

RESOLUTION NO. 22-56

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING A DEVELOPMENT REIMBURSEMENT AGREEMENT WITH PALMETTO HOSPITALITY OF PCB, LLC FOR INTERSECTION IMPROVEMENTS AT FRONT BEACH ROAD AND POWELL ADAMS.

WHEREAS, on September 10, 2020, the Council adopted Resolution 20-178, approving an agreement with Palmetto Hospitality of PCB, LLC (“Developer”) regarding their contribution of \$300,000 toward signalization improvements to be installed by the City at the intersection of Powell Adams Road and Front Beach Road; and

WHEREAS, in April 2021, the City advertised for bids to construct these improvements as part of its larger Front Beach Road Segment 4.1 and Powell Adams Road Segment 2 Project, but did not award a contract for the project because the bids received exceeded the CRA budget; and

WHEREAS, the Developer has maintained its commitment to contribute up to \$300,000 to see the intersection improvements installed and is willing to undertake their construction and installation, provided the City reimburses Developer for intersection improvement costs which exceed \$300,000; and

WHEREAS, the City desires to see the project realized and acknowledges the private sector may be able to accomplish this project more efficiently than can the City, though the parties agree and acknowledge that installation of any intersection improvements remains contingent upon the acquisition of real estate and jurisdiction over the intersection, which the City will continue to pursue; and

WHEREAS, the parties desire to enter a new agreement to memorialize the commitments of the parties with regard to the intersection improvements.

BE IT RESOLVED that

1. Resolution 20-178 is hereby repealed.
2. The appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Development Reimbursement Agreement between the City and Palmetto Hospitality of PCB, LLC, relating to the installation of intersection improvements at Front Beach Road and Powell Adams, for which the total, estimated project amount is Three Hundred Fifty

Two Thousand, Two Hundred Twenty One Dollars and Ten Cents (\$352,221.10), in substantially the form attached 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 special session this 07th day December, 2021.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

Resolution No. 22-56

| Signalization Budget | | Total | Comment |
|--------------------------|--|---------------|-----------------|
| Griffin | | \$ 315,701.00 | Signed contract |
| | | | |
| | | | |
| Surveying | | \$ 4,500.00 | allowance |
| | | | |
| Sub Total | | \$ 320,201.00 | |
| Contingency - 10% | | \$ 32,020.10 | |
| Total Preliminary Budget | | \$ 352,221.10 | |

| Excluded | | | |
|--|--------|--------------|--|
| | | | |
| Permits | | | |
| | FL DOT | | by the city |
| | City | | included in Griffin contract |
| | | | |
| Buried/concealed items | | | |
| Expediting Charge for 16 week delivery of mast arm and pole - Griffin CO 1 | | \$ 26,500.00 | Signed Change Order - assumed to be paid by OTO directly and not a shared cost |
| | | | |

AGREEMENT

THIS AGREEMENT made this 15th day of December, 2021, by and between PALMETTO HOSPITALITY OF PCB, LLC, a Florida limited liability company (hereinafter "Developer"), and the CITY OF PANAMA CITY BEACH, FLORIDA (hereinafter "City").

WITNESSETH:

WHEREAS, Developer proposes to construct certain right of way improvements along and within the intersection of Front Beach Road and Powell Adams Road (the "Project"), in conjunction with its development of a Panama City Beach Hyatt Place located northeast of the intersection of Front Beach Road and Powell Adams Road (the "Development"). The Project will provide for safe ingress and egress to the Development for auto and pedestrian traffic as well as providing significant improvement to the overall traffic flow via traffic signalization and pedestrian improvements serving the transportation needs and redevelopment objectives of the City's Community Redevelopment Agency which will be dedicated to the City for the benefit of the public (the "CRA Improvements"); and

WHEREAS, upon completion and certification of the Project, Developer intends to dedicate the CRA Improvements to the City and the City intends to accept the CRA Improvements from Developer, such that the CRA Improvements will become the property of the City, and controlled, maintained and operated by the City; and

WHEREAS, the City has approved plans and specifications for the location and installation of the Project, but is still pursuing acquisition of private right of way and authority from the Florida Department of Transportation in order to construct the project; and

WHEREAS, Developer has commenced efforts to acquire the goods and services necessary to install the CRA Improvements, such that construction can begin immediately upon the City's acquisition of authority to construct the Project.

NOW THEREFORE, in consideration of the mutual benefits contained herein and reliance upon these presents, the parties agree:

I. **Construction of Project.**

- A. **Project Described.** Developer is hereby authorized, subject to the conditions set forth herein, to enter the City's right of way along and within Front Beach Road

and Powell Adams Road, as well as any authorized easement areas along Front Beach Road and Powell Adams Road, to perform all activities necessary to construct the Project described in Exhibit A, attached hereto and incorporated herein.

- B. Design. Developer will construct the Project in accordance with plans and specifications prepared by Dewberry Engineers, Inc., dated March 4, 2021 consisting of 10 pages of Roadway and Signal Plans, which were reviewed and approved by the City on May 6, 2021. Should any changes to the plans be required during the construction of the Project, the Developer shall be required to notify the City of the changes and receive approval of such changes from the CRA Manager prior to the changes being constructed or implemented. All right of way construction shall be performed in accordance with the City's ROW standards and specifications.
- C. Construction Timeline. Developer may commence construction of the Project immediately upon written notice from the City confirming the City has obtained all necessary property interests to construct the Project, provided however, that Developer shall give the City a minimum of 48 hours notice before beginning construction within the Front Beach Road right of way. Developer shall complete the Project and tender final as-builts certified by Dewberry Engineers, Inc. on or before May 31, 2022, in a form acceptable to the City. If City determines that the Project is not completed in accordance with the provisions of this Agreement, the City shall deliver written notice of such to the Developer. The Developer shall have thirty (30) days from the date of receipt of the City's written notice, or such other time as the City and Developer agree in writing as may be reasonably necessary perform the work, to complete the Project and provide the City with written notice of the same. If (i) the Developer fails to timely complete the Project after such notice and opportunity to cure, or (ii) the City reasonably determines that the Project is not properly completed as required herein, or (iii) the Developer abandons work on the Project for a period exceeding sixty (60) days, force majeure excluded, then the City, within its sole discretion, may (a) provide the Developer with written authorization granting such additional time as

the City deems appropriate to correct the deficiencies, or correct the deficiencies or complete the work, or (b) correct the deficiencies and/or complete the Project at the Developer's sole cost and expense. If the City elects to correct the deficiencies and/or complete the Project, the actual costs incurred by the City to undertake and complete the installation of the CRA Improvements shall be offset against any amounts the City is obligated to pay to Developer pursuant to Section II. D. of this Agreement.

The Developer and the City acknowledge that the Project contemplates that the Developer will install the mast arm assemblies, poles, traffic signals, pedestrian signals, controller assembly, fiber, electrical service wire and all other items associated with the operation of the traffic signal (the "Signalization Improvements"). However, if the City does not acquire the necessary property interests to construct the Signalization Improvements on or before April 4, 2022, the Developer and City acknowledge that the Project shall be limited to the installation of Solar Powered Pedestrian rectangular rapid flashing beacons (W11-2, W16-7P) for the Powell Adams pedestrian crossing and the Front Beach Road pedestrian crossing (the "Pedestrian Improvements").

- D. General Liability Insurance Required. The Developer or Developer's contractor shall procure and maintain general liability insurance on policies and with insurers acceptable to City. Current Insurance Service Office (ISO) policies, forms, and endorsements or equivalents, or broader, shall be used where applicable.

Developer shall purchase and maintain Commercial General Liability Insurance on a full occurrence form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Developers, Broad Form Property Damage, Products and Completed Operation Liability Coverages and shall not exclude coverage for the "X" (Explosion), "C" (Collapse) and "U" (Underground) Property Damage Liability exposures. Limits of coverage shall not be less than:

| | |
|--|--|
| Bodily Injury, Property Damage & Personal Injury | \$2,000,000 Combined Single Limit Each Occurrence, and |
| Liability | \$5,000,000 Aggregate Limit |

The General Aggregate Limit shall be specifically applicable to this Project.

The Developer or Developer's contractor shall add City as an additional insured through the use of Insurance Service Office Endorsements No. CG 20.10.10.01 and No. CG 20.37.10.01 wording or equivalent, or broader, an executed copy of which shall be attached to or incorporated by reference on the Certificate of Insurance to be provided by Developer to the City prior to commencement of Project construction.

This insurance requirement shall not limit the liability of the Developer. The insurance coverages and limits required of Developer under this Agreement are designed to meet the minimum requirements of City and the City does not represent these types or amounts of insurance to be sufficient or adequate to protect the Developer's interests or liabilities. Developer alone shall be responsible to the sufficiency of its own insurance program.

The Developer and the Developer's contractor and sub-contractors shall be solely responsible for all of their property, including but not limited to any materials, temporary facilities, equipment and vehicles, and for obtaining adequate and appropriate insurance covering any damage or loss to such property. The Developer and the Developer's contractor and sub-contractors expressly waive any claim against City arising out of or relating to any damage or loss of such property. The Developer is obligated to include, or cause to be included, provisions similar to this paragraph in all of the Developer's contracts and its subcontractors' contracts with their sub-subcontractors.

E. Reserved.

F. Warranty. Developer guarantees workmanship and material of the CRA Improvements for a period of one year after the City's acceptance of the CRA Improvements. The Developer further agrees to defend, indemnify and hold

harmless the City from any and all liability claims by a third party due to faulty workmanship and materials within the aforementioned one-year guarantee period.

G. Acceptance of Project Improvements. City acceptance of the Project Improvements shall be by Resolution of the City Council. The City Council shall accept the Project Improvements only upon recommendation by the City's CRA Manager following their completion, inspection and certification. Acceptance of the Project Improvements shall occur not later than thirty (30) days after the CTA Manager issues his recommendation to the City Council. The recommendation by the City's CRA Manager shall be contingent upon, and shall be issued within ten (10) days after, the satisfaction of each of the following conditions:

1. Fulfillment of the requirements for maintenance of the Improvements as outlined by this part;
2. CRA Improvements have been completed and are in good repair, in accordance with approved plans and specifications reviewed by the City Transportation Engineer; and
3. As-built drawings dated, certified, and stamped by a registered Florida engineer have been submitted to and accepted by the City's Transportation Engineer.

II. Developer Reimbursement.

A. Net City Cost. The City will pay the fees and costs reasonably incurred to effect the design, engineering, construction and installation of the Project Improvements, less the cost of any Development specific Improvements (the "Net City Cost"). The current estimated costs for the Project are set forth in Exhibit B to this Agreement, attached hereto. Prior to the start of construction, the actual costs will be substituted in Exhibit B at the time the Contracts for the Project are accepted, and the City shall escrow the actual Net City Cost amount in a separate account established and maintained in accordance with governmental accounting rules applicable to the City.

A. Reimbursement Schedule.

- a. The City shall pay Developer 100 percent (100%) of Net City Cost within thirty (30) days after acceptance of the Project Improvements in accordance with Section I.G above. No portion of funds shall be paid by City to the Developer until all Project Improvements have been installed by Developer and accepted by the City.
- b. The City shall have no obligation to pay Developer any amount in excess of the Net City Cost, provided that the City shall pay the cost of any change orders with respect to the CRA Improvements which are necessitated by unforeseen conditions, required by the City, or necessary in order to comply with any requirements of governmental authority.

III. **General Provisions.**

- A. **Notice of Changes.** Each party shall have the obligation of notifying the other party of any events or circumstances that will affect either party's ability to carry out their duties under this Agreement. Notice to the City shall be sent to:

Drew Whitman, City Manager
City of Panama City Beach
17007 Panama City Beach Parkway
Panama City Beach, Florida 32413
Phone: (850) 233-5100
Fax: (850) 233-5108

with copy to:

Amy E. Myers, City Attorney
Hand Arendall Harrison Sale, LLC
16901 Panama City Beach Parkway, Suite 300
Panama City Beach, Florida 32413
Phone: (850) 769-3434
Fax: (850) 769-6121

Notice to the Developer shall be sent to:

Jason Lynch
Palmetto Hotels of PCB, LLC
100 Dunbar Street
Spartanburg, SC 20936

with copy to:

[]

B. Indemnification and Hold Harmless.

1. Developer shall indemnify and hold harmless and defend the City and its officers, employees, agents and representatives from and against any and all damages, lawsuits, liabilities, claims, costs and expenses including reasonable attorney's fees ("Damages") arising in whole or in part from: (i) the construction, installation, maintenance or repair of the Improvements by Developer or anyone claiming by, through or under Developer; or (ii) the breach of any of Developer's representations, warranties, covenants or agreements hereunder, including any Damages arising from the combined fault of Developer and City, but excluding any Damages arising solely from the negligence or willful misconduct of the City. The covenants contained in this paragraph shall survive the termination of this Agreement.
2. If any third party claim is made against the City that, if sustained, would give rise to indemnification liability of the Developer under this Agreement, the City shall promptly cause notice of the claim to be delivered to the Developer and shall afford the Developer and its counsel, at the Developer's sole expense, the opportunity to join in defending or compromising the claim. The covenants contained in this paragraph shall survive the termination of this Agreement.
3. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the City's sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes. The City's liability for breach of this Agreement is limited in amount and shall not exceed the limitations of liability for tort actions as set forth in Section 768.28, Florida Statutes.

C. Time. Time is of the essence in this Agreement.

D. Remedies. All rights and remedies conferred upon the parties in this Agreement shall be cumulative and in addition to those available under the laws of the State of Florida.

- E. Attorneys Fees. In the event of any litigation hereunder, each party shall be responsible for its own attorney's fees and court costs at all trial and appellate levels and at any mediation or arbitration.
- F. Assignment. This Agreement is not assignable.
- G. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- H. Modification. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City and Developer.
- I. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Florida. Venue for any action or proceeding to enforce the provisions of this Agreement shall be in the Circuit Court in and for Bay County, Florida.
- J. Termination. The City may terminate this Agreement at any time by providing sixty (60) days prior written notice of termination to the Developer.
- K. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supercedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are not representations, warranties, covenants or other agreements among them.


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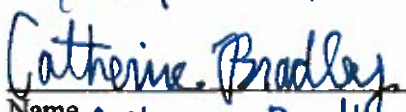
IN WITNESS WHEREOF, the parties have caused these presents to be executed in their names as of the day and year first above written.

WITNESSES:

DEVELOPER
PALMETTO HOSPITALITY OF PCB, LLC
a Florida limited liability company
By: Palmetto Hospitality GM, LLC
Its: Manager


Name Taylor Leaphart


By: Jason C. Lynch
Its: Manager


Name Catherine Bradley

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

The foregoing instrument was acknowledged before me this 15th day of December 2021, by Jason C. Lynch as Manager of Palmetto Hospitality GM, LLC, Manager of Palmetto Hospitality of PCB, LLC, a Florida limited liability company, on behalf of that entity. He is personally known to me.


Printed Name: Mary Yelton
NOTARY PUBLIC, State of South Carolina



[NOTARIAL SEAL]

CITY OF PANAMA CITY BEACH

Drew Whitman
Drew Whitman, City Manager

ATTEST:

Lynne Fasone
Lynne Fasone, City Clerk

Approved as to Form:

Amey P...
City Attorney

STATE OF FLORIDA)
COUNTY OF BAY)

The foregoing instrument was acknowledged before me this 21st day of December, 2021, by Drew Whitman, as City Manager of the CITY OF PANAMA CITY BEACH, FLORIDA. He is personally known to me or has produced a state driver's license as identification.

Lynne Fasone
Printed Name: Lynne Fasone
NOTARY PUBLIC, State of Florida

[NOTARIAL SEAL]



Lynne Fasone
Notary Public
State of Florida
Comm# HH096235
Expires 2/22/2025

EXHIBIT A – PROJECT DESCRIPTION

Front Beach Road and Powell Adams Intersection Improvement Project

Signalization Improvements:

Mast arm assemblies, poles, traffic signals, pedestrian signals, controller assembly, fiber, electrical service wire and all other items associated with the operation of the traffic signal

Pedestrian Improvements (To be provided only if Signalization Improvements cannot be installed):

Solar Powered Pedestrian actuated rectangular rapid flashing beacons (W11-2, W16-7P) for the Powell Adams pedestrian crossing and the Front Beach Road pedestrian crossing

EXHIBIT B—ESTIMATED PROJECT COSTS

| | |
|--|--------------|
| Estimated Total Cost of Project Improvements: | \$352,221.10 |
| Less Cost of Improvements to be paid by Developer: | \$300,000 |
| Net City Cost: | \$52,221.10 |

The Parties agree the following costs shall be borne entirely by City (and are not included in the Total Cost of Construction of the Project Improvements set forth above):

Design for Intersection Signalization and Roadway Striping

Intersection lighting

Acquisition of Right of Way

City's Legal Fees

City's Review and Inspection Fees