

**CAPITAL PROJECT
FUNDING AGREEMENT**

Project Name

THIS AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 20__ (“Effective Date”), by and between Pinellas County, a political subdivision of the State of Florida (“County”) and _____, a Florida _____ corporation (“Organization”) (collectively, the “Parties” or individually a “Party”).

WHEREAS, in accordance with Section 118-32 Pinellas County Code and Florida Statutes § 125.0104, the County is authorized to utilize tourist development tax revenues to fund statutorily eligible capital projects; and

WHEREAS, in order to equitably and consistently evaluate capital project funding requests, the County adopted Capital Project Funding Guidelines, which established both the requisite criteria, documents, studies and related financial information to be submitted by a capital funding applicant, as well as the capital project funding application and review process; and

WHEREAS, as part of the review and evaluation process, the County hired a consultant to review capital project funding applications and to provide a report of same to both the County and the Tourist Development Council for their consideration when evaluating capital project funding applications; and

WHEREAS, after due consideration of the capital project funding applications, the Consultant’s report and the recommendations of its Tourist Development Council, the County has approved the funding of certain capital projects determined to best promote tourism in Pinellas County; and

WHEREAS, the County, through its Board of County Commissioners agrees to provide Organization with funding for the Capital Project, as defined herein, in the amount and in accordance with the terms and conditions described herein; and

WHEREAS, this agreement sets forth the rights and obligations of the Parties related to the capital project, funding, and related matters.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. RECITALS. The above recitals are true and correct and are adopted as an integral part of this Agreement.

2. DEFINITIONS. In addition to other capitalized terms or phrases that may be defined elsewhere in this Agreement, the following capitalized terms have the meaning set forth as follows:

A. "Capital Project" or "Project" means that certain statutorily eligible project/facility as described in the Project budget in Exhibit A.

B. "Commencement Date" means the date that Organization commences construction of the Capital Project improvements on the project site after completion of the project design and the issuance of all permits and approvals necessary to construct the Capital Project.

C. "Repayment Amount" means the specific amount repayable to the County by the Organization under the circumstances of paragraph 6(F) herein, which will be calculated as follows:

REPAYMENT AMOUNT=A x (B/C) where:

A - is the final aggregate amount of funds actually disbursed to the Organization by the County per the agreement;

B - is the number of complete calendar months remaining per the term of the Tourism Promotion Benefits as stated in Exhibit B, if the circumstances of 6(F) occur; and

C - is the total number of months under the term of the Tourism Promotion Benefits as stated in Exhibit B.

D. "Tourist Promotion Benefits" means any and all tourism, sponsorship and/or marketing benefits provided by Organization to promote the destination, including but not limited to such Tourism Promotion Benefits as may be negotiated by County staff as part of the consideration for the County funding of the Project, as further described in Exhibit B.

E. "Tourist Tax Revenues" means any legally available tourist tax revenues levied and collected by the County pursuant to Section 125.0104, Florida Statutes, for capital funding of the Project in accordance with the County's Tourist Development Plan.

3. TERM. The term of this Agreement will commence on the date executed by the County, below ("effective date") and continue in full force and effect through _____ ("Term"), unless otherwise terminated as provided herein.

4. CONDITIONS PRECEDENT TO CAPITAL PROJECT FUNDING. The disbursement of, and any continued funding for the Capital Project herein, is subject to the following conditions precedent during the Term:

A. Organization continues to own and operate Capital Project improvements.

B. Organization provides the Tourism Promotion Benefits to the County as described in Exhibit B.

C. Florida law and The Plan authorize tourist tax revenues to be expended for such capital improvements.

D. The Commencement Date occurs no later than _____ and the Capital Project is completed no later than _____.

E. Any and all match requirements, as applicable, have been met.

F. For projects requiring matching funds, match funds must be maintained and County must be notified immediately if those match funds are lost or become unavailable.

G. Any and all private funds utilized in a capital project funded herein, must be expended first before County funds are expended on the Capital Project.

5. COUNTY'S RESPONSIBILITIES. Upon the Organization providing any documentation establishing satisfaction of the conditions precedent as required in Section 4, the County agrees to pay the Capital Project Funds in the sum of not to exceed _____ (\$_____) in total, and not to exceed _____ (\$_____) in any one fiscal year ("Capital Project Funds"), from legally available Tourist Tax Revenues and from no other revenue source of the County, payable as follows:

A. Reimbursement Payments will be made upon completion of the Capital Project, or any milestones in the Project outlined in Exhibit A. To request a Reimbursement Payment, the Organization must, no more than quarterly, submit a written payment request to the VSPC at the address set out in Section 12.A., with such documentation as reasonably required herein or subsequently requested by the VSPC Director. At a minimum, the payment request must include documentation detailing:

- i. the work completed that the Organization is seeking reimbursement for;
- ii. Proof of payment for the work to any contractor/vendors used by the Organization;
- iii. Certification from either the contractor, design professional, or the Organization certifying the work has been completed and paid for before submittal of the payment request.

B. The County's contributions of Capital Project Funds will in no event exceed any amount agreed to herein and any and all excess Project costs are the sole responsibility of the Organization.

6. ORGANIZATION RESPONSIBILITIES. During the Term of this Agreement, the Organization will:

A. Manage, supervise, oversee, pay all costs and expenses related to, and be solely responsible for completing the Project including, but not limited to securing all permits and approvals required for the Project, contracting and/or subcontracting with all third parties necessary to complete the Project, and operate the project/facility.

B. Utilize all commercially reasonable efforts to complete Project by the date set out in Section 4.D., but in any event, no later than the term of this agreement.

C. Notify County of any project cost savings or changes in scope of work that reduces Project costs as described in Exhibit A, which will result in a reduction of the County's contribution on a pro rata basis. Organization may elect to increase the Project budget set out

in Exhibit A or any component or part thereof with notice to the County, and Organization will be solely responsible for such additional costs and expenses, including any cost overruns on the Project.

D. Provide the Tourism Promotion Benefits to the County as described in Exhibit B.

E. Cooperate with VSPC as requested to market Pinellas County Tourism.

F. Secure property insurance on the Capital Project, during the construction phase of the Capital Project as well as upon completion of same, on a replacement cost basis, with limits of at least ninety percent (90%) of the replacement cost value to cover perils including, but not limited to, fire, explosion, windstorm and flood. The County will be listed as a loss payee as the County's interest may appear. In the event of an insurable loss to the Capital Project for which the City uses insurance funds to rebuild the Capital Project, the County will surrender any insurance proceeds and/or loss payee rights to the City. Should the City not rebuild the Capital Project, the County will be afforded the benefits of the insurance proceeds as the County's interests may appear, but in no event less than the Repayment Amount. A certificate of evidence of property insurance will be sent to Pinellas County Risk Management Department, 400 S. Ft. Harrison Ave., Clearwater, FL 33756 prior to disbursement of funds hereunder and annually thereafter. This subsection will survive the expiry or early termination of this Agreement.

G. In the event the Capital Project herein is not completed the Organization will be responsible to pay the County the Repayment Amount. This subsection will survive the expiry or early termination of this Agreement.

H. Upon completion of the Capital Project herein, secure and maintain property insurance on a replacement cost basis, with limits of at least ninety percent (90%) of the replacement cost value to cover perils including, but not limited to, fire, explosion, windstorm and flood. The County will be listed as a loss payee as the County's interest may appear. In the event of an insurable loss to the Capital Project for which the Organization uses insurance funds to rebuild the Capital Project, the County will surrender any insurance proceeds and/or loss payee rights to the Organization. Should the Organization not rebuild the Capital Project, the County will be afforded the benefits of the insurance proceeds as the County's interests may appear, but in no event less than the Repayment Amount. A certificate of evidence of property insurance will be sent to Pinellas County Risk Management Department, 400 S. Ft. Harrison Ave., Clearwater, FL 33756 prior to disbursement of funds hereunder and annually thereafter. This subsection will survive the expiry or early termination of this Agreement.

7. DEFAULTS AND REMEDIES.

A. Events of Default. Each of the following constitutes an event of default (each, an "Event of Default") hereunder:

1. A breach by the Organization of any material term, covenant, obligation or agreement under this Agreement, and the continuance of such breach for a period of thirty

(30) days after written notice thereof has been given to Organization except for a breach of those provisions described in subsection 4, 5 or 6 below, which will entitle the County to immediately exercise the available remedies;

2. Organization voluntary filing of or consent to a petition under any bankruptcy, insolvency, or reorganization law, failure to secure the dismissal of an involuntary bankruptcy petition within 60 days of filing, or a determination by a court of competent jurisdiction that is insolvent and unable to pay its debts when due;

3. A payment request containing a material misrepresentation;

4. Organization having ceased operations of the Capital Project/ tourism facility during the Term;

5. The tourist tax revenues are no longer legally available to pay this obligation, as a result of circumstances including but not limited to repeal or expiration of the tourist tax as provided by law, change in the law or Plan, or if the tourist tax is no longer available for whatever reason.

6. Organization fails to provide the Tourism Promotion Benefits for the term as described in Exhibit B.

7. Organization fails to pay taxes and/or assessments, if any.

B. Remedies. Upon or at any time after the occurrence of an Event of Default which has not been cured if authorized herein:

1. The County may withhold, temporarily or permanently, any or all unpaid portion of the Capital Project Funds and/or may terminate this Agreement by giving fifteen (15) calendar days' notice to the Organization. If permanently terminated, the County will then have no further funding obligation under this Agreement;

2. If the County has paid any Capital Project Funds, the Organization will repay to the County all Capital Project Funds received by it for the Project prior to the non-cured default;

3. Additionally the County may exercise any right, power, or remedy as provided in law or equity.

C. No consent or waiver, express or implied, by the County to or of any breach or default by the Organization in the performance of its obligations under this Agreement will constitute a consent to or waiver of any similar breach or default by the Organization. The failure of the County to complain of any act or omission to act by the Organization or to declare the Organization in default, irrespective of how long such failure continues, will not constitute a waiver by the County of its rights under this Agreement.

8. COMPLIANCE WITH LAWS. The Parties will comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue including but not limited to applicable public records laws.

9. INDEMNIFICATION. Organization will, to the extent permitted by law, protect, defend, indemnify, pay the cost of defense, and hold harmless the County, its agents, officers and employees from all damages, suits, actions or claims 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 construction or operation of the Project herein or its performance under the Agreement; or on account of any act or omission, neglect or misconduct of the Organization, its agents, officers, employees, contractors, subcontractors; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; or by, or on account of, any claim or amounts received under the Workers' Compensation Law or of any other laws, by-laws, ordinance, order or decree.

10. DUE AUTHORITY. Each party to this Agreement represents and warrants to the other party that: (i) it has the full right and authority and has obtained all necessary approvals to enter into this Agreement; (ii) each person executing this Agreement on behalf of the party is authorized to do so; and (iii) this Agreement constitutes a valid and legally binding obligation of the party, enforceable in accordance with its terms.

11. ASSIGNMENT. No party to this Agreement may assign any rights or delegate any duties under this Agreement without the prior written consent of the other party.

12. NOTICES.

A. Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by either party will be in writing and will be deemed given and delivered on the date delivered in person to the authorized representative of the recipient provided below, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested, to the authorized representative of the recipient provided below, or upon the date delivered by overnight courier (signature required) or emailed to the authorized representative of the recipient provided below:

TO THE COUNTY:	TO THE ORGANIZATION:
Brian Lowack, President & CEO Visit St. Petersburg/Clearwater 8200 Bryan Dairy Rd. Suite 200 Largo, FL 33777 BLowack@VisitSPC.com	

B. Either party may change its authorized representative or address for receipt of notices by providing the other party with written notice of such change. The change will become effective upon receipt by the non-changing party of the written notice of change.

13. WAIVER. No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, will be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be effected only through a duly executed written modification to this Agreement.

14. GOVERNING LAW. This Agreement will be construed in accordance with the Laws of the State of Florida.

15. JURISDICTION AND VENUE. Venue for any action brought in state court will be in Pinellas County, Clearwater Division. Venue for any action brought in federal court will be in the Middle District of Florida, Tampa Division, unless a division will be created in Pinellas County, in which case the action will be brought in that division. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

16. BINDING EFFECT. This Agreement will inure to the benefit of and be binding upon the Parties' respective successors and assigns.

17. NO THIRD-PARTY BENEFICIARY. Persons not a party to this Agreement may not claim any benefit hereunder or as third-party beneficiaries hereto.

18. HEADINGS. The paragraph headings are inserted herein for convenience and reference only and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.

19. NO CONSTRUCTION AGAINST PREPARER OF AGREEMENT. This Agreement has been prepared by County and reviewed by the Organization and its professional advisors. The Parties and their professional advisors believe that this Agreement expresses their understanding and that it should not be interpreted in favor of, or against either Party merely because of their efforts in preparing it.

20. DOCUMENTS COMPRISING AGREEMENT & ENTIRE AGREEMENT. This Agreement consists of this Capital Funding Project Agreement and the following exhibits, which are attached hereto and incorporated herein by reference:

- Exhibit A: Capital Project Scope of Work and Payment Milestones
- Exhibit B: Tourism Promotion Benefits

In the event of a conflict between this Capital Funding Project Agreement and the referenced exhibits, the Capital Funding Project Agreement will supersede over the exhibits, and the exhibits in their listed order will supersede over the succeeding exhibits.

This Agreement constitutes the entire agreement between the Parties and no change will be valid unless made by supplemental written agreement executed by the Parties.

21. SEVERABILITY. Should any paragraph or portion of any paragraph of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination will not render void, invalid or unenforceable any other paragraph or portion of this Agreement.

22. FUNDING OBLIGATION. This Capital Project Funding Agreement is not a general obligation of the County. It is understood by Organization that neither this Agreement nor any representation by any County employee or official creates any obligation to appropriate or make funds available for the purposes of this Agreement beyond the fiscal year in which this Agreement is executed. No liability will be incurred by the County, or any department thereof, beyond the funding budgeted and available for the purposes of this Agreement in the County's fiscal year. If funds are not appropriated by the County for any reason for any or all of this Agreement, the County will notify Organization in writing and upon transmission of this notice, this Agreement, and all rights and obligations contained therein will terminate without liability or penalty to the County. Notwithstanding the foregoing, the County will not be prohibited from pledging any legally available Tourist Development Taxes for any obligations incurred before or after the effective date of Agreement, which pledge will be prior and superior to any obligation of the County pursuant to this Agreement.

23. INDEPENDENT CAPACITY.

A. The Parties agree that the Organization, its officers, agents, and employees, in performance of this Agreement, will act in the capacity of an independent contractor and not as an officer, employee, or agent of the County. Organization agrees to take such steps as may be necessary to ensure that any third-party Organization contracts with will be deemed to be an independent contractor and will not be considered or permitted to be an agent of the County.

B. Organization has no authority to pledge, and will not attempt to pledge, the County's credit or make the County a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness.

24. DAMAGES. In no event will either Party be liable to the other (nor to any person claiming any right, title, or interest derived from, or as a successor to the agreement) for incidental, consequential, or special damages of any kind, including without limitation, lost profits, or loss of business arising out of this funding agreement irrespective of whether the parties have advance notice of the possibility of such damage; provided however, the foregoing limitation does not apply to the indemnification obligations described in Section 9 herein.

25. PUBLIC RECORDS. Organization acknowledges that information and data relating to its services may be public records in accordance with Chapter 119, Florida Statutes. Organization agrees that prior to providing services it will implement policies and procedures to maintain, produce, secure, retain, and transfer public records in accordance with applicable laws and regulations. Notwithstanding any other provision of this Agreement relating to compensation, Organization agrees to charge the County, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes for locating and producing public records associated with this Agreement.

26. RIGHT TO AUDIT.

A. All of the Organization records related to this Agreement will be open to inspection and subject to reproduction by the County during normal working hours to the extent necessary to permit adequate evaluation and verification of any invoices for payment, or claims, submitted by the Organization pursuant to the execution of the Agreement. Such records will include, but not be limited to, accounting records, written policies and procedures, subcontractor files, original estimates, estimating worksheets, correspondence, Change Order files (including the documentation of negotiated settlements), any supporting evidence necessary to substantiate charges related to this Agreement, and any records necessary to evaluate and verify costs as they may apply to costs associated with this Agreement.

B. For the purpose of such audits, inspections, examinations and evaluations, the County will have access to the said records from the effective date of this Agreement, for the duration of the Work, and until thirty-six (36) months after the date of final payment by the County to the Organization for performance under this Agreement. The Organization hereby agrees to maintain said records in safe and dry storage until the end of this time period.

C. The County will have access to the Organization's facilities and all necessary records in order to conduct audits in compliance with this Paragraph.

27. TIME IS OF THE ESSENCE. Time is of the essence with respect to all provisions of this Agreement and attachments hereto that specify a time for performance; provided, however, that the foregoing will not be construed to limit a Party's grace period allowed herein.

28. SURVIVAL. The terms and obligations of Sections 6, 7, 9, 22, 24, 25, and 26 of this Agreement will survive the termination of this Agreement.

<Remainder intentionally left blank>

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

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

LEGAL NAME OF ORGANIZATION

By: _____
Chair

By: _____

Printed Name: _____

ATTEST:
KEN BURKE

By: _____
Deputy Clerk

Exhibit A

Capital Project Scope of Work and Payment Milestones

Exhibit B
Tourism Promotion Benefits