

# FUNDING AGREEMENT

## FUNDING AGREEMENT:

BETWEEN PALMERSTON NORTH CITY COUNCIL  
("PNCC")

AND PALMERSTON NORTH PUBLIC SCULPTURE TRUST  
INCORPORATED ("PNPST")

## BACKGROUND

This Funding Agreement formalises the relationship and contractual requirements between Palmerston North City Council and Palmerston North Public Sculpture Trust.

## 1. DEFINITIONS

- (a) "Approved Sculpture" means a sculpture approved by PNCC pursuant to clause 3.1 below.
- (b) "Grant" means the sum that PNCC agrees to pay towards an Approved Sculpture.
- (c) "Installation" means the erection and placement of an Approved Sculpture including all associated support structures and lighting at its permanent location.
- (d) "Purchase Price" means the price to acquire an Approved Sculpture including uplift from the Sculptor's studio and all costs of Installation.
- (e) "Sculptor" means the sculptor of the Approved Sculpture.
- (f) "the Parties" means the parties to this Agreement
- (g) "this Agreement" means the within Funding Agreement.
- (h) "Transfer" means the transfer of ownership of an Approved Sculpture in accordance with clause 5.11 herein.
- (i) "Working Day" means any day when registered banks in New Zealand are open for business however does not include Saturday or Sunday.

## 2. SCOPE

PNCC and PNPST will work collaboratively to develop a collection of high quality, small-scale sculptures over a period of five years from the

date of this Agreement, focussed on but not limited to the Palmerston North City, CBD area.

### **3. APPROVAL PROCESS**

3.1 Once a sculpture has been selected by PNPST it shall be notified in writing to PNCC for approval by PNCC. PNCC shall provide advice to PNPST as to whether approval is given or not within forty (40) Working Days of receiving such notice. For the purpose of clarification, "approval" by PNCC pursuant to this clause 3.1 shall not relate to the artistic merit or design of a proposed sculpture but, rather, shall relate only to regulatory matters and matters of cultural appropriateness.

3.2 On a sculpture being approved pursuant to clause 3.1 above, it shall be categorised as an Approved Sculpture. On a sculpture becoming an Approved Sculpture PNPST shall enter into an appropriate commissioning agreement in relation to the Approved Sculpture or contract to purchase the Approved Sculpture as provided for within this Agreement.

### **4. FUNDING**

#### **4.1 PNCC**

PNCC shall provide a Grant to PNPST towards the Purchase Price of each Approved Sculpture, such Grant to be the lesser of the following:

- (a) \$50,000.00 plus GST; and
- (b) 50% of the GST inclusive Purchase Price of the Approved Sculpture;

subject to PNCC not being required to make any payment pursuant to this clause 4.1 over \$50,000.00 plus GST per PNCC financial year.

4.2 Any Grant payable by PNCC to PNPST pursuant to clause 4.1 above shall be subject to funding being approved by PNCC through its 10 Year Plan process.

### **5. PNPST OBLIGATIONS**

PNPST agrees to:

5.1 Use any Grant only towards the Purchase Price.

- 5.2 Lead a professional process to select appropriate sculptors and to commission or purchase Approved Sculpture.
- 5.3 Work collaboratively with PNCC and Rangitāne o Manawatū to identify and select appropriate locations for placement of Approved Sculpture.
- 5.4 Work collaboratively with nominated PNCC officers on the planning and implementation of Installation of each Approved Sculpture.
- 5.5 Provide lighting for each Approved Sculpture and consult with PNCC to determine an appropriate lighting plan prior to Installation.
- 5.6 Arrange Installation in compliance with all legal requirements including territorial authority requirements in a safe and efficient manner.
- 5.7 Collaborate with the Sculptor and PNCC to prepare an appropriate maintenance plan for each Approved Sculpture.
- 5.8 Take the lead in introducing each Approved Sculpture to the community.
- 5.9 Collaborate with PNCC to organise the launch and promotion of each Approved Sculpture when Installation is completed.
- 5.10 Nominate a PNPST spokesperson to address the media as and when necessary.
- 5.11 Transfer ownership of each Approved Sculpture to PNCC on completion of Installation by signing any necessary transfer documentation as required by PNCC.
- 5.12 Positively acknowledge in relation to each Approved Sculpture, the contribution and support of PNCC.

## **6. PNCC OBLIGATIONS**

PNCC agrees to:

- 6.1 Nominate PNCC officers to represent PNCC in relation to the matters referred to in clauses 5.3, 5.4, 5.6, 5.7 and 5.9.
- 6.2 Lead the liaison with Rangitāne o Manawatū to identify and select appropriate locations for placement of each Approved Sculpture.
- 6.3 Determine the location of placement of each Approved Sculpture in consultation with the Sculptor and PNPST.
- 6.4 Confirm the suitability of placement locations, including identification of in-ground infrastructure required as part of the Installation.
- 6.5 Identify infrastructure required in relation to Installation and compliance including with stakeholders and the community.

- 6.6 Assist with compliance in relation to the obligation referred to in clause 5.6 above provided this does not require additional PNCC funding.
- 6.7 Work with contractors tasked with Installation to ensure all necessary legal requirements are satisfied.
- 6.8 On Transfer taking place, assume the risk of an Approved Sculpture and establish appropriate insurance cover as determined by PNCC.
- 6.9 Maintain each Approved Sculpture in accordance with the agreed maintenance plan referred to in clause 5.7 above.
- 6.10 Positively acknowledge in relation to each Approved Sculpture the contribution and support of PNPST.
- 6.11 Meet any ongoing electricity costs relating to lighting of an Approved Sculpture subsequent to Transfer taking place.

## **7. ACCOUNTABILITIES**

PNCC requires PNPST to be accountable for its activities by providing to PNCC, when reasonably required by PNCC the following:

### **7.1 Reporting**

- a Subsequent to Transfer, prepare a brief report relating to adherence by PNPST of its obligations as outlined in clause 5 above.
- b An analysis of the costs of acquiring and Installation each Approved Sculpture including the use of any Grant.
- c Subsequent to Transfer, provide all relevant information for insurance, maintenance and the curation of each Approved Sculpture.
- d Subsequent to Transfer, provide a report outlining how PNPST has positively acknowledged PNCC's support in relation to each Approved Sculpture.

## **8. OPERATIONAL PROCEDURES**

PNPST will operate in an open and publicly transparent manner and will manage all administrative matters associated with its operations.

## **9. HEALTH AND SAFETY IN EMPLOYMENT**

- 9.1 PNPST acknowledges to PNCC that it is familiar with the provisions of the Health and Safety at Work Act 2015 its amendments, regulations and codes of practice and will at all times, in relation to its functions and obligations under this Agreement, comply with the same; and

9.2 The Parties agree that failure to comply with the provisions of clause 9.1 above shall entitle PNCC to immediately terminate this Agreement by giving notice in writing to PNPST.

## **10. TERM OF AGREEMENT**

This Agreement shall be deemed to have commenced on the 1st day of July 2018 and continue for a period of five (5) years however in the event, at the end of such five (5) year period, the Transfer of an Approved Sculpture has not been completed then this Agreement may continue at the discretion of PNCC, in relation to that particular Approved Sculpture until Transfer has taken place.

## **11. TERMINATION**

11.1 Subject to clause 9.2 above, if PNCC determines that PNPST is in breach of this Agreement then it may give ten (10) Working Days notice requiring the breach to be rectified and in the event the breach is not rectified within that time period then PNCC may terminate this Agreement immediately by given notice in writing to PNPST.

11.2 In the event this Agreement is terminated then:

- (a) PNCC shall not be required to provide any Grant to PNPST in relation to an Approved Sculpture.
- (b) Any Grant in relation to an Approved Sculpture that has not been transferred to PNCC within twenty (20) Working Days of termination (including this Agreement coming to an end by effluxion of time) shall be repaid forthwith to PNCC.

11.3 In the event any Grant relating to an Approved Sculpture has been paid by PNPST to the Sculptor then PNPST shall immediately complete Transfer of that Approved Sculpture to PNCC. In such case, risk in the Approved Sculpture shall pass to PNCC and PNCC shall assume all further obligations relating to the Approved Sculpture including, Installation.

## **12. PNCC NOT LIABLE**

PNCC shall not be liable whatsoever for any loss, damage or liability whatsoever incurred or sustained by PNPST or any employee, agent, contractor, customer or volunteer of PNPST in relation to PNPST undertaking any obligation or commitment as recorded within this Agreement.

**13. ALTERATIONS AND VARIATIONS**

No alteration to, deletion from or amendment to any of the provisions of this Agreement shall be binding on the Parties unless it is agreed to by the Parties and recorded in writing.

**14. PAYMENT**

Any Grant payable by PNCC to PNPST pursuant to clause 4 above shall not be paid until:

- (a) A commissioning agreement in relation to the Approved Sculpture or contract to purchase the Approved Sculpture is entered into between the Sculptor and PNPST and a copy is provided to PNCC; and
- (b) An appropriate GST invoice acceptable to PNCC has been provided by PNPST.

**15. REPLACEMENT AGREEMENT**

This Agreement replaces any previous agreement or arrangement entered into between the Parties prior to the date of this Agreement and constitutes the entire arrangement between the Parties in relation to the subject matter contained within this Agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2019

Signed for and on behalf of )  
**PALMERSTON NORTH PUBLIC** )  
**SCULPTURE TRUST INCORPORATED** )  
 by the affixing )  
 of its seal in the presence of: )

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 Witness name: .....  
 Occupation: .....  
 Address: .....  
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**THE COMMON SEAL of THE  
PALMERSTON NORTH CITY  
COUNCIL** was hereto affixed in  
the presence of:

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Mayor

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Legal Counsel