

**SMALL BUSINESS INCENTIVES AGREEMENT BETWEEN THE CORPUS CHRISTI
BUSINESS AND JOB DEVELOPMENT CORPORATION AND DEL MAR COLLEGE FOR AN
INTERN PROGRAM TO SUPPORT SMALL BUSINESSES**

This Small Business Incentives Agreement for ("Agreement") is entered into between the Corpus Christi Business and Job Development Corporation ("Corporation") and Del Mar College, a Texas institution of higher education ("Del Mar").

WHEREAS, the Texas Legislature in Section 4A of Article 5190.6, Vernon's Texas Revised Civil Statutes (Development Corporation Act of 1979), now codified as Subtitle C1, Title 12, Texas Local Government Code, Section 504.002 et seq, ("the Act"), empowered local communities with the ability to adopt an optional local sales and use tax as a means of improving the economic health and prosperity of their citizens;

WHEREAS, on November 5, 2002, residents of the City of Corpus Christi ("City") passed Proposition 2, New and Expanded Business Enterprises, which authorized the adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of one-eighth of one percent to be imposed for 15 years;

WHEREAS, the 1/8th cent sales tax authorized by passage of Proposition 2 was subsequently enacted by the City Council and filed with the State Comptroller of Texas, effective April 1, 2003, to be administered by the Corpus Christi Business and Job Development Corporation Board;

WHEREAS, the Corpus Christi Business and Job Development Corporation exists for the purposes of encouraging and assisting entities in the creation of jobs for the citizens of Corpus Christi, Texas;

WHEREAS, the Board of Directors of the Corporation ("Board"), on September 10, 2007, amended the Corporation's Guidelines and Criteria for Granting Business Incentives ("Type A Guidelines"), which the City Council incorporated into the City of Corpus Christi Economic Development Incentive Policies 2009-2011 on November 17, 2009;

WHEREAS, Section 501.073 of The Act requires the City Council to approve all programs and expenditures of the Corporation;

WHEREAS, Del Mar has requested business development funds from the Board to assist small businesses by providing access to students, who will serve as interns in professional level positions;

WHEREAS, the small businesses will pay the student interns minimum wage (currently \$7.25 per hour) and Del Mar will match the small business contribution.

WHEREAS, the interns will be selected based on the needs of the small businesses with the goal of providing the businesses with resources that make the businesses more effective and provide growth opportunities;

WHEREAS, the primary goal of the program is to provide support to small businesses in Corpus Christi that will encourage growth, retention, economic development, and job creation;

WHEREAS, the goal of the project is the creation of 1 new full time job for every 10 internship positions funded (a 10% new job "return on investment");

WHEREAS, a secondary benefit of the small business intern program is providing students real-world experience, while they are making a living wage without working extended hours and developing potential full-time employment opportunities following graduation;

In consideration of the covenants, promises, and conditions stated in this Agreement, Corporation and Del Mar agree as follows:

1. *Effective Date*. The effective date of this Agreement ("Effective Date") is the latest date that either party executes this Agreement.
2. *Term*.
 - a. The term of this Agreement is for one year from August 17, 2012, through August 16, 2013.
 - b. This Agreement may be extended at the option of the Corporation for up to four additional one year terms, contingent upon annual appropriation of funds and approval of the City Council.
 - c. If this Agreement is extended for subsequent period, this Agreement may be amended by adoption of a revised Schedule A, which is attached to and incorporated into this Agreement.
3. *Grant*.
 - a. The Corporation will grant Del Mar an incentive of up to One Hundred Seventy Three Thousand Two Hundred Twenty Three Dollars (\$173,223.00), which must be used to fund one half of the salary of up to a total of 93 interns during the Fall Semester of 2012, Spring Semester of 2013, and Summer Session in 2013, and the entire salary on two interns hired to help administer the program during the Fall and Spring Semesters and Summer Session. The interns will be paid twice the minimum wage, while participating in Del Mar's Small Business Employer Intern Program.
 - b. The Corporation's grant conditioned upon Del Mar's successful completion of the terms of this Agreement, including, but not limited to, the performance requirements and conditions precedent in Schedule A.
 - c. The Corporation's grant shall be paid in monthly installments based upon evidence of the amount paid by Del Mar to the small business employers during the prior month.
4. *Del Mar's Duties and Responsibilities*.
 - a. Del Mar shall provide administrative oversight and direct supervision for the placement of interns in the Del Mar's Small Business Employer Intern Program.
 - b. Del Mar shall create and maintain not less than two part-time intern (2) employment positions to assist in the Small Business Employer Intern Program in Corpus Christi,

Nueces County, Texas, during the term of this Agreement. The intern must be paid twice the minimum wage, which is scheduled to be \$7.25 per hour.

c. Del Mar shall place, with small businesses in Corpus Christi, up to the total number of interns specified in Schedule A, during any the academic year.

(1) Since the primary goal of the Del Mar's Small Business Employer Intern Program is to provide support to small businesses in Corpus Christi that will encourage growth, retention, economic development, and job creation, placements must be based on the needs of the small business with the goal of providing the business with resources that make the business more effective and provide growth opportunities for the businesses.

(2) For the purpose of this section a small business may include chambers of commerce, non-profit organizations, and other entity that will use the intern to assist existing, start-up, and home based small businesses in the City; recruit new small business to the City; assist the expansion of existing small businesses in the City; help entrepreneurs create start-up businesses; or help the owners and managers of small businesses develop their businesses.

d. Del Mar shall ensure that the small business employer of each intern pays the student intern the minimum wage, and Del Mar shall match the small business employer's payments to the interns.

e. Del Mar shall try to place the interns for 19 hours per week and 12 weeks per semester or summer session.

f. Del Mar shall work with the small businesses that receive interns under the program to encourage the creation of permanent full time jobs for the interns or similarly qualified individuals.

5. *Job Creation/Training Qualification.*

a. In order to count as a created job under this Agreement, the job must pay wages at least as high as the wages required by Section 501.162 of the Act, which is the median wage of the occupation in the Corpus Christi MSA as determined by Texas Workforce Commission's Texas Industry Profiles report.

b. In order to qualify for funds to provide job training under this Agreement, Del Mar agrees to create new jobs that pay wages at least as high as the wages required by Section 501.162 of the Act, which is the median wage of the occupation in the Corpus Christi MSA as determined by Texas Workforce Commission's Texas Industry Profiles report.

c. A "job" is defined in the Type A Guidelines as a full-time employee, contractor, consultant, or leased employee who has a home address in the Corpus Christi MSA.

d. Del Mar agrees to confirm and document to the Corporation that the minimum number of jobs created as a result of funding provided by this Agreement is maintained throughout the term by the Business.

e. Del Mar agrees to provide Corporation with a sworn certificate by authorized representative of each business assisted under this Agreement certifying the number of full-time permanent employees employed by the business.

f. Del Mar shall ensure that the Corporation is allowed reasonable access to personnel records of the businesses assisted under this Agreement.

6. Reports and Monitoring.

a. Del Mar shall provide a report at the end of each semester or summer session certifying the status of compliance through the life of the Agreement. Documentation for jobs may be in the form of quarterly IRS 941 returns, Del Mar employer Quarterly Reports, or employee rosters that show the hours worked and the positions filled, and such other reports as may reasonably be required.

b. Del Mar, during normal working hours shall allow the Corporation and its designee, City of Corpus Christi Economic Development Department, reasonable access to Del Mar's employment records and books, to verify employment and all other relevant records related to each of the other economic development considerations and incentives, as stated in this Agreement, but the confidentiality of the records and information must be maintained by Corporation and its designee, unless such records and information shall be required by a court order, a lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.

7. Warranties. Del Mar warrants and represents to Corporation the following:

a. Del Mar is a Texas institution of higher education duly organized, validly existing, and in good standing under the laws of the State of Texas, has all institution power and authority to carry on its business as presently conducted in Corpus Christi, Texas.

b. Del Mar has the authority to enter into and perform, and will perform, the terms of this Agreement to the best of its ability.

c. Del Mar has timely filed and will timely file all local, State, and Federal tax reports and returns required by laws to be filed and all Texas, assessments, fees, and other governmental charges, including applicable ad valorem taxes, have been timely paid, and will be timely paid, during the term of this Agreement.

d. Del Mar has received a copy of the Act, and acknowledges that the funds granted in this Agreement must be utilized solely for purposes authorized under State law and by the terms of this Agreement.

e. The parties executing this Agreement on behalf of Del Mar are duly authorized to execute this Agreement on behalf of Del Mar.

f. Del Mar does not and agrees that it will not knowingly employ an undocumented worker. If, after receiving payments under this Agreement, Del Mar is convicted of a violation under §U.S.C. Section 1324a(f), Del Mar shall repay the payments at the rate and according to the terms as specified by City Ordinance, as amended, not later than the 120th day after the date Del Mar has been notified of the violation.

8. *Compliance with Laws.* Del Mar shall observe and obey all applicable laws, ordinances, regulations, and rules of the Federal, State, county, and city governments.

9. *Non-Discrimination.* Del Mar covenants and agrees that Del Mar will not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in the Facility, on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State of Texas.

10. *Force Majeure.* If the Corporation or Del Mar are prevented, wholly or in part, from fulfilling its obligations under this Agreement by reason of any act of God, unavoidable accident, acts of enemies, fires, floods, governmental restraint or regulation, other causes of force majeure, or by reason of circumstances beyond its control, then the obligations of the Corporation or Del Mar are temporarily suspended during continuation of the force majeure. If either party's obligation is affected by any of the causes of force majeure, the party affected shall promptly notify the other party in writing, giving full particulars of the force majeure as soon as possible after the occurrence of the cause or causes relied upon.

11. *Assignment.* Del Mar may not assign all or any part of its rights, privileges, or duties under this Agreement without the prior written approval of the Corporation and City. Any attempted assignment without approval is void, and constitutes a breach of this Agreement.

12. *Indemnity.* To the extent authorized by law Del Mar covenants to fully indemnify, save, and hold harmless the Corporation, the City, their respective officers, employees, and agents ("Indemnitees") against all liability, damage, loss, claims demands, and actions of any kind on account of personal injuries (including, without limiting the foregoing, workers' compensation and death claims), or property loss or damage of any kind, which arise out of or are in any manner connected with, or are claimed to arise out of or be in any manner connected with Del Mar activities conducted under or incidental to this Agreement, including any injury, loss or damage caused by the sole or contributory negligence of any or all of the Indemnitees. Del Mar must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based on those claims and demands with counsel satisfactory to Indemnitees, and pay all charges of attorneys and all other cost and expenses of any kind arising from the liability, damage, loss, claims, demands, or actions.

13. *Events of Default by Del Mar.* The following events constitute a default of this Agreement by Del Mar:

a. The Corporation or City determines that any representation or warranty on behalf of Del Mar contained in this Agreement or in any financial statement, certificate, report, or opinion submitted to the Corporation in connection with this Agreement was incorrect or misleading in any material respect when made;

b. Any judgment is assessed against Del Mar or any attachment or other levy against the property of Del Mar with respect to a claim remains unpaid, undischarged, or not dismissed for a period of 120 days.

c. Del Mar makes an assignment for the benefit of creditors.

d. Del Mar files a petition in bankruptcy, or is adjudicated insolvent or bankrupt.

e. If taxes owed by Del Mar become delinquent, and Del Mar fails to timely and properly follow the legal procedures for protest or contest.

f. Del Mar changes the general character of business as conducted as of the date this Agreement is approved by the Corporation.

14. *Notice of Default.* Should the Corporation or City determine that Del Mar is in default according to the terms of this Agreement, the Corporation or City shall notify Del Mar in writing of the event of default and provide 60 days from the date of the notice ("Cure Period") for Del Mar to cure the event of default.

15. *Results of Uncured Default by Del Mar.* After exhausting good faith attempts to address any default during the cure Period, and taking into account any extenuating circumstances that might have occurred through no fault of Del Mar, as determined by the Board of Directors of the Corporation, the following actions must be taken for any default that remains uncured after the Cure Period.

a. Del Mar shall immediately repay all funds paid by Corporation to them under this Agreement.

b. Del Mar shall pay Corporation reasonable attorney fees and costs of court to collect amounts due to Corporation if not immediately repaid upon demand from the Corporation.

c. Upon payment by Del Mar of all sums due, the Corporation and Del Mar shall have no further obligations to one another under this Agreement.

d. Neither the City, the Corporation, nor Del Mar may be held liable for any consequential damages.

16. *No Waiver.*

a. No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, constitutes a waiver of any subsequent breach of the covenant or condition of the Agreement.

b. No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, justifies or authorizes the nonobservance on any other occasion of the covenant or condition or any other covenant or condition of this Agreement.

c. Any waiver or indulgence of Del Mar's default may not be considered an estoppel against the Corporation.

d. It is expressly understood that if at any time Del Mar is in default in any of its conditions or covenants of this Agreement, the failure on the part of the Corporation to promptly avail itself of the rights and remedies that the Corporation may have, will not be considered a waiver on the part of the Corporation, but Corporation may at any time avail itself of the rights or remedies or elect to terminate this Agreement on account of the default.

17. Del Mar specifically agrees that Corporation shall only be liable to Del Mar for the actual amount of the money grants to be conveyed to Del Mar, and shall not be liable to Del Mar for any actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by Corporation under the terms of this Agreement. Payment by Corporation is strictly limited to those funds so allocated, budgeted, and collected solely during the grant term of this Agreement. Corporation shall use its best efforts to anticipate economic conditions and to budget accordingly. However, it is further understood and agreed that, should the actual total sales tax revenue collected for any one year be less than the total amount of grants to be paid to all contracting parties with Corporation for that year, then in that event, all contracting parties shall receive only their pro rata share of the available sales tax revenue for that year, less Corporation's customary and usual costs and expenses, as compared to each contracting parties' grant amount for that year, and Corporation shall not be liable to for any deficiency at that time or at any time in the future. In this event, Corporation will provide all supporting documentation, as requested. Payments to be made shall also require a written request from Del Mar to be accompanied by all necessary supporting documentation.

18. The parties mutually agree and understand that funding under this Agreement is subject to annual appropriations by the City Council; that each fiscal year's funding must be included in the budget for that year; and the funding is not effective until approved by the City Council.

19. *Notices.*

a. Any required written notices shall be sent mailed, certified mail, postage prepaid, addressed as follows:

Del Mar:

Del Mar College
Attn: President
101 Baldwin
Corpus Christi, Texas 78404

Corporation:

City of Corpus Christi
Business and Job Development Corporation
Attn.: Executive Director
1201 Leopard Street
Corpus Christi, Texas 78401

b. A copy of all notices and correspondence must be sent the City at the following address:

City of Corpus Christi
Attn.: City Manager
P.O. Box 9277
Corpus Christi, Texas 78469-9277

c. Notice is effective upon deposit in the United States mail in the manner provided above.

20. *Incorporation of other documents.* The Corpus Christi Business and Job Development Corporation Guidelines and Criteria for Granting Business Incentives ("Corporation Guidelines"), as amended, are incorporated into this Agreement.

21. *Amendments or Modifications.* No amendments or modifications to this Agreement may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign Agreements on behalf of each party.

22. *Relationship of Parties.* In performing this Agreement, both the Corporation and Del Mar will act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.

23. *Captions.* The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

24. *Severability.*

a. If for any reason, any section, paragraph, subdivision, clause, provision, phrase or word of this Agreement or the application of this Agreement to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected by the law or judgment, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement be given full force and effect for its purpose.

b. To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected by the law, and in lieu of any illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

25. *Venue.* Venue for any legal action related to this Agreement is in Nueces County, Texas.

26. *Sole Agreement.* This Agreement constitutes the sole Agreement between Corporation and Del Mar. Any prior Agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.

27. *Survival of terms of Agreement and obligations of parties.* The terms of this Agreement and the obligation of the parties relating to Section 14.a and b shall survive the termination of this Agreement.

EXHIBIT A

PERFORMANCE MEASURES AND CORPORATION GRANTS

1. Placement of not more than a total of 93 interns with small businesses in Corpus Christi during the Fall Semester of 2012, Spring Semester of 2013, or Summer Session of 2014, plus employment of 2 interns to assist in program administration during the Fall and Spring Semesters and Summer Session.