

April 11, 2019

Honorable Mayor and City Council Members  
Galveston, Texas

Dear Honorable Mayor and Members of Council,

**Subject:** Consider for approval, of an Economic Development Agreement between the Industrial Development Corporation and the City of Galveston in the amount of \$55,000 to fund the 10% match for a TxDOT Aviation Grant to cover the engineering/design and construction phase of rehabilitating the asphalt section of Runway 14/32 and joint seal repairs to the North Apron.

**I. Background:**

- A. The Airport received a \$5,180,000 TxDOT Aviation Grant in 2018 to go toward the rehabilitation of Runway 14/32, all five Taxiways and Phase 3 & 4 Apron project. This project is currently under construction.
- B. Due to a change in FAA specifications related to the asphalt section of Runway 14/32, the specification in the winning bid, no longer met the current FAA requirements and was removed from the contract.
- C. During the engineering and design of this project, there were multiple staffing changes at both TxDOT and Garver. During the transition, TxDOT ultimately only funded the most critical pavement repairs on Phase 3 & 4 Apron Project, which removed approximately 100,000 linear feet of joint seal work from the project.
- D. The Industrial Development Corp. (IDC) approved the agreement for the Airport Apron Project on March 5, 2019.
- E. The Public Notice was run in the Galveston Daily News on March 7, 2019.
- F. The Public Hearing was held at the April 2, 2019 Industrial Development Corp. (IDC) meeting.

**II. Current Situation:**

- A. TxDOT Aviation has agreed to fund both the asphalt section of Runway 14/32 and the joint seal work on Phase 3 & 4 of the Apron.



- B. TxDOT will add our two projects to their Multi Airport Maintenance Bid, using State funds to fund projects at several airport across the State.
- C. Engineering/design would likely start in the third quarter of 2019 with construction in 2020.
- D. TxDOT Aviation is requesting the City budget \$55,000.00 to cover the 10% match for the engineering/design and construction of this \$550,000 multiphase project.
- E. The Industrial Development Corporation approved an Economic Development Agreement between the Industrial Development Corporation and the City of Galveston to fund the 10% match for the TxDOT Aviation Grant at their March 5, 2019 meeting.

### III. Issues:

- A. The concrete sections of Runway 14/32 will be rehabilitated during the current pavement project. Completing the rehabilitation of the asphalt section of Runway 14/32 should be completed as soon as possible. Utilizing this TxDOT Grant is the quickest solution to complete the full rehabilitation work of our primary runway.
- B. To fully rehabilitate the North Apron, approximately 100,000 linear feet of joint seals must be replaced. Utilizing this TxDOT Grant is the quickest solution to complete the full rehabilitation work of the North Apron.

### IV. Alternatives:

- A. City Council approves the execute the Economic Development Agreement between the Industrial Development Corporation and the City of Galveston to fund the 10% match for a TxDOT Aviation Grant.
- B. Council does not approve the Economic Development Agreement.

### V. Recommendation:

Staff recommends approving the Economic Development Agreement between the Industrial Development Corporation and the City of Galveston in the amount of \$55,000 to fund the 10% match for a TxDOT Aviation Grant to cover the engineering/design and construction phase of rehabilitating the asphalt section of Runway 14/32 and joint seal repairs to the North Apron..





# Scholes International Airport

AIRPORT ADMINISTRATION

2115 Terminal Dr | Galveston, TX 77554

[www.galvestonairport.com](http://www.galvestonairport.com) | [airport@galvestontx.gov](mailto:airport@galvestontx.gov) | 409-797-3590

## VI. **Fiscal Impact Report:**

Requested by:	Mike Shahan, Airport Director
Funding Source:	Industrial Development Corporation
Cost:	\$55,000
Costs of Implementation:	N/A
Estimated cumulative Revenue:	N/A
Additional Information:	See attached Resolution and Funding Agreement

**Respectfully submitted.**

A handwritten signature in blue ink that reads "Mike Shahan".

**Mike Shahan**  
**Airport Director**



**ECONOMIC DEVELOPMENT GRANT AGREEMENT  
BETWEEN THE CITY OF GALVESTON, TEXAS  
AND  
THE INDUSTRIAL DEVELOPMENT CORPORATION  
OF THE CITY OF GALVESTON, TEXAS**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Galveston, Texas, a home rule municipal corporation (the “CITY”), 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, 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 IDC finds that it is expedient to contract with the City of Galveston to implement and administer many of the projects that it funds; and

**WHEREAS**, the IDC determines that it is in the best interest of the corporation to have a Master contract form with the City of Galveston to implement and administer certain projects; and

**WHEREAS**, the Act requires that each project have an individual performance agreement with certain mandatory requirement; and

**WHEREAS**, the IDC has determined that a master contract form with the City of Galveston that mandates certain terms and conditions complies with the Act when the forms mandates the inclusion of the language required by the Act; and

**WHEREAS**, the IDC has determined that a master contract form with the City of Galveston is in keeping with the mission of IDC; and

**WHEREAS**, the CITY and the IDC agree that the form for each performance agreement between the IDC and the CITY will contain the terms, or similar terms, set forth below; and

**WHEREAS**, the CITY and the IDC agree that the approval of a project by CITY and IDC

that CITY will administer and implement includes the approval of a performance agreement between the IDC and the CITY that will contain the terms, or similar terms set forth below.

**NOW, THEREFORE**, for and in consideration of the recitals set forth above and the promises made herein, IDC and the CITY contract as follows:

**ARTICLE I.  
IDC'S OBLIGATIONS**

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 CITY as follows:

The IDC agrees to pay to the City of Galveston Fifty-Five Thousand and No/100 Dollars (\$55,000.00) plus costs for the following activities to be performed within the City of Galveston, Texas:

City of Galveston Staff and Scholes International Airport Staff will oversee and implement the engineering/design and construction phase of rehabilitating the asphalt section of Runway 14/32 and joint seal repairs to the North Apron approved by the IDC Board of Directors pursuant to chapters 501 and 505 of the Texas Local Government Code.

**ARTICLE II.  
CITY'S OBLIGATIONS**

A. Following the execution of this Agreement, the CITY shall begin efforts to implement the activities described in Article I of this Agreement. The failure by the CITY to develop and implement the activities described in Article I of this Agreement shall constitute a breach of this Agreement. The CITY understands and agrees that, in the event termination of this Agreement by CITY, or pursuant to Article VII of this Agreement, the CITY shall reimburse the IDC the full amount of money paid by the IDC to the CITY.

B. In accordance with Chapter 2264 of the Texas Government Code, the CITY agrees not to knowingly employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States. During the term of this Agreement, the CITY shall notify the IDC of any complaint brought against CITY

alleging that it has employed undocumented workers. If the CITY, or any branch, division or department of the CITY 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 CITY to the IDC not later than the one hundred twentieth (120th) day after the date the IDC becomes aware of and notifies the CITY of the violation. The CITY shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by any person with whom the CITY contracts. The CITY shall reimburse the IDC the required amount within thirty (30) days of the termination of this Agreement.

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

D. Upon completion of the activities described in Article I, but no later than sixty (60) days after, the City will furnish the IDC with a full accounting of the funds expended on the project.

E. At the conclusion of the construction of the project described in Article I, all monies not spent directly on the project shall be returned to the IDC. The City will make an accounting of all expenses expended pursuant to this Agreement.

### **ARTICLE III. CITY'S REPRESENTATIONS AND WARRANTIES**

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

1. the CITY is a local governmental entity of the State of Texas;
2. execution of this Agreement has been duly authorized by the CITY and this Agreement is not in contravention of the CITY's governing authority or any agreement or instrument to which the CITY 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 CITY that may result in a material adverse change in the CITY's business, properties, or operations sufficient to jeopardize the CITY's legal existence; and
4. no written application, written statement, or correspondence submitted by the CITY 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 CITY agrees that, upon execution of this Agreement, its application shall be attached and incorporated for all lawful purposes.

B. Except as expressly set forth in this Article III, the CITY 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 CITY 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 CITY 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 (5<sup>th</sup>) 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

*With a copy to:*                      City Manager  
    ATTN: Director, Economic Development  
    City of Galveston  
    P.O. Box 779  
    Galveston, Texas 77553  
    Facsimile: (409) 797-3521

For the CITY:                      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

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 CITY 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 Project as described in Section I above; (ii) when terminated by mutual agreement of the parties; (iii) when terminated pursuant to Article V hereof; (iv) at the CITY's sole and absolute discretion upon the CITY's return of all grant funding to the IDC that it has received under this Agreement; or (v) upon the CITY's repayment of all monies that are demanded by the IDC and are in fact required to be repaid by the CITY under Article II; or (vi) upon the failure to complete the project within 24 months. . 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 CITY under or pursuant to this Agreement that the CITY 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 CITY 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 CITY COUNCIL OF THE CITY OF GALVESTON, TEXAS acting through its duly authorized official.

**CITY OF GALVESTON, TEXAS,  
INDUSTRIAL DEVELOPMENT  
CORPORATION**

**CITY OF GALVESTON, TEXAS**

By: \_\_\_\_\_  
Name: James D. Yarbrough  
Title: President, Board of Directors  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Brian Maxwell  
Title: City Manager  
Date: \_\_\_\_\_

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Name: Brandon Cook  
Title: Secretary, Board of Directors

By: \_\_\_\_\_  
Name: Janelle Williams  
Title: City Secretary

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

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

By: \_\_\_\_\_  
Name: Don Glywasky  
Title: City Attorney