



BOARD OF COUNTY COMMISSIONERS

DATE: October 25, 2011

AGENDA ITEM NO. 19

Consent Agenda

Regular Agenda

Public Hearing

County Administrator's Signature: *[Handwritten Signature]*

Subject:

Approval to designate Creative Pinellas, Inc. as the Local Arts Agency independent of Pinellas County.

Department:

Parks & Conservation Resources

Staff Member Responsible:

Paul Cozzie, Director

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS APPROVE, THE CHAIRMAN SIGN, AND THE CLERK ATTEST THE LOCAL ARTS AGENCY TRANSITIONAL FUNDING AGREEMENT WITH CREATIVE PINELLAS, INC., A FLORIDA NONPROFIT CORPORATION.

Summary Explanation/Background:

Previously the Pinellas County Cultural Council, through the Pinellas County Cultural Affairs Department, promoted, administered and supported arts and cultural programs in Pinellas County. Due to financial considerations relating to the delivery of services and programs, the Cultural Council and Cultural Affairs Department were dissolved, and it became necessary to redefine the responsibilities for promoting, administering and supporting arts and cultural programs in Pinellas County. Pursuant to Section 90-143, Pinellas County Code, Creative Pinellas, Inc. was designated as the Local Arts Agency as defined by the State Division of Cultural Affairs. The agreement defines the purpose and transition support for Creative Pinellas as the designated Local Arts Agency to accomplish the duties and responsibilities relating to arts and cultural programs in Pinellas County. Creative Pinellas is deemed to be the successor in interest to, and assignee of, the County for the purposes of any grants or other arts or cultural program funding sources, including but not limited to the funding from the Pinellas County School Board, Americans for the Arts, Florida Department of Highway Safety and Motor Vehicles Specialty Plates, and Florida Division of Cultural Affairs.

Fiscal Impact/Cost/Revenue Summary:

Pinellas County to provide one time only transition funding in the amount of \$300,000.00. Dollars are budgeted in General Government.

Exhibits/Attachments Attached:

Contract Review Transmittal Slip
Agreement

NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIP

PROJECT: Local Arts Agency Transitional Funding Agreement

CONTRACT NO.: _____ ESTIMATED EXPENDITURE / REVENUE: \$300,000 (ONE TIME)

In accordance with Contract Administration and its Review Process, the attached documents are submitted for your review and comment.

Please complete this Non-Purchasing Contract Review Transmittal Slip below with your assessment, and **forward to the next Review Authority on the list, skipping any authority marked "N/A."** Indicate suggested changes by noting those in "Comments" column, or by revising, in RED, the appropriate section(s) of the document(s) to reflect the exact wording of the desired change(s).

OTHER SPECIFICS RELATING TO THE CONTRACT: Agreement to dissolve the Cultural Council and Cultural Affairs Department and designating Creative Pinellas as the Local Arts Agency.

REVIEW SEQUENCE	DATE	INITIALS/ SIGNATURE	COMMENTS (IF ANY)	COMMENTS REVIEWED & ADDRESSED OR INCORPORATED ORIGINATOR'S INITIALS & DATE
Originator P Cozzie	8/19/11	<i>[Signature]</i>		
W Davis Risk	8/23/11	<i>[Signature]</i>		
P Sacco REM	8/25/11	<i>[Signature]</i>	See pages 4 & 5	<i>[Signature]</i> 8/25/11
OMB J Woodruff	8/30/11	<i>[Signature]</i>		
Finance C Williams	9/7/11	<i>[Signature]</i>		
Assistant County Administrator M Woodard	9/13/11	<i>[Signature]</i>		
Legal D Long	9/14/11	<i>[Signature]</i>	To my knowledge, there is no current plan; however that will be addressed after approval	<i>[Signature]</i> 10/11/11

Please return to Jean Long by Friday, August 26. All inquiries can be made to Jean 582-2541. Thank you.

**LOCAL ARTS AGENCY
TRANSITIONAL FUNDING AGREEMENT**

THIS AGREEMENT, made and entered into the _____ day of _____, 2011 (“Effective Date”), by and between Pinellas County, a political subdivision of the State of Florida (hereinafter the "County"), and Creative Pinellas, Inc., a Florida nonprofit corporation (hereinafter "Creative Pinellas") (collectively hereinafter the "Parties").

W I T N E S S E T H:

WHEREAS, pursuant to Section 90-141, et. seq., Pinellas County Code, the Pinellas County Cultural Council, through the Pinellas County Cultural Affairs Department, promoted, administered and supported arts and cultural programs in Pinellas County; and

WHEREAS, based upon financial considerations relating to the delivery of services and programs resulting from Amendment One, statutory revenue caps and limitations, and the recession, the Board of County Commissioners of Pinellas County has determined that it is necessary to redefine the responsibilities for promoting, administering and supporting arts and cultural programs, including dissolving the Cultural Council and Cultural Affairs Department, amending Chapter 90-141, et. seq., Pinellas County Code, relating to cultural programs, and designating Creative Pinellas as the Local Arts Agency as defined by the State Division of Cultural Affairs; and

WHEREAS, while Creative Pinellas is operating as the designated Local Arts Agency independent of the County, Creative Pinellas is in need of transitional support and the County desires to continue to provide support for arts and cultural programs as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is hereby agreed by and between the County and Creative Pinellas as follows:

1. Purpose/Transition.

(a) The purpose of this Agreement is to: (i) establish and maintain a collaborative relationship to carry out the duties and responsibilities related to promoting, administering and supporting arts and cultural programs in Pinellas County; and (ii) provide for the transition to, and support of, Creative Pinellas as the designated Local Arts Agency to accomplish the duties and responsibilities relating to arts and cultural programs in Pinellas County in accordance with Section 90-141, et seq., Pinellas County Code and the applicable sections of Chapter 265, Florida Statutes, and Chapter 1T, Florida Administrative Code (the "Acts").

(b) In support of the program transition from the County beginning June 20, 2011, Creative Pinellas is hereby deemed to be the successor in interest to, and assignee of, the County for the purposes of any grants or other arts or cultural program funding sources, including but not limited to the funding from the Pinellas County School Board, Americans for the Arts, Florida Department of Highway Safety and Motor Vehicles Specialty Plates, and Florida Division of Cultural Affairs.

2. Definitions. The words and terms used herein shall have the same meaning as defined in Section 90-142, Pinellas County Code, as may be amended from time to time.

3. Creative Pinellas Responsibilities and Obligations. Creative Pinellas shall support arts and cultural programs for the benefit of the citizens of Pinellas County, as follows:

(a) Operate as a not-for-profit organization serving as the Local Arts Agency, until another public or private organization is designated to serve in that capacity by the Pinellas County Board of County Commissioners ("Board") in accordance with the Acts.

(b) Establish and provide a business plan to the County, which shall be subject to County approval as provided in Section 4(a), and which shall at a minimum include a mission statement, governance structure, staffing, facilities plan, a balanced

2011 and 2012 budget, a sustainable financial plan, promotional and marketing programs, and specific goals and metrics in support of arts and cultural programs (“Business Plan”).

(c) Perform the duties and responsibilities of the Local Arts Agency as defined in the Acts and in this Agreement, including but not limited to:

(i) Promoting and marketing local arts and cultural events and institutions, as well as artists, through social networking and other media tools, in accordance with the approved Business Plan.

(ii) Advancing the Pinellas County Community Cultural Plan as determined appropriate by Creative Pinellas.

(iii) Administering local grant programs for arts and cultural programs by the County, the State Division of Cultural Affairs, and other funding sources as mutually agreed to by Creative Pinellas and the funding source.

(iv) To the extent the Public Art and Design program is funded in the future by the County, administering this program as mutually agreed to by Creative Pinellas and the County.

(v) Serving as a fundraising organization for arts and cultural programs in Pinellas County in accordance with and to the extent provided for in the approved Business Plan.

(d) Secure necessary resources including staff and infrastructure to support the arts and cultural programs in accordance with the approved Business Plan.

4. County Obligations and Responsibilities. The County shall provide support for arts and cultural programs as follows:

(a) Provide one time only transition funding in the amount of three hundred thousand dollars (\$300,000.00), payable upon the receipt of an invoice from Creative

Pinellas, conditioned upon and after receipt of approval of the Business Plan by the County Administrator on behalf of the County.

(b) Host the Creative Pinellas website and other electronic media platforms for not exceeding ninety (90) days after the Effective Date, and thereafter provide a link on the County's website to Creative Pinellas' website during the term of this Agreement, as well as authorize the use of the domain name pinellasarts.org if requested by Creative Pinellas.

(c) Provide office and meeting space and related equipment and systems as requested by Creative Pinellas, and as determined appropriate by the County until Creative Pinellas secures its own offices, or ninety (90) days after the Effective Date, whichever occurs first.

5. Term. The term of this Agreement shall commence on the Effective Date, and shall remain in full force and effect through September 30, 2012, unless it is terminated or extended as provided herein (the initial term and any extensions referred to as "Term"). Thereafter, the Parties may extend the Term of the Agreement for additional one-year periods as may be mutually agreed to in writing by the Parties.

6. Examination of Records. Creative Pinellas shall keep adequate records and supporting documentation applicable to this Agreement. Said records and documentation shall be retained for a minimum of three (3) years from the date this Agreement terminates. Should any question arise concerning this Agreement, the County and its authorized agents shall have the right to review, inspect and copy, or audit, all such records and documentation during the record retention period stated above; provided, however, such activity shall be conducted only during normal business hours and shall be at County expense.

7. Notice. Each party hereby designates the person set forth below as its respective contact persons. The person designated herein shall be each party's prime contact person for

coordinating activities related to this Agreement. Notices or reports shall be sent to the attention of each party's contact person by U.S. mail, postage prepaid, to the Parties' addresses as set forth herein.

For the County:

Attn: County Administrator
315 Court Street
Clearwater, FL 33756

For Creative Pinellas, Inc.:

R. Terry Haas, Treasurer
Creative Pinellas, Inc.
362 Tall Oak Trail
Tarpon Springs, FL 34688

8. Termination.

(a) The County reserves the right to terminate this Agreement, without cause, by giving sixty (60) days advance written notice to Creative Pinellas of its election to terminate pursuant to this provision.

(b) The failure of either party to comply with any material provisions of this Agreement shall be considered a breach thereof, and shall be cause for immediate termination of the Agreement upon written notice to the defaulting party.

(c) In the event that the State of Florida determines that Creative Pinellas is not eligible to receive DHSMV Specialty Plates funds or other grant funding available to local arts agencies, or the County designates another public or private entity as the Local Arts Agency, this Agreement shall immediately terminate and be of no further force and effect.

(d) The funding from the County is subject to periodic appropriation of funds by the County. Further, obligations under this Agreement are contingent upon the availability of funds. 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 Creative Pinellas in writing of such failure of appropriation, and upon such notice, this Agreement shall terminate without penalty to the County.

9. Liability and Indemnification.

(a) Neither the County nor Creative Pinellas shall make any express or implied agreements, guarantees or representations, or incur any debt, in the name of or on behalf of the other party. Neither the County nor Creative Pinellas shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized hereunder. The County shall have no liability or obligation for any damages to any person or property directly or indirectly arising out of the operation by Creative Pinellas of its business, whether caused by Creative Pinellas' negligence or willful action or failure to act.

(b) Creative Pinellas shall indemnify, 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, including reasonable attorney's fees 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 Creative Pinellas; 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 shall have been occasioned by the sole negligence of the County.

10. Miscellaneous.

(a) Creative Pinellas shall comply with all applicable federal, state and local laws, rules, regulations and guidelines, relative to performance under this Agreement.

(b) Neither party may assign or transfer its rights or obligations under this Agreement without prior written consent of the other party.

(c) Nothing in this Agreement shall be construed to benefit any person or entity not a party to this Agreement.

(d) In carrying out this Agreement, Creative Pinellas shall not exclude from participating in, deny benefits to, or otherwise discriminate against, any person because of race, color, religion, sex, national origin, family status or disability.

(e) This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements, communications, or representations, whether oral or written, with respect hereto.

(f) No alteration, change, modification, amendment or waiver to or of this Agreement shall be valid or binding unless in writing and signed by both Parties hereto.

(g) Nothing in this Agreement will be construed to create, or be implied to create, any relationship between the County and Creative Pinellas, or its contractors, subcontractors or suppliers, and at all times, Creative Pinellas is and shall remain an independent contractor and not an agent of the County.

(h) This Agreement shall be construed, interpreted and governed by the laws of the State of Florida.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed on the day and year first written above.

CREATIVE PINELLAS, INC.

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

By: Robert T. Haas
Name: Robert T. Haas
Title: Treasurer

By: _____
Chairman

ATTEST:
KEN BURKE, CLERK OF CIRCUIT COURT

By: _____
Deputy Clerk

APPROVED AS TO FORM
OFFICE OF THE COUNTY ATTORNEY

By: [Signature]
Chief Assistant County Attorney