

**AGREEMENT BETWEEN THE CITY OF SANIBEL AND
HERON'S LANDING HOMEOWNERS ASSOCIATION OF SANIBEL, INC.**

THIS AGREEMENT is made and entered into this ____ day of _____, 2021, by and between the City of Sanibel, a municipal corporation, (hereinafter referred to as "City") and Heron's Landing Homeowners Association of Sanibel, Inc. (hereinafter referred to as "HOA").

WHEREAS, the City has made great efforts to improve water quality in and around the City;

WHEREAS, the HOA includes properties adjacent to or including portions of the Western Lake at Heron's Landing (the "Lake"), as depicted in Figure 1 of the Lake Management Plan for Heron's Landing (January 2018), attached hereto as Attachment A (the "Lake Management Plan");

WHEREAS, a 2016 study found the Lake had the poorest water quality of all 72 lakes on Sanibel, and the primary reason hypothesized for its poor quality is its close proximity to the former Sanibel Bayous Wastewater Treatment Plant, which was purchased and decommissioned by the City in 2008 and the site restored to conservation land in 2015; and

WHEREAS, the City and the HOA desire to partner in the improvement of the water quality in the Lake in accordance with the Lake Management Plan.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and the HOA hereby agree to the following:

1. RECITALS

The above recitals are acknowledged as correct and incorporated herein.

2. CITY OBLIGATIONS

The City agrees to coordinate a multi-year program under the direction of the City's Department of Natural Resources to improve water quality in the Lake. Specifically, for a period of five (5) years the City assumes financial and operational responsibility for, at a minimum, the installation, operation, and maintenance of an adequate aeration system, including any electrical needs to provide power as determined by the City. The City will identify an individual from the City's Department of Natural Resources Department to serve as the City's project coordinator (hereinafter "City Coordinator"), who shall have authority to identify tasks to be completed pursuant to this Agreement, to notify the HOA of services to be completed, transmit instructions, and receive information related to the work to be performed hereunder.

3. HOA OBLIGATIONS

The HOA shall designate in writing an individual to act as the HOA's coordinator (hereinafter "HOA Coordinator"), and such person shall be the person authorized and responsible to act on behalf of the HOA with respect to the work to be performed hereunder. The HOA agrees to assume financial responsibility for the periodic application of nutrient balancing chemical ingredients to the Lake, the nature of which and the timetable for such treatments being in collaboration with the City and based on best management practices identified in the Lake Management Plan. Additionally, the HOA shall be financially responsible for the purchase and

application of chemical treatments or other mitigative measures to reduce the smell and/or increase the clarity of lake water as deemed desirable by the HOA; however, the HOA shall obtain written approval from the City before taking any mitigative measures and/or applying any chemical treatment product. The unapproved application of any chemical treatment product or mitigative action deemed by the City to be contrary to the goals of the Lake Management Plan shall be a material breach of this Agreement and good cause for termination by the City without further obligation hereunder.

For any authorized mitigative measure or chemical treatment, the HOA shall notify the City of the dates of the application(s) of any mitigative measure or chemical treatment on the Lake and provide a monitoring plan to be carried out by an independent licensed contractor with appropriate water quality sampling experience and expertise. The HOA shall be financially responsible for water quality monitoring prior to and following each chemical treatment or mitigative measure that is authorized. .

The HOA also agrees to work with the City to develop a littoral planting plan to be implemented when oxygen levels have increased to a suitable level as determined by the City. The HOA assumes the financial responsibility for purchase, installation, and maintenance of any plantings.

The HOA shall abide by the Lake Management Plan, including immediately implementing the following low/no cost best management practices identified and fully described on Pages 13-14 to their maximum extent: _____.

1. Adhere to the City of Sanibel Fertilizer Ordinance
2. Install Florida-Friendly Plants
3. Proper Irrigation
4. Pet Waste Disposal
5. Runoff Control
6. Eliminate or Minimize Turf Grass
7. Proper Mowing Techniques

Further, the nine (9) lake front properties within the HOA shall implement the following additional best management practices within one year after the adoption of this Agreement:

- a. Establish, at a minimum, a 10-foot wide native plant buffer along the shoreline of each private property for water quality enhancement.
- b. Cease fertilization with nitrogen and phosphorus on any portion of adjacent property to reduce nutrient loading to the lake.
- c. Remove any features (pipes, outfalls, impervious surfaces) that cause direct or point discharge of stormwater from their property into the lake. Stormwater runoff must be gradual and dispersed and approximate natural rates.
- d. Cease blowing grass clippings, leaves, or any other vegetative debris into the lake to reduce nutrient loading to the lake.

4. ACCESS

Only small, non-motorized vessels may be launched by hand from Sanibel Bayou's Preserve for Lake access. Care should be taken by private contractors to minimize plant damage when

accessing the Lake. Excessive impacts to native vegetation may be assessed for mitigation and the HOA will be responsible for associated costs. The City reserves the right to terminate access from the City-owned land at any time. Lake access from Sanibel Bayous Road is not permitted due to the presence of sensitive bird rookery habitat. If access for a larger vessel is required, permission may be granted by one of the nine (9) lake-front property owners to access the Lake from private property.

5. REPORTING AND COMMUNICATION

The HOA shall provide the City with a yearly report that includes all monitoring data and a summary of all actions taken by the HOA to improve water quality in the Lake.

6. TERM

This Agreement shall terminate five (5) years following the initiation of the operation of the aeration strategy to be installed by the City; however, it may be renewed by the parties upon mutual agreement, in writing signed by both parties.

7. EVALUATION

As part of the City's Sanibel Communities for Clean Water Program, water quality in the Lake is sampled every two years. Water quality data and lake health assessments can be accessed at www.sanibelcleanwater.org.

The effectiveness of the joint efforts of the City and the HOA to improve water quality in the Lake shall be evaluated in a written report prepared by the City at the conclusion of the initial term of this Agreement.

8. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties, whether oral or written, and there are no warranties, representations, or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein and therein. Any amendment or modification to this agreement shall require a formal amendment in writing, signed by both parties.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first above written.

ATTEST:

CITY OF SANIBEL

BY: _____
Scotty Lynn Kelly, City Clerk

BY: _____
Judith A. Zimomra, City Manager

Heron's Landing Homeowners Association of Sanibel, Inc.

By: _____
Its: _____
Date: _____