

2018-2019 CAPITAL PROJECTS FUNDING APPLICATION & INSTRUCTIONS

INSTRUCTIONS:

The following are instructions for application for Pinellas County Tourist Development Council (TDC) Capital Projects Funding. It is very important to follow all instructions in the application packet, and to provide ALL requested support materials. Please read the application in its entirety. Complete every question in the application, or type “n/a” if a question is not applicable to you. Please refer to Florida Statutes § 125.0104, Pinellas County Code Sec. 118-32, and the Capital Projects Funding Program Guidelines if you have questions about the Program. *The granting of funds under this program is discretionary and not an entitlement; not all eligible projects may receive funding.*

Applicants must submit:

- One (1) **original application and supporting materials** secured together (marked “Original”):
- Fifteen (15) copies of the completed and signed application and supporting materials secured together; and
- The completed and signed application and supporting materials saved as a pdf file on a USB (flash) drive.

Application pages and attachments must be submitted in the following order:

- Application certification and compliance statement (Application Section A) initialed and signed in the spaces indicated (original should be in **blue** ink)
- Application Sections B through E
- All required supplemental and/or supporting documents

Note, the application may be prepared using word processing software, using either 10 or 12 point Times New Roman font only. All section labeling and numbering must match the application form exactly. All pages must be numbered.

NOTE: FAILURE TO PROVIDE A COMPLETE APPLICATION MAY DISQUALIFY THE APPLICATION/FUNDING REQUEST. No supplements or changes to an application will be allowed after the application has been submitted, unless specifically approved by the Board of County Commissioners.

**DEADLINE TO SUBMIT COMPLETED AND SIGNED APPLICATIONS IS
NO LATER THAN 4:00 PM ET, JANUARY 15, 2019 TO:**

Tim Ramsberger, Chief Operating Officer
Visit St. Petersburg/Clearwater
8200 Bryan Dairy Road
Suite 200
Largo, FL 33777
(727) 464-7220
tim@visitspc.com

2018-2019 CAPITAL PROJECTS FUNDING APPLICATION

DATE: _____

APPLICANT LEGAL NAME: _____

APPLICANT REPRESENTATIVE NAME: _____

Title: _____

Email address: _____

Telephone #: _____

SECTION A: CERTIFICATION AND COMPLIANCE STATEMENT

(to be completed by authorizing officer/individual)

I, _____, hereby certify that the above-referenced applicant is eligible to receive Capital Project Funding from the Pinellas County Tourist Development Council and Convention & Visitors Bureau pursuant to Pinellas County Code and the Capital Projects Funding Program Guidelines (Guidelines), and that the following documents are submitted herewith (Capitalized terms shall have the meaning ascribed herein or as set out in the Guidelines). (Initial each item below in **blue ink**.)

_____ A timely, fully completed, typed, signed application, Sections A through E, with all appropriate signatures in blue ink and marked "Original."

_____ The following complete support materials are provided (if not applicable to your project, explain why):

_____ An economic impact study, which satisfies the economic impact study requirements as specified in Attachment A, provided by an independent consultant demonstrating how the proposed Capital Project will enhance and promote Pinellas County as a tourist destination. Study must be completed no earlier than 6 months before application due date.

_____ Detailed Capital Project description.

_____ Certification that Capital Project is shovel-ready, including explanation and documentation of real or personal property security interests, and the design, permitting, and construction status.

_____ An explanation of how the funds will be utilized, including amount requested, total Capital Project budget, and an itemized budget (schedule of values).

- _____ Completed Marketing and/or Sponsorship benefits plan to be provided by Applicant upon completion and occupancy of the Capital Project to jointly promote the destination with VSPC, including the Applicant’s valuation and proposed term of the promotion plan.
- _____ Documentation identifying Applicant’s funding sources for Applicant’s matching funds.
- _____ Proof of ownership of project property (such as a deed or most recent tax bill); and if either the land or building is leased or licensed, a copy of the complete lease or license agreement.
- _____ Certification that Applicant and/or Applicant’s attorney has reviewed, understands and agrees to the terms, conditions and provisions of the Funding Agreement as set out in Attachment B.
- _____ Fifteen (15) collated copies of the application and support materials, and one copy of the application and support materials saved as a pdf file or files on a USB drive.
- _____ Attach to original only (non-governmental applicants): One (1) *Florida Certificate of Status* (aka *Certificate of Good Standing*) from the Florida Department of State, Division of Corporation (DOS); *OR* documentation verifying correct legal identity and status from the DOS website at www.sunbiz.org; *OR* equivalent.
- _____ I understand that incomplete applications may be disqualified and ineligible for funding.

I further certify that the information contained in this application is true and correct to the best of my knowledge and that I have read the Capital Projects Funding Program Guidelines and will abide by all legal, financial, and reporting requirements established in the Guidelines, Pinellas County Code, and Florida Statutes.

I also acknowledge and understand that receipt of any funding for this event is contingent upon a fully executed agreement, prepared by the County, that includes the County’s required terms and conditions.

Please have an **authorized corporate officer, or if a municipality, an authorized individual** sign below in **blue ink**.

Authorizing Officer/Individual	
Name (typed)	
Title	
Phone	
Email	
Date Signed	
Signature	

SECTION B: GENERAL INFORMATION

Applicant Organization: (Legal name)	
Mailing Address:	
City:	State: Zip:
Street Address:	
City:	State: Zip:
FEIN #:	
Phone:	FAX:
Web Address:	
Primary Contact Person:	
Title:	
Direct Phone:	
Email:	

1. TYPE OF ORGANIZATION:

- ____(1) A public entity located in Pinellas County;
- ____(2) An organization that operates a publicly-owned facility in Pinellas County through a service contract or lease whose use of the facility is eligible for funding pursuant to Pinellas County Code and the Capital Projects Funding Program Guidelines;
- ____(3.a) Not-for-profit entity that owns & operates a museum open to the public;
- ____(3.b) Not-for-profit entity that owns & operates an aquarium open to the public.

2. Identify the statutorily eligible Capital Project for which you are applying:

(a) Capital funds will be used for the (check all that apply):

- Acquisition; Construction; Extension; Enlargement; Remodel;
- Repair; Improvement

(b) of the following facility located in Pinellas County:

- Convention Center Coliseum Auditorium
- Museum Aquarium Sport Stadium/Arena

3. Identify the following for the existing or proposed facility:
 Owner: _____
 Facility Name: _____
 Facility Location: _____

4. Said facility is/will be:
 - Publicly owned and operated
 - Owned and operated by a not-for-profit organization and open to the public

5. If the facility or land is leased or licensed, indicate the date the lease/license period ends:

6. Total amount of funding requested: \$_____

7. Projected Capital Project timeline: Start Date: _____ End Date: _____

8. Projected annual incremental increase in the number of Tourist room nights expected to be generated by the Capital Project for a period of 10 years after completion and occupancy of the Capital Project: _____.

9. Projected annual incremental increase in the number of Tourist attendees expected to be generated by the Capital Project for a period of 10 years after completion and occupancy of the Capital Project: _____.

10. Applicant's valuation of the Marketing and/or Sponsorship benefits to be provided by the Applicant: _____.

11. Projected annual increases in governmental fees and taxes expected to be generated by the Capital Project for a period of 10 years after completion and occupancy of the Capital Project:
 _____.

SECTION C: PROJECT DESCRIPTION & ELABORATION

Please respond completely to each item below. While your answers may summarize information explained in more detail in your economic impact study, it is NOT acceptable to simply refer to this document (i.e., "see economic impact study").

12. Please provide the **mission statement** of your organization. Do not address history, goals, objectives, programs, objects or any other additional information. Mission statements should be one or two sentences.

13. Provide a brief synopsis of your Capital Project proposal and funding request. Describe the primary goals and objectives of the Project. ***Not to exceed 2 pages.***

14. Please provide a brief statement explaining how your Project comports with the requirements of Florida Statutes § 125.0104 and Pinellas County Code Sec. 118-32. ***Not to exceed 1 pages.***
 15. Describe in detail the appeal or attraction of the proposed Project/Tourism facility, and its proven or potential ability to generate a significant return on investment of Bed Taxes. Describe unique attributes of the facility and its value in promoting Pinellas County as a Tourist destination for visitors from the State of Florida, and nationally, or internationally. ***Not to exceed 2 pages.***
 16. Discuss the proposed Marketing and/or Sponsorship benefits plan to be provided by Applicant promoting Pinellas County as a Tourist destination jointly with VSPC, including projections related to how the project will attract overnight visitors during both tourist season and “off season” periods. Identify your targeted markets, and detail what marketing funds, in addition to the promotion benefits provided to the VSPC, that Applicant will commit to out-of-market advertising. ***Not to exceed 2 pages.***
 17. Describe any studies or reports undertaken to determine the feasibility of the current proposed Capital Project. ***Not to exceed 1 page.***
-

SECTION D: REQUIRED BUDGET INFORMATION

18. Provide a specific detailed budget (schedule of values) for the Capital Project (large budgets, round to the nearest hundred or thousand). Please differentiate how much of the budget would come from Capital Project Funding Program dollars versus other funding sources, including but not limited to matching funds, donations, loans, etc. ***Not to exceed 3 pages.***
-

SECTION E: CONFLICT OF INTEREST AVOIDANCE

19. List the names of any directors, officers, members, principals or employees of the applicant organization that are either Pinellas County employees, or that sit on any boards, commissions, councils, or committees of Pinellas County government.
-

SECTION F: PUBLIC RECORDS/TRADE SECRETS

Pinellas County Government is subject to the Florida Public Records law (Chapter 119, Florida Statutes), and all documents, materials, and data submitted to it are governed by the disclosure, exemption and confidentiality provisions relating to public records in Florida Statutes. Except for materials that are “trade secrets” or “confidential” as defined by applicable Florida law, ownership of all documents, materials, and data submitted in response to the solicitation shall belong exclusively to the County.

To the extent that Applicant or Applicant’s Agent desires to maintain the confidentiality of materials that constitute trade secrets pursuant to Florida law, trade secret material submitted must

be identified by some distinct method that the materials constitute a trade secret, and Applicant or Applicant's Agent shall provide an additional copy of the application and supporting documents that redact all designated trade secrets. By submitting any materials that are designated as trade secrets Applicant or Applicant's Agent acknowledges and agrees:

(i) that after notice from the County that a public records request has been made for the materials designated as a trade secret, the Applicant or Applicant's Agent shall be solely responsible for defending its determination that submitted material is a trade secret that is not subject to disclosure at its sole cost, which action shall be taken immediately, but no later than 10 calendar days from the date of notification or the trade secret designation of the materials will be deemed waived;

(ii) that to the extent that the application and/or supporting documents/materials with trade secret materials is evaluated, the County and its officials, employees, agents, and representatives, including Tourist Development Council members, that are in any way involved in processing, evaluating, negotiating, approving any funding request, or engaging in any other activity relating to the competitive selection process are hereby granted full rights to access, view, consider, and discuss the materials designated as trade secrets through the final funding award;

(iii) to indemnify and hold the County, and its officials, employees, agents, representatives and Tourist Development Council members harmless from any actions, damages (including attorney's fees and costs), or claims arising from or related to the designation of trade secrets herein, including, but not limited to actions or claims arising from the County's non-disclosure of the trade secret materials.

(iv) that information and data Applicant or Applicant's Agent manages may be public record in accordance with Chapter 119, Florida Statutes and Pinellas County public record policies. Applicant or Applicant's Agent agrees that it will implement policies and procedures, to maintain, produce, secure and retain public records in accordance with applicable laws, regulations, and County Policies including but not limited to Section 119.0701, Florida Statutes.

<Remainder of page intentionally left blank>

Attachment A

Economic Impact Study Requirements

All Consultants completing economic impact analyses related to a Capital Project for an Applicant must submit as part of the application all information and analyses as detailed in the following Qualifications and Resumes and Consultants Scope of Work sections of this document. It is the County's intent in requesting the information as outlined in the Consultants Scope of Work section to receive the information and projections in a way that the methodology and calculations utilized in estimating the incremental impacts can be followed, understood and vetted for reasonableness. In review of previous applications, it was challenging to understand the methodology and calculations utilized to obtain the incremental impacts.

Qualifications and Resumes

All Consultants completing incremental economic impact analyses related to the Capital Project for the Applicants must include, as part of the application document, their experience in completing hospitality economic impact analyses/projections for similar facility types as are being proposed by the Applicant. Submitted qualifications must include the following:

1. Brief descriptions of the project the Consultant has participated in that are similar to the type of project referenced in the Applicant's submission. Information should include the project name, location, date services were completed, opening date (if applicable), and description of services provided. Include references for each described project. References should include a contact person, address, phone number, and email. References should be prepared to be contacted.
2. Professional resumes of the key individuals assigned to the Applicant's project; describing education, qualifications, and experience with similar economic impact analyses (including dates worked on each project).

Consultants Scope of Work

The economic impact analysis included in the Applicant's submission shall include the following incremental impact estimates and methodology. Please see the example table in Section 4 detailing how the County prefers to receive the data.

I. Incremental Direct Impact Projection as a Result of the Capital Project

- A. Incremental Attendance, Average Length of Stay, Average Attendees per Party, Percentage of Attendees Using the Accommodation Type and Incremental Room Night Projection.
 1. Consultant shall project 1) incremental attendance, 2) average length of stay, 3) average attendees per party, 4) percent using the accommodation type, and 5) incremental hotel room nights, by year, for the first 10 years the facility is in operation. If the Applicant's Capital Project is an expansion to an existing facility, Consultant shall provide 5 years of historical data, projections until the expansion opens, and 10 years of post-expansion projections. The post-expansion projections must be delineated by base growth and incremental

growth. Consultant must provide the information/data utilized to support their projections.

2. Consultant shall describe the methodology utilized in the projections. Examples might include, user surveys, data from comparable facilities, etc.
3. Consultant shall delineate projections by attendee location, to include:
 - a. Local Attendees/Pinellas Residents (from inside Pinellas County, no hotel room nights)
 - b. Day Tripper Attendees (from outside Pinellas, no hotel room nights)
 - c. Overnight Attendees staying in hotel/condo (to include room nights on the days they utilized the proposed project only*)
 - d. Overnight Attendees staying in personal condo/home, camper, or with friend/relatives (to include room nights on the days they utilized the proposed project only*)
 - e. Overnight Professional Performer/Act (professional team players/members, traveling Broadway performers, etc.) staying in hotel/condo
 - f. Overnight Professional Performer/Act (professional team players/members, traveling Broadway performers, etc.) staying in owned condo/home or with friend/relatives
 - g. Other – Consultant may provide other categories utilized in projections if necessary.
4. Consultants projections should only capture the overnight stays associated with attending the proposed Capital Project and not include the “shoulder stays”, when attendees may go to the beach or some other area attraction. Utilizing ALL overnight stays may be considered if the Consultant can provide data supporting that the attendees would not have come to the area if the Capital Project were not developed. Meaning, the attendee would not have come to the area if the Capital Project were not developed.

B. Incremental Spending Projection

1. Consultant shall estimate the spending per attendee per day and the total incremental spending related to the Applicant’s Capital Project for the first 10 years the Capital Project is in operation. As an example, the Consultant may conclude that the spending per attendee for a hotel room is \$85 per day (not to be confused with average daily rate for a hotel room). If, on average, the Consultant concludes there are 3 attendees per room, the average rate for the hotel room would total \$255 (\$85 x 3 attendees per room).
2. If the Applicant’s Capital Project is an expansion to an existing facility, Consultant shall provide 5 years of historical estimated spending, projected spending until the expansion opens, and 10 years of post-expansion spending. The post-expansion spending projections must be delineated by base spending and incremental spending.
3. Spending estimates shall include the following incremental attendees:

- a. Local Attendees/Pinellas Residents (from inside Pinellas County) shall not be included in the spending estimates as Local Attendee spending shall be considered a recirculation of spending.
 - b. Day Tripper Attendees (from outside Pinellas County).
 - c. Overnight Attendees staying in hotel/condo.
 - d. Overnight Attendees staying condo/home (owned by attendee, friend or relatives) or recreational vehicle. These attendees would not pay for lodging.
 - e. Overnight Performer/Act Attendees staying in hotel/condo. For example, if the Applicant's facility is a performing arts center, these attendees would include the traveling performers/stagehands for a Broadway show.
 - f. Overnight Performer/Act Attendees staying condo/home (owned by attendee, friend or relatives). These performer/act attendees would not pay for lodging.
 - g. Other Attendees. The Consultant may include and shall explain any other attendee-type, as appropriate, for their estimates.
4. The Consultant must describe the methodology and approach utilized in estimating the spending per attendee per day (surveys of users, comparable facility data, industry-standard/recognized data, etc.).
 5. Consultant estimates shall include only the daily and total spending associated with days the attendee utilized the Capital Project and not include the "shoulder stays", when attendees may go to the beach or some other area attraction. Utilizing daily and total spending for ALL days may be considered if the Consultant can provide data supporting that the attendees would not have come to the area if the facility were not developed. Meaning, the attendee would not have come to the area if the facility were not developed.

II. Incremental Indirect/Induced Impacts as a Result of the Capital Project

Utilizing the incremental direct spending impacts, the Consultant shall estimate the indirect and induced spending impacts as a result of the Capital Project. The Consultant shall calculate incremental indirect and induced spending impacts utilizing IMPLAN, RIMS or other industry-standard input/output modeling software.

If the Applicant's Capital Project is an expansion to an existing facility, Consultant shall provide 5 years of historical estimated indirect and induced spending, projected indirect and induced spending until the expansion opens, and 10 years of post-expansion indirect and induced spending. The post-expansion spending projections must be delineated by base spending and incremental spending.

III. Incremental Tourism Development Tax (TDT) Impact as a Result of the Capital Project

Consultant shall estimate the incremental Tourism Development Tax (TDT) generated as a result of the Capital Project for the first 10 years the Capital Project is in operation. The TDT is currently 6.0%.

If the Applicant's Capital Project is an expansion to an existing facility, Consultant shall provide 5 years of historical estimated TDT, projected TDT until the expansion opens, and

10 years of post-expansion TDT. The post-expansion spending projections must be delineated by base TDT and incremental TDT.

IV. Data Table

Consultant shall provide estimates, as part of their overall analysis submitted to the County, in the example table format below. The information must be supplied for the first 10 years of operation. If the Applicant’s facility is an expansion to an existing facility, Consultant shall provide 5 years of historical information, projections until the expansion opens, and 10 years of post-expansion information. The post-expansion information must be delineated by base and incremental.

Note that the example table includes information for one year and does not assume an expansion. The Consultant must provide all pertinent information related to the Capital Project for the first 10 years of operation. If the Capital Project is an expansion to an existing facility, Consultant shall provide all pertinent information for 5 years of historical operations, projected pertinent information until the expansion opens, and 10 years of post-expansion pertinent information. The post-expansion information must be delineated by base and incremental.

Below is an example of the Excel data table mentioned above.

		Capital Project Name Operating Year 1								
				Overnight Attendee	Overnight Staying in Owned Condo, camper or with Friend/Relative	Overnight Performer/Act Staying in Hotel/Condo	Overnight Performer/Act Staying in Owned Condo or with Friend/Relative - Condo or Friend	Other	Other	
		Local Attendee	Day Tripper Attendee	Overnight Attendee Staying in Hotel/Condo	Overnight Staying in Owned Condo, camper or with Friend/Relative	Overnight Performer/Act Staying in Hotel/Condo	Overnight Performer/Act Staying in Owned Condo or with Friend/Relative - Condo or Friend	Other	Other	
Incremental Attendance	25,200	5,000	5,000	7,500	7,500	100	100			A
Avg. Length of Stay		1.0	1.0	2.0	2.0	4.0	4.0			B
Avg. Attendees per Party		2.0	2.0	3.0	3.0	1.0	1.0			C
Percent Utilizing Accommodations		0.0%	0.0%	90.0%	10.0%	100.0%	100.0%			D
Incremental Room Nights	5,800	0	0	4,500	500	400	400			E
Spending Per Attendee Per Day										
Hotel		n/a	\$0.00	\$85.00	n/a	\$200.00	n/a			F
Facility Admission		n/a	\$25.00	\$25.00	\$25.00	\$0.00	\$0.00			G
Food & Beverage		n/a	\$20.00	\$50.00	\$50.00	\$50.00	\$50.00			H
Other Recreation		n/a	\$0.00	\$5.00	\$5.00	\$5.00	\$5.00			I
Retail		n/a	\$0.00	\$5.00	\$5.00	\$5.00	\$5.00			J
Local Transportation		n/a	\$0.00	\$5.00	\$5.00	\$5.00	\$5.00			K
Auto Fuel		n/a	\$0.00	\$5.00	\$5.00	\$0.00	\$0.00			L
Other (please describe)		n/a	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			M
Other (please describe)		n/a	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			N
Annual Direct Spending										
Hotel	\$1,227,500	n/a	n/a	\$1,147,500	n/a	\$80,000	n/a	\$0	\$0	A x B x D x F
Facility Admission	875,000	n/a	125,000	375,000	375,000	0	0	0	0	A x B x G
Food & Beverage	1,640,000	n/a	100,000	750,000	750,000	20,000	20,000	0	0	A x B x H
Other Recreation	154,000	n/a	0	75,000	75,000	2,000	2,000	0	0	A x B x I
Retail	154,000	n/a	0	75,000	75,000	2,000	2,000	0	0	A x B x J
Local Transportation	154,000	n/a	0	75,000	75,000	2,000	2,000	0	0	A x B x K
Auto Fuel	150,000	n/a	0	75,000	75,000	0	0	0	0	A x B x L
Other (please describe)	0	n/a	0	0	0	0	0	0	0	A x B x M
Other (please describe)	0	n/a	0	0	0	0	0	0	0	A x B x N
Total Annual Direct Spending	\$4,354,500	\$0	\$225,000	\$2,572,500	\$1,425,000	\$106,000	\$26,000	\$0	\$0	
Annual Indirect and Induced Spending										
Multiplier	2,861,800	0	147,900	1,690,600	936,500	69,700	17,100	0	0	
Multiplier	0.6572		0.6572	0.6572	0.6572	0.6572	0.6572	0.6572	0.6572	
Total Spending	\$7,216,300	\$0	\$372,900	\$4,263,100	\$2,361,500	\$175,700	\$43,100	\$0	\$0	
Tourism Development Tax (6.0%)	\$73,650	n/a	n/a	\$68,850	n/a	\$4,800	n/a	\$0	\$0	

Attachment B

CAPITAL PROJECT FUNDING AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 201__ (“Effective Date”), by and between Pinellas County, a political subdivision of the State of Florida (“County”) and the _____ (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 the _____ 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 shall have the meaning set forth as follows:

A. "Capital Project" or "Project" means that certain statutorily eligible project/facility commonly known as _____ located in _____ Pinellas County, Florida and described in the Project budget described in Exhibit A attached hereto and incorporated herein by reference.

B. "Commencement Date" means the date that _____ 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. "Tourist Promotion Benefits" means any and all tourism, sponsorship and/or marketing benefits provided by _____ 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 attached hereto.

D. "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 shall commence on _____ 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. _____ continues to own and operate the _____.

B. _____ provides to the County the Tourism Promotion Benefits as described in Exhibit B and incorporated herein by reference.

C. The Plan authorizes 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. 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.

F. 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.

G. Any and all match requirements, as may be applicable, have been met.

5. COUNTY'S RESPONSIBILITIES. Upon 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 _____ (\$_____) ("Capital Project Funds"), from legally available Tourist Tax Revenues and from no other revenue source of the County, payable as follows:

A. Reimbursement Payments shall be made in (e.g. equal/annual installments of _____) after completion and occupancy of the Capital Project commencing on _____, and continuing through last payment due date of _____ upon receipt of a payment request from the _____ directed to the VSPC at the address set out in Section 12.A. with such documentation as reasonably required herein or by the VSPC Director. At a minimum, the payment request shall include documentation detailing (i) the work completed that the _____ is seeking reimbursement for; (ii) proof of payment for the work; (iii) a certification from the either the contractor, design professional, or the _____ certifying the work has been completed and paid for before submittal of the payment request.

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

6. [OTHER PARTY] RESPONSIBILITIES. During the Term of this Agreement, the _____ shall:

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 attached hereto, which will result in the a reduction of the County's contribution on a pro rata basis. _____ may elect to increase the Project budget set out in Exhibit A or any component or part thereof with notice to the County, and _____ shall be solely responsible for the 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. 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 shall 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 shall surrender any insurance

proceeds and/or loss payee rights to the City. Should the City not rebuild the Capital Project, the County shall 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 shall 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 shall constitute an event of default (each, an "Event of Default") hereunder:

1. A breach by the _____ 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 shall have been given to _____ 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. _____ 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. _____ having ceased operations of the Capital Project/ tourism facility during the Term;

5. The Tourist Tax Revenues legally available to pay this obligation are repealed or expire as provided by law.

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

7. _____ 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 seven (7) calendar days' notice to the _____. The County shall then have no further funding obligation under this Agreement;

2. If the County has paid any Capital Project Funds, the _____ shall repay to the County all Capital Project Funds received by it for the Project;

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

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

8. COMPLIANCE WITH LAWS. The Parties shall 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. _____ shall, to the extent permitted by law, protect, defend, indemnify, pay the cost of defense, and hold harmless the County, its agents, elected officials 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 _____ its agents, elected officials, 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 shall be in writing and shall 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) to the authorized representative of the recipient provided below:

TO THE COUNTY:
Director
Visit St. Petersburg/Clearwater
8200 Bryan Dairy Rd. Suite 200
Largo, FL 33777

TO THE _____:
Director

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 shall become effective ten (10) days after 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, shall 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 shall be construed in accordance with the Laws of the State of Florida.

15. JURISDICTION AND VENUE. Venue for any action brought in state court shall be in Pinellas County, Clearwater Division. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in Pinellas County, in which case the action shall 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 shall 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 _____ and its professional advisors. The County, the _____, 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. ENTIRE AGREEMENT. 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 shall 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 _____ that neither this Agreement nor any representation by any County employee or officer 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 shall 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 agrees to notify _____ in writing of the failure of this appropriation, and upon receipt of this notice, this Agreement, and all rights and obligations contained therein, shall terminate without liability or penalty to the County. Notwithstanding the foregoing, the County shall not be prohibited from pledging any legally available Tourist Development Taxes for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the County pursuant to this Agreement.

23. INDEPENDENT CAPACITY.

A. The Parties agree that the _____ 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. _____ agrees to take such steps as may be necessary to ensure that any third-party _____ 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. The _____ has no authority to, and shall not 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 shall 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. _____ acknowledges that information and data relating to its services may be public records in accordance with Chapter 119, Florida Statutes. _____ 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, including but not limited to the Sec. 119.0701, Florida Statutes. Notwithstanding any other provision of this Agreement relating to compensation, _____ 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 during the term of this Agreement.

26. RIGHT TO AUDIT.

A. All of the _____ records related to this Agreement shall 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 ____ pursuant to the execution of the Agreement. Such records shall 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 shall 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 ____ for performance under this Agreement. The ____ hereby agrees to maintain said records in safe and dry storage until the end of this time period.

C. The County shall have access to the _____ 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 shall 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 shall survive the termination of this Agreement.

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

<Signature page follows>

WITNESSES

Sign: _____
Print: _____

By: _____
Printed name: _____

Sign: _____
Print: _____

ATTEST:
KEN BURKE, CLERK OF COURT

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

By: _____
Deputy Clerk

By: _____
_____, Chairperson

APPROVED AS TO FORM
OFFICE OF THE COUNTY ATTORNEY

By: _____

Pro-Law Doc #171696