

**BUSINESS INCENTIVE AGREEMENT BETWEEN
THE CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION AND SAM
KANE BEEF PROCESSORS, INC
FOR CREATION AND RETENTION OF JOBS**

This 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 Sam Kane Beef Processors, LLC ("Sam Kane"), a Texas Limited Liability Company.

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 and retention 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, Sam Kane is the seventh largest beef processing facility in the nation. They process on average 1,200 head of cattle per day that are raised in South Texas for distribution throughout the nation. They own their facility which is located at 9001 Leopard Street in Corpus Christi;

WHEREAS, on May 1, 2013 the Board determined that it is in the best interests of the citizens of Corpus Christi, Texas that business development funds be provided to Sam Kane, through this Agreement with Sam Kane, to be used by Sam Kane to continue operating their beef processing facility and to create 100 full-time jobs and retain 739 existing full-time jobs, with an estimated annual average salary of \$27,700 per year.

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

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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. 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.

b. Sam Kane 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.

c. Sam Kane 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.

d. Sam Kane shall ensure that the Corporation is allowed reasonable access to personnel records of the businesses assisted under this Agreement.

5. *Utilization of Local Contractors and Suppliers.* Sam Kane agrees to exercise reasonable efforts in utilizing local contractors and suppliers in any construction that may take place in conjunction with 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. Sam Kane agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of Sam Kane 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 Sam Kane 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").* Sam Kane 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. Sam Kane agrees to a goal of 30% of the total dollar amount of all construction contracts and related supply agreements, if any, that may take place in conjunction with the Project being paid to disadvantaged business enterprises, with a priority made for disadvantaged business enterprises which are local. Sam Kane agrees, during any construction that may take place in

conjunction with the Project and for four years after Completion thereof, to maintain written records documenting the efforts of Sam Kane 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 Sam Kane 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/or 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.

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.

9. *Warranties.* Sam Kane warrants and represents to Corporation the following:

a. Sam Kane 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. Sam Kane has the authority to enter into and perform, and will perform, the terms of this Agreement to the best of its ability.

c. Sam Kane 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. Sam Kane 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. The person executing this Agreement on behalf of Sam Kane is duly authorized to execute this Agreement on behalf of Sam Kane.

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

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

11. *Non-Discrimination.* Sam Kane covenants and agrees that Sam Kane 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.

12. *Force Majeure.* If the Corporation or Sam Kane 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 Sam Kane 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.

13. *Assignment.* Sam Kane 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.

14. *Indemnity.* Sam Kane 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 Sam Kane 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. Sam Kane 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.

15. *Events of Default by Sam Kane.* The following events constitute a default of this Agreement by Sam Kane:

- a. The Corporation or City determines that any representation or warranty on behalf of Sam Kane 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 Sam Kane or any attachment or other levy against the property of Sam Kane with respect to a claim remains unpaid, undischarged, or not dismissed for a period of 120 days.
- c. Sam Kane makes an assignment for the benefit of creditors.
- d. Sam Kane files a petition in bankruptcy, or is adjudicated insolvent or bankrupt.
- e. If taxes owed by Sam Kane become delinquent, and Sam Kane fails to timely and properly follow the legal procedures for protest or contest.

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

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

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

17. *Results of Uncured Default by Sam Kane.* 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 Sam Kane, 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. Sam Kane shall immediately repay all funds paid by Corporation to them under this Agreement.

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

d. Neither the City, the Corporation, or Sam Kane may be held liable for any consequential damages.

18. *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 Sam Kane's default may not be considered an estoppel against the Corporation.

d. It is expressly understood that if at any time Sam Kane 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.

19. Sam Kane specifically agrees that Corporation shall only be liable to Sam Kane for the actual amount of the money grants to be conveyed to Sam Kane, and shall not be liable to Sam

Kane 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 Sam Kane to be accompanied by all necessary supporting documentation.

20. 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.

21. *Notices.*

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

Sam Kane:

Sam Kane Beef Processors, LLC
Attn: President
P.O. Box 9254
Corpus Christi, TX 78469

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 Type A 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 Sam Kane 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 Sam Kane. 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 26. a and b shall survive the termination of this Agreement.

[Remainder of Page Intentionally Left Blank]

Corpus Christi Business & Job Development Corporation

By: [Signature]
Robert Tamez
President

Date: July 15, 2013

Attest:

Ord. 029875 AUTHORIZED
BY COUNCIL 6/25/13
SECRETARY [Signature]

By: [Signature]
Armando Chapa
Assistant Secretary

Sam Kane Beef Processors, LLC

By: [Signature]
Louis A. Waters, Jr.
President

Date: May 31, 2013

THE STATE OF TEXAS

COUNTY OF NUECES

This instrument was acknowledged before me on May 31, 2013, by Louis A. Waters, Jr., President, for Sam Kane Beef Processors, LLC a Texas Limited Liability Company, on behalf of the Sam Kane Beef Processors, LLC.

[Signature]
Notary Public
State of Texas



EXHIBIT A

PERFORMANCE MEASURES AND CORPORATION GRANTS

1. Sam Kane shall retain 739 full-time jobs, with an average annual salary of \$27,700 per year as described in the schedule below. Sam Kane shall create 100 full-time jobs over the term of this Agreement.

Year	Number of New Jobs	Number of Retained Jobs	Annual Payroll	Capital Investment
1	0	739	20,470,000	0
2	25	739	21,855,300	0
3	25	739	23,240,300	0
4	25	739	24,625,300	0
5	25	739	26,010,300	0

a. Grants, not to exceed \$600,000 per year and a cumulative total of \$3,000,000 over five years, are available on a per job created/retained basis.

b. Should the Company fall below the Performance Standards in any one year, the Company shall receive a reduced percentage of the Cash Incentive in effect that year. Such reduction will be in that percentage equal to the percentage the Company's performance falls below the Performance Standards. However if the Company falls below 70% then there is no payment for that year.

The reduced Cash Incentive shall be calculated as follows:

Annual payroll commitment:

5th year: 739 employees

Actual: 700 employees

Cash Incentive: = $700/739 \times \$600,000 = \$568,335.59$

In the 5th year, the Company would receive a reduced Cash Incentive of \$568,335.59 from the Corporation for not meeting the performance goals for retained employees.

2. The Corporation will award a grant to Sam Kane based on the formula above, payable not later than 30 days after the completion of the compliance report each year if Sam Kane retains the minimum number of in the preceding year described in paragraph 1 above (collectively, the "annual performance benchmarks").