfied or that the insurance policy shown on the Certificate(s) of Insurance is in compliance with the requirements of the Agreement. County reserves the right to require a certified copy of the entire insurance policy, including endorsement(s), at any time during the Quote and/or contract period.

- d) All policies providing liability coverage(s), other than professional liability and workers compensation policies, obtained by the PHHS and any subcontractors to meet the requirements of the Agreement shall be endorsed to include Pinellas County a Political Subdivision of the State of Florida as an Additional Insured.
- e) If any insurance provided pursuant to the Agreement expires prior to the completion of the Work, renewal Certificate(s) of Insurance and endorsement(s) shall be furnished by the PHHS to the County at least thirty (30) days prior to the expiration date.
 - (1) PHHS shall also notify County within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, nonrenewal or adverse material change in coverage received by said PHHS from its insurer. Notice shall be given by certified mail to: **Pinellas County Risk Management 400 South Fort Harrison Ave Clearwater FL 33756**
 - (2) Should the PHHS, at any time, not maintain the insurance coverages required herein, the County may terminate the Agreement, or at its sole discretion may purchase such coverages necessary for the protection of the County and charge the PHHS for such purchase or offset the cost against amounts due to PHHS for services completed. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance

company or companies used. The decision of the County to purchase such insurance shall in no way be construed to be a waiver of any of its rights under the Agreement.

- f) The County reserves the right, but not the duty, to review and request a copy of the Contractor's most recent annual report or audited financial statement when a self-insured retention (SIR) or deductible exceeds \$50,000.

If subcontracting is allowed under this Quote, the Prime PHHS shall obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth; and require any subcontractors to obtain and maintain, at all times during its performance of the Agreement, insurance limits as it may apply to the portion of the Work performed by the subcontractor; *but in no event will the insurance limits be less than \$500,000 for Workers' Compensation/Employers' Liability, and \$1,000,000 for General Liability and Auto Liability if required below.*

- (1) All subcontracts between PHHS and its subcontractors shall be in writing and are subject to the County's prior written approval. Further, all subcontracts shall (1) require each subcontractor to be bound to PHHS to the same extent PHHS is bound to the County by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor; (2) provide for the assignment of the subcontracts from PHHS to the County at the election of Owner upon termination of the Contract; (3) provide that County will be an additional indemnified party of the subcontract; (4) provide that the County will be an additional insured on all insurance policies required to be provided by the subcontractor except workers

compensation and professional liability; (5) provide waiver of subrogation in favor of the County and other insurance terms and/or conditions as outlined below; (6) assign all warranties directly to the County; and (7) identify the County as an intended third-party beneficiary of the subcontract. PHHS shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Section C and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents.

g) Each insurance policy and/or certificate shall include the following terms and/or conditions:

- (1) The Named Insured on the Certificate of Insurance and insurance policy must match the entity's name that responded to the solicitation and/or is signing the agreement with the County. If PHHS is a Joint Venture per Section A. titled Joint Venture of this Quote, Certificate of Insurance and Named Insured must show Joint Venture Legal Entity name and the Joint Venture must comply with the requirements of Section C with regard to limits, terms and conditions, including completed operations coverage.
- (2) Companies issuing the insurance policy, or policies, shall have no recourse against County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Contractor.
- (3) The term "County" or "Pinellas County" shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and Constitutional offices of County and individual members, employees thereof in their official capacities, and/or while acting on behalf of Pinellas County.

- (4) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County or any such future coverage, or to County's Self-Insured Retentions of whatever nature.
- (5) All policies shall be written on a primary, non-contributory basis.
- (6) Any Certificate(s) of Insurance evidencing coverage provided by a leasing company for either workers compensation or commercial general liability shall have a list of covered employees certified by the leasing company attached to the Certificate(s) of Insurance. The County shall have the right, but not the obligation to determine that the PHHS is only using employees named on such list to perform work for the County. Should employees not named be utilized by PHHS, the County, at its option may stop work without penalty to the County until proof of coverage or removal of the employee by the contractor occurs, or alternatively find the PHHS to be in default and take such other protective measures as necessary.
- (7) Insurance policies, other than Professional Liability, shall include waivers of subrogation in favor of Pinellas County from both the PHHS and subcontractor(s).

The minimum insurance requirements and limits for this Agreement, which shall remain in effect throughout its duration and for two (2) years beyond final acceptance for projects with a Completed Operations exposure, are as follows:

(1) Workers' Compensation

Insurance Limit: Florida

Statutory

Employers' Liability Limits:

Per Employee	\$ 500,000
Per Employee Disease ¹²	\$ 500,000
Policy Limit Disease	\$ 500,000

- (2) Commercial General Liability Insurance including, but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operations, and Personal Injury.

Limits:

Combined Single Limit Per Occurrence	\$ 1,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal Injury and Advertising Injury	\$ 1,000,000
General Aggregate	\$ 2,000,000

- (3) Property Insurance PHHS will be responsible for all damage to its own property, equipment and/or materials.