

**FIRST AMENDED BUSINESS INCENTIVE AGREEMENT BETWEEN  
THE CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION  
AND PLANT BIKES, LLC FOR THE RETENTION AND CREATION OF JOBS**

This First Amended Business Incentive Agreement for Capital Investments and the Creation and Retention of Jobs ("Agreement") is entered into between the Corpus Christi Business and Job Development Corporation ("Corporation") and Plant Bikes LLC ("Rugged Cycles"), a Texas for profit limited liability corporation.

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, 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, the City Council approved the Corporation's amended Guidelines and Criteria for Granting Business Incentives on September 18, 2007;

WHEREAS, the Board, on November 9, 2010, amended the Corporation's Guidelines and Criteria for Granting Business Incentives;

WHEREAS, the City Council approved the Corporation's amended Guidelines and criteria for Granting Business Incentives on November 9, 2010;

WHEREAS, Section 501.073, Texas Local Government Code, formerly Section 21 of the Texas Development Corporation Act of 1979, Art. 5190.6, Vernon's Texas Revised

Civil Statutes, requires the City Council to approve all programs and expenditures of the corporation;

WHEREAS, Rugged Cycles has its headquarters located in Corpus Christi and it assembles bicycles in Corpus Christi. Rugged Cycles sales and leases the bicycles to large companies and colleges for their employees and/or students;

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 Rugged Cycles, through this Agreement with Rugged Cycles, to be used by Rugged Cycles to purchase a manufacturing facility in Corpus Christi and will be used in the creation of up to 3 new full-time permanent jobs in the City of Corpus Christi and the retention of 11 existing full-time jobs with an estimated annual average salary of \$47,000, and in the creation of 2 new part-time permanent jobs in the City of Corpus Christi and the retention of 8 existing part-time jobs with an estimated annual average salary of \$30,000.

In consideration of the covenants, promises, and conditions stated in this Agreement, Corporation and Rugged Cycles 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 five years beginning on the effective date.
3. **Performance Requirements and Grants.** The Performance Requirements and Grants are listed in Exhibit A, which is attached to and incorporated into this Agreement.
4. **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 full-time permanent job is defined in the Type A Guidelines.
  - c. Rugged Cycles 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.
  - d. Rugged Cycles 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.
  - e. Rugged Cycles shall ensure that the Corporation is allowed reasonable access to personnel records of the businesses assisted under this Agreement.

5. Buy Local Provision.

a. Rugged Cycles 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 in the normal course of business.

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.

6. Warranties. Rugged Cycles warrants and represents to Corporation the following:

a. Rugged Cycles is a limited liability company 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. Rugged Cycles has the authority to enter into and perform, and will perform, the terms of this Agreement to the best of its ability.

c. Rugged Cycles 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. Rugged Cycles has received a copy of the Texas Development Corporation Act, Subtitle C1, Title 12, Texas Local Government Code, 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 Rugged Cycles are duly authorized to execute this Agreement on behalf of Rugged Cycles.

7. Compliance with Laws. Rugged Cycles shall observe and obey all applicable laws, ordinances, regulations, and rules of the Federal, State, county, and city governments.

8. Non-Discrimination. Rugged Cycles covenants and agrees that Rugged Cycles 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.

9. Force Majeure. If the Corporation or Rugged Cycles 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 Rugged Cycles 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.

10. Assignment. Rugged Cycles 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.

**11. Indemnity. Rugged Cycles 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 Rugged Cycles 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. Rugged Cycles 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.**

12. Events of Default by Rugged Cycles. The following events constitute a default of this Agreement by Rugged Cycles:

- a. The Corporation or City determines that any representation or warranty on behalf of Rugged Cycles 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 Rugged Cycles or any attachment or other levy against the property of Rugged Cycles with respect to a claim remains unpaid, undischarged, or not dismissed for a period of 120 days.
- c. Rugged Cycles makes an assignment for the benefit of creditors.



d. Rugged Cycles files a petition in bankruptcy, or is adjudicated insolvent or bankrupt.

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

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

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

14. Results of Uncured Default by Rugged Cycles. 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 Rugged Cycles, 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. Rugged Cycles shall immediately repay all funds paid by Corporation to them under this Agreement.

b. Rugged Cycles 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 Rugged Cycles of all sums due, the Corporation and Rugged Cycles shall have no further obligations to one another under this Agreement.

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

15. 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 Rugged Cycles' default may not be considered an estoppel against the Corporation.

d. It is expressly understood that if at any time Rugged Cycles 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.

16. Rugged Cycles specifically agrees that Corporation shall only be liable to Rugged Cycles for the actual amount of the money grants to be conveyed to Rugged Cycles, and shall not be liable to Rugged Cycles 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 Rugged Cycles to be accompanied by all necessary supporting documentation.

17. Notices.

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

Rugged Cycles:

Rugged Cycles  
Attn: Vince Denais  
401 South Water Street  
Corpus Christi, Texas 78401

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.

18. 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.

19. 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.

20. Relationship of Parties. In performing this Agreement, both the Corporation and Rugged Cycles 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.

21. 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.

22. 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.

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

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

25. 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.

Corpus Christi Business & Job Development Corporation

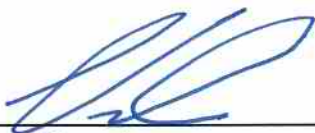
By: \_\_\_\_\_  
Robert Tamez  
President

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Armando Chapa  
Assistant Secretary

Plant Bikes, LLC

By:  \_\_\_\_\_  
Vince Denais  
President

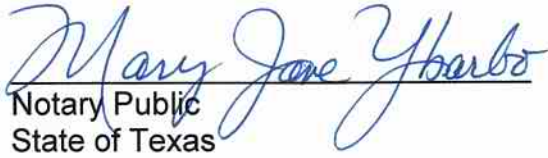
Date: 10/12/12

THE STATE OF TEXAS



COUNTY OF NUECES

This instrument was acknowledged before me on October 12, 2012, by Vince Denais, President, for Rugged Cycles, a for profit limited liability company, on behalf of the Plant Bikes, LLC.

  
Notary Public  
State of Texas



## EXHIBIT A

### PERFORMANCE MEASURES AND CORPORATION GRANTS

1. Rugged Cycles shall retain 11 full-time and 8 part-time jobs and create up to 3 new full-time and up to 2 new part-time jobs, with an average annual salary of \$47,000 for a full-time job and \$30,000 for a part-time job
  - a. The company will receive a total of \$70,000 for employees. That is \$49,000 for full-time positions up to 14 positions or \$3,500 per full time job and \$21,000 for part time jobs up to 10 jobs or \$2,100 per part time job.
  - b. The Company may request payment for the positions it has created/retained on the anniversary of the effective date each year. The maximum payout for a year is \$25,000 for the employee portion of the grant.
  - c. If Rugged Cycles purchases a building in the city limits of Corpus Christi, the Corporation will award a grant to the company of \$130,000 within 60 days from the date Rugged Cycles closes on, and invests at least \$1 million in, a property in Corpus Christi as evidenced by the executed closing documents. . If the total cost of the building is less than \$1 million, Rugged Cycles will receive the proportionate amount. For example if the building costs \$500,000 it would receive half of the grant or \$65,000.
2. If after receiving payment for employees, Rugged Cycles does not retain the position, the company will be required to repay to the Corporation the amount of the grant equal to the positions lost.