

RESOLUTION NO. 24-97


A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AMENDMENT TO THE PUBLIC IMPROVEMENT PARTNERSHIP AGREEMENT BETWEEN THE CITY, PANAMA CITY BEACH COMMUNITY REDEVELOPMENT AGENCY, THE PIER PARK COMMUNITY DEVELOPMENT DISTRICT, AND THE ST. JOE COMPANY PROVIDING FOR THE CITY'S ASSUMPTION OF MAINTENANCE FOR AARON BESSANT PARK AND THE CITY'S BEACHFRONT PROPERTY ADJACENT TO THE RUSSELL-FIELDS PIER.

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that First Amendment to the Amended and Restated Public Improvement Partnership Agreement between the City, the Panama City Beach Community Redevelopment Agency, the Pier Park Community Development District, and the St. Joe Company related to the City's assumption of maintenance of Aaron Bessant Park and the City's beachfront property adjacent to the Russell-Fields Pier in substantially the form **attached** as Exhibit A and presented to the Council today, 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 regular session this 22 day of February 2024.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

Prepared by and return to:

**FIRST AMENDMENT
TO
AMENDED AND RESTATED
PUBLIC IMPROVEMENT PARTNERSHIP AGREEMENT**

by and among

CITY OF PANAMA CITY BEACH, FLORIDA

**PANAMA CITY BEACH COMMUNITY REDEVELOPMENT
AGENCY**

PIER PARK COMMUNITY DEVELOPMENT DISTRICT

and

THE ST. JOE COMPANY

(Pier Park Project)

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED PUBLIC IMPROVEMENT PARTNERSHIP AGREEMENT (the "First Amendment") is made and executed as of _____, 2024, (the "Effective Date") by and among the **City of Panama City Beach** (the "City"), a municipal corporation duly organized and validly existing under the laws of the State of Florida (the "State"), the **Panama City Beach Community Redevelopment Agency** (the "CRA"), a public body corporate and politic under the laws of the State established pursuant to Part III of Chapter 163, *Florida Statutes*, the **Pier Park Community Development District** (the "CDD"), a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, and **The St. Joe Company**, a Florida corporation ("St. Joe") and together with the City, the CRA and the CDD, the "Parties").

WITNESSETH:

WHEREAS, the Parties entered into that certain *Public Improvement Partnership Agreement* dated September 27, 2001, and recorded in the Official Records of Bay County, Florida, at Book 2072, page 68, as amended and supplemented by that certain *Supplemental Public Improvement Partnership Agreement* dated June 12, 2002, and recorded in the Official Records of Bay County, Florida, at Book 2155, page 404, and that certain *First Amendment to Public Improvement Partnership Agreement (Pier Park Project)* dated January 12, 2009, and recorded in the Official Records of Bay County, Florida, at Book 3134, page 1479 (collectively, the "Original PIPA"); and

WHEREAS, the Parties subsequently entered into that certain *Amended and Restated Public Improvement Partnership Agreement* dated May 21, 2014, and recorded in the Official Records of Bay County, Florida, at Book 3611, Page 308 ("Amended and Restated PIPA"); and

WHEREAS, the Amended and Restated PIPA sets out certain rights and maintenance obligations by and among the Parties relating to the Pier Park Redevelopment Area (defined therein) including, *inter alia*, the maintenance of the Park Improvements (defined therein), Beachfront Improvements (defined therein) and Aaron Bessant Festival Grounds (defined therein); and

WHEREAS, the Parties acknowledge and agree that certain efficiencies and benefits may be realized by allowing the City to assume maintenance obligations

that are currently the responsibility of the CDD with regard to Park Improvements, and Beachfront Improvements; and

WHEREAS, each of the Parties hereto has the authority to execute this First Amendment and perform each of its obligations and duties hereunder, and each party hereto has satisfied all conditions precedent to the execution of this First Amendment so that this First Amendment constitutes a legal and binding obligation of each of the Parties hereto.

NOW, THEREFORE, in consideration of the mutual premises set forth above and the covenants, obligations, duties and benefits herein set forth, and reliance upon these presents, the Parties agree as follows:

SECTION 1. The Amended and Restated PIPA is hereby affirmed, and the parties hereto agree that it continues to constitute a valid and binding agreement between the parties. Except as described in Section 2 of this First Amendment, nothing herein shall modify the rights and obligations of the parties under the Amended and Restated PIPA. All of the remaining provisions remain in full effect and fully enforceable.

SECTION 2. The Amended and Restated PIPA is hereby amended as follows in underline/strikethrough format:

SECTION 1.02 DEFINITIONS. As used in this Partnership Agreement, the following terms shall have the following meanings, unless the context hereof otherwise requires.

...

"Annual Reinvestment" means the amount calculated as of October 1st of each Fiscal Year equal to the lesser of:

(A) the sum of (1) ~~[RESERVED]the Budgeted Aaron Bessant Maintenance Cost for that Fiscal Year~~, (2) ~~[RESERVED]the Budgeted Beachfront Property Maintenance Cost for that Fiscal Year~~, (3) sixty-one and seventeen-one-hundredths percent (61.17%) of the Debt Service Amount due in that Fiscal Year (4) and sixty-one and seventeen-one-hundredths percent (61.17%) of the

amount by which the interest component of the Debt Service Amount is increased solely as the result of a Determination of Taxability (the “Determination of Taxability Surcharge”), provided always that the sum of the amounts of the forgoing item (3) and this item (4) shall never exceed sixty-one and seventeen-one-hundredths percent (61.17%) of the annual debt service on the Original Debt Obligations as illustrated on **Exhibit K**, and ~~(5) the sum of the principal amounts of Subordinated Notes then outstanding~~, except that this sum shall not be less than the sum of ~~(1) the Tax Increment Revenue transferred by the CRA to the Revenue Fund for that Fiscal Year, (2) the Budgeted Aaron Bessant Maintenance Cost for that Fiscal Year, and (3) the Budgeted Beachfront Property Maintenance Cost for that Fiscal Year~~ (the sole purpose of this exception being to provide, in the event that Tax Increment Revenue exceeds the Debt Service Amount in any Fiscal Year, ~~(i) that the excess will be applied to the earliest possible redemption of the Refunding Debt Obligations as provided in Section 5.03; and (ii) that the Budgeted Aaron Bessant Maintenance Cost and the Budgeted Beach Front Maintenance Cost will be paid from Shared Pier Park Revenue~~); or

(B) the sum of (1) the Tax Increment Revenue projected to be received by the CRA during that Fiscal Year, and (2) the Shared Pier Park Revenue projected to be received during that Fiscal Year, determined and subsequently adjusted as provided in Section 6.03.

...

SECTION 3.06 AARON BESSANT FESTIVAL GROUNDS MAINTENANCE.

(A) The Parties hereby determine and declare as follows:

(1) Proximity of a well-maintained Aaron Bessant Festival Grounds to the CDD will improve the commercial prospects of property located within the CDD.

(2) ~~[RESERVED]The City lacks the necessary resources to ensure maintenance of the Aaron Bessant Festival Grounds in the condition necessary to attract high quality commercial activity to the CDD Property.~~

(3) ~~[RESERVED]The Park Improvements are sufficiently related to the CDD Property to qualify Aaron Bessant Festival Grounds and its internal and access roadways as a project or facility of the CDD, authorizing the imposition of special assessments to fund its maintenance.~~

(4) ~~[RESERVED]Property located within the CDD will derive a special benefit from ensuring maintenance of the Aaron Bessant Festival Grounds in the manner provided in Section 3.06(B) hereof.~~

(B) ~~The CDD City is responsible for maintenance of the Park Improvements (the Park Improvements do not include the and Aaron Bessant Expansion which shall be operated and maintained by the City) and shall make all repairs, renewals and replacements necessary to ensure that the Park Improvement and Aaron Bessant Festival Grounds are maintained in the condition necessary to attract high-quality commercial activity to the CDD; provided however, that the CDD shall not be required to (1) reconstruct the Park Improvements in the event of an uninsurable casualty; or (2) replace trees, shrubs and other landscaping in the event of a weather related casualty if the CDD has taken customary precautions to avoid the loss. In no event shall the Park Improvements or Aaron Bessant Festival Grounds be maintained at a lower standard than the City applies to maintenance of similar facilities. However, immediately following any special event sponsored or permitted by the City, the City shall be responsible for cleaning any portion of the Aaron Bessant Festival Grounds used for the event. The City hereby grants to the CDD a license (which shall be irrevocable during the term hereof) to enter upon the Aaron Bessant~~

~~Festival Grounds to perform the maintenance required by this Partnership Agreement.~~

(C) ~~[RESERVED]The City shall be responsible for operating and maintaining the Aaron Bessant Expansion and paying for the electric, water and sewer services provided to the Aaron Bessant Festival Grounds. The CDD shall be responsible for solid waste removal.~~

(D) ~~[RESERVED]The Aaron Bessant Maintenance Cost shall be payable from proceeds of the Annual Reinvestment, CDD Assessments or other funds of the CDD.~~

...

SECTION 3.07 BEACHFRONT PROPERTY MAINTENANCE.

(A) The Parties hereby determine and declare as follows:

(1) Proper maintenance of the Beachfront Property, including the Beachfront Improvements, will improve the commercial prospects of property located within the CDD.

(2) ~~[RESERVED]The City lacks the necessary resources to ensure maintenance of the Beachfront Property in the condition necessary to attract high quality commercial activity to the CDD.~~

(3) ~~[RESERVED]The Beachfront Improvements are sufficiently related to the CDD Property to qualify the Beachfront Property as a project or facility of the CDD, authorizing the imposition of special assessments to fund its maintenance.~~

(4) ~~[RESERVED]Property located within the CDD will derive a special benefit from ensuring maintenance of the Beachfront Property in the manner provided in Section 3.07(B) hereof.~~

(B) ~~The CDD~~ City is responsible for maintenance of the Beachfront Improvements and the other grounds and facilities of the Beachfront Property and shall make all repairs, renewals and replacements (excluding beachfront renourishment), including reconstruction of the Beachfront Improvements in the event of a casualty or other loss, necessary to ensure that the Beachfront Property is maintained in the condition necessary to attract high-quality commercial activity to the CDD. In no event shall the Beachfront Property be maintained at a lower standard than the City then applies to maintenance of similar facilities. ~~However, immediately following any special event sponsored or permitted by the City, the City shall be responsible for cleaning any portion of the Beachfront Property used for the event. The Public Restrooms shall be open to the public (except for routine maintenance) whenever the Russell Fields Pier is open. The City hereby grants to the CDD a license (which shall be irrevocable during the term hereof) to enter upon the Beachfront Property (other than the Pier Access Control Station and the Retail Building and any portion of the Concession Deck which the City may be currently leasing to a private party) to perform the maintenance required by this Partnership Agreement. The CDD shall be responsible for the payment of all utilities provided to the Beachfront Improvements (excluding the Pier Access Control Station and Retail Building), including but not limited to electricity, water, sewer and solid waste removal.~~

(C) The City shall be responsible for operating and maintaining the Pier Access Control Station, the Retail Building, and the Russell-Fields Pier (both within and beyond the Beachfront Property), including the bait station and other related facilities located on the Russell-Fields Pier. The City shall provide lifeguard services for the Beachfront Property to the same extent such services are provided by the City for other public, City gulf beaches, if any. The City shall be responsible for the payment of all utilities provided to the Russell-Fields Pier (including the Pier Access Control Station and Retail Building), including but not limited to electricity, water, sewer and solid waste removal.

~~(D) The Beachfront Property Maintenance Cost shall be payable from proceeds of the Annual Reinvestment, CDD Assessments or other funds of the CDD.~~

SECTION 3.08 CDD ASSESSMENTS.

(A) The CDD is required by Section 3.05(D), ~~3.06(D) and 3.07(D)~~ hereof to fund the cost of maintaining the Horizontal Infrastructure (other than certain utility infrastructure described in Section 3.05(B), which shall be maintained by the City), ~~the Park Improvements (excluding the Aaron Bessant Expansion) and the Beachfront Improvements~~ all from the proceeds of the CDD Assessments or other funds of the CDD Annual Reinvestment (except that no portion of the Annual Reinvestment shall be used to pay the cost of maintaining the Horizontal Infrastructure and Tax Increment Revenue is restricted to paying principal and interest on the Refunding Debt Obligations), ~~CDD Assessments or other funds of the CDD.~~

(B) If the Tax Increment Revenue paid for the benefit of the CDD in any Fiscal Year, plus interest earnings thereon, are not sufficient to timely pay the Debt Service Amount for that Fiscal Year, or if the remaining Annual Reinvestment paid to the CDD in any Fiscal Year, plus the interest earnings thereon, are not sufficient to pay the sum of the remaining balance of the Debt Service Amount, if any, ~~the Aaron Bessant Maintenance Cost and the Beachfront Property Maintenance Cost for that Fiscal Year~~, the CDD shall be required to impose and collect CDD Assessments in an aggregate amount sufficient to fund the shortfall.

(C) The CDD shall also be required to impose and collect CDD Assessments as specified in Section 4.01(A).

...

SECTION 3.10 MAINTENANCE COST AND CASUALTY LOSSES.

~~[RESERVED](A) Aaron Bessant Maintenance Cost and Beachfront Property Maintenance Cost shall include the annual premium expense of casualty insurance for those of the Park~~

~~Improvements and Beachfront Improvements, respectively, which are insurable.— Upon request of the CDD, the City shall use reasonable efforts to procure such insurance upon such terms and conditions as the City and the CDD may agree.—~~

~~(B) The CDD's obligation to maintain, repair, renew and replace the Concession Deck shall not include the horizontal, structural concrete slab flooring system or the horizontal flooring and joint system, as applicable, of the Pier Access Control Station, the Retail Building and any portion of the Concession Deck which the City may be then leasing to a private party or which the City may have previously leased to a private party whose use materially contributed to the need addressed.~~

~~(C) Aaron Bessant Maintenance Cost and Beachfront Property Maintenance Cost shall include the capital cost incurred by the CDD under Sections 3.06(B) and 3.07(B) to renew, replace or reconstruct in whole or in part, the Park Improvements/Aaron Bessant Festival Grounds and the Beachfront Improvements, respectively, (herein "Capital Cost"), provided that if such Capital Cost shall cause the Annual Reinvestment to be increased in any Fiscal Year by an amount exceeding twenty percent (20%) of the amount determined by deducting the Tax Increment Revenue for the preceding Fiscal Year from the Annual Reinvestment for the preceding Fiscal Year, the CDD shall use its best efforts to finance the Capital Cost at prevailing market terms and conditions in level installments of combined principal and interest (each a "Capital Cost Debt Service Amount") maturing concurrently with installments of principal and interest due upon the Refunding Debt Obligations over the remainder of the term of the Partnership Agreement and secured by pledge of the Annual Reinvestment, unless the City shall release in writing the CDD from such good faith efforts. The Capital Cost Debt Service Amount shall become part of the Debt Service Amount.—~~

~~(D) Notwithstanding the foregoing, the Capital Cost shall not include any cost which the CDD may incur under Section 3.06(B) to replace trees, shrubs and other landscaping in the event of a weather-related casualty where the CDD failed to take customary precautions to avoid the loss.—~~

...

SECTION 6.03 ANNUAL REINVESTMENT

(A) On or before the tenth (10th) day of each November, and the tenth (10th) day of each consecutive month thereafter, the City shall pay to the CDD the amount of the Pier Park Occupational License Tax Revenue received during the preceding month, or so much thereof as may be required until the actual (when known) or projected Annual Reinvestment for the current Fiscal Year has been paid in full.

(B) For each Fiscal Year in which Annual Reinvestment will be due:

(1) ~~[RESERVED] Each September 1st, the CDD shall notify the City in writing the amounts of the Aaron Bessant Maintenance Cost and the Beachfront Maintenance Cost budgeted by the CDD for the next Fiscal Year to be used in the computation of Annual Reinvestment for the next Fiscal Year, and the City shall have ten (10) days after the City Manager or his/her designee acknowledge in writing receipt of such notice (which acknowledgement shall not be withheld or delayed) within which to notify the CDD in writing that it objects to any budgeted amount. Absent timely objection, the budgeted amount shall be used. If a timely objection is made, and the CDD and the City cannot agree upon a budgeted amount within fourteen (14) days after the objection is made, then the amount used shall be the lesser of the CDD's budgeted amount or the actual amount expended by the CDD for the respective maintenance cost during the immediately preceding Fiscal Year and either party may proceed with dispute resolution specified in Section 7.04.~~

(2) On or before October 1st of the Fiscal Year, the City shall notify the CDD in writing the amounts of Tax Increment Revenue and Shared Pier Park Revenue projected to be collected in that Fiscal Year, and the CDD shall have ten (10) days after the CDD Manager or his/her designee acknowledge in writing receipt of such notice (which acknowledgement shall not

be withheld or delayed) within which to notify the City in writing that it objects to any projected amount. Absent timely objection, the projections shall be used. If a timely objection is made, and the CDD and the City cannot agree upon a projected amount within fourteen (14) days after the objection is made, then the projection shall be the greater of the City's projection or one hundred percent (100%) ~~ninety five percent (95%)~~ of the actual amount collected during the preceding Fiscal Year (the intent of the forgoing being to ensure the CDD receives no less than 61.17% of the Debt Service Amount due for the Fiscal Year from Tax Increment Revenue and Pier Park Occupational License Tax Revenue) and either party may proceed with dispute resolution specified in Section 7.04.

(3) When the actual amount of the Tax Increment Revenue received by the CRA and transferred into the Revenue Fund that Fiscal Year is known, the amount of the Annual Reinvestment for that Fiscal Year shall be adjusted to reflect the known amount of Tax Increment Revenue transferred in that Fiscal Year.

(4) Monthly payments by the City to the CDD shall cease when the Annual Reinvestment amount calculated on October 1st of that Fiscal Year (less the projected amount or actual amount of Tax Increment Revenue to be transferred or which was transferred in January of that Fiscal Year, depending upon when the computation is made) is paid. When Annual Reinvestment is based upon Shared Pier Park Revenue, within thirty (30) days after the actual amount of Pier Park Occupational License Tax Revenue collected during the Fiscal Year, and therefore the Shared Pier Park Revenue for the Fiscal Year, is known and reflected in the City's final, Fiscal Year-end books and records, the City and the CDD shall, by payment one to the other, true-up the Annual Reinvestment paid against the actual amount due if different.

(C) The portion of Annual Reinvestment received by the CDD (Tax Increment Revenue being paid directly to the Trustee for the Revenue Fund, not to the CDD) for any Fiscal Year shall be applied

by the CDD in the following order of priority: (1) ~~[RESERVED]payment of the Aaron Bessant Maintenance Cost for such Fiscal Year,~~ (2) ~~[RESERVED]payment of the Beachfront Property Maintenance Cost for such Fiscal Year,~~ (3) payment of the Debt Service Amount becoming due in such Fiscal Year, and (4) payment of any Subordinated Notes then outstanding and according to their respective terms.

...

SECTION 7.02 TERM OF AGREEMENT.

...

(B) The Parties acknowledge that upon termination of this Partnership Agreement, the City shall be required to assume the responsibility for maintaining the ~~Aaron Bessant Festival Grounds, the Beachfront Property and the~~ Public Improvements to be maintained by the CDD hereunder (other than the CDD Stormwater Facilities, which shall be maintained by the Pier Park Owners' Association) and that the Shared Pier Park Revenue shall become available for any lawful purpose, including such maintenance. If the Refunding Debt Obligations will be retired prior to their stated date of maturity, the CDD agrees to notify the City at least ninety (90) days prior to the beginning of the Fiscal Year in which the Refunding Debt Obligations will be retired to allow time for the City to plan and budget for maintenance of the Aaron Bessant Festival Grounds, the Beachfront Property and the Public Improvements (other than the CDD Stormwater Facilities).

SECTION 3. To manage the transition of maintenance responsibility and Annual Reinvestment funding contemplated by this First Amendment, the parties agree that upon full execution of this First Amendment the City will proceed in due course to arrange for maintenance of the Beachfront Improvements and Park Improvements. The CDD will simultaneously proceed in due course to terminate or amend contracts or agreements it has in place as necessary to eliminate the CDD's maintenance activities related to the Beachfront Improvements and Park Improvements. The CDD and City will cooperate in good faith to ensure that there

is no lapse in necessary maintenance of the Beachfront Improvements and Park Improvements. The CDD will thereafter provide notice to the City after the CDD has paid all Aaron Bessant Maintenance Costs and Beachfront Property Maintenance Costs incurred under the First Amendment or as incurred in connection with the transition of maintenance responsibility and Annual Reinvestment funding contemplated herein. Upon receipt of such notice, the City shall adjust calculation of the Annual Reinvestment for the Fiscal Year in which this transition occurs to reflect the known Aaron Bessant Maintenance Costs and Beachfront Property Maintenance Costs incurred by the CDD for the Fiscal Year. Thereafter, the Annual Reinvestment shall be calculated as contemplated in Section 6.03.

SECTION 4. All other terms of the Amended and Restated PIPA shall remain in full force and effect and are hereby ratified.

IN WITNESS WHEREOF, the parties hereto have signed this First Amendment to the Amended and Restated PIPA on the day and year first written above.

[Signatures on pages following.]

ATTEST:

CITY OF PANAMA CITY BECH, FL

Lynne Fasone, City Clerk

By _____
Drew Whitman, City Manager

APPROVED AS TO FORM:

Cole Davis, City Attorney

ATTEST:

**PANAMA CITY BECH COMMUNITY
REDEVELOPMENT AGENCY**

Lynne Fasone, City Clerk

By _____
Mark Sheldon, Mayor

WITNESS:

**PIER PARK COMMUNITY
DEVELOPMENT DISTRICT**

By _____

WITNESS:

THE ST. JOE COMPANY

By _____
