

CITY OF SARASOTA
Sarasota, Florida

Inter-Office Memorandum

December 7, 2020

TO: Shayla Griggs, City Auditor and Clerk

RECEIVED

DEC 08 2020

City Auditor & Clerk

FROM: Robert M. Fournier, City Attorney *RMF*

RE: Interlocal Agreement regarding Cooperative Funding of Capital Improvements to the Bay Park Using Tax Increment Revenues

Attached please find the fully executed original of the above-referenced Interlocal Agreement for retention as an official record of the City. This Agreement was approved by the City Commission on October 19, 2020. The Agreement was subsequently delivered to Sarasota County for approval by the Board of County Commissioners. It was just returned to me by the Office of the County Attorney.

/lg

enc.: a/s

**INTERLOCAL AGREEMENT REGARDING COOPERATIVE FUNDING
OF CAPITAL IMPROVEMENTS TO THE BAY PARK USING
TAX INCREMENT REVENUES**

This Interlocal Agreement Regarding Cooperative Funding of Capital Improvements to the Bay Park using Tax Increment Revenues (hereafter referred to as the "Agreement") is entered by and between Sarasota County, Florida, a charter county and political subdivision of the State of Florida ("County"), and the City of Sarasota, a Florida municipal corporation ("City")(hereafter the City and County may be referred to individually as "Party" and collectively as "Parties").

WHEREAS, Section 163.01, Florida Statutes authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Section 163.01, Florida Statutes permits public agencies to enter interlocal agreements to exercise jointly any power, privilege, or authority which such agencies commonly share and which each might exercise separately; and

WHEREAS, the City owns ±53-acres north of the Boulevard of the Arts abutting Sarasota Bay, which the City desires to redevelop into a comprehensive park known as The Bay Park, which will be open and available for a variety of public recreational uses; and

WHEREAS, the City has entered into a Partnership Agreement with the Bay Park Conservancy, Inc. ("BPC"), a 501(c)(3) non-profit corporation, to redevelop, improve and maintain The Bay Park; and

WHEREAS, the Partnership Agreement between the City and the BPC provides an opportunity for the City and County to participate in the meetings of the BPC Board of Directors as non-voting *ex officio* members; and

WHEREAS, the City has approved a conceptual Master Plan for the redevelopment of The Bay Park to occur in several distinct phases over a period of fifteen to twenty years; and

WHEREAS, the redevelopment of The Bay Park will enhance the public welfare, provide vital economic, recreational and community opportunities to the people of Sarasota County, will attract visitors from throughout and beyond the County, will stimulate and promote investment into The Bay Park and the surrounding area, and increase the property values in the surrounding area; and

WHEREAS, the City has requested that the County support the City's efforts to redevelop The Bay Park, through the establishment of a County home rule tax increment mechanism from which the County can contribute funding toward redevelopment of The Bay Park; and

WHEREAS, the City will also establish its own home rule tax increment mechanism from which the City will contribute funding toward the redevelopment of The Bay Park; and

WHEREAS, the County finds that it is reasonable and in the public interest to support the redevelopment of The Bay Park and the surrounding area, which promotes the public welfare of Sarasota County by creating economic, recreational and community opportunities for the people of Sarasota County, will attract visitors from throughout and beyond the County, will promote additional investment in the park and surrounding area, and will raise property values in the surrounding area; and

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt, sufficiency, and adequacy of which are expressly acknowledged, the County and City, each intending to be legally bound, do hereby mutually agree as follows:

- 1. Incorporation of Recitals.** The above recitals are hereby confirmed as correct and incorporated herein by reference.
- 2. Authority.** This Interlocal Agreement is entered into under the home rule authority of the Parties and consistent with the provisions of Section 163.01, Florida Statutes. Additionally, the contribution of Tax Increment Revenue by the County and the use of such funds by the City in the redevelopment of The Bay Park are expressly subject to full compliance with the provisions of Article XV, Chapter 38 of the Sarasota County Code, as the same may be amended from time to time. All capitalized terms in this Agreement shall be given the meaning as defined in the County code unless otherwise specifically defined herein.

3. Term. This Agreement shall become effective upon the satisfaction of all conditions precedent and the filing of a fully executed copy with the Clerk of the Circuit Court of Sarasota County. Unless otherwise terminated in accordance with this section, this Agreement shall continue in effect until December 31, 2049. This Agreement may be terminated prior to December 31, 2049 upon the following:

- a. If all Approved Projects have been completed and the financing of the Approved Projects has been fully paid, then this Agreement can be terminated with 60 days written notice by either party delivered to other party; or
- b. If no projects are approved, as provided in this Agreement, for funding with tax increment revenues within eight years of the execution of this Agreement, then this Agreement can be terminated with 60 days written notice by either party delivered to the other party; or
- c. If no Approved Projects have commenced construction within ten years of the execution of this Agreement, then this Agreement can be terminated with 60 days written notice by either party delivered to the other party; or
- d. If any Party is in default of the terms hereof and such Party remains in default following notice and a reasonable opportunity to cure, then the Party not in default may elect to terminate this Agreement with 30 days written notice to the other party; or
- e. If the Partnership Agreement between the City and the BPC terminates, then either Party can terminate this Agreement upon written notice delivered to the other party. Notwithstanding such termination, the County and City will remain obligated under the terms of this Agreement to continue to contribute Tax Increment Revenues to satisfy the full repayment of any borrowing used to complete Approved Projects.

4. Performance Evaluation. Beginning in the fifteenth year of this Agreement and every five years thereafter, the City and the County agree to work in good faith to jointly evaluate the performance of this Agreement. Factors that may be considered during such an evaluation include, but are not limited to, the types and numbers of completed capital improvements in The Bay Park, the amount of Tax Increment Revenue being produced each year, the total amount of Tax Increment Revenue contributed to the Trust Fund under the Agreement, the amount of outstanding debt used to redevelop The Bay Park, the amount of private investment in The Bay Park, and the operation of The Bay Park. While the results of the

evaluation will not mandate any particular result or any change in this Agreement, the intent of this requirement is to provide an opportunity for a collective review and discussion about the Agreement.

5. Reciprocal Tax Increment Mechanisms. An express condition precedent to the effectiveness of this Agreement is the lawful establishment of a tax increment mechanism by each the City and the County that provides for the creation of a revenue stream (hereafter collectively referred to as “Tax Increment Revenues”) that captures the tax increment created by the increased valuation of Subject Property within the District and makes such revenue available to the redevelopment of The Bay Park. To satisfy this condition, the respective City and County tax increment mechanisms must be based on the same base year of 2019 valuation, apply to the same geographical area, and be set at the same defined increment percentage.

6. Bay Park Improvement Board.

a. **Creation.** The City and the County hereby create a new body public and corporate that shall be known as the Bay Park Improvement Board. The Bay Park Improvement Board shall be made up of five members constituted as follows:

- 1) Two members shall be County Commissioners appointed by the Board of County Commissioners to serve staggered two-year terms. To achieve the staggered terms, the initial term of one of the appointed County Commissioners shall be for a one-year term with the second appointed County Commissioner being appointed for a full two-year term.
- 2) Two members shall be City Commissioners appointed by the Sarasota City Commission to serve staggered two-year terms. To achieve the staggered terms, the initial term of one of the appointed City Commissioners shall be for a one-year term with the second appointed City Commissioner being appointed for a full two-year term.
- 3) One member shall be a member of the general public as chosen by a majority vote of the four elected officials listed above. The initial selection of this fifth member shall occur at the first meeting of the Bay Park Improvement Board and then every two-years during the term of this agreement at the first meeting of the respective year.
- 4) Notwithstanding any provisions to the contrary, nothing shall prevent a person appointed to a term on the Bay Park Improvement

Board from being reappointed to subsequent terms provided that the member continues to meet the requirements for appointment and service.

b. **Bylaws and Process.** The Bay Park Improvement Board shall make and adopt such bylaws and procedures as necessary to govern the conduct of its business. The first official to serve as Chair will be one of the appointed City Commissioners and the first to serve as Vice-Chair will be one of the appointed County Commissioners, each chosen by a majority of Bay Park Improvement Board. The role of Chair and Vice-Chair shall alternate annually between a City Commissioner member and a County Commissioner member.

c. **Meetings.** The Bay Park Improvement Board shall meet at such times and places as the Chair deems appropriate to carry out its functions.

d. **Function.** The Bay Park Improvement Board will be responsible for the review and approval of all proposed capital project budgets to be completed using Tax Increment Revenue from the Trust Fund.

e. **Public Records and Open Meetings.** The Bay Park Improvement Board will constitute a governmental body subject to applicable law, including Florida's public records and open meetings requirements.

f. **Administrative Support.** The City, or the BPC serving as the agent of the City, will coordinate and house all meetings of the Bay Park Improvement Board and will provide administrative staff to assist necessary to the proper conduct of its meetings including providing public notice of and producing minutes from the meetings.

7. Project Approval, Budgeting and Funding Process. Tax Increment Revenues from the City and the County, as they may become legally available from time to time under the terms of this Agreement, will be allocated to fund any or all of the following: i) capital improvements at The Bay Park, ii) a portion of a new performing arts center, and iii) bicycle/pedestrian and multimodal facilities within the District, as approved through the following process:

a. The City and/or the BPC, as the City's designated agent, will provide the Bay Park Improvement Board with a written request for approval of the specific capital improvements to be funded with Tax Increment Revenues.

- b. The written funding request will explain how the specific capital improvements will promote public health, safety and welfare as well as enhance The Bay Park; will provide an itemized budget of the design, permitting and construction costs of each requested capital improvement project; will expressly identify whether the project(s) will be accomplished through City financing; and will also include an estimate of the anticipated annual operating and maintenance expenses for each proposed capital improvement and an explanation of the plan to fund those operating and maintenance expenses.
- c. The Bay Park Improvement Board will convene to consider the request to approve projects to receive Tax Increment Revenue funding.
- d. If a majority of the Bay Park Improvement Board recommends approval of the funding request, either in whole or in part, then consideration of the funding request will be scheduled for presentation to the Board of County Commissioners and the Sarasota City Commission. If a majority of the Bay Park Improvement Board does not approve the funding request, then the funding request will be denied, but without prejudice to being subsequently reconsidered.
- e. The Board of County Commissioners and the Sarasota City Commission shall each have full authority to approve or deny the funding request, either in whole or in part, in their sole and absolute discretion.
- f. Projects that receive approval of the Bay Park Improvement Board, the Board of County Commissioners, and the Sarasota City Commission shall be deemed "Approved Projects" for which Tax Increment Revenue will be programmed into an annual budget.
- g. The City and the County shall work with the BPC to develop an annual budget for the use of legally available Tax Increment Revenue toward Approved Projects. The budget shall balance revenues and expenses with the appropriation of Tax Increment Revenue first budgeted to fund scheduled debt service on City

issued debt that is used to fund the design and construction of Approved Projects.

- h. On or before May 1 of each year, a proposed annual budget for the use of Tax Increment Revenue in the upcoming the City and County fiscal years will be presented to the Bay Park Improvement Board, the Board of County Commissioners, and the City Commission for approval.
- i. Until the proposed annual budget is approved by the Bay Park Improvement Board, no corresponding budget action shall be required by the City or the County.
- j. Once the proposed annual budget is approved by the Bay Park Improvement Board, then the City and the County will each review the budget proposal.
- k. The Board of County Commissioners and the Sarasota City Commission shall each have full authority to approve or deny the budget request, either in whole or in part, in their sole and absolute discretion.
- l. If the budget is approved by the Bay Park Improvement Board, the County Commission and the City Commission, then the budget shall constitute the "Annual Approved Budget" that will govern the deposit and expenditure of Tax Increment Revenue into and out of the Trust Fund. It is expressly recognized that the Annual Approved Budget may include the carryforward of funds deposited into the Trust Fund from prior year(s).
- m. The City and the County will take the necessary action to appropriate legally available Tax Increment Revenue that corresponds to the Annual Approved Budget.
- n. Any amounts of Tax Increment Revenue that are received by the City and County but are not included in the Annual Approved Budget shall continue to be held by the City and the County until such revenue is appropriated into an Annual Approved Budget, at which point the funds will deposited into the Trust Fund. There

shall not be any requirement for the City and County to contribute any interest earnings on Tax Increment Revenue held in such circumstances.

8. Trust Fund. The City shall establish an interest-bearing trust fund (hereafter “Trust Fund”) for the deposit of Tax Increment Revenue from both the City and the County. This trust fund shall constitute a special revenue fund held by the City with the funds deposited to be held in trust until disbursed to cover the reasonable and customary costs in the design and construction of the Approved Projects and pursuant to a budget approved by the Bay Park Improvement Board, Sarasota County and the City of Sarasota.

9. Deposits to City Trust Fund. To provide time to meet the conditions precedent to the effectiveness of this Agreement and to also provide time for the development and approval of the required Annual Approved Budget for the timely deposit of Tax Increment Revenue into the City’s Trust Fund, the City and the County agree to make the amount of Tax Increment Revenue from the 2020 tax year available for programming into the 2022 Annual Approved Budget process along with the amount of Tax Increment Revenue from 2021 tax year, which deposits shall constitute two of the maximum twenty-nine deposits under this Agreement. Provided that all conditions to the effectiveness of this Agreement are satisfied and an Annual Approved Budget is developed and approved, in accordance with Section 7, then the City and the County will each make their respective deposits of allocated Tax Increment Revenue into the Trust Fund in accordance with the Annual Approved Budget for each year on or before December 31. All interest earned on the Tax Increment Revenue in the Trust Fund shall follow the principal and shall only be used for the same Approved Projects and in the same portion as the principal amounts allocated for each Approved Project. Notwithstanding any other term in this Agreement that may be read to the contrary, the County will make a maximum of twenty-nine deposits of Tax Increment Revenue to the City and will only make deposits that correspond to an Approved Budget of Tax Increment Revenue and only when there is sufficient increase in valuation of the Subject Property to produce a Tax Increment Revenue in accordance with Article XV, Chapter 38 of the Sarasota County Code. Furthermore, should any Annual Approved Budget provide for the deposit of less than the full amount of Tax Increment Revenue in a particular year, the deposit shall nonetheless count as one of the maximum twenty nine deposits of Tax Increment Revenue under this Agreement.

10. City Financing. Given the nature and duration of the tax increment mechanism, it is anticipated that the City may choose to borrow funds to carry out the timely redevelopment of The Bay Park and to repay the borrowing using revenue from the respective tax increment mechanisms under this Agreement. The City may use the revenue stream identified under this Agreement only for the payment of debt service on borrowings that are used for the completion of Approved Projects and pursuant to an Annual Approved Budget. The County agrees to reasonably cooperate with the City in support the City's efforts to issue City debt to financing the improvements to the Bay Park. The City shall be solely responsible for the timely payment of all debt service on City issued debt. Nothing in this Agreement shall be deemed to constitute a pledge of the County's credit or taxing authority. Furthermore, nothing contained herein shall be read to obligate the County to set any particular millage rate nor allow a lien upon Tax Increment Revenue held by the County before such revenue is delivered to the City.

11. Project delivery. The completion of the Approved Projects is the responsibility of the City. However, the City may utilize the BPC as the City's designated agent to deliver approved projects provided that the BPC agrees to indemnify and hold the County harmless from all liability relative to the project delivery and further adds the County as an additional insured to the general liability policy required under the Partnership Agreement with the City and agrees that the consent of the County will be required to change this requirement. Any review and approval of the concept or design of the Approved Projects by the Bay Park Improvement Board and the Board of County Commissioners is limited to the context of the decision to provide funding and shall not be construed in any way as endorsing, approving or insuring the quality, safety or suitability of the design or construction of the Project. The City, and the BPC as the City's agent, will choose consultants and contractors through the City's procurement processes. Additionally, the City will insure that any consultants and contractors performing services in furtherance of the design, permitting and construction of Approved Projects hold the Bay Park Improvement Board and Sarasota County harmless, indemnify the Bay Park Improvement Board and Sarasota County against all liability arising out of the contractor and consultant's work, and name the Bay Park Improvement Board and Sarasota County as an additional named insured on all policies of insurance obtained by the City and/or the BPC related to work at The Bay Park with such policies as primary with respect to the additional insured coverage to the Bay Park Improvement Board and Sarasota County.

12. Record keeping. The City shall make and keep complete and itemized records demonstrating how the funds provided under this Agreement are utilized for each Approved Project. All costs, records and accounts may be subject to audit by a representative of the County within five (5) years after final closeout of each Approved Project.

13. Project Reporting. Once design or construction services of an Approved Project begin, the City or the BPC, as an agent for the City, will provide the Bay Park Improvement Board and the County with semi-annual progress reports in March and September addressing the project timeline and showing all itemized expenditures for each of the Approved Projects.

14. Annual Trust Fund Audit and Reporting. The City shall provide for an annual audit of the Trust Fund by an independent certified public accountant in accordance with rules for audits of local governments adopted by the Florida Auditor General and provide the County with a copy of the audit report. Should any funds deposited by the County into the Trust Fund be used in a manner not in compliance with this Agreement, then the City shall promptly restore such funding in the Trust Fund using a lawful source other than Tax Increment Revenue. In addition, the City and the BPC, as the City's designated agent, shall make an annual presentation to the Board of County Commissioners on or before April 1 of each calendar year for the purpose of providing a financial update of prior fiscal year actuals.

15. Naming Rights. The Partnership Agreement between the City and the BPC provides for the development of a Naming Rights Policy for The Bay Park that will specify how future components of the park shall be named. The City agrees that it will not approve a Naming Rights Policy for The Bay Park, or any subsequent revisions thereto, without first receiving the affirmative approval of such a Naming Rights Policy from a supermajority of the Bay Park Improvement Board and that the future components at the park will only be named in accordance with such approved naming rights policy.

16. Defaults. Should the City fail to abide by the terms and conditions of this Agreement, then the County may deem the City in default and provide written notice of such default to the City along with a reasonable opportunity to cure such default. If following the time allotted to cure the default as outlined in the County notice of default, the City has failed to take sufficient action to cure the default, then the County shall provide the City with notice of the continuing default and notice that the County will no longer be obligated to deliver Tax Increment Revenue to the City. Notwithstanding the foregoing, the County will continue to hold the Tax Increment

Revenue until the default is cured or the agreement is terminated for a continuing default as provided in Section 3 above.

17. Disposition of Funds on Termination. Any Tax Increment Revenue that remains in the Trust Fund at the end of this Agreement, whether by the natural expiration or early termination of the Agreement, will be returned to the City and County in proportion to total contributions into the Trust Fund by the City and County. Such amounts to be disbursed within ninety (90) days of the termination or expiration of this Agreement.

18. Notice to Parties. All notices or communications between the Parties regarding this Agreement shall be in writing and shall be delivered or addressed to the addressees set forth below or otherwise as either party may designate in writing.

If to the City: City of Sarasota
 Attention: Thomas W. Barwin, City Manager
 1565 First Street
 Sarasota, FL 34236

If to the County: Sarasota County Government
 Attention: Jonathan R. Lewis, County Administrator
 1660 Ringling Boulevard
 Sarasota, FL 34236

19. Indemnification. The County is providing funding under this agreement toward the Project but is not in any way responsible for the quality, safety, or suitability of the design or the construction of the Project. Accordingly, the City hereto shall hold the County harmless and, to the express monetary limits of Section 768.28, *Florida Statutes*, shall defend and indemnify the County and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error or omission by the City, its agents or its employees during the performance of this Agreement. However, nothing in the foregoing shall be construed to require the City to indemnify the County for any claim, loss, damage, cost, charge or expense that results from the negligence of that the County or any of its officers, agents, or employees during the performance of this Agreement. Nothing in the foregoing shall be deemed to constitute any waiver of either Party's sovereign immunity beyond the waiver provided in Section 768.28, *Florida Statutes*. Additionally, the provision of any insurance policy by the City,

the BPC, or any third-party consultants or contracts shall not be deemed to satisfy or reduce the obligations of the City to indemnify the County under this section.

20. Dispute Resolution. In the event of a dispute between the City and County under this Agreement, the City Manager and the County Administrator or their designated representatives shall review such dispute and options for resolution. The mutual decision of the City Manager and County Administrator regarding the dispute shall be final. In the event the City Manager and the County Administrator are unable to agree to a resolution, the matter shall be referred to the respective Commissions who may jointly elect to hold a joint meeting to resolve the matter. This process shall substitute for the dispute resolution process set forth in Chapter 164 of the Florida Statutes.

21. Entire Agreement. This Interlocal Agreement embodies the entire understanding of the respective parties hereto regarding the subject matter hereof, and there are no further or other agreements or understandings, written or oral, in effect between parties relating to the subject matter hereof. This Interlocal Agreement may be amended or modified only by an instrument of equal formality executed by authorized representatives of the County and the City.

22. Severability. If any provision of this Interlocal Agreement or any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Interlocal Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Interlocal Agreement, and to this end the provisions of this Interlocal Agreement are declared to be severable.

23. Waiver of Jury Trial. The City and County hereby expressly agree that in the event of litigation regarding this Agreement, any and all rights to a jury trial are waived.

24. No Third-Party Beneficiaries. This Interlocal Agreement is for the mutual benefit of the named parties only and nothing herein shall be construed as creating any right or cause of action whatsoever to any third-party or anyone not an express Party to this Interlocal Agreement.

25. Counterparts. This Agreement may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Interlocal Agreement on the dates indicated below.

ATTEST:

KAREN E. RUSHING, Clerk of Circuit Court and Ex-Officio Clerk of the Board of County Commissioners of Sarasota County, Florida

By: *Blanca Martinez*
Deputy Clerk

Approved as to form and correctness:

By: *FJE*
Frederick J. Elbrecht, County Attorney

SARASOTA COUNTY, FLORIDA,
a political subdivision of the State of Florida,

By: *[Signature]*
Michael A. Moran, Chair

Date: 11/9/2020

CITY OF SARASOTA, FLORIDA,
a municipal corporation of the State of Florida,

By: *[Signature]*
Jen Ahearn-Koch, Mayor

Date: 10/29/2020

ATTEST:

By: *Shayla Griggs*
Shayla Griggs, City Auditor and Clerk

Approved as to form and correctness:

By: *Robert M. Fournier*
Robert M. Fournier, City Attorney