



Agenda Item: Discuss and Consider the Approval to Execute the Third One-Year Option and the Reimbursement to the City of Galveston for Annual Survey Work for Galveston’s Engineered Beaches

Background:

Historically the City of Galveston and the Park Board have worked together to perform annual beach surveys that determine the changes in volume of sand along the beachfront. This is especially important for our engineered beaches, as this historical information is used after a storm event to show comparative proof of loss in order to file a claim with the Federal Emergency Management Agency (FEMA).

In March 2019, the Park Board entered into an interlocal agreement with the City to conduct Annual Depth of Closure and Wading Depth Surveys. The Wading Depth Surveys will take place along the entire length of Galveston Island, excluding some privately held parcels, Galveston Island State Park and Jamaica Beach. This work is being funded by the City. The Depth of Closure surveys will be conducted on the three engineered beaches only; Historic Stretch, Babe’s Beach & Dellanera RV Park. These surveys are typically performed at the beginning of hurricane season.

This interlocal agreement does account for Optional Services that allow for post storm surveys. These surveys would only take place in the event of a disaster where the City and Park Board feel there is a potential claim for beach damage with FEMA. The costs incurred for this type of survey are reimbursable with FEMA, if the project is deemed eligible.

The term of this Agreement is for one (1) year with three (3) one-year options for a total of four (4) years. It is time to execute the third and final one-year option.

All surveys are initiated by the City through their contract with Aptim and invoiced to the Park Board for their agreed upon portion.

Staff Recommendation:

Staff recommends the execution of the third and final one-year option for the Annual Depth of Closure survey for the engineered beaches. Staff also recommends the payment of \$55,230 to the City of Galveston, per the agreement.

Funding Source (if applicable):

BC-70-5204

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF GALVESTON, TEXAS,
AND**

THE PARK BOARD OF TRUSTEES OF THE CITY OF GALVESTON, TEXAS

STATE OF TEXAS

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§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GALVESTON

This Interlocal Agreement is made and entered into effective on the 5th day of March, 2019, pursuant to the Texas Interlocal Cooperation Act, Chapter 791 of the Texas Government Code (the "Act"), by and between the City of Galveston (hereinafter referred to as "CITY"), and the Park Board of Trustees of the City of Galveston (hereinafter referred to as "PARK BOARD").

WITNESSETH:

WHEREAS, the Parties recognize the major economic and environmental asset in the beaches of Galveston Island; and

WHEREAS, preservation of Galveston beaches will help protect the environment, tax base, public infrastructure, and public access to beaches and recreational opportunities; and

WHEREAS, the Parties desire to enter into an agreement whereby each Party is responsible for a proportionate share of the costs associated with conducting beach surveys along Galveston Island; and

WHEREAS, in accordance with the Act, the CITY and the PARK BOARD recognize that any payments for the governmental functions or services performed under this Agreement are from available current revenues and such other appropriations available by the Parties; and

WHEREAS, the Parties agree that the respective rights, duties, and obligations, regarding this joint project are as specified in this Interlocal Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants, obligations, and benefits hereunder, the Parties do hereby agree as follows:

Section 1. Incorporation of Recitals. The representations, covenants, and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

Section 2. Scope. The Parties hereby enter into this Agreement for the purpose of sharing the costs associated with conducting beach surveys along Galveston Island. In partnership with the PARK BOARD, the CITY submitted a Request for Qualifications (City RFQ #18-02) for the wading depth and depth of closure surveys and analysis for locations on Galveston Island. On February 28, 2019, the Galveston City Council approved acceptance of the proposal submitted by Aptim Environmental & Infrastructure, Inc. The Parties agree that the scope of work to be performed is that work set forth in “Attachment A” to the response to City RFQ #18-02 submitted by Aptim Environmental & Infrastructure, Inc. The response including the scope of work document is attached hereto as Exhibit A with said exhibit being incorporated into this document for all purposes as though each and every sentence of Exhibit A was set forth in this paragraph. The Parties agree to share the cost of the scope of work in the following manner based on the breakdown of the costs detailed in Exhibit B to this agreement (all dollar amounts are approximations; the actual cost shall be allocated according to percent):

Schedule	Description	Cost (in Dollars)	Responsible Party	Responsible Party Percent	Responsible Party Cost
A.	Annual Surveys				
	Year 1 Surveying				
	Depth of Closure Surveys for Engineered Beaches (44 Profiles)	\$55,230.00	Park Board	100%	\$55,230.00
	RTK GPS Wading Depth Surveys (96 Profiles)	\$54,271.00	City	100%	\$54,271.00
	UAS/Drone Proof of Methodology Study	\$12,167.00	City	50%	\$6,083.50
			Park Board	50%	\$6,083.50
	Year 2 Surveying				
	Depth of Closure Surveys for Engineered Beaches	\$55,230.00	Park Board	100%	\$55,230.00
	Wading Depth Surveys (UAS and 20 Profiles)	\$47,919.00	City	100%	\$47,919.00
	Year 3 Surveying				
	Depth of Closure Surveys for Engineered Beaches	\$55,230.00	Park Board	100%	\$55,230.00
	Wading Depth Surveys (UAS and 20 Profiles)	\$47,919.00	City	100%	\$47,919.00
	Year 4 Surveying				
	Depth of Closure Surveys for Engineered Beaches	\$55,230.00	Park Board	100%	\$55,230.00
	Wading Depth Surveys (UAS and 20 Profiles)	\$47,919.00	City	100%	\$47,919.00

Schedule	Description	Cost (in Dollars)	Responsible Party	Responsible Party Percent	Responsible Party Cost
B.	Optional Services				
	Post Storm Event Surveying (Category G Only)				
	Depth of Closure Surveys for Engineered Beaches	\$55,230.00	*	100%	\$55,230.00
	Contingency Cost to Restore Control Points (up to Four Control Points-2 Days)	\$6,497.00	*	100%	\$6,497.00
	Storm Assessment Report & Coordination with FEMA	\$29,552.00	*	100%	\$29,552.00
	Post Storm Event Surveying (Category B and G)				
	Depth of Closure Surveys for Engineered Beaches	\$55,230.00	*	100%	\$55,230.00
	Wading Depth Surveys (UAS)	\$47,919.00	*	100%	\$47,919.00
	Contingency Cost to Restore Control Points (up to Four Control Points-2 Days)	\$6,497.00	*	100%	\$6,497.00
	Storm Assessment Report & Coordination with FEMA	\$41,027.00	*	100%	\$41,027.00
C.	Beach Maintenance Plan – Optional	\$47,600	**	100%	\$47,600
D.	Shoreline Change Analysis (Deleted from BAFO at City Request)	N/A			
E.	GIS Deliverables (Included with Survey Deliverables)	N/A			
* The cost will be the responsibility of the Party that is the applicant for FEMA Project Worksheets.					
** The cost will be the responsibility of the Party that initiates this project.					

Section 3. Insurance. Each Party agrees to provide the minimal level of general liability insurance as required by State law. In the event of any cause of action or claim asserted against the CITY or the PARK BOARD, the Party or Parties will provide the other Party or Parties timely notice of such claim, dispute or notice. Thereafter, to the extent allowed by law, the CITY and/or the PARK

BOARD shall at their own expense, faithfully and completely defend and protect themselves against any and all liabilities arising from the claim, cause of action or notice.

Section 4. Liability. The Parties, being fully cognizant of the provisions of TEX. GOV'T. CODE § 791.006(a), nonetheless agree and intend that each shall be responsible for its own actions and those of its members, while providing emergency assistance, traveling to or from the scene of emergencies, or in any manner of providing services pursuant to and within the scope of this agreement, or a written supplement hereto. It is therefore expressly understood and agreed by the Parties that neither shall be held liable for the actions of the other Party or any of the other Party's members while in any manner furnishing services hereunder. Under no circumstances shall either Party be deemed an employee of the other Party. Any and all joint venture or partnership status is hereby expressly denied and the Parties expressly state that they have not formed, either expressly or impliedly a joint venture or partnership.

Section 5. Immunity Retained. No Party waives or relinquishes any immunity or defense on behalf of itself, its officers, employees and agents as a result of its execution of this Agreement and the performance of the covenants contained herein.

Section 6. Waiver of Claims Against Parties. Each Party hereto waives all claims against the other Party hereto for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement, except those caused in whole or in part by the negligence of an officer or employee of another Party. Provided however, that this waiver shall not apply in those cases in which the claim results from the failure of the requesting Party to accept responsibility for any civil liability for which the requesting Party is responsible as determined by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended.

However, neither Party waives, nor shall be deemed to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its governmental powers and functions.

This Agreement shall not be construed to be for the benefit of any third Party.

Section 7. Term. The term of this Agreement is for one (1) year with three (3) one-year options for a total of four (4) years, unless earlier terminated by providing 90 days written notice.

Section 8. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. No modification of, or waiver of any right under, this Agreement will be effective unless it is evidenced in writing, executed by an authorized representative of each Party to this Agreement.

Section 9. Compliance with All Applicable Laws. This Agreement is intended to enhance emergency planning by the Parties. It is not meant to supersede or negate any other Agreements entered into by the Parties. The Parties will comply with all applicable federal, state, and local laws, rules,

ordinances and regulations affecting the conduct of services provided and the performance of all obligations undertaken by this Agreement.

Section 10. Venue. Venue of any dispute arising out of this agreement shall be in Galveston County, Texas.

Section 11. Headings. All headings and captions are for convenience only and shall not modify, limit or alter any provision of this Agreement.

Section 12. Authority. The Parties hereby respectively covenant, agree, represent, and warrant, each to the others, that this Agreement and any other documents to be executed and delivered by such Party in connection herewith is, and upon execution will be, duly authorized, executed, and delivered, and is, and upon execution will be, the legal, valid, and binding obligation of such Party, without the requirement of any further or additional approvals or consents and do not, and upon execution will not, violate any provisions of any agreement, obligation or applicable law, regulation, rule or order to which such Party is subject.

Section 13. Authority. The persons signing this Agreement on behalf of the CITY and PARK BOARD represent to each other that this Agreement, the transactions contemplated in this Agreement, and the execution and delivery of this Agreement have been duly authorized by all necessary governing bodies, corporate, partnership, or trust proceedings and actions, including, but not limited to, actions on the part of the directors, officers, and agents of CITY and PARK BOARD pursuant to section 791.001 et seq. of the Texas Government Code. The Parties further acknowledge that each other party may only act as authorized by law and that any act of an employee or officer that is not duly authorized is void.

Section 14. Understanding, Fair Construction. By execution of this Agreement, the Parties acknowledge that they have read and understand each provision, term, and obligation contained in this Agreement. This Agreement, although drawn by one Party, shall be construed fairly and reasonably and not more strictly against the drafting Party than the non-drafting Party.

Section 15. Attorneys Fees. In the event of any litigation to interpret or enforce the provisions of this Agreement then the prevailing Party shall be entitled to recover its reasonable attorneys' fees and expenses including costs of court from the non-prevailing Party.

Section 16. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof or in the Lease or the Assignment, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 17. Notice. Any notice required to be given hereunder shall be in writing and delivered to the addresses and titles set forth below by certified mail (return receipt requested), a recorded delivery service, or by other means of delivery requiring a signed receipt. All notices shall be effective upon receipt. The addresses provided herein may be changed at any time on prior written notice.

FOR THE CITY OF GALVESTON

City Manager
City of Galveston
P.O. Box 779
Galveston, Texas 77553
Phone: 409.797.3520
Fax: 409.797.3521

with copy to: City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553
Phone: 409.797.3520
Fax: 409.797.3521

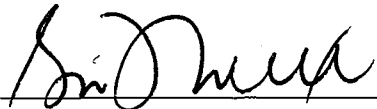
FOR THE PARK BOARD OF TRUSTEES

Executive Director
Park Board of Trustees
of the City of Galveston
601 Tremont, Suite 201
Galveston, Texas 77550
Phone: 409.797.5000
Fax: 409.762.8911

Section 18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original instrument and which taken together constitute one and the same agreement.

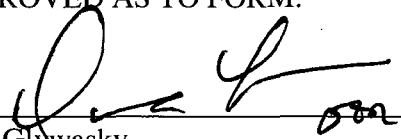
Section 19. Effective Date. This Agreement shall be effective as of the 5th day of March, 2019.

CITY OF GALVESTON, TEXAS

By: 

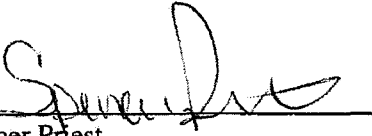
Brian Maxwell
City Manager

APPROVED AS TO FORM:


By: 

Don Glywasky
City Attorney

THE PARK BOARD OF TRUSTEES OF
THE CITY OF GALVESTON, TEXAS

By: 
Spencer Priest
Chair of Park Board
Chairperson for the Galveston
Park Board of Trustees

APPROVED AS TO FORM:

By: 
Carla Cotropia
Counsel for the Park Board