



Agenda Item: Discuss and Consider Approval of the Second Addendum to the Interlocal Agreement with the City of Galveston for the City Auditor to Perform Hotel Occupancy Tax Audits

Background: The Park Board and City of Galveston have previously entered into an Interlocal Agreement concerning, among other things, the collection of hotel occupancy tax (HOT), and management of short-term rental registry dated on or about October, 2019. Further, the Park Board and the City entered an Addendum to the Interlocal Agreement that allows for the City Auditor’s office to conduct HOT audits on behalf of the Park Board on a trial basis.

The audits performed by the City Auditor under the Addendum focused on Short-term Rentals (STRs) as the Park Board is currently under contract with a third-party to perform HOT audits of hotels. However, that contract is set to expire and staff, and the City auditor have discussed a second the Addendum to allow for the City Auditor to perform additional HOT audits and to include hotels as auditees. To date the City Auditor has completed 12 audits and generated over \$31,000 in tax assessments.

If the revisions are approved, the addendum would expire on September 30, 2023. The revisions to the addendum call for the City Auditor to perform up to an additional 80 HOT audits for a total of up to 100 audits. The cost will \$600 per audit for STRs and \$1,000 per audit for hotels, for a total amount not to exceed \$60,000.

Staff Recommendation: Staff recommends that the board approve the second addendum to the interlocal agreement with the City of Galveston to allow for the City Auditor to perform HOT audits. City Council approved the second addendum to the interlocal on September 15, 2022.

Funding Source: Fiscal Year 2023 Budget: GF-60-5124 HOT Expenses

SECOND ADDENDUM TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF GALVESTON AND THE PARK BOARD OF TRUSTEES OF THE CITY OF GALVESTON CONCERNING THE CONDUCT OF HOTEL OCCUPANCY TAX (HOT) AUDITS

This Second Addendum is entered into by the City of Galveston (City) acting by and through its City Council and the Park Board of Trustees of the City of Galveston (Park Board) acting by and through its Board of Trustees and modifies the Interlocal Agreement previously entered into between the parties in October 2019 and amended via a first addendum on April 28, 2022.

WHEREAS, the City and Park Board are political subdivisions of the State of Texas and are authorized to enter into an agreement with each other relative to governmental functions and services by the Interlocal Cooperating Act, Texas Government Code, Chapter 791; and

WHEREAS, the Park Board and City have previously entered into an Interlocal Agreement concerning the management of city parks, paid parking, collection of hotel occupancy tax (HOT), and management of short- term rental registry and provision of coastal management and public space maintenance services dated on or about October, 2019; and

WHEREAS, the Park Board and City entered into a First Addendum to the Interlocal Agreement concerning the management of city parks, paid parking, collection of hotel occupancy tax (HOT), and management of short- term rental registry and provision of coastal management and public space maintenance services dated on or about April, 2022; and

WHEREAS, the Park Board receives Hotel Occupancy Tax (HOT) Funds dedicated to promote tourism, provide lifeguarding services and to clean and maintain public beaches as described in Texas Tax Code Chapter 351, Texas Tax Code Chapter 156 and Texas Natural Resource Code Chapter 61; and

WHEREAS, the Park Board has endeavored to conduct audits of HOT tax payers through the use of an independent audit firm; and

WHEREAS, the Park Board desires to continue to utilize the City Auditor to conduct HOT audits and extend the time to September 30, 2023; and

WHEREAS, the City is receptive to this proposal and the parties agree to the following terms and conditions:

- 1) The Interlocal Cooperation Agreement entered into between the parties on or about October 2019 and on April 28, 2022, is hereby modified as set forth herein. All other portions of the previous agreements, except as are modified herein, remain in full force and effect.
- 2) The Park Board Finance Office shall deliver to the Office of the City Auditor One Hundred (100) randomly selected HOT cases for audit to ensure all required HOT tax has been paid

by the operator of the unit being assessed HOT tax. Such cases may include hotel properties and/or Short Term Rental properties. The Park Board and City Auditor shall arrange for the timing and delivery of those audit cases.

- 3) The Park Board shall pay to the City a cost reimbursement of Six Hundred Dollars (\$600.00) per audit of short term rentals, One Thousand Dollars (\$1,000.00) per audit of hotels, for a total compensation not to exceed Sixty Thousand Dollars (\$60,000.00), along with the transmittal of the cases. The funds shall be deposited into the City depository by the Director of Finance in the normal course of business to the credit of the City Auditors office. The City shall issue an invoice the Park Board quarterly based on the number of audits completed. The procedure by which an invoice is generated will be determined internally by the City.
- 4) The audit plan of the City Auditor is hereby amended by City Council to accommodate for the conduct of these HOT audits by the City Auditor.
- 5) The City Auditor will conduct the audits using his training, skill and expertise in as timely a manner as each audit allows. Due to the varied circumstances that may be presented in each audit, there is no timeline within which the Auditor must complete the audit, but the Auditor shall conduct each audit with dispatch and complete each in a reasonable period of time.
- 6) At the conclusion of each audit a report of the findings of the audit will be prepared and delivered to the Park Board for review. If the audit shows further tax is owed, the Park Board will make a reasonable effort to collect the tax. If such efforts are unsuccessful the case will be forwarded to the City Attorney Office for collection.
- 7) The Term of this Agreement is extended to September 30, 2023. After the initial one hundred audits reports have been completed, the City and Park Board will confer and each will determine whether the City Auditor will conduct further audits. If the parties agree to such further services by the City Auditor, they will set new terms and conditions to be reduced to writing in a new Interlocal Agreement.
- 8) Nothing in this agreement modifies the duty of the Park Board to conduct audits of HOT Tax as required by the Interlocal Agreement entered into in October 2019 and April 2022; and the Park Board may continue to hire outside audit companies to conduct HOT audits as well as those conducted by the City Auditor.
- 9) The city shall, to the extent allowed by law, hold harmless, indemnify and defend the Park Board, its officers, agents and employees from any liability, causes of action, damages, judgments, costs, charges, expenses and attorneys' fees arising from or under the actions of the city, its officers, agents or employees.
- 10) The Park Board shall, to the extent allowed by law, hold harmless, indemnify and defend the City, its officers, agents and employees from any liability, causes of action, damages,

judgments, costs, charges, expenses and attorney's fees arising from or under the actions of the city, its officers, agents or employees

- 11) This Agreement represents the entire agreement between the parties as related to the conduct of HOT tax audits for the Park Board by the City Auditor. This Agreement shall not be assigned in whole or in part.
- 12) In no event will this agreement continue in effect after September 30, 2023; neither party may terminate this agreement upon the issuance of a thirty day notice.
- 13) Any notice required to be given shall be deemed to have been given when sent by mail, hand delivery or email address to the City Manager or the Park Board Executive Director.

This Agreement is effective upon the signing by all parties.

City of Galveston
Office of the City Manager
Brian Maxwell
832 Rosenberg
Galveston, Texas 77550
Phone: 409-763-6564

Park Board of Trustees
Chief Executive Officer
Kelly de Schaun
601 23rd Street
Galveston, Texas 77550
Phone: 409-797-5000

By: _____
City Manager

By: _____
Executive Director

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____
Janelle Williams, City Secretary

By: _____
Dave Jacoby, Secretary

Approved As To Form:

Approved As To Form:

City Attorney's Office

Carla Cotropia, legal Counsel