

**TOURIST DEVELOPMENT TAX GRANT AGREEMENT
BETWEEN
LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AND
THE CITY OF SANIBEL
FOR
BEACH PARK FACILITY MAINTENANCE (401656)**

THIS GRANT AGREEMENT is entered into by and between LEE COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision and charter county of the State of Florida, hereinafter referred to as the “**COUNTY**” and the CITY OF SANIBEL hereinafter referred to as “**RECIPIENT**”, for funding provided pursuant to the **COUNTY’S** Tourist Development Plan and Florida Statutes Section 125.0104.

WITNESSETH:

WHEREAS, pursuant to Florida Statutes §125.0104 and Lee County Ordinances No. 13-14 and 16-18, and as may be further amended from time to time, Lee County collects Tourist Development Tax; and

WHEREAS, the **COUNTY** has the authority to enter into this Agreement and distribute Tourist Development Tax funds in the amount and manner set forth in this Agreement; and

WHEREAS, the **COUNTY** and **RECIPIENT** acknowledge that the Tourist Development Tax may only be spent in accordance with state law, case law and the Tourist Development Plan adopted by Lee County; and

WHEREAS, the **COUNTY** approved the **RECIPIENT’S** request for funding under its Tourist Development Tax Plan for implementation of the following Project:

NAME: Beach Park Facility Maintenance

NUMBER: 401656

NOW, THEREFORE, for and in consideration of the covenants and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound hereby agree to perform the duties described herein in this Agreement as follows:

1. SCOPE OF WORK

The **RECIPIENT** will perform the work necessary to complete the Project in accordance with the Beach and Shoreline Funding Program Guidelines and the Project Plan (*attached*). **RECIPIENT** may not make any major alterations, changes or substitutions to the Project without obtaining prior written approval from the **COUNTY**. The Director of the Visitor and Convention Bureau or Program Manager may approve minor changes, alterations and/or substitutions. **RECIPIENT** shall be solely responsible for managing and controlling the Project, including the hiring, and supervising of any consultants or contractors it engages.

1.1 The parties agree that time is of the essence in the performance of each obligation under this Agreement.

1.2 The parties acknowledge that the Project is for *maintenance of beach and shoreline facilities in the City of Sanibel*.

2. CONTRACT PERIOD

Maintenance Awards: This Agreement is effective as of October 1, 2024 (the "Effective Date") and shall continue until the earlier occurs (a) September 30, 2025 (the "Expiration Date") or (b) the date on which either Party terminates this Agreement (the "Termination Date"). The **RECIPIENT** shall not be eligible for reimbursement for any work that is commenced, or costs that are incurred, prior to the effective date or subsequent to the expiration date of this Agreement. Maintenance awards are not eligible for carryovers, but unspent funds may be requested during the next grant application process.

3. FUNDING

This Agreement is a cost reimbursement Agreement. The parties agree that the total cost of the Project will be Two Million Four Hundred Ninety-Seven Thousand Three Hundred Seventy-Four Dollars and no cents (\$2,497,374.00). The **COUNTY** will reimburse the **RECIPIENT** for an amount not to exceed Two Million Four Hundred Ninety-Seven Thousand Three Hundred Seventy-Four Dollars and no cents (\$2,497,374.00) for charges incurred during the contract period.

3.1 The **RECIPIENT** shall pay Project costs prior to requesting reimbursement from the **COUNTY**. The **COUNTY** shall reimburse the **RECIPIENT** allowable Project costs in accordance with the Project Budget set forth in the Project Plan.

3.2 To receive payment, the **RECIPIENT** shall submit request for reimbursement and supporting documentation to the **COUNTY** MONTHLY, with the final month no later than thirty (30) days after the contract period. The invoices must describe the services performed, show proof of payment, and all supporting documentation related to the expenses. The invoice packets must be a PDF format and transmitted digitally. The County may modify administrative guidelines from time to time. The **COUNTY** will forward the documentation to the Clerk of Courts Office for payment. Any other additional documentation requested by the **COUNTY** or the Clerk shall be provided. Sufficient supporting invoices and documentation to support pre-audit and post-audit review must accompany invoices.

At no point in time will the **COUNTY'S** reimbursement amount under this Agreement exceed Two Million Four Hundred Ninety-Seven Thousand Three Hundred Seventy-Four Dollars and no cents (\$2,497,374.00).

3.3 The **RECIPIENT** may contract with consultant(s), contractor(s) or both to accomplish the Project without approval of the **COUNTY**.

3.4 The parties acknowledge that the Project was approved for funding by the **COUNTY** based upon the benefits expected to be achieved by the Project. The parties also acknowledge that the **RECIPIENT** is solely responsible for implementing the Project in such a manner that the expected benefits are achieved. If at any point during the progression of the Project, the **COUNTY** determines that it is likely that the Project will not be completed, the **COUNTY** shall provide the **RECIPIENT** with fifteen (15) days advance written notice that the **COUNTY** shall withhold payments to the **RECIPIENT** until such time as the **RECIPIENT** demonstrates that the Project shall reach completion, to provide the **RECIPIENT** with an opportunity to cure the deficiencies.

- 3.5 **RECIPIENT** agrees to comply with the following Special Conditions for funding of this project: *mulch is ineligible for reimbursement.*
- 3.6 **RECIPIENT** shall provide the **COUNTY** evidence of substantial activity within six (6) months of the beginning of the fiscal year the grant funding is awarded.
- 3.7 Unspent or unencumbered funds remaining at the end of the fiscal year may not be carried over into the next fiscal year for maintenance grants. Capital grants may be carried over, with appropriate approval.
- 3.8 In the event any dispute or disagreement arises during the course of the Project, including whether expenses are reimbursable according to the Project Request, the **RECIPIENT** is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by providing the details and basis of the dispute to the Director, Visitor and Convention Bureau, no later than ten (10) days after the precipitating event. If not resolved by the Director, Visitor and Convention Bureau, within ten (10) days of receipt of notice the dispute will be forwarded to the Assistant County Manager assigned to the Visitor and Convention Bureau. The Assistant County Manager in consultation with the County Attorney's Office will issue the **COUNTY'S** final determination. The **RECIPIENT'S** continuation of the Project work as required under this subparagraph shall not constitute a waiver of any legal remedy available to the **RECIPIENT** concerning the dispute.

4. COMPLETION DATES

The **RECIPIENT** shall commence and complete the Project and meet the deadlines in accordance with the Project Schedule set forth in the Project Plan. In the event of hurricanes, tornado, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies such as labor strikes or riots, which are beyond the control of the **RECIPIENT**, the **RECIPIENT'S** obligation to meet the time frames provided in this Agreement shall be suspended for the period of time the condition continues to exist. During such suspension, this Agreement shall remain in effect. When the **RECIPIENT** can resume performance of its obligations under this Agreement, in whole or in part, it shall immediately give the **COUNTY** written notice to that effect and shall resume performance no later than two (2) working days after the notice is delivered. The suspension of the **RECIPIENT'S** obligations provided for in this paragraph shall be the **RECIPIENT'S** sole remedy for the delays set forth herein.

5. REPAYMENT

- 5.1 Notwithstanding anything in this Agreement to the contrary, **COUNTY** has an absolute right to recoup Grant Funds. **COUNTY** may refuse to reimburse **RECIPIENT** for any cost if **COUNTY** determines, in its sole discretion, that such cost was not incurred in compliance with the terms of this Agreement. **COUNTY** may demand return of the Grant Funds if **COUNTY** terminates this Agreement.
- 5.2 In the event the **RECIPIENT** is obligated to repay the **COUNTY** under any paragraph of this Agreement, the **RECIPIENT** shall repay the **COUNTY** within a reasonable time, as determined by the **COUNTY** in its sole discretion.
- 5.3 Capital equipment purchased with grant proceeds may not be disposed of without approval from the **COUNTY**. Sale proceeds may be required to be repaid to the **COUNTY**'s Beach and Shoreline Program.
- 5.4 The **RECIPIENT** shall pay attorney's fees and costs incurred by the **COUNTY**, including appeals, as a result of the **RECIPIENT'S** failure to repay the **COUNTY** as required by this Agreement.
- 5.5 This Repayment Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

6. PROJECT RECORDS

The **RECIPIENT** shall maintain accurate records of all expenditures, and **RECIPIENT** shall make records related to this Agreement available at all reasonable times for inspection, review or audit by the **COUNTY**. Records shall be kept for a period of at least three (3) years following the end of the funding period. Each party shall comply with Chapter 119, F.S., the Public Records Act, including allowing public access to the Project documents and materials made or received by either party. Should either party assert any exemption to the requirements of Chapter 119, F.S., the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the asserting party. This paragraph shall survive the expiration or termination of this Agreement.

7. REPORTS

- 7.1 **RECIPIENT** shall provide quarterly status updates to the **COUNTY** describing the progress of the Project, adherence to the Project

Schedule and any developments affecting the Project. The **RECIPIENT** shall promptly advise the **COUNTY** of issues that arise that may impact the successful and timely completion of the Project. Quarterly reports shall be submitted to the **COUNTY'S** Program Manager, Visitor and Convention Bureau no later than forty-five (45) days following the completion of the quarterly reporting period.

- 7.2 Status reports must be current to receive reimbursement.
- 7.3 The **RECIPIENT** shall provide the reports and documents referenced in this paragraph at no cost to the **COUNTY**.

8. LIABILITY AND INDEMNIFICATION

- 8.1 To the extent permitted by Florida law, the **RECIPIENT** assumes all risks relating to the Project and agrees to be solely liable for, and to indemnify and hold the **COUNTY** harmless from all claims, loss, damage and other expenses, including attorney's fees and costs and attorneys' fees and cost on appeal, arising from the Project.
- 8.2 The **COUNTY** shall not be liable to any person, firm or corporation that contracts with the **RECIPIENT** to provide goods and services associated with the Project conducted with the funding. Nor shall the **COUNTY** be liable to any person, firm or corporation for claims against the **RECIPIENT** or debts incurred by the **RECIPIENT**.
- 8.3 This Liability and Indemnification paragraph, including all subparagraphs, shall not be construed as a waiver of the **RECIPIENT'S** sovereign immunity or an extension of the **RECIPIENT'S** liability beyond the limits established in Section 768.28, F.S., nor be construed as consent by the **RECIPIENT** to be sued by third parties in any manner arising out of this Agreement.
- 8.4 Nothing in this Agreement shall be interpreted as a waiver of the **COUNTY'S** sovereign immunity or an extension of its liability beyond the limits established in Section 768.28, F.S., nor be construed as consent by the **COUNTY** to be sued by third parties in any manner arising out of this Agreement. This Liability and Indemnification paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

9. TERMINATION

9.1 The **COUNTY**, by written notice to **RECIPIENT** may terminate this Agreement immediately and cancel any unpaid disbursement if the **COUNTY** determines, in its sole discretion, that:

- a) **RECIPIENT** used any portion of the grant funds for purposes not included in the terms of this Agreement.
- b) **RECIPIENT** is not making satisfactory progress toward the completion of the Project or has violated the terms of this Agreement.

Upon receipt of the written notice, **RECIPIENT** shall not provide any further deliverables after receiving the notice of termination. Within 30 days after receiving written notice from the **COUNTY** of such termination, the **RECIPIENT** shall return the funds reimbursed. The **COUNTY** will have no liability to pay the **RECIPIENT** any further sums in relation to this Agreement.

9.2 **RECIPIENT** may terminate this Agreement for inability to obtain all permits and local government approvals necessary to complete the Project or inability to complete the Project. To effect termination, **RECIPIENT** shall provide **COUNTY** with written "Notice of Termination". **RECIPIENT** shall refund all grant funds provided under this Agreement to the **COUNTY** for the Project within 30 days of termination.

9.3 This Funding Agreement terminates three (3) years after approval by the Board of County Commissioners.

10. LAW COMPLIANCE

The **RECIPIENT** shall comply with all applicable federal, state and local laws, rules, regulations and guidelines related to performance under this Agreement.

11. ASSIGNMENT

Except as otherwise provided in this Agreement, no party may assign any of its rights or delegate any of its obligations under this Agreement, including any operation or maintenance duties related to the Project, without the prior written consent of the other party. Any attempted assignment in violation of this paragraph is void. This paragraph shall survive the expiration or termination of this Agreement.

12. GOVERNING LAW

The laws of the State of Florida shall govern the construction, enforcement, and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. The Parties expressly consent to exclusive jurisdiction and venue in any state court located in Lee County, Florida, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense.

13. SEVERABILITY

If any paragraph or paragraphs of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining paragraphs shall not in any way be affected or impaired thereby. Notwithstanding the above, if a paragraph or paragraphs of this Agreement setting forth the requirements or expectations of the benefit of promoting tourism resulting from the Project is held to be invalid, illegal, or unenforceable during the term of this Agreement, this Agreement shall terminate in accordance with the Repayment paragraph. This paragraph shall survive the expiration or termination of this Agreement.

14. COUNTERPARTS

The parties may execute this Agreement, and any amendments related to this Agreement, each of which constitutes an original, and all of which, collectively, constitute only one Agreement. The signatures of all the parties need not appear on the same counterpart.

15. MISCELLANEOUS

15.1 The **RECIPIENT** covenants to the **COUNTY** that it has lawful authority to enter into this Agreement and has authorized the execution of this agreement by its authorized representative.

15.2 This Agreement embodies the entire agreement of the Parties with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties. If a court of competent jurisdiction voids or holds unenforceable any provision of this Agreement, then that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions shall remain in full force and effect.

15.3 This Agreement may not be modified, amended or extended orally. This Agreement may only be amended by written agreement executed by the governing bodies of both parties.

16. CONTACT INFORMATION

COUNTY

Lee County Board of County Commissioners
Director, Visitor and Convention Bureau
2201 Second Street, Suite 600
Fort Myers, FL 33901

RECIPIENT

CITY OF SANIBEL, City Manager
800 Dunlop Road
Sanibel, Florida 33957-4096

The Parties' respective contact and notice information is set forth in the immediately preceding paragraph and may be subject to change at the Parties' discretion. If the contact information changes, the Party making such change will notify the other Party in writing. When the term "written notice" is used to specify a notice requirement herein, said notice shall be deemed to have been given (i) when personally delivered; (ii) when transmitted by email, if the sender on the same day sends a confirming copy of such notice by certified or registered mail; (iii) the next business day following the day on which the same has been delivered prepaid to a recognized overnight delivery service; or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid, with return receipt.

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth above, the Parties, through their duly-authorized representatives, sign this Agreement and represent and warrant that they understand the Agreement as of this _____ day of _____, 20_____.

ATTEST:
KEVIN KARNES, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: _____
DEPUTY CLERK

BY: _____

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

BY: _____
OFFICE OF THE COUNTY ATTORNEY

ATTEST:
CITY CLERK

CITY OF SANIBEL, FLORIDA

BY: _____

BY: _____

APPROVED AS TO FORM

BY: _____
CITY ATTORNEY'S OFFICE

**EXHIBIT "A"
BEACH AND SHORELINE
PROJECT PLAN**

Project Type: Maintenance Capital

This Project Plan will be used in the formalization process for reimbursement and deliverables for approved Beach and Shoreline Projects. It is intended as a summary of the information provided in the Funding Request.

PROJECT DESCRIPTION

The City of Sanibel maintains 15.5 miles of world-class, highly visited beaches including 1.3 miles of Lee County beach at Bowman's Beach Park and Turner Beach Park (on Captiva). These facilities, which are maintained 7 days a week, 365 days a year, include 622 parking spaces, 10 restroom facilities, fishing pier, beach walkovers, shade structures, changing rooms, a playground, a fitness trail, picnic areas, garbage & recycling collection and management, information kiosks, 16,214 linear feet of rope and bollards, and 28,087 linear feet of walking and access trails. In all, the City of Sanibel owned or maintained beach park facilities encompass approximately 119 acres of land. These parks provide visitors from all over the world with a place to enjoy fishing, shelling, basking in the sun, beautiful sunsets, or sunrises and much more.

PROJECT TASKS: List key tasks to be performed with this funding

The funds being requested from the TDC are earmarked exclusively for personnel services, repair and maintenance, contractual services, utilities, maintaining existing signage, walkover maintenance and equipment used exclusively for beach maintenance.

DELIVERABLES & DUE DATES

- Reimbursement for expenditures is contingent upon COUNTY approval in accordance with the Funding Paragraph in the Agreement. The AGENCY must provide justification for the expenditure that will require documentation including, but not limited to, the purpose and necessity of the expenditure, the reason the expenditure was not included in the consultant or contractor agreement with the AGENCY expenditure cost comparisons and justification of the cost.
- Project Status Reports for Capital Projects are to be submitted quarterly.
- Project Reimbursement Requests are to be submitted monthly for Maintenance projects and quarterly for Capital projects.
- Final Reimbursement Request Due by October 20th. (include photos and proof of TDC recognition (ie. website mention, TDC logo on facility signage or equipment)
- The COUNTY shall respond to the agency within twenty (20) business days of receipt of the Final Reimbursement request.
- The agency shall respond the COUNTY'S questions within twenty (20) business days of receipt by the agency.

** Please add any additional deliverables in the box below.*

CAPITAL PROJECT SCHEDULE

DESCRIPTION	COMMENCE	ESTIMATED COMPLETION

PROJECT BUDGET

Please attach the Budget form from the original funding request.

Please attach this Project Plan to the interlocal agreement prior to approval by your agency.

BEACH & SHORELINE PROJECT BUDGET

Project Name:

Combined - Facility Beach Park Operations and Maintenance

Facility Name & Address

City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957

	TDC Request	Agency Match	Total
Personnel			
In-house Labor	\$1,160,374.00	\$1,706,286.00	\$2,866,660.00
Contract Labor		\$20,000.00	\$20,000.00
Total	\$1,160,374.00	\$1,726,286.00	\$2,886,660.00
Contracted Services			
Janitorial Services	\$125,000.00	\$0.00	\$125,000.00
Landscape Maintenance	\$440,000.00	\$0.00	\$440,000.00
			\$0.00
Total	\$565,000.00	\$0.00	\$565,000.00
Travel			
Bridge Tickets & Passes (Transponders)		\$13,458.00	\$13,458.00
Total	\$0.00	\$13,458.00	\$13,458.00
Communications			
Cellular Phones/Pagers		\$54,817.00	\$54,817.00
Radios		\$0.00	\$0.00
Total	\$0.00	\$54,817.00	\$54,817.00
Repairs & Maintenance			
Building Maintenance	\$127,000.00	\$911,292.00	\$1,038,292.00
Maintenance Materials	\$35,000.00	\$21,219.00	\$56,219.00
Vehicle Maintenance	\$10,000.00	\$0.00	\$10,000.00
Equipment Maintenance	\$20,000.00	\$192,039.00	\$212,039.00
Equipment Repair Parts	\$0.00	\$0.00	\$0.00
			\$0.00
Total	\$192,000.00	\$1,124,550.00	\$1,316,550.00
Other Charges & Obligations			
Indirect Cost		\$720,911.00	\$720,911.00
Total	\$0.00	\$720,911.00	\$720,911.00
Operating Supplies			
Fuel & Lubricants	\$34,000.00	\$36,863.00	\$70,863.00
Uniforms		\$6,500.00	\$6,500.00
Janitorial Supplies	\$115,000.00	\$0.00	\$115,000.00
Maintenance Supplies	\$50,000.00	\$207,764.00	\$257,764.00
Signage	\$125,000.00	\$0.00	\$125,000.00
			\$0.00
Total	\$324,000.00	\$251,127.00	\$575,127.00
Utilities			
Electric	\$8,000.00	\$3,593.00	\$11,593.00
Water & Sewer	\$62,000.00	\$500.00	\$62,500.00
Solid Waste Removal	\$58,000.00	\$100.00	\$58,100.00
Total	\$128,000.00	\$4,193.00	\$132,193.00
Insurance			
Insurance Premiums		\$219,726.00	\$219,726.00
Total	\$0.00	\$219,726.00	\$219,726.00
Equipment			
Equipment	\$58,000.00	\$0.00	\$58,000.00
Vehicles	\$100,000.00	\$0.00	\$100,000.00
			\$0.00
Total	\$158,000.00	\$0.00	\$158,000.00
Construction - Capital Projects Only			
Permits	\$0.00	\$0.00	\$0.00
Site Preparation	\$0.00	\$0.00	\$0.00
Construction	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
Total	\$0.00	\$0.00	\$0.00
TOTAL	\$2,527,374.00	\$4,115,068.00	\$6,642,442.00

Notes: 1. Buildings must be open to the public in order to be eligible for funding.

2. Equipment must be 100% assigned to the project in order to be 100% eligible for funding.