

1. Requested Motion:

Meeting Date: October 5, 2009

Authorize execution of the 2009-2010 Agreements for Tourist Development Tax Funding for Beach & Mound House Maintenance and Portable ADA Restrooms, and the First Amendment to the Agreement for Tourist Development Tax Funding for Newton Beach Park.

Why the action is necessary:

Execution of the agreements will allow reimbursement of approved funds associated with each of the above listed projects.

What the action accomplishes:

The projects outlined in each of the three agreements provide regular maintenance and capital improvements to beach and shoreline facilities within the Town of Fort Myers Beach.

2. Agenda:

- Consent
- Administrative

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other:

4. Submitter of Information:

- Council
- Town Staff
- Town Attorney

5. Background:

The Town submitted two applications to the Tourist Development Council (TDC) Beach & Shoreline Program during the current grant cycle. Both projects were approved for funding including regular maintenance at beach accesses, Mound House, and Newton grounds that have received prior assistance from the TDC and the purchase of additional portable ADA restrooms for beach accesses. In addition, \$200,000 in earmarked funds for the development of Newton Park are allocated through an amendment to the 2004 interlocal agreement for this project. In total, expenditures up to \$718,808 are eligible for reimbursement among all projects.

Individual project amounts are outlined on the attached cover letter from Nancy MacPhee, Program Manager for the Beach & Shoreline Program and copies of each agreement are provided as Attachments A, B, and C, respectively.

6. Alternative Action:

7. Management Recommendations:

Authorize execution of the two agreements and one amendment for Tourist Development Tax Funding.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director
					

9. Council Action:

- Approved
- Denied
- Deferred
- Other

the beaches of
FORT MYERS  **SANIBEL**

September 25, 2009

Mr. Jack Greene
Interim Town Manager
TOWN OF FORT MYERS BEACH
2523 Estero Boulevard
Fort Myers Beach, Florida 33931

Dear Mr. Green:

Enclosed please find "Agreement for Tourist Development Tax Funding" documents for the following projects approved for funding in Lee County's fiscal year 2009-2010:

<u>Project No.</u>	<u>Project Name</u>	<u>Amount</u>
401895	Beach & Mound House Maintenance	\$367,800.00
402133	Portable ADA Restrooms	\$151,008.00
202031	Newton Beach Park	\$200,000.00

Three (3) originals for each project have been provided for execution by the Town of Fort Myers Beach. Please return all agreements to my attention for approval by the Lee County Board of County Commissioners. A fully executed original of each agreement will be returned for your files.

Should you have any questions, please feel free to contact this office.

Sincerely,



Nancy MacPhee
Program Manager

Enclosures

ATTACHMENT A

AGREEMENT FOR TOURIST DEVELOPMENT TAX FUNDING

THIS AGREEMENT is entered into by and between LEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the “**COUNTY**” and the Town of Fort Myers Beach, a municipality incorporated in the State of Florida, hereinafter referred to as “**RECIPIENT**”, for funding provided by Lee County pursuant to its Tourist Development Plan.

WITNESSETH:

WHEREAS, pursuant to Florida Statutes §125.0104 and Lee County Ordinance No. 07-28, or as may be amended from time to time, Lee County collects tourist development tax; and

WHEREAS, COUNTY and **RECIPIENT** acknowledges that the tourist development tax may only be spent in accordance with the Tourist Development Plan adopted by Lee County; and

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

NAME: Town of Fort Myers Beach — Operation Beach Maintenance

NUMBER: 401895

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The **RECIPIENT** will perform the work as outlined in the project description and submit a detailed invoice to the **COUNTY**. The **COUNTY** will then reimburse the **RECIPIENT** for the amount not to exceed \$367,800 during the **COUNTY'S** fiscal year 2010.
2. Funding is solely limited to the project as described in the forms submitted by the **RECIPIENT** to the Tourist Development Council. **RECIPIENT** may not make any major alterations, changes or substitutions to the project description without obtaining prior approval from the Tourist Development Council and **COUNTY**. Minor changes, alterations and/or substitutions may be approved by the Director of the Visitor Convention Bureau or his designee.
3. This Agreement is subject to the **RECIPIENT** complying with the following Special Conditions: None.
4. **RECIPIENT** shall provide to **COUNTY** evidence of substantial activity within eighteen (18) months at the beginning of the fiscal year.
5. Unspent or unencumbered revenue remaining at the end of the fiscal year may be carried over into the next fiscal year, contingent upon approval of the Board of County Commissioners.
6. Accurate records of all expenditures shall be maintained by the **RECIPIENT**, and these records shall be made 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.

7. **RECIPIENT** will submit quarterly reports to the **COUNTY**. Expenditure reports must be accompanied by sufficient supporting invoices and documentation to support pre-audit and post-audit review. The sufficiency of said documentation shall be determined by the Clerk of the Circuit Court, who may seek additional information as the circumstances require.
8. 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**.
9. The **RECIPIENT** shall reimburse the Lee County Tourist Development Tax Trust Fund for any sums adjudged by a court of competent jurisdiction to be an unauthorized expenditure.
10. 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.
11. This agreement may not be modified, amended or extended orally. This agreement may be amended only by written agreement executed by the governing bodies of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by the undersigned officials, as duly authorized this ____ day of _____, 200__.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: _____
DEPUTY CLERK

BY: _____
CHAIRMAN

APPROVED AS TO FORM

BY: _____
COUNTY ATTORNEY'S OFFICE

ATTEST:
TOWN CLERK

TOWN OF FORT MYERS BEACH, FLORIDA

BY: _____

BY: _____

APPROVED AS TO FORM

BY: _____
TOWN ATTORNEY

ATTACHMENT B

AGREEMENT FOR TOURIST DEVELOPMENT TAX FUNDING

THIS AGREEMENT is entered into by and between LEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the “**COUNTY**” and the Town of Fort Myers Beach, a municipality incorporated in the State of Florida, hereinafter referred to as “**RECIPIENT**”, for funding provided by Lee County pursuant to its Tourist Development Plan.

WITNESSETH:

WHEREAS, pursuant to Florida Statutes §125.0104 and Lee County Ordinance No. 07-28, or as may be amended from time to time, Lee County collects tourist development tax; and

WHEREAS, COUNTY and RECIPIENT acknowledges that the tourist development tax may only be spent in accordance with the Tourist Development Plan adopted by Lee County; and

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

NAME: ADA Portable Restrooms

NUMBER: 402133

1.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The **RECIPIENT** will perform the work as outlined in the project description and submit a detailed invoice to the **COUNTY**. The **COUNTY** will then reimburse the **RECIPIENT** for the amount not to exceed \$151,008 during the **COUNTY'S** fiscal year 2010.
2. Funding is solely limited to the project as described in the forms submitted by the **RECIPIENT** to the Tourist Development Council. **RECIPIENT** may not make any major alterations, changes or substitutions to the project description without obtaining prior approval from the Tourist Development Council and **COUNTY**. Minor changes, alterations and/or substitutions may be approved by the Director of the Visitor Convention Bureau or his designee.
3. This Agreement is subject to the **RECIPIENT** complying with the following Special Conditions: None.
4. **RECIPIENT** shall provide to **COUNTY** evidence of substantial activity within eighteen (18) months at the beginning of the fiscal year.
5. Unspent or unencumbered revenue remaining at the end of the fiscal year may be carried over into the next fiscal year, contingent upon approval of the Board of County Commissioners.
6. Accurate records of all expenditures shall be maintained by the **RECIPIENT**, and these records shall be made 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.
7. **RECIPIENT** will submit quarterly reports to the **COUNTY**. Expenditure reports must be accompanied by sufficient supporting invoices and documentation to support pre-audit and post-audit review. The sufficiency of said documentation shall be determined by the Clerk of the Circuit Court, who may seek additional information as the circumstances require.
8. 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**.
9. The **RECIPIENT** shall reimburse the Lee County Tourist Development Tax Trust Fund for any sums adjudged by a court of competent jurisdiction to be an unauthorized expenditure.
10. 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.
11. This agreement may not be modified, amended or extended orally. This agreement may be amended only by written agreement executed by the governing bodies of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by the undersigned officials, as duly authorized this _____ day of _____, 200__.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: _____
DEPUTY CLERK

BY: _____
CHAIRMAN

APPROVED AS TO FORM

BY: _____
COUNTY ATTORNEY'S OFFICE

ATTEST:
TOWN CLERK

TOWN OF FORT MYERS BEACH, FLORIDA

BY: _____

BY: _____

APPROVED AS TO FORM

BY: _____
TOWN ATTORNEY

ATTACHMENT C

FIRST AMENDMENT TO
AGREEMENT FOR TOURIST DEVELOPMENT TAX FUNDING

THIS AMENDMENT to the Tourist Development Tax Funding Agreement, dated November 9, 2004, is made and entered into this ____ day of _____, 2009, by and between **LEE COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as the “**COUNTY**”, and the Town of Fort Myers Beach, a municipality incorporated in the State of Florida, hereinafter referred to as “**RECIPIENT**”, for funding provided by Lee County pursuant to its Tourist Development Plan, collectively, the “**PARTIES**”.

WITNESSETH:

WHEREAS, the County and the Recipient entered into an Agreement dated November 9, 2004, regarding their respective duties and responsibilities for the distribution and use of Tourist Development Tax; and

WHEREAS, the County and Recipient acknowledges that the Tourist Development Tax may only be spent in accordance with the Tourist Development Plan adopted by Lee County; and

WHEREAS, the County has approved the Recipient’s request for funding under its Tourist Development Tax Plan for implementation of the following project:

NAME: Newton Beach Park

NUMBER: 202031

NOW, THEREFORE, the Parties hereby agree to amend the Agreement as follows:

1. The **RECIPIENT** will perform the work as outlined in the project description and submit a detailed invoice to the **COUNTY**. The **COUNTY** will then reimburse the **RECIPIENT** for the amount not to exceed ~~\$300,000.00 during the COUNTY'S fiscal year 2004.~~ \$500,000.00 during the COUNTY'S fiscal year 2010.
2. Funding is solely limited to the project as described in the forms submitted by the **RECIPIENT** to the Tourist Development Council. **RECIPIENT** may not make any major alterations, changes or substitutions to the project description, without obtaining prior approval from the Tourist Development Council and **COUNTY**. Minor changes, alterations and/or substitutions may be approved by the Director of the Visitor and Convention Bureau or her designee.
3. This Agreement is subject to the **RECIPIENT** complying with the following Special Conditions: Funds may not be used for (1) the creation of a 12 car parking area (2) the demolition/removal of the carport structure, (3) shuffleboard court, and (4) picnic tables included in the **RECIPIENT** request (Exhibit A) or (5) bocce ball court included in the additional RECIPIENT request (Exhibit "B"), as these expenditures were deemed ineligible.
4. **RECIPIENT** shall provide to the **COUNTY** evidence of substantial activity within Eighteen (18) months at the beginning of the fiscal year.
5. Unspent or unencumbered revenue remaining at the end of the fiscal year may be carried over into the next fiscal year, contingent upon approval of the Board of County

Commissioners.

6. Accurate records of all expenditures shall be maintained by the **RECIPIENT**, and these records shall be made 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.
7. **RECIPIENT** will submit quarterly reports to the **COUNTY**. Expenditure reports must be accompanied by sufficient supporting invoices and documentation to support pre-audit and post-audit review. The sufficiency of said documentation shall be determined by the Clerk of the Circuit Court, who may seek additional information as the circumstances require.
8. 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**.
9. The **RECIPIENT** shall reimburse the Lee County Tourist Development Tax Trust Fund for any sums adjudged by a court of competent jurisdiction to be an unauthorized expenditure.
10. 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.
11. This agreement may not be modified, amended or extended orally. This agreement may be amended only by written agreement executed by the governing bodies of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this amended agreement to be executed by the undersigned officials, as duly authorized this _____ day of _____, 2009.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: _____
DEPUTY CLERK

BY: _____
CHAIRMAN

APPROVED AS TO FORM

BY: _____
COUNTY ATTORNEY'S OFFICE

ATTEST:

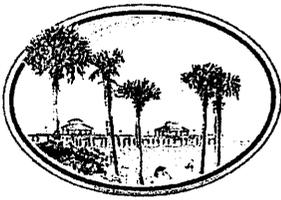
TOWN OF FORT MYERS BEACH, FLORIDA

BY: _____

BY: _____

APPROVED AS TO FORM

BY: _____
TOWN ATTORNEY



Town of Fort Myers Beach

Larry Kiker
Mayor

Herb Acken
Vice Mayor

Tom Babcock
Councilmember

Jo List
Councilmember

Bob Raymond
Councilmember

2 September 2009

Nancy MacPhee
New Product Development Coordinator
Lee County Visitor & Convention Bureau
12800 University Drive, Suite 500
Fort Myers, Florida 33907-5337

RE: Beach & Shoreline Project #202031 Newton Beach Park Contract #2689

Dear Nancy:

The Town of Fort Myers Beach has made significant progress in the planning and development of Newton Beach Park. Earlier this year, Seven Seas, the historic home of Jim and Ellie Newton received local historic designation and the planned changes to the structure passed review by the Historic Preservation Board. These changes include the installation of beach restroom/bathhouse facilities that will be of great benefit to residents and visitors.

The Town currently has an interlocal agreement with Lee County for \$300,000 of the \$500,000 earmarked in Beach & Shoreline reserve (Project No. 202031) to develop Newton Park. To date, \$128,847.17 has been reimbursed from this grant with an additional \$30,134.86 requested for reimbursement. Project tasks have included exotic vegetation removal, installation of native plantings, design and development of path networks, environmental interpretive signage, architectural design of restroom facilities, seawall inspection, and associated fees.

Authorization is requested for additional tasks that remain to be completed including: seawall repair; dune and crossover construction; construction of restroom/bathhouse facilities and associated ramping; landscaping and site work (excluding parking areas); nature trail and interpretive signage; associated architectural and engineering fees. This list of tasks was previously provided in 2007 and reviewed for eligibility by the County Attorney. In addition to these items, we request the use of Beach and Shoreline funds to install two bocce courts on the property.

With this letter, the Town of Fort Myers Beach respectfully requests that the additional \$200,000 earmarked in beach and shoreline reserves for this project be made available so that the Town may move forward with the remainder of park development. Enclosed please find plans for the Newton home and proposed park layout.

Should you require any further information on this project, please do not hesitate to contact me.

Sincerely,

Theresa M. Schober
Director of Cultural Resources

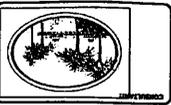
LEGEND :

- SIGNS**
- ENTRANCE SIGN
 - HOUSE INTERPRETIVE PANEL
 - ECOSYSTEM INTERPRETIVE PANEL
 - DIRECTORY
 - PLANT IDENTITY SIGNAGE
 - NATURE WALK SIGN
 - PARKING SIGN
 - SPONSOR RECOGNITION SIGN
 - EXIT ONLY
 - PRIVATE PROPERTY
- TREES**
- CANOPY TREE
 - PALM TREE
 - CABBAGE PALM
 - SEAGRAPE
 - UNDERSTORY TREE
- * EXISTING NATIVE VEGETATION TO BE RELOCATED AS NEEDED TO ACCOMMODATE IMPROVEMENTS



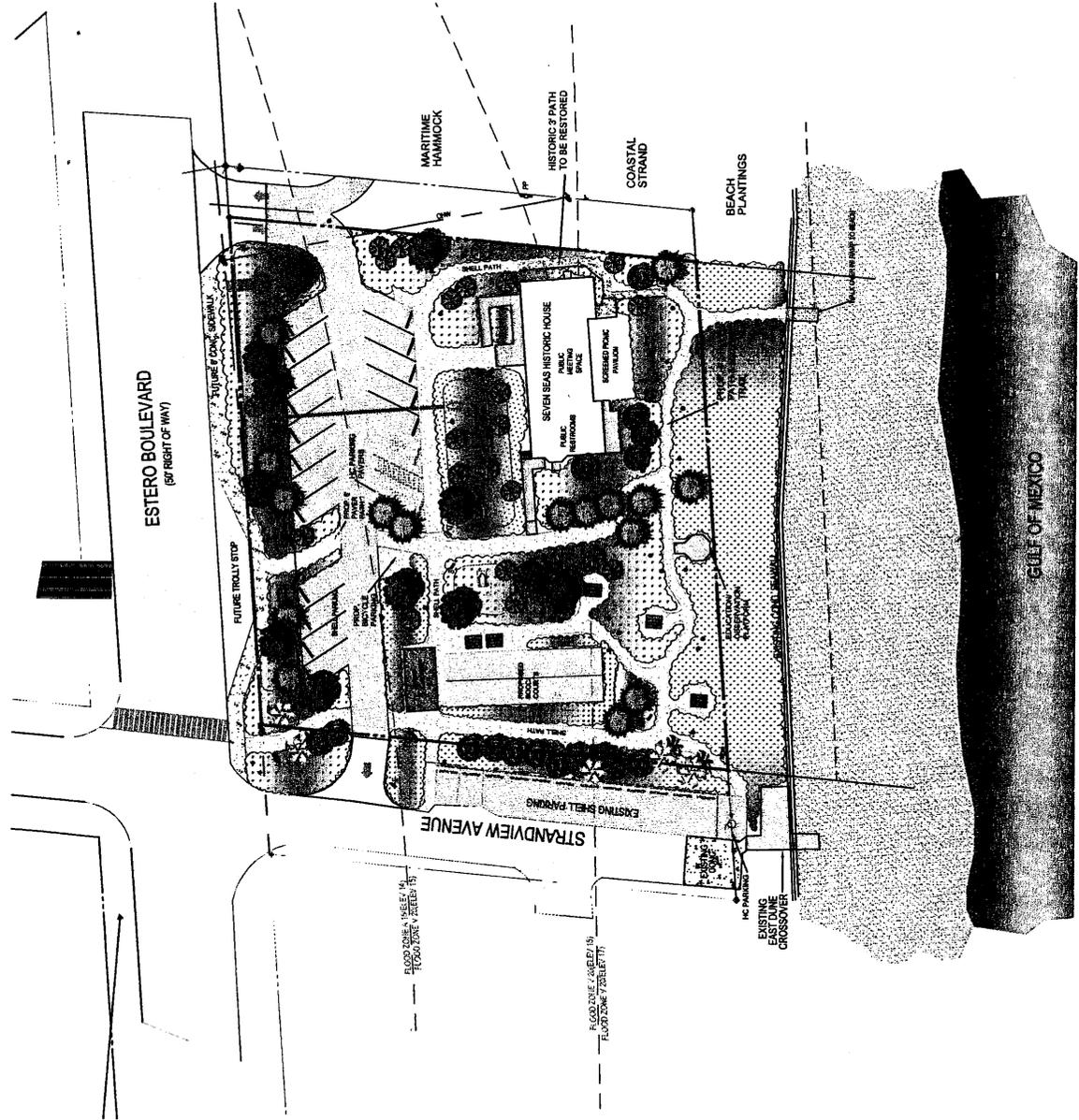
DAVID M. JONES JR. AND ASSOCIATES, INC.
 LANDSCAPE ARCHITECTS AND PLANNERS
 2271 WESLEYAN AVENUE, SUITE 100
 FORT MYERS, FLORIDA 33901
 (888) 337-5025
 (239) 337-4494
 LC 000003

DATE: 01/15/11	PROJECT: NEWTON BEACH PARK
DATE: 01/15/11	PROJECT: NEWTON BEACH PARK
DATE: 01/15/11	PROJECT: NEWTON BEACH PARK



LANDSCAPE ARCHITECTURAL PLANNING FIRM
NEWTON BEACH PARK
 FORT MYERS BEACH, FLORIDA
SITE PLAN

PROJECT NO. 124675
DATE 01/15/11
DRAWN BY J.M.
CHECKED BY J.M.
SCALE: 1" = 20'
PROJECT NUMBER: L-1



SITE PLAN



SHEET NUMBER:
L-1

