

**BUSINESS INCENTIVE AGREEMENT BETWEEN
THE CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION AND
SERVICE CORPS OF RETIRED EXECUTIVES (SCORE) CHAPTER 221 FOR JOB
TRAINING**

This Business Incentive Agreement for Job Training (“Agreement”) is entered into between the Corpus Christi Business and Job Development Corporation (“Corporation”) and Service Corps of Retired Executives Chapter 221 (“SCORE”), a Washington, D.C. non-profit corporation.

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 of jobs for the citizens of Corpus Christi, Texas;

WHEREAS, the Board of Directors of the Corporation (“Board”), on August 17, 2015, amended the Corporation’s Guidelines and Criteria for Granting Business Incentives (“Type A Guidelines”), which the City Council approved on September 15, 2015;

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

WHEREAS, SCORE will provide assistance to small businesses, persons, and entities desiring to begin and operate a small business in Corpus Christi by mentoring clients; conducting workshops; and advising clients as to business plans, pro-forma statements, forms of business entity, financial implications of business decisions, and all other aspects of small business operations;

WHEREAS, SCORE proposes to retain an executive assistant/coordinator to assist SCORE volunteers in administrating the assistance program;

WHEREAS, on August 15, 2016 the Board determined that it is in the best interests of the citizens of Corpus Christi, Texas that business development funds be provided to SCORE,

through this Agreement with SCORE, to be used by SCORE to provide assistance to small businesses.

In consideration of the covenants, promises, and conditions stated in this Agreement, Corporation and SCORE 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.*

a. The term of this Agreement is for one year from October 1, 2016, through September 30, 2017.

b. This Agreement may be extended at the option of the Corporation for up to two additional one year terms, contingent upon annual appropriation of funds and approval of the City Council. Per the guidelines, SCORE must reapply every year for the grant.

3. *Performance Requirements and Grants.* The Performance Requirements and Grants are listed below;

- Corporation will reimburse SCORE by grant for all direct expenses related to the project. The total reimbursements may not exceed Fifty-Two Thousand Six Hundred Dollars (\$52,600.00).
- Providing 1,620 hours of general and technical services to small businesses through volunteer counselors.
- SCORE agrees to the following reporting and monitoring provisions, and failure to fully and timely comply with any one requirement is an act of default.
- SCORE shall provide quarterly reports on its performance requirements. The reports must document:
 - a. Number of face to face consultations between SCORE volunteers and small business owners or prospective owners.
 - b. Number of workshops with description of workshop and number of attendees.
 - c. Number of small business owners or prospective owners who were provided counseling by email or on-line services.
- SCORE, during normal working hours, at its Corpus Christi, Texas, facility, shall allow Corporation and its designee, the City's Economic Development Department ("Department"), reasonable access to SCORE's employment records and books, to verify employment and all other relevant records related to each of the other economic development considerations and incentives, as stated in this agreement, but the confidentiality of records and information shall be maintained by Corporation and Department, unless the records and information shall be required by a court order, a lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.

4. *Utilization of Local Contractors and Suppliers.* SCORE 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. SCORE agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of SCORE 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 SCORE 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.

5. *Utilization of Disadvantaged Business Enterprises (“DBE”).* SCORE 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. SCORE 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. SCORE agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of SCORE 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 SCORE 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. *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.

7. *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.

8. *Warranties.* SCORE warrants and represents to Corporation the following:

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

c. SCORE 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. SCORE 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 SCORE is duly authorized to execute this Agreement on behalf of SCORE.

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

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

10. *Non-Discrimination.* SCORE covenants and agrees that SCORE 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.

11. *Force Majeure.* If the Corporation or SCORE 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 SCORE 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.

12. *Assignment.* SCORE 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.

13. Indemnity. SCORE 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 SCORE 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. SCORE 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.

14. *Events of Default by SCORE.* The following events constitute a default of this Agreement by SCORE:

- a. The Corporation or City determines that any representation or warranty on behalf of SCORE 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 SCORE or any attachment or other levy against the property of SCORE with respect to a claim remains unpaid, undischarged, or not dismissed for a period of 120 days.
- c. SCORE makes an assignment for the benefit of creditors.
- d. SCORE files a petition in bankruptcy, or is adjudicated insolvent or bankrupt.
- e. If taxes owed by SCORE become delinquent, and SCORE fails to timely and properly follow the legal procedures for protest or contest.
- f. SCORE changes the general character of business as conducted as of the date this Agreement is approved by the Corporation.
- g. SCORE fails to comply with one or more terms of this Agreement.

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

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

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

17. *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 SCORE's default may not be considered an estoppel against the Corporation.

d. It is expressly understood that if at any time SCORE 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.

18. SCORE specifically agrees that Corporation shall only be liable to SCORE for the actual amount of the money grants to be conveyed to SCORE, and shall not be liable to SCORE 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 SCORE to be accompanied by all necessary supporting documentation.

19. 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.

20. *Notices.*

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

SCORE Chapter 221:

SCORE 221 Chapter Chair
2820 South Padre Island Drive
Suite 108
Corpus Christi, Texas 78408

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.

21. *Incorporation of other documents.* The Type A Guidelines, as amended, are incorporated into this Agreement.

22. *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.

23. *Relationship of Parties.* In performing this Agreement, both the Corporation and SCORE 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.

24. *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.

25. *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.

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

27. *Sole Agreement.* This Agreement constitutes the sole Agreement between Corporation and SCORE. Any prior Agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.

28. *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.

APPROVED AS TO FORM: ____ day of _____, 2016.

Assistant City Attorney
For City Attorney

Corpus Christi Business & Job Development Corporation

By: _____

President

Date: _____

Attest:

By: _____

Rebecca Huerta
Assistant Secretary

SCORE Chapter 221

By: _____

Joe Dove
President

Date: _____

THE STATE OF TEXAS §

§

COUNTY OF NUECES §

§

This instrument was acknowledged before me on _____, 2016, by Dennis Dolce, President for Service Corps of Retired Executives (SCORE) Chapter 221, a Washington, D.C. non-profit corporation, on behalf of the corporation.

Notary Public
State of Texas