

**BUSINESS INCENTIVE AGREEMENT BETWEEN  
THE CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION AND  
NORTH PADRE WATERPARK HOLDINGS LTD  
FOR INFRASTRUCTURE CONSTRUCTION TO ENHANCE ECONOMIC  
DEVELOPMENT**

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 North Padre Waterpark Holdings Ltd. ("Schlitterbahn"), a Texas limited partnership.

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, Schlitterbahn is a major destination waterpark resort that will draw tourists and visitors from outside of the local area;

WHEREAS, Schlitterbahn proposes to invest approximately \$39 million over a 3 year period;

WHEREAS, on May 4, 2012, the Board determined that it is in the best interests of the citizens of Corpus Christi, Texas that business development funds be provided to Schlitterbahn, through this Agreement with Schlitterbahn, to be used by Schlitterbahn to pay for the creation of certain infrastructure improvements allowed under Section 501.103 of the Texas Local Government Code needed for the development of the Schlitterbahn waterpark and that will result in increased economic development and the creation of 40 new full-time permanent jobs and 300 seasonal jobs in the City of Corpus Christi.

In consideration of the covenants, promises, and conditions stated in this Agreement, the Corporation and Schlitterbahn 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 three years beginning on the effective date.

3. **Performance Requirements.**

a. Schlitterbahn 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 development of the Schlitterbahn waterpark .

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

c. Schlitterbahn will provide the Corporation with a detailed list of infrastructure expenditures each year within 30 days of the anniversary of the effective date until the end of this agreement.

4. **Grant Award.**

a. The Board will grant Schlitterbahn the amount of \$5,000,000 over the term of the agreement, to be paid to North Padre WPH GP, LLC, general partner of Schlitterbahn.

b. One half of the grant (\$2,500,000) will be awarded upon the Developer providing documentation that they have spent \$5,000,000 for infrastructure improvements for the waterpark allowed under Section 501.103 of the Texas Local Government Code or have achieved 50% completion of the waterpark. 50% completion of the waterpark means that at least \$10,000,000 has been spent on construction of the first phase of the waterpark.

c. One half of the grant (\$2,500,000) will be awarded upon the completion of the waterpark. Completion means that the Certificate of Occupancy for the waterpark has been issued by the City.

5. Buy Local Provision.

a. Schlitterbahn 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.

8. Warranties. Schlitterbahn warrants and represents to Corporation the following:

a. Schlitterbahn is a corporation 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. Schlitterbahn has the authority to enter into and perform, and will perform, the terms of this Agreement to the best of its ability.

c. Schlitterbahn 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. Schlitterbahn 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 Schlitterbahn are duly authorized to execute this Agreement on behalf of Schlitterbahn.

f. Schlitterbahn does not and agrees that it will not knowingly employ an undocumented worker. If, after receiving payments under this Agreement,

Schlitterbahn is convicted of a violation under §U.S.C. Section 1324a(f), Schlitterbahn shall repay the payments at the rate and according to the terms as specified by City Ordinance, as amended, not later than the 120<sup>th</sup> day after the date Schlitterbahn has been notified of the violation.

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

8. Non-Discrimination. Schlitterbahn covenants and agrees that Schlitterbahn 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 Schlitterbahn 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 Schlitterbahn 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. Except as provided below, Schlitterbahn may not assign all or part of its rights and obligations under this Agreement to a third party without prior written approval of City Council and the Board, which approval will not be unreasonably withheld or delayed. The City agrees, however, that Schlitterbahn may assign all or part of its rights and obligations under this Agreement to any entity affiliated with Schlitterbahn by reason of controlling, being controlled by, or being under common control with Schlitterbahn or to a third party lender advancing funds for the construction or operation of the waterpark. The City expressly consents to any assignment described in the preceding sentence, and agrees that no further consent of City Council or the Board to such an assignment will be required. Schlitterbahn agrees to provide City with written notice of any such assignment. The foregoing notwithstanding, any assignment of Schlitterbahn's rights under this Agreement shall not release Schlitterbahn from its obligations hereunder.

**11. Indemnity. Schlitterbahn 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**

***Schlitterbahn 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. Schlitterbahn 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 Schlitterbahn. The following events constitute a default of this Agreement by Schlitterbahn:

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

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

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

d. Neither the City, the Corporation, nor Schlitterbahn 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 Schlitterbahn's default may not be considered an estoppel against the Corporation.

d. It is expressly understood that if at any time Schlitterbahn 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. Schlitterbahn specifically agrees that Corporation shall only be liable to Schlitterbahn for the actual amount of the money grants to be conveyed to Schlitterbahn, and shall not be liable to Schlitterbahn 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 Schlitterbahn 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:

Schlitterbahn:

North Padre Waterpark Holdings Ltd.  
Attn: Gary Henry  
381 East Austin  
New Braunfels, Texas 78130

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 Schlitterbahn 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 Schlitterbahn. 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  
Vice President

Date:

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Attest:

By:

Armando Chapa  
Assistant Secretary

Schlitterbahn

North Padre Waterpark Holdings Ltd

By: North Padre WPH GP, LLC, general partner

By:

  
Gary Henry  
Manager

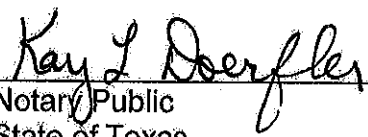
Date:

5/18/12

THE STATE OF TEXAS

COUNTY OF Comal

This instrument was acknowledged before me on 18 of May, 2012, by Gary Henry, Manager of North Padre WPH GP, LLC, general partner of North Padre Waterpark Holdings Ltd for North Padre Waterpark Holdings Ltd., a Texas limited partnership, on behalf of the partnership.

  
Notary Public  
State of Texas

