

**ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN  
GALVESTON ISLAND PARK BOARD OF TRUSTEES  
AND  
THE INDUSTRIAL DEVELOPMENT CORPORATION  
OF THE CITY OF GALVESTON, TEXAS**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between GALVESTON ISLAND PARK BOARD OF TRUSTEES, and the Industrial Development Corporation of the City of Galveston, Texas (the "IDC"), a Texas nonprofit corporation established pursuant to the Development Corporation Act of 1979 and now codified in Chapters 501, 502, 504 and 505 of the Texas Local Government Code (hereafter referred to as the "Act").

**WITNESSETH:**

**WHEREAS**, pursuant to the Act, the IDC is authorized to provide funding relating to projects that the IDC finds to be encompassed within the definition of "Projects," as that word is defined by Chapters 501, 504 and 505 of the Act; and

**WHEREAS**, the GALVESTON ISLAND PARK BOARD OF TRUSTEES has applied for a grant from the IDC; and

**WHEREAS**, the IDC has determined that such a grant complies with the Act and is in keeping with the mission of IDC.

**NOW, THEREFORE**, for and in consideration of the recitals set forth above and the promises made herein, the GALVESTON ISLAND PARK BOARD OF TRUSTEES and the IDC agree as follows:

**ARTICLE I.  
IDC'S OBLIGATIONS**

A. Subject to the terms and conditions set forth in Article II hereof, upon execution of this Agreement, the IDC will provide a grant to the GALVESTON ISLAND PARK BOARD OF TRUSTEES as follows:

The IDC agrees to pay to GALVESTON ISLAND PARK BOARD OF TRUSTEES Two Hundred Thousand Dollars and no cents (\$200,000.00) for the following activities to be performed within the City of Galveston, Texas:

The project will provide the 40% local match requirement for a pending grant award from the GLO CEPRA cycle 12 grant program. The project extends a prior awarded CEPRA cycle 11 project in the 8-Mile Road area west to the bollard line at 13-Mile Road at the eastern boundary of Galveston Island State Park. The project intends to develop engineering and design documents for a future beach nourishment project. **The IDC will request a full accounting of the funds expended on the project no later than sixty (60) days after completion of the project. The IDC will pay GALVESTON ISLAND PARK BOARD OF TRUSTEES up to Two Hundred Thousand Dollars and no cents (\$200,000.00) no later than thirty (30) days after the receipt and approval of the accounting.**

## **ARTICLE II.**

### **GALVESTON ISLAND PARK BOARD OF TRUSTEES'S OBLIGATIONS**

A. Following the execution of this Agreement, GALVESTON ISLAND PARK BOARD OF TRUSTEES shall begin efforts to implement the activities described in Article I of this Agreement. **The Park Board's 8-13 MILE ROAD BEACH PROJECT shall begin within 24 months.** The GALVESTON ISLAND PARK BOARD OF TRUSTEES' failure to begin the 8-13 Mile Road Beach project within 24 months will constitute a breach of the Agreement and result in immediate termination of this agreement with no opportunity to cure.

B. In accordance with Chapter 2264 of the Texas Government Code, GALVESTON ISLAND PARK BOARD OF TRUSTEES agrees not to knowingly employ any undocumented workers. During the term of this Agreement, GALVESTON ISLAND PARK BOARD OF TRUSTEES shall notify the IDC of any complaint brought against GALVESTON ISLAND PARK BOARD OF TRUSTEES alleging that it has employed undocumented workers. If GALVESTON ISLAND PARK BOARD OF TRUSTEES, or any branch, division or department of GALVESTON ISLAND PARK BOARD OF

TRUSTEES is convicted of a violation under 8 U.S.C. Section 1324a (f), the total amount of economic development grants it has received, together with interest at the rate of five percent (5%), shall be repaid by GALVESTON ISLAND PARK BOARD OF TRUSTEES to the IDC not later than the one hundred twentieth (120th) day after the date the IDC becomes aware of and notifies GALVESTON ISLAND PARK BOARD OF TRUSTEES of the violation. GALVESTON ISLAND PARK BOARD OF TRUSTEES shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by any person with whom GALVESTON ISLAND PARK BOARD OF TRUSTEES contracts. GALVESTON ISLAND PARK BOARD OF TRUSTEES shall reimburse the IDC the required amount within thirty (30) days of the termination of this Agreement.

C. GALVESTON ISLAND PARK BOARD OF TRUSTEES shall keep and maintain complete and accurate records relating to its hiring and employment of persons, which is separate and identifiable from its other records, and shall make such records available for not less than three (3) years following termination of this Agreement. The IDC and its representatives shall be entitled to inspect said records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice to GALVESTON ISLAND PARK BOARD OF TRUSTEES. GALVESTON ISLAND PARK BOARD OF TRUSTEES' failure to comply with this provision will constitute a breach of the Agreement.

D. Upon completion of the 8-13 MILE ROAD BEACH project, but no later than sixty (60) days after, GALVESTON ISLAND PARK BOARD OF TRUSTEES will furnish the IDC with a full accounting of the funds expended on the BEACH PERMIT project. At the conclusion of the 8-13 MILE ROAD BEACH project GALVESTON

ISLAND PARK BOARD OF TRUSTEES will provide the IDC with an accounting of all monies spent on the 8-13 MILE ROAD BEACH project.

E. In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this contract on behalf of company verifies that the company does not boycott Israel and will not boycott Israel during the term of this contract.

**ARTICLE III.  
GALVESTON ISLAND PARK BOARD OF TRUSTEES' REPRESENTATIONS AND  
WARRANTIES**

A. The GALVESTON ISLAND PARK BOARD OF TRUSTEES represents and warrants, as of the date hereof, that:

1. GALVESTON ISLAND PARK BOARD OF TRUSTEES is a governmental entity created by a special act of the Texas Legislature in 1962 for the purpose of directing all tourism efforts for Galveston.;

2. Execution of this Agreement has been duly authorized by GALVESTON ISLAND PARK BOARD OF TRUSTEES and this Agreement is not in contravention of the GALVESTON ISLAND PARK BOARD OF TRUSTEES' governing authority or any agreement or instrument to which GALVESTON ISLAND PARK BOARD OF TRUSTEES is a party or by which it may be bound as of the date hereof;

3. No litigation or governmental proceeding is pending or, threatened against or affecting GALVESTON ISLAND PARK BOARD OF TRUSTEES that

may result in a material adverse change in GALVESTON ISLAND PARK BOARD OF TRUSTEES' business, properties, or operations sufficient to jeopardize the GALVESTON ISLAND PARK BOARD OF TRUSTEES' legal existence; and

4. No written application, written statement, or correspondence submitted by GALVESTON ISLAND PARK BOARD OF TRUSTEES to the IDC in connection with this Agreement, or in connection with any transaction contemplated hereby contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading. GALVESTON ISLAND PARK BOARD OF TRUSTEES agrees that, upon execution of this Agreement, its application shall be attached and incorporated for all purposes.

B. Except as expressly set forth in this Article III, GALVESTON ISLAND PARK BOARD OF TRUSTEES makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

**ARTICLE IV.  
IDC'S REPRESENTATIONS AND WARRANTIES**

A. The IDC represents and warrants, as of the date hereof, that:

1. The IDC, to the best of the knowledge of its Board of Directors, is legally authorized to enter into this Agreement by virtue of the statute under which it is governed and by the authorities and powers vested in it as a corporation duly and properly organized under the Act;

2. The execution of this Agreement has been duly authorized by the IDC;

3. No litigation or governmental proceeding is pending, or, to the knowledge of any of the IDC's officers, threatened against or affecting the IDC, that may result in the IDC's inability to meet its obligations under this Agreement; and

4. The IDC has no reasonable basis for believing that it has or will have incurred debts beyond its ability to pay as such debts mature, including, but not limited to, the obligations set forth in this Agreement.

B. Except as expressly set forth in this Article IV, the IDC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

#### **ARTICLE V. REMEDIES**

A. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by any party hereto, **or any successor** to such party, such defaulting or breaching party shall, upon written notice from the other party, proceed immediately to cure or remedy such default or breach.

B. Upon breach of this Agreement by either party the non-breaching party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies that may be provided by law and this Agreement. Each party acknowledges and agrees that GALVESTON ISLAND PARK BOARD OF TRUSTEES is not entitled to recover any amounts in excess of the grant money contracted for under this Agreement and that the IDC, pursuant to a breach and failure to cure by GALVESTON ISLAND PARK BOARD OF TRUSTEES in accordance with

this Agreement, is entitled to recover attorney fees, collection costs, and any other costs due to its pursuit of repayment and remedies under this Agreement.

C. Any delay by any party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, so long as the breach or default by another party is continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor will any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

## **ARTICLE VI. GENERAL PROVISIONS**

A. Severability. The provisions of this Agreement are severable and, if for any reason, a provision of this Agreement is determined to be invalid by a court having competent jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

B. Amendment. This Agreement may be amended only by written amendment signed by both parties hereto.

C. Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in Galveston County, Texas. Venue will lie in Galveston County, Texas; and this Agreement is

governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws thereof.

D. Notices. All notices given with respect to this Agreement must be in writing and will be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested, postage prepaid, on the fifth (5<sup>th</sup>) business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation), provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

For the IDC:                    President  
   City of Galveston, Texas  
   Industrial Development Corporation  
   P.O. Box 779  
   Galveston, Texas 77553  
   Facsimile: (409) 797-3521  
  
   City Manager  
   City of Galveston  
   P. O. Box 779  
   Galveston, Texas 77553  
   Facsimile: (409) 797-3521

*With a copy to:*            City Attorney  
   City of Galveston  
   P. O. Box 779  
   Galveston, Texas 77553  
   Facsimile: (409) 797-3531

For the GALVESTON ISLAND PARK BOARD OF TRUSTEES:

Executive Director  
601 23<sup>rd</sup> Street  
Galveston, TX 77550  
409-797-5000



E. Assignment. This Agreement may not be assigned by either party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a party consents to any valid assignment of this Agreement by the other party hereto, the assigning party will be relieved of any and all obligations and liabilities on the part of such assigning party under this Agreement.

F. Parties in Interest. Nothing in this Agreement shall entitle any party other than GALVESTON ISLAND PARK BOARD OF TRUSTEES or the IDC to any claim, cause of action, remedy or right of any.

G. Term. The term of this Agreement (the "Term") will commence upon execution of this Agreement and shall terminate on the earlier occurrence of: (i) completion of the schematic of improvements and probable construction costs for Shield Park in accordance the application; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Article V hereof; or (iv) at GALVESTON ISLAND PARK BOARD OF TRUSTEES' sole and absolute discretion. Upon termination of this Agreement, all rights, duties and obligations of any kind under this Agreement shall automatically expire and terminate and be of no other force and effect.

H. Interpretation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement will therefore, be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arm's length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

I. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

J. Survival of Terms. All rights, duties, liabilities, and obligations accrued prior to termination will survive termination.

K. Public Information. Information provided by or on behalf of the GALVESTON ISLAND PARK BOARD OF TRUSTEES under or pursuant to this Agreement that GALVESTON ISLAND PARK BOARD OF TRUSTEES considers as proprietary shall be marked as such and will be maintained as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information Act, the IDC shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests, and GALVESTON ISLAND PARK BOARD OF TRUSTEES shall be responsible for defending the confidentiality of such information. Other records and information provided to the IDC and its representatives to verify compliance with this Agreement shall be available for public inspection.

L. Counterparts. This Agreement may be executed in several identical counterparts by the parties and each counterpart, when so executed and delivered, shall constitute an original instrument.

M. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof.

**EXECUTED AND EFFECTIVE**, as of the date first indicated above, by the CITY OF GALVESTON, TEXAS, INDUSTRIAL DEVELOPMENT CORPORATION, by and through its Board President, duly authorized to execute same by action of its Board;

and by the GALVESTON ISLAND PARK BOARD OF TRUSTEES acting through its duly authorized official.

**CITY OF GALVESTON, TEXAS,  
INDUSTRIAL DEVELOPMENT  
CORPORATION**

**GALVESTON ISLAND PARK BOARD  
OF TRUSTEES**

By: \_\_\_\_\_  
Name: Dr. Craig Brown, President  
Title: President, Board of Directors  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Kelly de Schaun  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Name:  
Title: Secretary, Board of Directors

By: \_\_\_\_\_  
Name:  
Title:

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: Arthur L. Pertile, III  
Title: Counsel for the Corporation

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT "A"**  
**APPLICATION FOR FUNDING**