

**SMALL BUSINESS INCENTIVES AGREEMENT BETWEEN THE CORPUS CHRISTI
BUSINESS AND JOB DEVELOPMENT CORPORATION AND ACCIÓN TEXAS, INC. FOR AN
INTEREST BUY DOWN PROGRAM FOR SMALL BUSINESSES**

This Small Businesses Incentives Agreement for an Interest Buy Down Program for Small Businesses ("Agreement") is entered into between the Corpus Christi Business and Job Development Corporation ("Corporation") and ACCIÓN Texas, Inc., a Texas nonprofit corporation ("ACCIÓN Texas").

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, ACCIÓN Texas is a Texas nonprofit corporation whose principal mission is to provide loans to small business owners lacking access to commercial credit;

WHEREAS, ACCIÓN Texas anticipates, over the next twelve months, providing interest buy down to 5.5% for approximately 60 loans with an average value of \$25,000 to low and moderate income micro and small business owners in Corpus Christi to generate 20 new permanent full-time jobs;

WHEREAS, the Board has determined that it is in the best interests of the citizens of Corpus Christi, Texas that business development funds be provided to ACCIÓN Texas, through this contract with ACCIÓN Texas, to be used by ACCIÓN Texas to buy down the interest on commercial loans to 5.5% interest for small businesses and establish a small business grant program, both of which will result in creation of new full-time permanent jobs in the city of Corpus Christi.

In consideration of the covenants, promises, and conditions stated in this Agreement, Corporation and ACCIÓN Texas 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.** The term of this Agreement is for one year from August 1, 2012, through July 31, 2013. This agreement may be extended at the option of the Corporation for up to two additional one year terms, contingent upon annual appropriation of funds and approval of the City Council.

3. **Loan Loss Reserve Program.**

a. The Corporation has previously provided \$75,000 for the Loan Loss Reserve Program.

b. The Loan Loss Reserve Program funds will be used to allow ACCIÓN Texas to leverage additional capital for small business loans.

c. "Small business" is defined in the Corpus Christi Business & Job Development Corporation Guidelines & Criteria for Granting Business Incentives ("Corporation Guidelines), adopted on May 5, 2003, and amended on November 9, 2010.

d. ACCIÓN Texas anticipates that it will have one million dollars available on an annual basis to be lent to qualifying small businesses in Corpus Christi.

e. For every \$50,000 in loans that ACCIÓN Texas provides to a small business in Corpus Christi, ACCIÓN Texas shall ensure that the loan will result in the creation of one new full-time permanent job in the city of Corpus Christi.

f. Businesses assisted must be located in or locating within the city limits of Corpus Christi, Texas.

g. Businesses assisted must be unable to obtain a loan from traditional lending institutions.

h. Loan amounts shall be within the range of \$5,000 to \$75,000.

i. ACCIÓN Texas shall provide the Corporation with quarterly reports to identify the loans made, name and address of business receiving loan, jobs created, and other reports as requested by the Corporation.

j. ACCIÓN Texas shall provide the corporation with quarterly reports of capital available for loans to qualified Corpus Christi small businesses or qualified small businesses locating to Corpus Christi.

k. ACCIÓN Texas will provide funds for operations and loan capital to implement and sustain the program.

4. **Interest Buy Down Program.**

a. In consideration for creation and maintenance of new jobs as provided in this Agreement, the Corporation agrees to pay ACCION Texas up to \$350,000 for the

Interest Buy-Down Program as follows:

- i. ACCIÓN Texas must first receive a request for a loan from a small business or start-up company that has the ability to produce jobs in the future and is located in Corpus Christi or will be locating in Corpus Christi ("Business").
- ii. The request from the applicant must include a notarized affidavit stating that they have applied for normal financing from a bank, or similar lending institution, and have been denied a loan.
- iii. ACCIÓN Texas shall review the request for a loan from the Business.
- iv. Upon ACCIÓN Texas approval of a loan, and prior to the closing of the loan, ACCIÓN Texas shall submit Attachment "A" to the Corporation requesting funds to buy down the interest rate from the interest rate allowable per the underwriting criteria to 5.5%. The Corporation authorizes an interest buy down up to 7% of the interest rate to finance the loan. Payment by Corporation shall not exceed \$17,500 per loan and shall be calculated using the following formula:

$$(\text{Loan amount} \times \text{interest rate to buy down to } 5.5\%) / 12 = N$$

N x number of payments = interest buy down reimbursement to ACCIÓN Texas for business loan. (The number of monthly payments shall not exceed sixty (60).)

Example: $(\$10,000 \times 7\%) / 12 = 58.33$

$58.33 \times 36 = \$2,100 =$ amount to be reimbursed to ACCIÓN Texas for business loan.

- v. The Corporation shall provide a response to approve or deny the reimbursement for the Interest Buy Down Program funds to ACCIÓN Texas within 2 business days of receipt of Attachment "A." The Corporation shall reimburse funds within 30 days after evidence of closing the loan is submitted.
 - vi. The total funds available on an annual basis under the Interest Buy Down Program under this agreement are \$350,000.
- b. The loans assisted with the program must be within the range of \$5,000 to \$75,000.
 - c. This program must result in the creation of one permanent full-time job per every loan of at least \$50,000 assisted with the Interest Buy Down Program. ACCIÓN Texas shall ensure that the loan will result in the creation of one new full-time permanent job in the city of Corpus Christi.
 - d. Businesses assisted through this program must be:
 - i. A start-up or existing small business that is unable to obtain a loan from a traditional financial institution or unable to qualify for the total needed for a business loan through a bank or credit union, in which case ACCIÓN Texas can

loan the remaining amount with the buy down interest rate program in conjunction with the bank\credit union.

ii. An existing small business that needs assistance to expand.

iii. Any business assisted under the provisions of paragraphs i or ii of this subsection, must be:

A. Located in or locating in Corpus Christi city limits.

B. Current on payment of all sales taxes.

C. Current on payment of all ad valorem taxes in the City of Corpus Christi.

e. The following projects are ineligible for this program:

i. Refinancing of existing loans or debt

ii. Businesses located outside the Corpus Christi city limits

iii. Home-based businesses located outside the Corpus Christi city limits

iv. Loans to existing businesses which are not planning on expanding

v. Business retention.

f. ACCIÓN Texas may use up to \$200,000 to assist start-up and existing small businesses that have little or no access to traditional credit, and up to \$150,000 to existing small businesses that wish to expand.

g. ACCIÓN Texas shall provide the Corporation with quarterly reports as provided in Attachment "B" to identify the loans made, name and address of the business receiving the loan, jobs created under the Interest Buy Down Program, and other reports as requested by the Corporation.

h. ACCIÓN Texas shall provide funds for operations and loan capital to implement and sustain the program.

i. ACCIÓN Texas shall develop loan underwriting criteria and payment terms and conditions for its loan program and provide to the Corporation.

j. At the termination of this agreement and after repayment or other conclusion of all loans assisted by Interest Buy Down Program, ACCIÓN Texas will return to the Corporation any unexpended funds remaining from the Loan Loss Reserve Program.

5. Small Business Grant Program.

a. In consideration for creation and maintenance of new jobs as provided in this Agreement, the Corporation agrees to pay ACCIÓN Texas up to \$50,000 for the Small Business Grant Program as follows:

- i. Grants to loan applicants who do not meet standard underwriting criteria, either because of capacity, cash flow, or credit, who could benefit from a grant to boost their ability to become successful. The grant amount may not exceed \$2,500 or 10% of the principal amount requested, whichever is less.
 - ii. Grants to loan applicants who want to use part of loan proceeds to reduce energy consumption or transition into green retail products. The grant amount may not exceed \$2,500 or 25% of the upgrades presented in the loan file.
 - iii. Grants to loan applicants who provide services for working families (e.g. both children and adult day care centers) to improve their facilities to be compliant with state/federal standards. The grant amount may not exceed \$2,500.
 - iv. Grants to loan applicants that are veteran owned businesses. The grant amount may not exceed \$500.
 - v. Working capital grants to holders of existing loans with ACCIÓN Texas. If the loans that have paid routinely on time for a period of 24 months, the maximum grant amount may not exceed \$1,000. If the loans have been paid routinely on time for a period of 12 months on time payments, the maximum grant amount may not exceed \$500 grant.
- b. The loans assisted with the program must be within the range of \$500 to \$25,000.
- c. This program must result in the creation of one permanent full-time job per every related loan of at least \$50,000 assisted through the Interest Buy Down Program. ACCIÓN Texas shall ensure that the loans will result in the creation of one new full-time permanent job in the city of Corpus Christi.
- d. Businesses assisted through this program must be:
 - i. A start-up or existing small business that is unable to obtain a loan from a traditional financial institution or unable to qualify for the total needed for a business loan through a bank or credit union, in which case ACCIÓN Texas can loan the remaining amount with the Buy Down interest rate program in conjunction with the bank\credit union.
 - ii. An existing small business that needs assistance to expand.
 - iii. Any business assisted under the provisions of paragraphs i or ii of this subsection, must be:
 - A. Located in or locating in Corpus Christi city limits.
 - B. Current on payment of all sales taxes.
 - C. Current on payment of all ad valorem taxes in the City of Corpus Christi.
- e. The following projects are ineligible for this program:

- i. Businesses located outside the Corpus Christi city limits
 - ii. Home-based businesses located outside the Corpus Christi city limits
 - iii. Grants to existing businesses which are not planning on expanding
- f. ACCIÓN Texas shall provide the Corporation with quarterly reports as provided in Attachment "B" to identify the grants made, name and address of the business receiving the grant, jobs created under the related Interest Buy Down Program, and other reports as requested by the Corporation.
- g. ACCIÓN Texas shall provide funds to implement and sustain the program.
- h. ACCIÓN Texas shall develop grant award criteria and payment terms and conditions for the grant loan program, and must provide copies of the criteria, terms, and conditions to the Corporation.
- i. At the termination of this agreement or other conclusion of the Small Business Grant Program, ACCIÓN Texas shall return to the Corporation any unexpended funds remaining from the Small Business Grant Program.

6. Job Creation Qualification.

- a. In order to count as a created job under this Agreement, the job must pay wages at least as high as the median wage of the occupation in the Corpus Christi MSA as determined by Texas Workforce Commission's Texas Industry Profiles report.
- b. 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.
- c. ACCIÓN Texas agrees to confirm and document to the Corporation that each job created as a result of funding provided by this Agreement is maintained throughout the term of the loan to the Business.
- d. ACCIÓN Texas agrees to provide Corporation with a sworn certificate by authorized representative of each shall business assisted under this Agreement certifying the number of full-time permanent employees employed by the small business.
- e. ACCIÓN Texas shall ensure that the Corporation is allowed reasonable access to personnel records of the small businesses assisted under this Agreement.

7. Buy Local Provision.

- a. ACCIÓN Texas agrees to use its best efforts to give preference and priority to local manufacturers, suppliers, contractors, and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency.
- b. For the purposes of this section, the term "local" as used to describe manufacturers, suppliers, contractors, and labor includes firms, businesses, and persons who reside in or maintain an office within a 50 mile radius of Nueces County.

8. Local Offices. Two staff persons of ACCIÓN Texas offices shall be located in Corporation designated offices or a mutually agreeable location.

9. Representation on ACCIÓN Texas governing board. ACCIÓN Texas agrees to appoint a person designated by the Corporation as a member of ACCIÓN Texas governing board.

10. Warranties. ACCIÓN Texas warrants and represents to Corporation the following:

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

b. ACCIÓN Texas has the authority to enter into and perform, and will perform, the terms of this Agreement.

c. ACCIÓN Texas 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. ACCIÓN Texas 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. If an audit determines that the funds were not used for authorized purposes, ACCIÓN Texas agrees to reimburse Corporation for the sums of money spent for purposes not authorized by law within 30 days written notice requesting reimbursement.

f. The parties executing this Agreement on behalf of ACCIÓN Texas are duly authorized to execute this Agreement on behalf of ACCIÓN Texas.

g. ACCIÓN Texas does not and agrees that it will not knowingly employ an undocumented worker. If, after receiving payments under this Agreement, ACCIÓN Texas is convicted of a violation under §U.S.C. Section 1324a(f), ACCIÓN Texas 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 ACCIÓN Texas has been notified of the violation.

11. Compliance with Laws. ACCIÓN Texas shall observe and obey all applicable laws, ordinances, regulations, and rules of the Federal, State, county, and city governments.

12. Non-Discrimination. ACCIÓN Texas covenants and agrees that ACCIÓN Texas 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.

13. Force Majeure. If the Corporation or ACCIÓN Texas 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 ACCIÓN Texas 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.

14. Assignment. ACCIÓN Texas 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.

15. Indemnity. ACCIÓN Texas 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 ACCIÓN Texas 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. ACCIÓN Texas 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.

16. Events of Default. The following events constitute a default of this Agreement:

- a. Failure of ACCIÓN Texas to timely, fully, and completely comply with any one or more of the requirements, obligations, duties, terms, conditions, or warranties of this Agreement.
- b. The Corporation or City determines that any representation or warranty on behalf of ACCIÓN Texas 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;
- c. Any judgment is assessed against ACCIÓN Texas or any attachment or other levy against the property of ACCIÓN Texas with respect to a claim remains unpaid, undischarged, or not dismissed for a period of 30 days.
- d. ACCIÓN Texas makes an assignment for the benefit of creditors.
- e. ACCIÓN Texas files a petition in bankruptcy, or is adjudicated insolvent or bankrupt.
- f. If taxes owed by ACCIÓN Texas become delinquent, and ACCIÓN Texas fails to timely and properly follow the legal procedures for protest or contest.
- g. ACCIÓN Texas changes the general character of business as conducted of the date this Agreement is approved by the Corporation.

17. Notice of Default. Should the Corporation or City determine that ACCIÓN Texas is in default according to the terms of this Agreement, the Corporation or City shall notify ACCIÓN

Texas in writing of the event of default and provide 60 days from the date of the notice ("Cure Period") for ACCIÓN Texas to cure the event of default.

18. Results of Uncured Default. 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 ACCIÓN Texas, 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. ACCIÓN Texas shall immediately repay all funds paid by Corporation under this Agreement.
- b. ACCIÓN Texas shall pay Corporation reasonable attorney fees and costs of court to collect amounts due to Corporation.
- c. The Corporation shall have no further obligations to ACCIÓN Texas under this Agreement.
- d. Neither the City nor the Corporation may be held liable for any consequential damages.
- e. The Corporation may pursue all remedies available under law.

19. 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 ACCIÓN Texas' default may not be considered an estoppel against the Corporation.
- d. It is expressly understood that if at any time ACCIÓN Texas 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.

20. ACCIÓN Texas specifically agrees that Corporation shall only be liable to ACCIÓN Texas for the actual amount of the money grants to be conveyed to ACCIÓN Texas, and shall not be liable to ACCIÓN Texas 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, being August 1, 2012, through July 31, 2013. 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 ACCIÓN Texas to be accompanied by all necessary supporting documentation.

21. Notices.

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

ACCIÓN Texas:

ACCIÓN Texas
Attn.: Janie Barrera
2014 Hackberry
San Antonio, Texas 78210

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.

22. 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.

23. 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.

24. Relationship of Parties. In performing this Agreement, both the Corporation and ACCIÓN Texas 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.

25. 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.

26. 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.

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

28. Sole Agreement. This Agreement constitutes the sole agreement between Corporation and ACCIÓN Texas. Any prior agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.

29. Survival of terms of agreement and obligations of parties. The terms of this agreement and the obligation of the parties relating to the Loan Loss Reserve Program and the Interest Buy Down Program shall survive the termination of this agreement.

Corpus Christi Business & Job Development Corporation

By:

~~Eloy Salazar~~
President

Robert Tamez

Date:

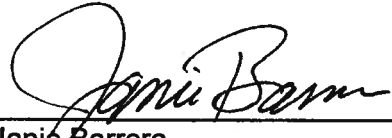
Aug. 22, 2012

Res. 029602
AUTHORIZED
BY COUNCIL 8/21/12
ac
SECRETARY my

Attest:

By: 
Armando Chapa
Assistant Secretary

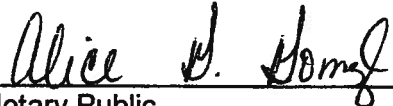
ACCIÓN Texas, Inc.

By: 
Janie Barrera
President and Chief Executive Officer

Date: 7/19/12

THE STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on July 19, 2012, by Janie Barrera, President and Chief Executive Officer for ACCIÓN Texas, Inc., a Texas non-profit corporation, on behalf of the corporation.


Notary Public
State of Texas

