

RESOLUTION NO. 19-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUGAR LAND, TEXAS, ADOPTING A CITY COUNCIL POLICY REGARDING FUNDING OF PUBLIC DESTINATION VENUE CAPITAL ENHANCEMENT PROJECTS.

WHEREAS, the City Council wishes to adopt a policy regarding funding of capital enhancement projects for public destination venues; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUGAR LAND, TEXAS:

Section 1. That the City Council adopts the following policy:

POLICY ON REQUESTS FOR FUNDING PUBLIC DESTINATION VENUE CAPITAL ENHANCEMENT PROJECTS

PURPOSE

The purpose of this Policy is to establish guidelines for considering requests to fund a Capital Enhancement Project after the Public Destination Venue has been opened to the public.

SCOPE

This policy applies to the City Council.

AUTHORITY

Authority is established by State law and the SL4B Articles of Incorporation and Bylaws.

DEFINITIONS

Capital Enhancement Project means a project to enhance and update infrastructure, assets, and land that are capital, physical, and enduring in nature, provide long-term, added value to the City, and achieve a stated objective of the City.

Development Corporation Act means the Development Corporation Act of 1979 codified as Chapters 501 through 505, Tex. Local Gov't Code.

Fiscal Year means from October 1 through September 30.

Nonprofit Entity, for purposes of this Policy, means (i) a nonprofit corporation no part of the income of which is distributable to a member, director, or officer of the corporation, except as provided by Section 22.054, Tex. Bus. Org. Code; or (ii) a limited liability company qualifying as a federally tax exempt organization described in Section 501(c)(3) of the Internal Revenue Code, as amended, and organized and operated exclusively for charitable, scientific, literary, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code pursuant to its certificate of formation.

Public Destination Venue means property (i) owned, leased by, or under the control of, the City or that by written agreement may be owned by the City; and (ii) with facilities located thereon that attract events for the general public, including a minor league baseball stadium, museum, performing arts center / live entertainment venue, festival site, and similar venues.

SL4B means the Sugar Land 4B Corporation, a non- profit corporation created by the City to promote economic development activities as authorized by the Development Corporation Act.

BACKGROUND

For more than a decade, the City has had an intentional strategy of growing and solidifying the City's economy and position within the region as an economic powerhouse through the development of major destinations in partnership with the private sector – including partnerships with non-profit organizations. This strategy has been guided by the City's comprehensive plan, which includes goals of providing or supporting activities and facilities that enrich the artistic, cultural, educational and historic character of Sugar Land.

Additionally, a citizen-led Visioning Task Force solidified this strategy in 2007 when it concluded that the City should pursue several unique venues through public-private partnerships, recognizing that destination entertainment venues are an important tool for promoting capital investment, attracting primary employers, enhancing educational and cultural arts opportunities, increasing tourism and attracting local and regional visitors, enhancing the quality of life for residents, and maintaining the second lowest property tax rate in the State of Texas among cities the size of Sugar Land.

This strategy has also been deliberately guided by several intentional principles – all designed to protect the City's investment and minimize the City's exposure to risk. As such, these guiding principles – which are listed below – are reflected in each of the City's public-private partnership agreements:

- Selectively choosing high-quality partners with a preference for those who have ties to Houston region;
- Protecting the City's business and financial interests by limiting the City's risk – including assignment of ongoing operational responsibility to the partner, limiting the City's contribution to capital investments, and seeking private sector equity contributions for commercial entertainment venues;
- Leveraging the use of restricted or project-generated revenue sources - ultimately offsetting the demand on residential property taxes through growth in the resulting additional general fund revenues;
- Increasing the amount of upside sharing as the City's upfront capital investment increases; and
- Celebrating amenities through the Visit Sugar Land Tourism Program.

Since many of the destination venues within the City have now been open over or nearly a decade, the City has begun to receive requests from its private sector partners for additional funding for Capital Enhancement Projects, but there is no policy guidance to ensure that any such requests are evaluated in a way that is consistent with the original framework of the City's public-private partnership agreements.

With that, the City recognized a need to formalize policy guidance for consideration of requests for the City's financial support of a Capital Enhancement Project for a Public Destination Venue.

CRITERIA

The project must meet all of the following Policy guidelines to be eligible for funding:

- A. Type of Project. The project must be a Capital Enhancement Project for a Public Destination Venue that will provide a substantial benefit to the economy or the community. Operational costs are not eligible for funding.
- B. Revenue Source. A Capital Enhancement Project for a Public Destination Venue may be funded from revenues received by the City from the Public Destination Venue. Additionally, a Nonprofit Entity is eligible to receive revenues from available SL4B funds if requested by the City, authorized by the Development Corporation Act, and approved by the SL4B.
- C. Matching Funds Required and Maximum Annual Amount. A match of no less than 50% will be required from the entity that is operating or leasing the Public Destination Venue. Subject to available funds, the total amount contributed by the SL4B each fiscal year for all Capital Enhancement Projects for Public Destination Venues will not exceed \$200,000.
- D. Budgeted Funds. Funds for a Capital Enhancement Project for a Public Destination Venue must be budgeted.
- E. Existing Agreements. A Capital Enhancement Project for a Public Destination Venue will not be eligible for funding if an existing agreement between the City and the entity requires the entity to provide all the upfront capital and for the City to be responsible for the costs of operation and maintenance.
- F. Conflicts with Existing Plans or Policies. The Capital Enhancement Project for the Public Destination Venue must not conflict with any existing plans or policies adopted by the City's City Council.
- G. Compliance with Law. Funds for a Capital Enhancement Project for a Public Destination Venue must be authorized by law, including the Development Corporation Act as to SL4B funds.
- H. Financial Ability. The applicant must demonstrate its financial ability to fund its share of the cost of the Capital Enhancement Project for the Public Destination Venue, including all operation and maintenance costs, and the financial ability to undertake and manage the Capital Enhancement Project.

- I. Early Expenditure of Funds. The requesting entity cannot have begun or expended any funds on any component of the Capital Enhancement Project for a Public Destination Venue for which it is seeking funding, whether from the SL4B (as to a Nonprofit Entity) or from revenues received by the City from the Public Destination Venue. Pursuant to the Development Corporation Act, a public hearing is required before any funds are spent on a project funded by the SL4B.

PROCESS

- A. Evaluation of Available SL4B Economic Development Sales Tax. Each year, after the previous Fiscal Year has concluded, the City's Finance Department will determine the amount of the SL4B's economic development sales taxes from the previous Fiscal Year received by the City.
 - 1) If the ending available fund balance of the SL4B exceeds the budgeted amount in the previous Fiscal Year, staff from the Finance and Economic Development Departments will present an update to the City Council Economic Development Committee, the City Council, and the SL4B, on the opportunity to utilize up to \$200,000 from this additional capacity to fund Capital Enhancement Projects for Public Destination Venues.
 - 2) At the same time that staff from the Finance and Economic Development Departments presents the update above, staff will also provide an update on the City's "Reserve for Opportunities" projects and any other priorities that should be considered at such time.
 - 3) If the City Council or SL4B, as applicable, determines that funding is available for a Capital Enhancement Project for a Public Destination Venue from revenues received by the City from the Public Destination Venues or from SL4B's ending fund balance after the annual budget carryover process, City staff will present to the City's Economic Development Committee any requests received, as provided in this Policy.
- B. Processing a Request for Funding. Requests must be submitted to the Director of Economic Development on the requestor's letterhead along with sufficient information to determine the proposed Capital Enhancement Project. The deadline for submitting requests is the first business day in February of each Fiscal Year. Requests submitted after the deadline will be considered on a case-by-case basis. The City and SL4B, as applicable, may request additional information as part of considering a Request. Requests will be reviewed by the City Council Economic Development Committee within 30 days after a request is submitted to the City. If the City Council Economic Development Committee recommends proceeding with providing funding for the Capital Enhancement Project for a Public Destination Venue, City staff may conduct a workshop with the City Council and SL4B (if SL4B funds are requested) to seek feedback before requesting that the City Council and/or SL4B act on any necessary agreements (including amendments to existing Lease Agreements) or SL4B funding resolutions. City staff will consider feedback from the City Council and/or SL4B, as applicable, at the workshop and will then bring forward any necessary individual agreements, budget amendments, and funding resolutions for each Capital Enhancement Project for a Public Destination Venue for consideration and action of the City Council and/or SL4B, as applicable. The requestor will undertake or contract

for and manage the Capital Enhancement Project for a Public Destination Venue, unless a law provides otherwise or the City determines that the State bidding requirements apply to the Public Enhancement Project for a Public Destination Venue.

- C. Prioritization of Requests. If the City receives requests for more than \$200,000 for Capital Enhancement Projects for a Public Destination Venue, the City Council Economic Development Committee and the City Council and/or SL4B (if SL4B funds requested) may take into consideration the following factors in prioritizing the requests:
- a. Amount of time since the Public Destination Venue opened;
 - b. Number of times since the opening of the Public Destination Venue that the requestor has requested funding for a Capital Enhancement Project for the Public Destination Venue;
 - c. Economic benefit to the City of the Capital Enhancement Project for the Public Destination Venue; and
 - d. Overall community benefit of the Capital Enhancement Project for the Public Destination Venue.
- D. Release of Identified Capacity. Any remaining funds identified for Capital Enhancement Projects for a Public Destination Venue that are not formally allocated by the City Council or SL4B, or tentatively identified by the City Council or SL4B for a specific Capital Enhancement Project for a Public Destination Venue by May 31 of each Fiscal Year, will be considered released and available for allocation for other projects or the SL4B's "Reserve for Opportunities" in the next Fiscal Year in the approved budget.

DISCRETION

The City Council and the SL4B have discretion on whether to fund, and the amount of funding to be allocated for, a Public Enhancement Project for a Public Destination Venue.

NO WAIVER OR RELEASE

By approving a request for funding under this Policy, the City Council does not (i) waive the terms of, or the City's rights, powers or remedies under, a lease between the City and the entity; (ii) release or discharge the entity from its obligations under a lease between the City and the entity; or (iii) waive the City's right to enforce, or preclude the City from enforcing, the terms of a lease between the City and the entity.

APPROVED on _____, 2019.

Joe R. Zimmerman, Mayor

ATTEST:

Thomas Harris III
Acting City Secretary

APPROVED AS TO FORM: