

**AMENDED BUSINESS INCENTIVE AGREEMENT
BETWEEN THE CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION
AND ASSOCIATED BUILDERS & CONTRACTORS MERIT SHOP TRAINING PROGRAM,
INC. DBA CRAFT TRAINING CENTER OF THE COASTAL BEND FOR EXPANSION OF
THEIR TRAINING FACILITY IN CORPUS CHRISTI**

This Business Incentive Agreement for ("Agreement") is entered into between the Corpus Christi Business and Job Development Corporation ("Corporation") and Associated Builders & Contractors Merit Shop Training Program, Inc., a Texas non-profit corporation, doing business as Craft Training Center of the Coastal Bend ("CTCCB").

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 Texas Comptroller of Public Accounts, effective April 1, 2003, to be administered by the Corporation's Board of Directors ("Board");

WHEREAS, the ordinance adopting the 1/8th cent sales tax specifically provided that the funds could be used 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 Corporation exists for the purposes of encouraging and assisting entities in the creation of jobs for the City's residents;

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 Texas Local Government Code requires the City Council to approve all programs and expenditures of the Corporation;

WHEREAS, CTCCB was formed in 1988 in conjunction with industry partners as a place where area residents could get the skills required to qualify for work in local industrial companies;

WHEREAS, CTCCB currently has an enrollment of over 400 students that are receiving training in an industrial curricula and conducts 1,500 assessments per year for employment at local industrial companies ;

WHEREAS, CTCCB intends to expand its existing training program by adding the new training stations and new classes at its Corpus Christi location on Leopard Street ("Facility"), which will

allow it to increase their enrollment by up to 50% and train more students for employment in the local industries;

WHEREAS, the Corporation originally approved a grant of \$1,750,000 to CTCCB on October 17, 2011 and entered into a business incentive agreement with CTCCB, approved by the City Council by Resolution No. 029304 on December 6, 2011;

WHEREAS, the Corporation approved an additional grant of \$750,000 to CTCCB on July 23, 2012, increasing the total grant to CTCCB to \$2,500,000;

WHEREAS, the proposed grant from the Corporation will further CTCCB's mission of education and economic development;

WHEREAS, the local industry produces meaningful, wealth producing jobs that bring in dollars from outside of the City into the City; and

WHEREAS, CTCCB proposes to invest at least \$3,500,000 over a two year period to increase and expand its training facility in the City;

In consideration of the covenants, promises, and conditions stated in this Agreement, the Corporation and CTCCB 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. CTCCB shall expand its Facility to add additional training space in order to expand its existing programs and to develop new programs needed by local and regional employers.
 - b. CTCCB shall invest at least \$3,500,000 in the expansion of its Facility to be used for training students and CTCCB shall annually report its actual investments at the Facility and provide documentation to support its report to the Corporation.
 - c. The Corporation will reimburse CTCCB for the costs incurred by CTCCB to expand and improve its Facility in the City, including the purchase of fixtures, furnishings, and instructional equipment. The amount reimbursed by the Corporation may not exceed \$2,500,000.
 - d. On the annual anniversary of the Effective Date of this Agreement, CTCCB shall report to the Corporation the total number of students enrolled and the total number of course graduates placed with area industry within the City and the industrial districts in jobs requiring training provided by CTCCB through their facilities on Leopard Street and the average starting annual salaries paid by each employer within Corpus Christi during the previous year.

4. Job Training Qualification.

a. In order to be eligible for funds for job training under this Agreement, CTCCB must commit in writing to create jobs that pay wages at least as high as the wages required by Section 501.162 of the Act, which is 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.

5. Utilization of Local Contractors and Suppliers. CTCCB 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. CTCCB agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of CTCCB 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 CTCCB 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. Warranties. CTCCB warrants and represents to the Corporation the following:

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

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

c. CTCCB has timely filed and will timely file all local, state, and federal tax reports and returns required by law 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. CTCCB has access to 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 parties executing this Agreement on behalf of CTCCB are duly authorized to execute this Agreement on behalf of CTCCB.

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

7. Compliance with Laws. CTCCB shall observe and obey all applicable federal, state, and local laws, ordinances, regulations, and rules.

8. Non-Discrimination. CTCCB covenants and agrees that CTCCB 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 CTCCB 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 CTCCB 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. CTCCB 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 the City. Any attempted assignment without approval is void, and constitutes a breach of this Agreement.

11. INDEMNITY. TO THE EXTENT AUTHORIZED BY LAW, CTCCB COVENANTS TO FULLY INDEMNIFY, SAVE, AND HOLD HARMLESS THE CORPORATION, THE CITY, AND 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 CTCCB'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. CTCCB MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL 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 CTCCB 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 the City determines that any representation or warranty on behalf of CTCCB 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 CTCCB or any attachment or other levy against the property of CTCCB with respect to a claim remains unpaid, undischarged, or not dismissed for a period of 120 days.
- d. CTCCB makes an assignment for the benefit of its creditors.
- e. CTCCB files a petition in bankruptcy, or is adjudicated insolvent or bankrupt.
- f. The taxes owed by CTCCB become delinquent, and CTCCB fails to timely and properly follow the legal procedures for protest or contest.
- g. CTCCB changes the general character of its business as conducted as of the date this Agreement is approved by the Corporation.

13. Notice of Default. Should the Corporation or the City determine that CTCCB is in default according to the terms of this Agreement, the Corporation or City shall notify CTCCB in writing of the event of default and provide sixty (60) days from the date of the notice ("Cure Period") for CTCCB 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 CTCCB, as determined by the Board, the following actions must be taken for any default that remains uncured after the Cure Period.

- a. CTCCB shall immediately repay all funds paid by the Corporation under this Agreement.
- b. CTCCB shall pay the Corporation for the reasonable attorney fees and costs of court incurred by the Corporation to collect any amounts due under this Agreement.
- c. The Corporation shall have no further obligations to CTCCB 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 CTCCB's default may not be considered an estoppel against the Corporation.
- d. It is expressly understood that if at any time CTCCB 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 the Corporation may at any time avail itself of any rights or remedies or elect to terminate this Agreement on account of the default.

16. Limitation of Liability. CTCCB specifically agrees that the Corporation shall only be liable to CTCCB for the actual amount of the money grants to be conveyed to CTCCB, and shall not be liable to CTCCB for any actual or consequential damages, direct or indirect, interest, attorney fees, or costs of court for any act of default by the Corporation under the terms of this Agreement. Payment by the Corporation is strictly limited to those funds so allocated, budgeted, and collected solely during the term of this Agreement. The Corporation shall use its reasonable 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 the 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 the Corporation's customary and usual costs and expenses, as compared to each contracting party's grant amount for that year, and the Corporation shall not be liable to for any deficiency at that time or at any time in the future. In this event, the Corporation will provide all supporting documentation, as requested. Payments to be made shall also require a written request from CTCCB to be accompanied by all necessary supporting documentation.

17. Notices.

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

CTCCB:

Craft Training Center of the Coastal Bend
Attn: President
7433 Leopard Street
Corpus Christi, Texas 78409

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 to 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 if sent in the manner provided above.

18. Incorporation of other documents. The 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 CTCCB 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 the Corporation and CTCCB. 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 Sections 14.a and 14.b shall survive the termination of this Agreement.

Corpus Christi Business & Job Development Corporation

By: _____
Eloy Salazar
President

Date: _____

Attest:

By: _____
Armando Chapa
Assistant Secretary

**Associated Builders & Contractors Merit Shop Training Program, Inc.
dba Craft Training Center of the Coastal Bend**

By: Anne Matula
Anne Matula
President

Date: July 31, 2012

THE STATE OF TEXAS

COUNTY OF NUECES

This instrument was acknowledged before me on July 31, 2012, by Anne Matula, as President of Associated Builders & Contractors Merit Shop Training Program, Inc. dba Craft Training Center of the Coastal Bend, a Texas non-profit corporation, on behalf of said corporation.

Alma N. Sanchez
Notary Public
State of Texas

