

**CONTRACT FOR THE AWARD OF
HOTEL OCCUPANCY FUNDS FROM THE CITY OF GALVESTON
TO THE GALVESTON PARK BOARD OF TRUSTEES
FOR FISCAL YEAR 2023**

This Contract is entered into by and between the City of Galveston (City) and the Park Board of Trustees of the City of Galveston (Park Board) for the delivery by the City to the Park Board for the use of Hotel Occupancy Taxes (HOT) pursuant to Texas Tax Code §351.101 and 351.105.

Under Tax Code Ch. 351, the uses of HOT are identified and subsequently restricted for specific purposes. The City may expend the funds in accordance with those prescribed uses. Alternatively, the City may accomplish the prescribed purposes of the HOT statutes through the award of contracts with third parties and may delegate to another governmental entity the management or supervision of programs and activities funded with revenue.

As further stated in Tax Code Ch. 351.105(f), the delivery of HOT funds by the City to the Park Board may must be supported by a written contract.

Article VIII, Section 2(a) of The City Charter provides 'the proceeds of such tax levied at the rate of 3%, after the expense of collection, shall be appropriated by the city for the use by the beach park board of trustees for the purpose of advertising and promoting the city's recreational advantages and advertising and promoting recreational facilities under the board's supervision and control; provided, however, that no portion of the tax levied at the rate of 3% for advertising and promoting the city's recreational advantages and advertising and promoting recreational facilities shall be used by the park board of trustees for capital improvements nor shall such proceeds ever be pledged as security for a bond issue".

Accordingly, the City agrees to deliver HOT funds to the Park Board subject to the terms and conditions below.

Tax Code provisions.

Texas Tax Code 351.105(f) allows the City the option to appropriate HOT to the Park Board. The City contends Tax Code 351.101(c) requires that the City to delegate the management of programs funded by HOT revenue and requires the City approve the annual budget of that entity and receive reports at least quarterly.

Contract term and purpose.

The City and the Park Board each have a fiscal year that begins on October 1 and terminates the following September 30. The purpose of this contract is to provide HOT funds to the Park Board for the remainder of fiscal year ending September 30, 2023.

This contract is effective upon signature of both parties and will expire on September 30, 2023. No extension shall be available or be given. The parties may contemplate a new contract for the award of HOT to the Park Board on a yearly basis as set forth herein.

This document addresses the collection and distribution of HOT revenue by the Park Board, funding of all Park Board activities using HOT funds and the process by which HOT is collected, accounted for, reported and provided to the Park Board and ultimately the City. Any operational issues between the City and Park Board beyond funding shall be addressed in a separate Interlocal Agreement.

The Park Board acknowledges that the approval of this contract creates a fiduciary duty with regard to the collection and expenditure of the HOT funds.

Collection of HOT Tax.

The Park Board presently collects HOT from various providers and remits it to the City on the third and twenty third day of each month. The Park Board shall continue such collection and remittances under this agreement until September 30, 2023. The City and Park Board agree that the process of collecting HOT directly from providers will be accomplished by the automated systems presently in use or being developed by the Park Board.

Uses for which HOT funds may be expended by the Park Board

The City will deliver to the Park Board HOT funds for the purposes of 1) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; 2) the provision of beach lifeguard services for all beaches in the City of Galveston; and 3) cleaning and maintain public beaches in the City of Galveston, all of which will be consistent with an operations and expense budget approved by Council. Presently the City has assessed HOT at 7% (excluding the Brimer bill 2%). From the rate of 7%, the City allocates 3% for the Park Board's Convention and Visitor Bureau for advertising; .5% for beach cleaning; and .5% for Beach Patrol. The Park Board agrees to use the HOT funds for the purposes as designated.

The State of Texas sends 2% of State HOT to the City to be used for beach cleaning and lifeguard services. The City will deliver those funds to the Park Board in accordance with the approved budget. The 2% HOT rebate provided by the state is contingent upon the existence of the Park Board.

The Park Board may use HOT funds for City approved capital improvement projects. For the purposes of this agreement, capital improvements are defined as the addition of a permanent structural change or the restoration of some aspect of a property that will either enhance the property's overall value, prolong its useful life, or adapt it to new uses, has a value of \$125,000 or more, and a useful life of over five years. Expenditures of HOT that meet the definition of capital improvements as stated herein do not require City Council approval beyond annual budget and capital improvement plan approvals.

Funding and payments.

The HOT distributions referenced herein will be made in quarterly payments to the Park Board for each remaining quarter of the fiscal year ending September 30, 2023, based on the Park Board's budget approved by Council. For FY 2023 the City has been advised of the reserve requirements for HOT funds utilizing the Park Board budget submitted and approved by City Council. The approved funding will be made in quarterly payments for each remaining quarter of the fiscal year ending September 30, 2023, based on the Park Board's budget approved by Council. As part of its budget request, the Park Board may include up to 120 days of reserve funds. The 120 day reserve may be used to fund Park Board operations or projects pending receipt of quarterly payments by the City. The Park Board may include in their quarterly request of HOT funds amounts sufficient to cover any expenditures of the 120 reserve funds. The Park Board may make requests for additional funding if necessary; any such funding request will be made to the City Manager. The City Manager or his designee will evaluate the request and make a recommendation to Council.

Quarterly draw requests

The Park Board will provide quarterly reports within five business days after the end of a quarter, with the City recognizing those reports may be subject to change due to accruals and other factors. Quarterly budget to actual reports as provided by Park Board and maintained at the budgeted line-item level will satisfy contractual requirements and State law requirements for listing of eligible HOT expenditures.

Following each party's execution of this agreement, the Park Board will request an advance payment of HOT funding for the quarters BEGINNING APRIL 1 AND JULY 1, including amounts sufficient to cover expenses that are anticipated to occur in the April to June quarter. The request will include totals by fund and category (salaries, materials, services, supplies, and contracts, and capital expenditures) The City will transfer the funds to the Park Board's designated depository by April 1, 2023. The HOT advance request for the final July to September quarter will be submitted by the Park Board to the City by June 15, 2023. The City will transfer the funds to the Park Board's designated depository by July 1, 2023.

A true-up process should be used at year end based on a comparison of actuals to budget. Accordingly, the unaudited fourth quarter report will be submitted in November 2023 for the year ended September 30, 2023 to allow time for major accruals to be posted to Park Board accounts.

The Park Board budget for FY 2024 will provide line-item information for revenue and expenditures based on proposed operating and capital plans for FY 2024. The proposed budget will be submitted to the City by August 1, 2023. The final budget will include the FY 2022 Actual, the Adopted FY 2023 Budget, the Estimated Expended amount for FY 2023, and the FY 2024 Proposed amount for each income and expense line in the Proposed Budget.

City Council will consider for approval the FY 2024 Proposed Budget for the Park Board in August or September 2023. The FY 2024 first quarter HOT advance request by the Park Board will be based on the Adopted Budget and submitted to the City by September 15, 2023. As part of the approval a new contract will be executed between the parties, and the City will transfer the funds to the Park Board's designated depository by October 1, 2023.

A draft audit for the Park Board for FY 2023 will be submitted to the City by March 1, 2024. The final audit will be included in the City's Annual Comprehensive Financial Report as a component unit of the City.

Maintenance in separate accounts

HOT held by the Park Board shall be maintained in separate bank accounts. Separate accounting funds shall be maintained by the Park Board to track and record HOT according to major purposes as provided by State and local law.

Treatment of Revenues earned from the expenditure of HOT funds

Any revenue received by the Park Board as a result of an expenditure of HOT shall be considered to be non-HOT unrestricted funds.

In recognition of the Park Board's efforts and contributions towards generating additional revenue ~~in the form of HOT~~, the City and Park Board agree that such additional revenues will be shared with the City on an equal basis (50-50 split). Such shared revenue will be limited to revenue derived from sponsorships and advertising sales generated from HOT supported activities. The shared revenue will not

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include any revenue generated from reimbursements (including but not limited to forgiven loans, insurance claim reimbursements, or other reimbursement revenue not generated from advertising sales or sponsorships). The revenue share will be completed as part of the yearly true up process discussed above in the Quarterly draw requests section.

No pledge of HOT Funds.

The Park Board shall not pledge any HOT funds for the repayment of bonds or other financial security or note without the prior approval of the City Council. Any such request to Council will be considered separately from this agreement.

No prior approval of HOT expenditures by the Park Board

The Park Board may expend the funds awarded it by the City and no individual approval of Park Board operating expenditures of HOT funds will be required by City Council or City staff subject to the following conditions:

- a. All expenditure of HOT by the Park Board will be made in accordance with the operating budget approved by Council;
- b. No expenditure of HOT funds will be made by the Park Board for any purpose not authorized by Tex. Tax Code Ch. 351.

Audits

HOT Funds are derived from a City imposed tax and are funds of the City. The City Council retains oversight to ensure HOT funds delivered to the Park Board are utilized only for the purposes designated by law or contract. The City Council may authorize an audit of the use of HOT funds at its discretion. The Park Board will maintain complete and accurate records pertaining to the expenditure of HOT funds, including subgrants and donations, and will make them available for inspection on request by City Council. Any audit will be authorized by City Council and shall be performed by a qualified auditor and licensed CPA selected by the City. The City will pay the cost of its audit of the Park Boards uses of HOT.

HOT funding for FY 2024 and subsequent budget years.

The parties agree that the provisions of Tax Code Ch. 351 and bond covenants binding the City allocate funds by percentage. The parties agree that City HOT and Venue HOT in Galveston are assessed for a total of 9 cents for each dollar of the cost of a room. The parties further agree that for budget purpose the amount of HOT to be raised for each is uncertain but must be forecasted for the purpose of budget preparation.

The forecast of how much HOT will be generated by each penny will be made by the City Finance Director in consultation with the Park Board Chief Financial Officer (CFO). The Park Board CFO will provide relevant information and make recommendations that may assist the City Finance Director with making his determination. The City Finance Director will consider penny value recommendations made by the Park Board CFO when making his determination. The forecast will be released on or about June of each calendar year. The value forecasted by the City Finance Director will be used by the Park Board in the preparation of any annual HOT budget requests submitted to the City.

Contracts between Park Board and third-party vendors

The City acknowledges that the Park Board awards contracts using HOT funds for HOT eligible goods and services. The Park Board expressly acknowledges that any HOT funds delivered to any sub-vendor are only for those undertakings that are eligible activities under the Tex. Tax Code Ch. 351.101 and 351.105, and consistent with applicable State procurement laws.

No payment to a third-party vendor for the conduct of an activity eligible for HOT funding shall be made unless a contract between the Park Board and the third-party vendor has previously been approved by the Trustees of the Park Board and the contract has been executed between the Park Board and third-party vendor.

Entire agreement

This Contract constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as it relates to HOT budgets, collection, and distribution as of this document's date. Any prior agreements, promises, negotiations, or representations related to HOT budgets, collection, and distribution between the City and the Park Board not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

This Agreement may be executed in multiple counterparts, each of which shall be deemed as an original, but all of which shall constitute one and the same instrument. A copy of this Agreement shall be as valid, binding, and enforceable as the original.

All titles, headings, and captions used in this Agreement have been included for administrative convenience only and do not constitute matters to be construed in interpreting this Agreement.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The Agreement is entered into and fully performable within Galveston County, Texas. Venue shall lie in Galveston County, Texas

The Parties as evidenced by their below duly authorized representative signatures represent and warrant to have full corporate power and authority to enter into this Agreement and to carry out the obligations and transactions contemplated hereby.

(Remainder of page left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Contract in duplicate originals and shall be effective the 1st day of April, 2023.

THE CITY OF GALVESTON

By: _____
Brian Maxwell
City Manager

ATTEST: _____
Janelle Williams
City Secretary

APPROVED AS TO FORM:

BY: _____
Donald S. Glywasky
City Attorney

THE PARK BOARD OF TRUSTEES

BY: _____
Kelly de Schaun
Executive Director

ATTEST: _____