

**BUSINESS INCENTIVE AGREEMENT BETWEEN  
THE CORPUS CHRISTI B CORPORATION AND NEXT SPORTS COMPANY LLC  
FOR DEVELOPMENT OF A RECREATIONAL SPORTS COMPLEX**

This Business Incentive Agreement for Capital Investments and the development of a recreational sports complex and creation of jobs ("Agreement") is entered into between the Corpus Christi B Corporation ("Corporation") and Next Sports Company LLC ("Company"), a Texas limited liability company.

WHEREAS, the Texas Legislature in Chapter 501 et seq. of the Local Government Code (Development Corporation Act of 1979) (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 8, 2016, residents of the City passed Proposition 1, Adopt Type B Sales Tax to Replace Expiring Portion of Type A Sales Tax, which authorized the adoption of a sales and use tax to be administered by a Type B Corporation at the rate of one-eighth of one percent to be imposed for 20 years with use of the proceeds for (1) 50% to the promotion and development of new and expanded business enterprises to the full extent allowed by Texas law, (2) \$500,000 annually for affordable housing, and (3) the balance of the proceeds for the construction, maintenance and repair of arterial and collector streets and roads;

WHEREAS, the 1/8th cent sales tax authorized by passage of Proposition 1 was subsequently enacted by the City Council and filed with the State Comptroller of Texas, effective April 1, 2018, to be administered by the Corpus Christi B Corporation Board;

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

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

WHEREAS, Company proposes to develop a recreational sports complex, located on Old Brownsville Road between South Padre Island Drive and Cliff Maus Drive (the "Project");

WHEREAS, Company proposes to invest approximately \$17.2 million for the development of the recreational sports complex and a soccer stadium.

WHEREAS, the Board determined that it is in the best interests of the citizens of Corpus Christi, Texas that business development funds be provided to Company, through this Agreement with Company, to be used by Company to fund infrastructure necessary for the development of a recreational sports complex.

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

1. *Effective Date.* The effective date of this Agreement (“Effective Date”) is the latest date that either party executes this Agreement, so long as the Agreement has been approved by the City’s City Council. Company understands that this Agreement is dependent upon the approval of City Council.

2. *Term.* The term of this Agreement is for five years beginning on the Effective Date.

3. *Performance Requirements.*

a. Company agrees to use these funds to pay for the creation of certain infrastructure improvements allowed under Section 501.103 of the Texas Local Government Code needed for the Project.

b. Company agrees to provide the Corporation with a sworn certificate by an authorized representative of the Company, certifying the amount used for infrastructure improvements.

c. Company will provide the Corporation with a detailed list of infrastructure expenditures each year within 30 days of the anniversary of the Effective Date until construction is complete.

d. During the term of this Agreement, Company will create at least 47 new full-time equivalent positions in the City of Corpus Christi and maintain all such positions for the full term of the Agreement.

1. If Company fails to create or retain the full 47 full-time equivalent positions at the time that Phase II construction is completed, then Company will only be eligible for a portion of the maximum incentive based on the percentage of positions created or retained rounded to the nearest dollar. For example, if only 40 positions are created at the time that Phase II construction is completed, then Company will only be entitled to receive a maximum incentive of \$1,574,468.

2. If, after the positions are created, fewer than 47 full-time positions are retained for the term of the Agreement, Company will, within 60 days following notice from the Corporation, repay an amount based on the percentage of positions that is not retained rounded to the nearest dollar.

For example, if only 40 positions are retained until the end of the term of the Agreement, Company will be required to repay \$275,532.

e. During the term of this Agreement, Company will invest at least \$17,200,000 in the Project and adjacent soccer stadium. The Project will be constructed in two phases.

1. Phase I of the construction will have eight multi-purpose fields that can be used for soccer, lacrosse, field hockey, flag football, and cheerleading for children and adults, and their parents and friends. Phase I also includes the parking to accommodate ongoing activities and tournaments. The overflowing parking must include fencing, or some other permanent barrier, designed to prevent pedestrian crossing of Old Brownsville Road and encouraging all pedestrians to cross at the signaled intersection with Cliff Maus. Construction of the majority of the infrastructure and site preparation costs of their facility will be designed and installed during Phase I, which is expected, but not required, to be completed in December 2021.

2. Phase II, which includes approximately 10,000 square feet administrative offices, retail space and pro shop, 4,000 square foot rest room/locker room, children's play area, and supporting amenities is anticipated to be completed by December 2022. The 5,000-seat soccer stadium will also be done during the phase.

f. Company will ensure that no funds received under this Agreement are used for the construction of the adjacent soccer stadium and that at least \$1,200,000 will be expended on qualified public infrastructure as part of the construction of the Project. Company will ensure that at least \$1,850,000 is expended on the Project.

g. Company will complete construction of both Phase I and Phase II on or before July 31, 2023.

h. Within 90 days after the Effective Date, Company must demonstrate to the satisfaction of the City Manager that Company has full funding for construction of Phase I and Phase II, including all necessary public infrastructure.

#### 4. *Grant Award.*

a. The Corporation will grant Company the amount of \$1,850,000, subject to appropriations as described in paragraph 20 below.

b. The grant will be paid to the Company in two payments.

1. The first payment of \$1,200,000, representing two-thirds of the total incentive, will be made within 60 days following receipt of a request for reimbursement from the Company that includes documentation showing

that Phase I has been completed, as verified by approval of permit requirements and final inspection by the City of Corpus Christi, and evidence showing that at least \$1,200,000 has been expended on the Project.

2. The second payment of \$650,000, representing one-third of the total incentive, will be made within 60 days following receipt of a request for reimbursement from the Company that includes documentation confirming the completion of Phase II, which includes administrative offices, retail space and supporting amenities as certified by a final Certificate of Occupancy issued by the City of Corpus Christi.

3. Along with any request for reimbursement, Company must submit certification that there are no mechanics, contractor's or materialman's liens against the property and provide documentation establishing that all other performance requirements, including the creation of jobs, have been met. If Company does not provide the required documentation prior to the end of the Term, this Agreement shall expire, and Company shall not be entitled to the grant funds.

5. *Utilization of Local Contractors and Suppliers.* Company agrees to exercise reasonable efforts in utilizing local contractors and suppliers in the construction of the Project, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency in the normal course of business, with a goal of 50% of the total dollar amount of all construction contracts and supply agreements being paid to local contractors and suppliers. 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. Company agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of Company to comply with the Local Requirement, and to provide an annual report to the City Manager or designee, from which the City Manager or designee shall determine if Company 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.

6. *Utilization of Disadvantaged Business Enterprises ("DBE").* Company agrees to exercise reasonable efforts in utilizing contractors and suppliers that are determined to be DBEs, 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. Company agrees to a goal of 30% of the total dollar amount of all construction contracts and supply agreements being paid to DBEs, with a priority made for DBEs which are local. Company agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of Company 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 Company 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 DBEs, 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.

7. *Living Wage Requirement.* In order to count as a permanent full-time job under this agreement, the job should provide a "living wage" for the employee. The target living wage under this agreement is that annual amount equal or greater than poverty level for a family of three, established by the U.S. Department of Health and Human Services Poverty Guidelines, divided by 2,080 hours per year for that year.

8. *Health Insurance.* To qualify for this incentive, an employer shall certify that it has offered a health insurance program for its employees during the term of the Agreement. The health insurance program must comply with all applicable laws.

9. *Sales Tax Sourcing.* The Developer shall utilize, or cause its contractors to utilize, Separated Building Materials and Labor Contracts for all taxable building material contracts related to the Development in the amount of One Hundred Thousand Dollars (\$100,000.00) or more, to site payment of the sales tax on building materials for the Development to the Property.

10. *Warranties.* Company warrants and represents to Corporation the following:

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

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

c. Company has timely filed and will timely file all local, State, and Federal tax reports and returns required by laws to be filed and all taxes, 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. Company has received a copy of the Act and acknowledges that the funds granted under this Agreement must be utilized solely for purposes authorized under State law and by the terms of this Agreement.

e. The person executing this Agreement on behalf of Company is duly authorized to execute this Agreement on behalf of Company.

f. Company does not and agrees that it will not knowingly employ an undocumented worker. If, after receiving payments under this Agreement, Company is convicted of a violation under 8 U.S.C. Section 1324a(f), Company shall repay the payments received under this Agreement to the City, with interest at the Wall Street Journal Prime Rate, not later than the 120<sup>th</sup> day after the date Company has been notified of the violation.

11. *Compliance with Laws.* During the Term of this Agreement, Company shall observe and obey all applicable laws, ordinances, regulations, and rules of the Federal, State, county, and city governments.

12. *Non-Discrimination.* Company covenants and agrees that Company 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 Project, 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 Company is 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 Company 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.* Company 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.* Company 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 Company’s 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. Company 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 costs and expenses of any kind arising from the liability, damage, loss, claims, demands, or actions.**

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

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

d. Company files a petition in bankruptcy or is adjudicated insolvent or bankrupt.

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

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

g. Company fails to comply with one or more terms of this Agreement.

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

18. *Results of Uncured Default by Company.* 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 Company, 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. Company shall immediately repay all funds paid by Corporation to it under this Agreement.

b. Company shall pay Corporation’s 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 Company of all sums due, the Corporation and Company shall have no further obligations to one another under this Agreement.

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 Company's default may not be considered an estoppel against the Corporation.

d. It is expressly understood that if at any time Company 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. Company specifically agrees that Corporation shall only be liable to Company for the actual amount of the money grants to be conveyed to Company, and shall not be liable to Company 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 Company to be accompanied by all necessary supporting documentation.

21. 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. Specifically, the parties understand that no funds have been allocated to this Agreement in fiscal year 2020-2021 and that no payment will be due unless sufficient funds are appropriated in the fiscal year 2021-2022 budget. Staff intends to

present such budget requests to City Council, but cannot guarantee that they will be approved, as budget approval is within the sole discretion of the City Council.

22. *Notices.*

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

Company:

Next Sports Company, LLC  
Attn: Dr. Kingsley Okonkwo  
10201 S Padre Island Dr. #205  
Corpus Christi, Texas 78418

Corporation:

Corpus Christi B 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.

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 Company 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 Company. 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 Section 15 shall survive the termination of this Agreement.

(Remainder of this page intentionally left blank)

Corpus Christi B Corporation

By: \_\_\_\_\_  
Scott Harris  
President

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

Attest:

By: \_\_\_\_\_  
Rebecca Huerta  
Assistant Secretary

Next Sports Company, LLC

By: \_\_\_\_\_  
Dr. Kingsley Okonkwo  
Manager

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

THE STATE OF TEXAS  
COUNTY OF NUECES

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by Dr. Kingsley Okonkwo, Manager for Next Sports Company, LLC, a Texas limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public  
State of Texas