RESOLUTION NO.

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT CORPORATION OF THE CITY OF GALVESTON APPROVING AS A PROJECT THE BENEFICIAL USE OF DREDGED MATERIAL (BUDM) FOR BEACH RE-NOURISHMENT IN THE BABE'S BEACH AREA.

* * * * * * * *

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT CORPORATION OF THE CITY OF GALVESTON:

Section 1. The Board of Directors of the Industrial Development Corporation of the City of Galveston does hereby find that the expenditures provided for in this project are required and suitable for infrastructure necessary to promote or develop new or expanded business enterprises limited to beach remediation along the Gulf of Mexico in accordance with Section 501.103 of the Texas Local Government Code.

Section 2. The Board of Directors of the Industrial Development Corporation of the City of Galveston ("IDC") does hereby approve the following described project:

> This proposed project is a Beneficial Use of Dredged Material (BUDM) nourishment project that proposes to take advantage of the Corps of Engineers (USACE) maintenance dredging of the Houston-Galveston Ship Channel and to place the beach quality material onto the beach west of 61st street in accordance with the application attached hereto as **Exhibit B** and incorporated herein for all purposes.

Section 3. The anticipated cost of the project is Five Million Dollars ($5,000,000.00) plus legal and administrative costs paid by IDC to use as matching funds with several grant programs.

Section 4. A public hearing before the Industrial Development Corporation of the City of Galveston is hereby called regarding the proposed Project. Said public hearing shall be held at 9:00 o'clock a.m., on _____ __, 2020, at City Hall 823 Rosenberg Room 204 Galveston, Texas.

Section 5. A notice of such public hearing to be published in a newspaper of general circulation within the City of Galveston, Texas, in the form attached hereto as Exhibit "A."

PASSED, APPROVED, AND RESOLVED on this _ day of _____ 2020.

_____
James D. Yarbrough, President
Board of Directors

ATTEST:

_____
Brandon Cook, Secretary
Board of Directors

APPROVED AS TO FORM:

_____
Arthur L. Pertile, III
Counsel for the Corporation

Exhibit "A"
INDUSTRIAL DEVELOPMENT CORPORATION OF THE CITY OF GALVESTON
NOTICE OF PROJECT AND NOTICE OF PUBLIC HEARING

The Industrial Development Corporation of the City of Galveston ("IDC") hereby gives notice pursuant to Section 505.159 of the Texas Local Government Code that the Corporation has adopted, as a project the following:

> The project will place beach quality sand in the Babe's Beach area and dune template to help offset the sediment that is lost due to the erosional processes increased by the end of the seawall.
>
> The anticipated cost of the project is Five Million Dollars ($5,000,000.00) plus legal and administrative costs.

The Corporation hereby gives notice that it will conduct a public hearing to solicit citizen input on the proposed Project. The public hearing shall be held at __:00 o'clock a.m., on ___ __, 2020, at City Hall 823 Rosenberg Room 204 Galveston, Texas. Interested citizens are invited to attend and will be given an opportunity to be heard.

EXHIBIT B

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

This Agreement is entered into this _____ day of _____, 2020, by and between the Galveston Island Park Board of Trustees (the "PARK BOARD"), a governmental entity created by special act of the Texas Legislature in 1962, 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 and 505 of the Act; and

WHEREAS, the PARK BOARD has applied for a grant from the IDC for assistance in beach remediation along the Gulf of Mexico; 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 PARK BOARD 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 PARK BOARD as follows: The IDC agrees to pay to the PARK BOARD **Five Million Dollars ($5,000,000.00)** for the following activities to be performed within the City of Galveston, Texas:

The project will place beach quality sand in the Babe's Beach area and dune template to help offset the sediment that is lost due to the erosional processes in accordance with the Grants documents attached hereto and incorporated herein for all purposes as **Exhibit A**.

B. The IDC will request a full accounting of the funds expended on the project no later than sixty (60) days after completion of project. If, after completion of the project there are funds remaining and/or savings from project and received from IDC, PARK BOARD shall return such funds to the IDC to be returned to the budget line item from which the funds were taken.

ARTICLE II.
PARK BOARD'S OBLIGATIONS

A. Following the execution of this Agreement, the PARK BOARD shall begin efforts to implement the activities described in Article I of this Agreement. The failure by the PARK BOARD to develop and implement the activities described in Article I of this within twenty-four (24) months from the date of execution of this Agreement shall constitute a breach of this Agreement subject to immediate termination. The PARK BOARD understands and agrees that, in the event termination of this Agreement by PARK BOARD, or pursuant to Article V of this Agreement, the PARK BOARD shall reimburse the IDC the full amount of money paid by the IDC to the PARK BOARD.

B. In accordance with Chapter 2264 of the Texas Government Code, the PARK BOARD agrees not to knowingly employ any undocumented workers. During the term of this Agreement, the PARK BOARD shall notify the IDC of any complaint brought against PARK BOARD alleging that it has employed undocumented workers. If the PARK BOARD, or any branch, division or department of the PARK BOARD 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 the PARK BOARD to the IDC not later than the one hundred twentieth (120th) day after the date the IDC becomes aware of and notifies the PARK BOARD of the violation. The PARK BOARD shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by any person with whom the PARK BOARD contracts. The PARK BOARD shall reimburse the IDC the required amount within thirty (30) days of the termination of this Agreement.

C. The PARK BOARD 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 the PARK BOARD. The PARK BOARD's failure to comply with this provision will constitute a breach of the Agreement.

D. Upon completion of the project, but no later than sixty (60) days after, PARK BOARD will furnish the IDC with a full accounting of the funds expended on the project. If, after completion of the project there are funds remaining and/or savings from the project, PARK BOARD shall return such funds to the IDC within thirty (30) days of IDC's acceptance of the full accounting.

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.
PARK BOARD'S REPRESENTATIONS AND WARRANTIES

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

1. the PARK BOARD is a local governmental entity of the State of Texas;

2. execution of this Agreement has been duly authorized by the PARK BOARD and this Agreement is not in contravention of the PARK BOARD's governing authority or any agreement or instrument to which the PARK BOARD 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 the PARK BOARD that may result in a material adverse change in the PARK BOARD's business, properties, or operations sufficient to jeopardize the PARK BOARD's legal existence; and

4. no written application, written statement, or correspondence submitted by the PARK BOARD 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. The PARK BOARD 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, the PARK BOARD 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, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, seeking specific performance and/or injunctive relief.

B. Upon breach of this Agreement by either party and the failure to cure as permitted by this Article V, 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 the PARK BOARD 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 the PARK BOARD 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 (5th) 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 PARK BOARD: President, Board of Trustees
Galveston Island Park Board of Trustees
601 Tremont Street
Galveston, Texas 77550

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 the PARK BOARD 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 Beneficial Use of Dredged Material (BUDM) nourishment project; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Article V hereof; (iv) when terminated pursuant to Article II hereof; (v) at the PARK BOARD's sole and absolute discretion upon the PARK BOARD's return of all grant funding to the IDC that it has received under this Agreement; or (vi) upon the PARK BOARD's repayment of all monies that are demanded by the IDC and are in fact required to be repaid by the PARK BOARD under Article II hereof. 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 PARK

BOARD under or pursuant to this Agreement that the PARK BOARD 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 the PARK BOARD 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: James D. Yarbrough
Title: President, Board of Directors
Date: _____

ATTEST:

By: _____
Name: Brandon Cook
Title: Secretary, Board of Directors

APPROVED AS TO FORM:

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

By: _____
Name:
Title: President
Date: _____

ATTEST:

By: _____
Name:
Title: Secretary

APPROVED AS TO FORM:

By: _____
Name:
Title: Counsel for the Board of Trustees

EXHIBIT "A"
BENEFICIAL USE OF DREDGED MATERIAL (BUDM) NOURISHMENT PROJECT DOCUMENTS FOR APPLICABLE GRANTS

Exhibit B
APPLICATION