

**RESOLUTION 20-85**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AND EX OFFICIO THE PANAMA CITY BEACH COMMUNITY REDEVELOPMENT AGENCY, APPROVING AN INTERLOCAL AGREEMENT WITH BAY COUNTY TO PROVIDE FOR THE RETURN OF EXCESS TAX INCREMENT REVENUES TO THE COUNTY AS MORE PARTICULARLY SET FORTH IN THE AGREEMENT.**

**BE IT RESOLVED** by the City Council of the City of Panama City Beach, and ex officio, by the governing board of the Panama City Beach Redevelopment Agency, that the appropriate officers of the City and Agency are authorized to accept and deliver on behalf of the City and Agency that certain Interlocal Agreement between the City, Agency and Bay County, relating to the return of excess tax increment revenues to the County, in substantially the form attached and presented to the Council today, draft dated March 19, 2020, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.


**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in special session this 23<sup>rd</sup> day of March, 2020.

**CITY OF PANAMA CITY BEACH**

By:   
Mike Thomas, Mayor

**ATTEST:**

  
Mary Jan Bossert, City Clerk

**Front Beach Road CRA**  
**INTERLOCAL AGREEMENT**

**THIS INTERLOCAL AGREEMENT** is made and entered into as of the \_\_\_\_ day of January, 2020, by and among the **City of Panama City Beach, Florida**, a municipal corporation duly organized and existing under the laws of the State of Florida (the "City"), the **Panama City Beach Community Redevelopment Agency**, a public body corporate and politic, duly organized and existing under the laws of the State of Florida (the "Agency") and **Bay County, Florida**, a political subdivision of the State of Florida (the "County").

WHEREAS, on September 26th, 2019, the City found and determined that completion of the capital transportation projects and right of way improvements generally described as Front Beach Road, its north/south connectors with Back and Middle Beach Roads and their respective intersections and nodes (the "ROW Projects" or "Projects") identified in its Front Beach Road Community Redevelopment Plan (the "CRP") and as particularly defined in this Agreement, could not be completed by 2031, and therefore adopted Resolution 19-140 extending the duration of the CRP to 2049. This action was subsequently ratified by Resolution 20-16, adopted on November 14, 2019; and

WHEREAS, Panama City Beach tourism is a major and for at least the immediate future a disproportionately large economic driver for the County by comparison with other communities in Florida and elsewhere, including competitive leisure-travel destinations, and the City believes that the timely completion of the ROW Projects is critical to modernize, sustain, and grow that industry in a highly competitive marketplace; and

WHEREAS, following the City's decision to extend the duration of the CRP, and in light of the devastation wrought by Hurricane Michael and the economic losses incurred by the County, on October 29, 2019, the officials of the parties met to consider expediting the completion of the ROW Projects and also the return of Tax Incremental Revenues to the County prior to the extended expiration of the CRP when completion of road redevelopment projects more particularly described in this Agreement is funded; and

WHEREAS, the parties also agree that the lengthy and linear scope of the ROW Projects prevent the City from fast-tracking all the segments concurrently because to do so would severely, and potentially permanently, injure the very tourism industry the Projects are destined to serve, and therefore they acknowledge that there is a practical limit to the pace at which the Projects may be completed (the "Practical Pace"); and

WHEREAS, the City has prepared, and the County has reviewed and accepted, projections of tax increment, debt service, construction and operating costs for the ROW Projects, and proposed a hard \$15,000,000 threshold meeting the primary objective of finishing the ROW Projects as expeditiously as reasonably possible, the excess of which may be returned to the County without jeopardizing debt service coverage requirements or paralyzing the pace of construction of the Projects; and

WHEREAS, the parties acknowledge that the original CRP underestimated the cost and complexity of constructing the segments of Front Beach Road and the connectors already constructed, due in large part to storm-water requirements, substantially increased real-estate acquisition costs and delays, and conflict with current underground utility conditions, but also acknowledge that the City has acquired expertise and developed experience in addressing these matters; and

WHEREAS, the County projects that its Front Beach Road tax increment ("FBR TI") contribution could exceed \$700,000,000, far exceeding original estimates, and the County desires assurance that its FBR TI contribution may be diminished as the City realizes savings in its projected costs, as additional funds in excess of the amounts necessary to sustain the Practical Pace become available through additional development within the Front Beach Road Redevelopment Area increasing the measure of FBR TI, and through incremental completion of the ROW Projects; and

WHEREAS, the City agrees that the County's obligation to contribute tax increment to the City shall be reduced as excess funds become available and upon completion of the ROW Projects so long as related debt service is paid and debt service coverages and reserve requirements and other financial bond covenants are met; and

WHEREAS, the parties acknowledge and agree that the projections on which this proposed agreement is based will require periodic review by the parties and adjustment as the projected costs are actualized, made certain, and future estimates made based upon those experiences, and that the thresholds established for rebates or caps shall be mutually established by the parties based on actual costs of construction incurred rather than those projected in the spreadsheet upon which this agreement is initially based; in sum, that the methodology, formulae, variables, and data sources (but not data points) which produced the attached spreadsheet (the "Rebate Model") are the essence of the parties' complete agreement concerning the payment, use, and rebate of FBR TI and shall be updated from time to time with current data points as circumstances and economic conditions change.

**NOW THEREFORE**, in consideration of the mutual covenants of this Agreement, the City, Agency and County agree as follows:

1. Recitals. The foregoing recitals are true and correct, and incorporated herein as if set forth in full.
2. Authority. This Agreement is made pursuant to Section 163.01, F.S., and other applicable provisions of law.
3. Purpose. The City, Agency and County agree and acknowledge that the purpose of this Interlocal Agreement is express a mechanism to locally address, distribute and account for FBR TI revenues necessary to reasonably complete the ROW Projects at the Practical Pace; provide the County comfort that tax increment revenues derived from the Front Beach Road Community Redevelopment area in excess of that needed to reasonably complete the ROW Projects at the Practical Pace will be returned to the County; provide for agreed upon models and methods to determine the amount of excess funds; and to confirm the need and desire for continued communication between City and County officials and staff.
4. Definitions.
  - a. *County Payment* means FBR TI paid into the Front Beach Road Redevelopment Trust Fund (the "Trust Fund") pursuant to Sec. 163.387(1)(a).
  - b. *Fixed City Obligations* means, for each City and County fiscal year the amounts specified in the then applicable Rebate Model, initially:
    - (i) Five Hundred Thousand Dollars (\$500,000.00), which sum will be increased annually, beginning in 2021, by a three percent (3%) annual adjustment without changing the data points in the Rebate Model; and
    - (ii) All bond payments paid by or on behalf of the City or the Agency secured by the tax increment revenues for the Front Beach Road Redevelopment Plan, during such calendar period, excluding, however, any payments due on bond financing secured by tax increment revenues for the Front Beach Road Redevelopment Plan obtained by the City or the Agency after January 1, 2020 (the "New Financing"), to the extent such New Financing exceeds in the aggregate the amount of eighty million dollars (\$80,000,000.00).

- c. *ROW Projects* or *Projects* means the design, permitting, acquisition of land, and rights and easements in land, construction, improvement, and streetscaping of the following roadways, intersections and nodes of the Front Beach Road Community Redevelopment Area:
  - i. Front Beach Road Segment 3/Hwy 79
  - ii. Alf Coleman
  - iii. Powell Adams Phase 2
  - iv. Front Beach Road Segment 4.1 (1.35 miles from Lullwater Drive to Hills Road)
  - v. Front Beach Road Segment 4.2 (1.41 miles from Hills Road to Hutchison Boulevard)
  - vi. Front Beach Road Segment 4.3 (1.81 miles from Hutchison Boulevard to REJ Boulevard)
  - vii. Front Beach Road Segment 5 (1.68 miles from Hwy 79 to Cobb Road)
  - viii. Cobb Road
  - ix. Hills Road
  - x. Nautilus Street
  - xi. Clara Avenue
  - xii. North Thomas Drive

The scope of the Project design shall include street lighting, paving, striping, turn lanes, medians, regulatory signage, signalization, landscaping, sidewalks, drainage and undergrounding of utilities.

- d. *Excess Increment* means FBR TI repaid by the City to the Agency, and then by the Agency to the County pursuant to this Agreement or as negotiated between the parties.
5. Remaining Projects of the CRA. The City and the Agency agree that the ROW Projects represent the remaining capital work plan of the Front Beach Road Community Redevelopment Area, and that the completion of construction of the ROW Projects at the Practical Pace is in the best interests of the public and the parties. The County Payment shall be used solely for the Fixed City Obligations and the ROW Projects, unless the parties otherwise agree through processes described herein.
  6. Rebate of Tax Increment to County.
    - a. Annual Calculation In any calendar year in which the County Payment equals or exceeds the sum of Fifteen Million Dollars (\$15,000,000.00), the Agency shall return to the County a sum equal to twenty percent of the difference between that year's County Payment and Fifteen Million Dollars (\$15,000,000.00). Unless otherwise agreed by the

parties, such payments shall be made annually, no later than October 15 of the applicable calendar year.

- b. Annual Evaluation. The parties agree to annually review actual County Payments, and the actual data points in the Rebate Model, including Fixed City Obligations, and costs of the ROW Projects, and compare those to the projections used in **Exhibit A** and determine whether:
    - i. the Trust Fund still is anticipated to have sufficient funds to cover the Fixed City Obligations and ROW Project construction costs; and
    - ii. whether additional rebates to the County can occur without risking the completion of the Projects at the Practical Pace.
  - c. The City, Agency, and the County agree to cooperate in good faith in their annual meeting to update the rebate model with actualized data points so as to modify the rebate calculation of Excess Increment or the timing of its payment with the primary goal of ensuring that the Trust Fund has sufficient revenue to complete the Projects and cover the related debt service, and the secondary goal of returning funds not needed for such Projects or debt service to the County.
7. Reduction of County Contribution. The parties agree that upon completion of the funding for the ROW Projects, the County Payment shall be limited to the sums required by debt service requirements related to bonds or obligations issued by the City or Agency to pay for the ROW Projects.
8. Revision of Project List, Conflict Resolution. Should the City desire to expand the ROW Project list in a manner that is objectionable to the County, the parties agree to follow the following conflict resolution procedure:
- a. Upon recommendation of the Agency, the City shall initially adopt a resolution describing the desired expansion, estimating its soft and hard costs, and specifying the applicable economic and policy reasons for it, and shall deliver a copy to the County.
  - b. Within 30 days from and after receipt of the City's resolution, the County shall advise the City of its approval of the expansion, or alternatively that the County has competing policy goals and plans for that portion of the County Payment that would be used for the proposed expansion and specifying the uses to which the County would prefer to apply the funds.

- c. If a notice of objection is timely provided to the City, the parties shall schedule and hold a joint meeting co-chaired by the Mayor and the chair of the County Commission, with the agenda to be set by the County, at which the competing policy goals for the public funds shall be discussed. Public input shall be permitted. The joint meeting shall be held within 90 days after receipt by the City of the County objection to the proposed additional project.
  - d. If a notice of objection is timely provided to the City, the City may not use any portion of the County Payment to advance the proposed expansion unless and until such use is agreed to in writing by the parties. Notwithstanding the foregoing, the County's objection shall be deemed waived if the County fails to timely specify alternative competing policy goals, plans and uses for that portion of the County Payment that would be used for the expansion proposed by the City, or if the County has failed to schedule or a majority of the members of the County Commission have failed to attend the joint hearing within the required 90-day period.
  - e. Notwithstanding the time requirements established herein, the parties may at any time voluntarily use the dispute resolution process established in chapter 164 to attempt to resolve any competing policy goals between the County and City related to the proposed additional project. Nothing in this subsection grants the County or the City the authority to require the other local government to participate in the dispute resolution process.
9. Prior Agreement. The parties acknowledge that the Interlocal Agreements adopted as of February 18<sup>th</sup>, 2003 and July 5, 2005, among the parties hereto (the "Prior Agreements") remains in full force and effect. Except as specified herein, this Interlocal Agreement shall not be deemed to affect or modify any prior agreement among or between the parties or any two of them, but otherwise supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions of the agreements, understandings, and negotiations between the parties, whether oral or written, pertaining to the subject matter hereof.
10. The City and CRA have entered this Interlocal Agreement solely in order to cooperate for the greater good, avoid delays in implementing the ROW Projects and to provide certainty regarding completion of the ROW Projects and conclusion of the Plan.

11. The term of this Interlocal Agreement shall commence upon execution by the parties hereto and be coterminous with the continuation of the Front Beach Road Redevelopment Plan.
12. No modification or addition to this Interlocal Agreement will be effective unless in writing, signed by all parties. No waiver of any provision of this Interlocal Agreement shall be deemed a waiver of any other provision. Neither the failure or any delay by any party in exercising any right or power under this Agreement, nor any course of dealing between the parties, will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or of any other right or power. In the event of a dispute under or associated with this Agreement, each party shall bear their own attorneys' fees and costs of litigation, including appeal.
13. This Interlocal Agreement shall become effective immediately upon the execution by the City, the Agency and the County as of the date set forth above, and upon filing of this Agreement with the Clerk of the Circuit Court of Bay County, Florida as required by Section 163.01(11), Florida Statutes.

[Signature Pages Follow]



**IN WITNESS WHEREOF**, the City and the Agency have caused this Interlocal Agreement to be executed and delivered as of the date first above written.

**CITY OF PANAMA CITY BEACH, FLORIDA**

By: \_\_\_\_\_

Mike Thomas, Mayor

By: \_\_\_\_\_

Tony O'Rourke, City Manager

**ATTEST:**

\_\_\_\_\_

City Clerk

**PANAMA CITY BEACH  
COMMUNITY REDEVELOPMENT AGENCY**

By: \_\_\_\_\_

Mike Thomas, Chair

By: \_\_\_\_\_

Tony O'Rourke, Executive Director

**ATTEST:**

\_\_\_\_\_

Agency Clerk

**IN WITNESS WHEREOF**, the County has caused this Interlocal Agreement to be executed and delivered as of the date first above written.

**BOARD OF COUNTY COMMISSIONERS  
OF BAY COUNTY, FLORIDA**

By: \_\_\_\_\_

Chair

ATTEST:

\_\_\_\_\_

Bill Kinsaul, Clerk of Circuit Court