

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS RELATING TO “CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION SALES TAX REVENUE REFUNDING BONDS, SERIES 2012 (SEAWALL PROJECT)”;  
APPROVING THE RESOLUTION OF CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION AUTHORIZING THE ISSUANCE OF SUCH BONDS; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, the Corpus Christi Business and Job Development Corporation (the *Corporation*) was created by the City of Corpus Christi, Texas (the *City*), pursuant to the provisions of Chapters 501, 502, and 504, as amended, Texas Local Government Code (formerly Section 4A of the Development Corporation Act of 1979, Texas Revised Civil Statutes Annotated Article 5190.6, as amended) (collectively, the *Act*) and a resolution of the City Council of the City approved on September 27, 2000; and

WHEREAS, the Board of Directors (the *Board*) of the Corporation heretofore issued, sold, and delivered, and there are currently outstanding obligations in the aggregate principal amount of \$33,190,000 designated as “Corpus Christi Business and Job Development Corporation Sales Tax Revenue Bonds, Series 2001 (Seawall Project)”, dated September 1, 2001, stated to mature on March 1 in each of the years 2013 through 2026 (the *Refunded Obligations*); and

WHEREAS, the Board intends to issue an aggregate principal amount of \$\_\_\_\_\_ in sales tax revenue refunding bonds the proceeds of which will be utilized to provide for the (i) refunding of the Refunded Obligations and (ii) payment of the costs of issuance of the sales tax revenue refunding bonds; and

WHEREAS, pursuant to the provisions of Section 501.213 of the Act, the Board is authorized to issue sales tax revenue refunding bonds and deposit the proceeds of sale under an escrow agreement to provide for the payment of the Refunded Obligations, and such deposit shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, the deposit of the proceeds from the sale of the sales tax revenue refunding bonds will be deposited directly with any designated escrow agent which is not the depository bank of the Board; and

WHEREAS, Section 501.204 of the Act requires the City Council of the City to approve the resolution of the Corporation providing for the issuance of the Bonds not more than sixty (60) days prior to the delivery of the sales tax revenue refunding bonds; now, therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:**

SECTION 1: The Resolution authorizing the issuance of \$\_\_\_\_\_ “Corpus Christi Business and Job Development Corporation Sales Tax Revenue Refunding Bonds, Series 2012 (Seawall Project)” (the *Bonds*), adopted by the Corporation on June 18, 2012 and submitted to the City Council this day (a copy of which is attached hereto as Exhibit A and incorporated herein by reference for all purposes, the *Corporation Resolution*), is hereby approved in all respects. The Bonds are being issued to provide for the (i) refunding of the Refunded Obligations and (ii) payment of the costs of their issuance.

SECTION 2: The approvals herein given are in accordance with Section 501.204 of the Act, and the Bonds shall never be construed an indebtedness or pledge of the City or the State of Texas (the *State*), within the meaning of any constitutional or statutory provision, and the owner of the Bonds shall never be paid in whole or in part out of any funds raised or to be raised by taxation (other than sales tax proceeds as authorized pursuant to the Act) or any other revenues of the Corporation, the City, or the State, except those revenues assigned and pledged by the Corporation Resolution.

SECTION 3: The City hereby agrees to promptly collect and remit to the Corporation the Gross Sales Tax Revenues (as defined in the Corporation Resolution) in accordance with the terms of the Corporation Resolution and the Act to provide for the prompt payment of the Bonds, and to assist and cooperate with the Corporation in the enforcement and collection of sales and use taxes imposed on behalf of the Corporation.

SECTION 4: The City hereby acknowledges and recognizes that the Bonds are being issued as tax-exempt obligations under and pursuant to the provisions of the Internal Revenue Code of 1986, as amended and the proceeds of sale of such Bonds may be deposited with the City following their receipt by the Corporation and the City may have partial or full control and responsibility with respect to the maintenance and operation of the project refinanced with the proceeds of the Refunded Obligations and the investment and disbursement of the proceeds of sale of the Bonds. Therefore, as a result of the foregoing, the City hereby makes the following representations and warranties to the Corporation:

A. Definitions. When used in this Section, the following terms have the following meanings:

*Code* means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

*Computation Date* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*Gross Proceeds* means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

*Investment* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*Nonpurpose Investment* means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

*Rebate Amount* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*Regulations* means any proposed, temporary, or final Income Tax Regulations issued pursuant to sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

*Yield of*

(1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and

(2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

B. Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

C. No Private Use or Private Payments. Except to the extent that it will not cause the Bonds to become “private activity bonds” within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Obligations), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds (including

property financed with Gross Proceeds of the Refunded Obligations) or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

D. No Private Loan. Except as would not cause the Bonds to become “private activity bonds” within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if- (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

E. Not to Invest at Higher Yield. Except as would not cause the Bonds to become “arbitrage bonds” within the meaning of section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds, whether then held or previously disposed of, materially exceeds the Yield of the Bonds.

F. Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

G. Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

H. Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Bond Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Bonds equals in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

I. Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection H of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

J. Bonds Not Hedge Bonds.

(1) The City reasonably expects to spend at least 85% of the spendable proceeds of the Bonds within three years after such Bonds are issued.

(2) Not more than 50% of the proceeds of the Bonds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

K. Current Refunding of the Refunded Obligations. The Bonds are issued, in part, to refund the Refunded Obligations, and the Bonds will be issued, and the proceeds thereof used, within 90 days after the Closing Date for the redemption of the Refunded Obligations. In the issuance of the Bonds, the Corporation has employed no “device” to obtain a material financial advantage (based on arbitrage), within the meaning of section 149(d)(4) of the Code, apart from savings attributable to lower interest rates. The Corporation has complied with the covenants, representations, and warranties contained in the documents executed in connection with the issuance of the Refunded Obligations.

L. Elections. The City hereby directs and authorizes the Mayor, City Manager, City Attorney, City Secretary, or any Designated Financial Official (as defined in the Corporation Resolution), either or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document. Such elections shall be deemed to be made on the Closing Date.

SECTION 5: The Sales Tax Remittance Agreement, dated as of September 10, 2001, between the Corporation and the City (a copy of which is attached hereto as Exhibit B, the *Remittance Agreement*) provides for the transfer of the Sales Tax (as defined in the Corporation Resolution) from the City to the Corporation for use by the Corporation as security for its bonds issued for the Project (as defined in the Corporation Resolution). As the Bonds refund the Refunded Obligations, which were originally issued to finance the Project, the City hereby finds that the Bonds are also bonds issued for the Project. As a result, the City hereby affirms, ratifies, and approves the validity and enforceability of the Remittance Agreement for so long as the Bonds (or any bonds issued to refund the Bonds) remain outstanding.

SECTION 6: The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

SECTION 7: All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 8: This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 9: If any provision of this resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and this City Council hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 10: It is officially found, determined, and declared that the meeting at which this resolution is adopted was open to the public and public notice of the time, place, and subject

matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 11: This Resolution shall be in force and effect from and after its passage on the date shown below.

PASSED AND ADOPTED, this June 19, 2012.

CITY OF CORPUS CHRISTI, TEXAS

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

(CITY SEAL)

APPROVED THIS \_\_\_\_ DAY OF JUNE, 2012:

\_\_\_\_\_  
Carlos Valdez, City Attorney

Exhibit A – Corporation Resolution

Exhibit B – Sales Tax Remittance Agreement



THE STATE OF TEXAS )(

COUNTY OF NUECES )(

I, the undersigned, City Secretary of the City of Corpus Christi, Texas, do hereby certify that the above and foregoing is a true, full and correct copy of a Resolution passed by the City Council of the City of Corpus Christi, Texas (and of the minutes pertaining thereto) on the 19<sup>th</sup> day of June, 2012, authorizing the issuance of the Corpus Christi Business and Job Development Corporation's Sales Tax Revenue Refunding Bonds, Series 2012 (Seawall Project), which resolution is duly of record in the minutes of said City Council, and said meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Texas Government Code, Chapter 551.

EXECUTED UNDER MY HAND AND SEAL of said City, this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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City Secretary

(CITY SEAL)

**EXHIBIT A**

Corporation Resolution

See Tab No. \_\_\_\_\_

**EXHIBIT B**

Sales Tax Remittance Agreement

See Tab No. \_\_\_\_\_