



Agenda Item: Discuss and Consider Approval of Agreement with the Cavalla Historical Foundation

Background: The Cavalla Historical Foundation and the Park Board of Trustees share contractual responsibility to manage and preserve the naval assets at Seawolf Park. The attached proposed Memorandum of Understanding is an updated agreement designed to assign specific responsibilities to each of the partners in the management of the ships.

Generally speaking, CHF is the operational manager of the vessels and is assuming responsibility for maintenance, preservation, operations and relations with the Navy on behalf of the partnership. The Park Board holds responsibility for overall park management and controls, disaster preparedness, liability insurance and utilities.

CHF pays a base fee and a percentage of admissions to the Park Board to cover the above-indicated costs.

The partners have been working well together over the past year and the agreement was mutually developed by the legal team of each entity and approved by the executives. CHF has circulated the agreement to the Board for initial commentary and all items have been addressed.

Staff Recommendation:

Staff recommends the approval of the proposed agreement as presented.

Funding Source (if applicable):

N/A

AGREEMENT AMONG OWNERS

RECITALS

1. Parties

a) Park Board of Trustees of the City of Galveston (Park Board) is a governmental entity created by statute and charged with the management of Seawolf Park (Park) on Pelican Island.

b) Cavalla Historical Foundation (CHF) is a 501c(3) nonprofit corporation, established for the purpose of managing restoring, preserving and displaying USS Cavalla and USS Stewart (the Vessels), as well as other donated artifacts, and including the recruitment of volunteers and fundraising for these purposes.

2. Co-Owners of Ex USS Cavalla and Ex USS Stewart

a) Park Board and CHF are co-owners of two World War II Vessels, the USS Cavalla and USS Stewart (the Vessels), having received them from the United States Navy pursuant to Contracts No. N00024-02-C-0201 and No. N00024-03-C-2020 (Donation Contracts).

b) Donation Contracts provide that the co-owners will maintain, preserve and exhibit the Vessels as a museum and memorial (Museum) and keep the Vessels safe and in a condition satisfactory to the Navy and for public exhibition.

c) In the sharing of responsibility for the care of the vessels and surrounding assets and park site, the co-owners generally agree that the preservation, upkeep and maintenance of the vessels and historic and educational assets are under the responsibility and stewardship of CHF, whereas the maintenance and general upkeep of the land, utilities and infrastructure are the responsibility of the Park Board.

3. Galveston Naval Museum

a) Seawolf Park (Park) is owned by the City of Galveston (City) and managed by Park Board pursuant to City Ordinance.

b) The Vessels are located in an area of Seawolf Park that is designated as the Seawolf Memorial Plaza/Museum hereinafter the Galveston Naval Museum (Museum).

c) The Museum consists of a fenced area inside Seawolf Park (Fenced Area) surrounding the two Vessels, a memorial compass rose, numerous memorial plaques, the sail from the USS Tautog, a conning tower from USS Carp, 3 storage containers, two periscopes, other military artifacts, one mobile ticket booth, one mobile bathroom unit, and other assets as acquired

by CHF and registered with the Park Board.

4. Prior Agreements

a) There are prior agreements between the Park Board and CHF dated October 3, 2017 and July 26, 2020 (Prior Agreements) addressing the operation of the Museum and maintenance of the Vessels.

b) Park Board and CHF agree the Prior Agreements should be terminated and replaced by this Agreement.

AGREEMENT

5. Coordination

a) Coordination of responsibilities will normally be conducted through the Park Board park management and the CHF ships superintendent/executive director. The CHF CEO and the Park Board Chief Operating Officer (COO) will meet quarterly. The CHF CEO will meet with the Park Board Chair and CEO annually for planning and coordination purposes.

b) CHF's fiscal year ends September 30th, and CHF will provide the Park Board with a copy of its annual financial review or audit.

c) The Park Board has a five (5) year capital improvement plan and will share that plan, as it relates to Seawolf Park, with CHF to facilitate coordination and cooperation between the co-owners as to plans and improvements that relate to Seawolf Park and the Museum. CHF will prepare a five (5) year capital improvement plan also and will share that plan with the Park Board.

d) Each April of every year, CHF and the Park Board will jointly undertake review and planning efforts.. This process will be undertaken by the CEO of the Park Board and the CEO of CHF, and the assessment will be provided to each owner's Board of Directors and will include reports on annual and five year budget, operational changes and any identified potential risks.

e) As part of the annual planning, CHF will provide a risk assessment relating to: a) personnel, staff, volunteer, and visitor safety; b) vessel condition and integrity; and c) vessel mooring status.

6. CHF's Use of Fenced Area and Management of Galveston Naval Museum

a) The Fenced Area is bounded by Seawolf Parkway on its north side; the parking lot on its east side; the Galveston Ship Channel on its south side, and the starboard hull of the Ex USS Stewart on its west side.

b) Park Board will charge CHF a monthly fee for the use of the property inside the Fenced Area. CHF agrees it will not sublet to any third parties or have any permanent vendors in the Fenced Area or the Ticket Collection Area. If CHF desires to have a caterer or temporary vendor for one of their planned events, they will inform the Park Board two weeks (2) in advance of their intent to host on site vendors and provide a list of vendors with proof of insurance (where deemed necessary).

c) Park Board will continue to store and use 1 container, with 2 sheds and 1 garage within the Fenced Area.

d) All improvements at the site, such as ticket booths and gift shops and other structures must have prior written approval by the Park Board which will not be unreasonably withheld. And approved structures must obtain all required City of Galveston or County permits before installation.

e) CHF will maintain and pick up the trash in the Fenced Area. Park Board will provide a common dumpster for the common use of CHF and the Park Board for trash disposal. The Park Board will mow the grass within the Fenced Area. CHF will provide Park Board with keys to any CHF gates or entry ways which Park Board may use for emergency purposes. CHF's access to and use of the Fenced Area shall not be denied or restricted by the Park Board except for emergency management or safety reasons pursuant to Paragraph 10 below. CHF is responsible for ensuring the pedestrian gate for entrance into the museum is secured when the museum is closed.

f) CHF will have access to the Park Board park administration building from time to time for the purpose of accessing critical infrastructure such as electrical switches, cable communications, and water connections that impact Museum operations.

g.) CHF can request use of the Park Board Plaza board and training rooms free of cost and with advanced reservations through the Park Board Plaza front desk.

7. Monthly Fee

a) The Park Board will charge CHF a monthly fee for the use of the property inside the Fenced Area. The monthly fee will be as follows: \$7500.00 plus 10% of gross ticket sales. All gross ticket sales are subject to a point of sale system. This monthly payment of \$7500.00 plus 10% of gross ticket sales will continue for six months. On October 1, 2021, the monthly payment will be \$2500.00 plus 10% of gross ticket sales and continue for six months until April 1, 2022 when the monthly payment will be \$7500.00 plus 10% of gross ticket sales for six months. Thereafter during the term of this Agreement, the monthly payments beginning in October of each year will be \$2500.00 plus 10% of gross ticket sales and continuing for six months until in April each year when the monthly payment increases to \$7500.00 a month plus 10% of gross ticket sales and continues for six months.

b) Any closures initiated by CHF and not by the Park Board will not be discounted from the monthly fee, however, any closures initiated by the Park Board due to the City, County or State short term or long term declared emergencies, the monthly fee will be discounted by the number of days closed. Closures initiated by the Park Board due to operating conditions such as weather, and which are limited to five (5) days or less will not be discounted from the monthly fee, but closures in excess of five (5) days will be prorated on a daily basis after the initial period.

8. Operation of Galveston Naval Museum by CHF

a) CHF is responsible for the maintenance of the Vessels and interactions with the Navy. CHF will provide Park Board with copies of all inspection reports and any communications with the Navy within 30 days of receipt. All inspection reports and communications with the Navy will be shared with the Park Board. CHF agrees it will notify the Park Board of any issues raised by the Navy. CHF will oversee the operation of the Museum, maintenance of the Vessels and will coordinate all activities in the Plaza including the sleepovers, special events, inspections, and remediation. CHF is solely responsible for all the salaries for the operation of the Museum. Park Board will pay for all utilities, which includes water, electricity and internet connectivity for the Fenced Area. If it is regular maintenance of the utilities this will be a cost of CHF. If it is a major repair it will be shared equally between CHF and Park Board unless caused by the negligence of either. If it is caused by the negligence of the Park Board it is a cost of the Park Board and if caused by the negligence of CHF it is a cost of CHF. If it is caused by an act of god and covered by insurance provided by the Park Board, the cost of the deductible will be split between the CHF and Park Board. CHF is solely responsible for marketing fees, human resource support, accounting or administrative support, legal support and other operational fees and costs connected with the operation of the Museum.

9. Insurance and Indemnity

a) Park Board agrees to pay for the General Liability Insurance policy on the Vessels and covering CHF's activities with the volunteers and their maintenance of the Vessels. The insurance will be in an amount of \$1,000,000 per occurrence and \$4,000,000 aggregate and name the Park Board, City and CHF as insureds. Park Board will be responsible for obtaining the insurance. Each year by October 1st, the Park Board will provide a copy of the certificate of insurance to the City and CHF, and the insurance will contain a 30-day notice if for any reason the policy is cancelled. In addition, as required by the Navy, the Park Board will obtain a Public Sector Commercial Inland Marine Insurance in an amount of \$150,000 with the City, CHF and Park Board named as insureds. The Park Board will pay all costs for these insurance policies. CHF will notify Park Board promptly for any accidents, injuries, claims or incidents on the Vessels or in the Museum area. All deductibles for the insurance coverage will be split 50/50 between CHF and Park Board. All legal fees not covered by insurance will be split 50/50 between CHF and the PB.

b) CHF SHALL DEFEND WITH COUNSEL, APPROVED BY PARK BOARD, INDEMNIFY, AND HOLD HARMLESS PARK BOARD AND CITY, ITS COUNCIL MEMBERS, ITS TRUSTEES, AGENTS, EMPLOYEES AND REPRESENTATIVES (COLLECTIVELY THE PARK BOARD AND CITY) FROM AND AGAINST ANY CLAIMS, ACTIONS, DEMANDS, LAWSUITS, LOSSES, DAMAGES, COSTS, EXPENSES, JUDGMENT, FINES, PENALTIES AND LIABILITIES (INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS) INCURRED IN CONNECTION WITH ANY THIRD PARTY DEMANDS, ASSERTIONS, CLAIMS, SUITS, ACTIONS OR OTHER PROCEEDINGS ARISING FROM THE ACTS OR OMISSIONS OF CHF OR ITS EMPLOYEES, VOLUNTEERS, AGENTS, AND CONTRACTORS IN CONNECTION WITH THE ACTIVITIES CONTEMPLATED UNDER THIS AGREEMENT EXCEPT TO THE EXTENT SUCH CLAIM IS CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF THE PARK BOARD OR CITY.

c) PARK BOARD SHALL DEFEND WITH COUNSEL, APPROVED BY CHF, INDEMNIFY, AND HOLD HARMLESS CHF, ITS BOARD MEMBERS, AGENTS, EMPLOYEES AND REPRESENTATIVES (COLLECTIVELY CHF) FROM AND AGAINST ANY CLAIMS, ACTIONS, DEMANDS, LAWSUITS, LOSSES, DAMAGES, COSTS, EXPENSES, JUDGMENT, FINES, PENALTIES AND LIABILITIES INCURRED IN CONNECTION WITH ANY THIRD PARTY DEMANDS, ASSERTIONS, CLAIMS, SUITS, ACTIONS OR OTHER PROCEEDINGS ARISING FROM THE ACTS OR OMISSIONS OF PARK BOARD OR ITS TRUSTEES, EMPLOYEES, AGENTS, AND CONTRACTORS IN CONNECTION WITH THE ACTIVITIES CONTEMPLATED UNDER THIS AGREEMENT EXCEPT TO THE EXTENT SUCH CLAIM IS CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF CHF.

10. Emergency Management by Park Board

a) The Park Board controls all emergency management issues for the Park including for the Museum. The Park Board controls and decides the opening and closing of the Park for emergency issues. CHF acknowledges that the Park Board, as manager of the Park, has absolute discretion concerning safety, emergency management and opening and closing of the Park due to safety or emergency issues. CHF will keep on record with the Park Board a copy of its own emergency management plan relative to the safety and protection of the Vessels. The Park Board has the right to close the Park for emergency or safety reasons and will follow Park Board safety protocols. A copy of the safety protocols is available for CHF review. CHF is responsible for the removal of its unaffixed property or the securing of its unaffixed property and equipment before hurricanes or other emergency events.

b) During emergency events where the Park Board has deemed it necessary to close the Park, CHF will continue to have access to the Fenced Area for the purposes of securing and protecting the assets within the Museum.

11. FEMA Claims

a) The Park Board is in charge of administering the outstanding three (3) FEMA awarded project worksheets (PWs) and all future awarded projects. Current PWs are being managed by the Park Board, and the Park Board will contribute the

matching dollar amounts required by FEMA and is responsible and will receive any proceeds from these FEMA PWs. The Park Board will manage all FEMA project worksheets, including any decisions to amend or alter PW for work outside the Galveston Naval Museum. CHF will have input on the FEMA PWS potentially affecting the Vessels, their operation, or their historical status. The Park Board will have final approval, but as to decisions that affect the management of vessels, the Park Board will obtain CHF endorsement. The Park Board will contribute the required project amount, including the required counterpart dollar match to execute the projects, maintain all project documentation and seek reimbursement.

- b) For all future FEMA PWs, the Park Board will be in charge of all administration and decisions as the authorized local agent. The PB will involve a representative from CHF in all initial PW determinations regarding scope of work and costing for repairs. The local match will be shared 50/50 between the Park Board and CHF for the counterpart contribution for all PWs directly impacting the vessels or assets maintained within the Fenced Area. Counterpart contributions from CHF will be due 60 days within project closeout. The Park Board will cover all project costs and administration, until such time as the project has been closed out. Insurance proceeds collected by the PB for damage to these assets will be held and attributed to any recognized FEMA claims for the future.

12. Responsibility for Vessels

- a) The Park Board provides funds for the maintenance and preservation of the Vessels by paying for insurance, utilities, FEMA repairs. The CHF is solely responsible for the costs of preservation and maintenance of the Vessels and will pay for all required asbestos remediation. CHF will provide PB with remediation and testing documentation.

13. Joint Development of Capital Improvement Plans for Seawolf Park and Galveston Naval Museum

- a) The Park Board and CHF will collaborate in the development of plans for the improvement of the Galveston Naval Museum. The Park Board will share with CHF its five (5) year plan as it pertains to Seawolf Park, and CHF will share with the Park Board its capital improvement plans for the Galveston Naval Museum. This coordination and collaboration will take place between the CEO and the Executive Director/CEO of CHF.

- b) CHF may present to the Park Board a proposed location and plan for the ticket booth and gift shop, which will not be unreasonably refused by the Park Board.

14. Grants

a) CHF agrees to fundraise for the purpose of restoring, improving, maintaining and promoting the Vessels. Actions include (1) grant funding from the Arts and Historic HOT Funds, (2) use of those funds obtained through grants, fundraising and direct solicitation for the upkeep, maintenance and realization of improvements of the artifacts, including the Vessels. CHF may request grants as long as the grants do not bind the Park Board as to any grant requirement. The Park Board may assist CHF in the grant writing/application process.

15. Parking

a) The Park Board will provide free parking for CHF staff and board members. All CHF board members and staff must show appropriate ID at the front entrance gate in order to park for free.

b) The Park Board will sell CHF a packet of 100 parking vouchers at the reduced cost of \$300.00. CHF has the right to buy packets of 100 vouchers for a price of \$300.00 each month. These parking vouchers are not for resale and are intended for sale as part of the overnight and group promotions CHF undertakes. The parking vouchers allow for free parking only for access to the Memorial Plaza and do not include fishing or recreation use at the park. If the cost of parking is increased by the Park Board, the price of the vouchers will also be proportionally increased. However, the vouchers will always be at a wholesale discounted price to CHF.

c) Each fiscal year (October 1-September 30), the Park Board will allow free parking at Seawolf Park to public for a period of no more than two hours for four separate CHF events, provided that CHF gives timely notification to the Park Board of the dates for these two (2) planned events.

d) There will be no overnight parking by CHF volunteers or CHF visitors with the exception of those exhibiting daily parking passes as issued by CHF in paragraph 15.b. for the purposes of sleep overs and work weekends. Overnight parking must be paid to CHF and all cars must exhibit a parking pass issued daily. No overnight cars are permitted in the Fenced area and must be parked in the park parking lot.

16. Positive Communications

a) The Park Board and CHF will work with each other in a positive manner. In this regard, communication between CHF and the Park Board is critical. CHF agrees to communicate to the Seawolf Park manager when they will open the Vessels and when they will close the Vessels to the public. CHF will provide to the Seawolf Park manager their plan for operational hours for the Vessels and will confirm to the Seawolf Park manager any changes to this schedule.

17. Term

a) The term of this Agreement is for five (5) years, beginning on the effective date of this Agreement. Unless terminated or otherwise amended prior to the initial expiration date, this Agreement will automatically renew for another five (5) year period.

18. Breach of the Agreement

a) If either party violates this Agreement and the violation is not cured after thirty (30) days' written notice, the parties agree to go to mediation and, if this is not successful, to arbitration. The arbitration will be conducted through the American Arbitration Association with attorney's fees and costs for the arbitration charged to the losing party. The arbitration will be held in Galveston County.

19. Written Notice

a) All written notices to the Park Board must be sent to:

CEO
Park Board of Trustees of the City of Galveston
601 23rd St.
Galveston Texas 77550

b) All written notices to CHF must be sent to:

President / CEO
Cavalla Historic Foundation
6341 Stewart Rd. #249
Galveston, Texas 77551

20. Final Agreement

a) **THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AND ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDES ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES, AND THIS AGREEMENT MAY ONLY BE AMENDED OR WAIVED BY AN INSTRUMENT IN WRITING SIGNED BY BOTH PARTIES.**

Dated: _____, 2021

PARK BOARD OF TRUSTEES
OF THE CITY OF GALVESTON

CAVALLA HISTORICAL FOUNDATION