

**BUSINESS INCENTIVE AGREEMENT BETWEEN THE CORPUS CHRISTI
BUSINESS AND JOB DEVELOPMENT CORPORATION AND DEL MAR COLLEGE
FOUNDATION FOR EXPANSION OF THE PROCESS AND INSTRUMENTATION
TECHNOLOGY TRAINING PROGRAM**

This Business Incentive Agreement ("Agreement") for capital investments and job training is entered into between the Corpus Christi Business and Job Development Corporation ("Corporation") and Del Mar College Foundation, Inc. ("Del Mar Foundation"), a 501(c)(3) foundation supporting Del Mar College, a political subdivision of the State of 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 504.001 *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 ordinance adopting the ballot language that authorized the use of the 1/8th cent sales tax proceeds specifically provided that the funds could be used for to make grants to organizations to provide training, retraining, and education to ensure the knowledge and skills required for the jobs of the future are in place;

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 October 18, 2010, amended the Corporation's Guidelines and Criteria for Granting Business Incentives ("Type A Guidelines");

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, the City Council approved the amended Type A Guidelines on November 9, 2010;

WHEREAS, the Board of Directors of the Corporation ("Board"), approved this grant on December 16, 2013;

WHEREAS, Del Mar Foundation intends to help Del Mar College (DMC) expand DMC's Process and Instrumentation Technology Program by purchasing a Process Technology Base Unit and Glycol Distillation Unit with ancillary equipment/software and a Process Control Learning System;

WHEREAS, this equipment will help Del Mar College increase the number of students in the Process and Instrumentation Technology Program from 111 per year up to 500 students per year and build participation with area industry and independent school districts;

WHEREAS, local industries produce meaningful, wealth producing jobs which bring in dollars from outside Corpus Christi into the City;

WHEREAS, the Process and Instrumentation Technology Training expansion will further Del Mar College's mission of education and economic development; and

In consideration of the covenants, promises, and conditions stated in this Agreement, Corporation and Del Mar Foundation 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.**
 - a. Del Mar College Foundation shall purchase Process Technology Base Unit and Glycol Distillation Unit with ancillary equipment/software and a Process Control Learning System for DMC's Process and Instrumentation training Program.
 - b. The Corporation will reimburse Del Mar Foundation for the costs incurred by Del Mar Foundation to acquire the equipment to expand the Del Mar College Process and Instrumentation Training Program. The amount reimbursed by the Corporation may not exceed \$1,390,071.
 - c. On the annual anniversary of the effective date of this agreement, Del Mar Foundation shall report to the Corporation the number of students completing Process Technology and Instrumentation training programs at Del Mar College during the previous year.
4. **Buy Local Provision.**
 - a. Del Mar Foundation 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.

5. Utilization of Disadvantaged Business Enterprises ("DBE"). Del Mar Foundation agrees to exercise reasonable efforts in utilizing contractors and suppliers that are determined to be disadvantaged business enterprises, including minority business enterprises women-owned business enterprises and historically-underutilized business enterprises. In order to qualify as a business enterprise under this provision, the firm must be certified by the City, the Regional Transportation Authority or another governmental entity in the jurisdiction of the home office of the business as complying with state or federal standards for qualification as such an enterprise. Del Mar Foundation agrees to a goal of 30% of the total dollar amount of all construction contracts and supply agreements being paid to disadvantaged business enterprises, with a priority made for disadvantaged business enterprises which are local. Del Mar Foundation agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of Del Mar Foundation to comply with the DBE Requirement, and to provide an annual report to the City Manager or designee, from which the City Manager or designee shall determine if Del Mar Foundation is in compliance with this requirement. Failure to substantially comply with this requirement, in the sole determination of the City Manager or designee, shall be a default hereunder. For the purposes of this section, the term "local" as used to describe contractors and suppliers that are determined to be disadvantaged business enterprises, including minority business enterprises women-owned business enterprises and historically-underutilized business enterprises includes firms, businesses, and persons who reside in or maintain an office within a 50 mile radius of Nueces County.

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

a. Del Mar Foundation is a 501(c)(3) organization and 509(a)(1) public charity under the Internal Revenue Code, 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. Del Mar Foundation 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 Foundation 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 Foundation has access to the Texas Development Corporation Act, Subtitle C1, Title 12, Texas Local Government Code, on the State of Texas' website, 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 Foundation are duly authorized to execute this Agreement on behalf of Del Mar Foundation.

f. Del Mar Foundation does not and agrees that it will not knowingly employ an undocumented worker. If, after receiving payments under this Agreement, Del Mar Foundation is convicted of a violation under §U.S.C. Section 1324a(f), Del Mar Foundation shall repay the payments received under this Agreement to the City, with interest at the Wall Street Journal Prime Rate, not later than the 120th day after the date Del Mar Foundation has been notified of the violation.

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

8. Non-Discrimination. Del Mar Foundation covenants and agrees that Del Mar Foundation will not discriminate or 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 Del Mar Foundation 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 Foundation 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. Del Mar Foundation 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. To the extent authorized by law, Del Mar Foundation 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 Foundation 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 Foundation 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. The following events constitute a default of this Agreement:

- a. Failure of Del Mar Foundation 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 Del Mar Foundation 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 Del Mar Foundation or any attachment or other levy against the property of Del Mar Foundation with respect to a claim remains unpaid, undischarged, or not dismissed for a period of 120 days.
- d. Del Mar Foundation makes an assignment for the benefit of creditors.
- e. Del Mar Foundation files a petition in bankruptcy, or is adjudicated insolvent or bankrupt.
- f. If taxes owed by Del Mar Foundation become delinquent, and Del Mar Foundation fails to timely and properly follow the legal procedures for protest or contest.
- g. Del Mar Foundation 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 Del Mar Foundation is in default according to the terms of this Agreement, the Corporation or City shall notify Del Mar Foundation in writing of the event of default and provide 60 days from the date of the notice ("Cure Period") for Del Mar Foundation to cure the event of default.

14. 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 Del Mar Foundation, 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 Foundation shall immediately repay all funds paid by Corporation under this Agreement.
- b. Del Mar Foundation shall pay Corporation's reasonable attorney fees and costs of court to collect amounts due to Corporation.
- c. The Corporation shall have no further obligations to Del Mar Foundation 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.

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 Del Mar Foundation's default may not be considered an estoppel against the Corporation.
- d. It is expressly understood that if at any time Del Mar Foundation 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. Del Mar Foundation specifically agrees that Corporation shall only be liable to Del Mar Foundation for the actual amount of the money grants to be conveyed to Del Mar Foundation, and shall not be liable to Del Mar Foundation 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 Foundation to be accompanied by all necessary supporting documentation.

17. 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.

18. Notices.

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

Del Mar:

Del Mar College Foundation
Attn: Executive Director of Development
101 Baldwin
Corpus Christi, Texas 78404

Corporation:

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.

19. 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.

20. 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.

21. Relationship of Parties. In performing this Agreement, both the Corporation and Del Mar Foundation 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.

22. 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.

23. 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.

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

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

26. 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.

(Remainder of page intentionally left blank)

Corpus Christi Business & Job Development Corporation

By: _____
Robert Tamez
President

Date: _____

Attest:

By: _____
Rebecca Huerta
City Secretary

Del Mar College Foundation, Inc.

By: Mary McQueen
Mary C. McQueen, CFRE
Executive Director of Development

Date: 4/16/2014

THE STATE OF TEXAS

COUNTY OF NUECES

This instrument was acknowledged before me on April 16th, 2014, by Mary C. McQueen, CFRE, Executive Director of Development, Del Mar College Foundation, Inc., a 501(c)(3) organization supporting Del Mar College, a political subdivision of the State of Texas, on behalf of the Foundation.

Joel A. Soliz
Notary Public
State of Texas

