

**BUSINESS INCENTIVE AGREEMENT BETWEEN
THE CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION
AND NUECES COUNTY COURTHOUSE DEVELOPMENT PARTNERS, LLC FOR
THE CREATION OF JOBS AND INFRASTRUCTURE CONSTRUCTION TO
ENHANCE ECONOMIC DEVELOPMENT**

This Business Incentive Agreement for Capital Investments and the Creation of Jobs ("Agreement") is entered into between the Corpus Christi Business and Job Development Corporation ("Corporation") and Nueces County Courthouse Development Partners, LLC ("Courthouse"), a Texas limited liability 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 February 19, 2018 last amended the Corporation's Guidelines and Criteria for Granting Business Incentives ("Type A Guidelines"), which the City Council approved on April 17, 2018;

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

WHEREAS, the Courthouse plans to redevelop the old Nueces County Courthouse into a four-star hotel for tourists and visitors from outside of the local area (the "Project");

WHEREAS, Courthouse proposes to invest over \$40 million within a 5-year period, with intent to begin construction in 2019;

WHEREAS, on April 16, 2018, the Board determined that it is in the best interests of the citizens of Corpus Christi, Texas that business development funds be provided to Courthouse, through this Agreement to be used 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 Courthouse hotel and that will result in increased economic development and the creation of a minimum of 25 new full-time equivalent positions in the City of Corpus Christi.

In consideration of the covenants, promises, and conditions stated in this Agreement, the Corporation and Courthouse 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. Courthouse 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. Courthouse 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. Courthouse agrees to provide the Corporation with a sworn certificate by authorized representative of the business, certifying the amount used for infrastructure improvements.

c. Courthouse 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, Courthouse will create at least 25 new full-time equivalent positions in the City of Corpus Christi.

e. During the term of this Agreement, Courthouse will invest at least \$40,000,000 in the Project.

4. **Grant Award.**

a. The Board will grant Courthouse the amount of \$3,000,000, to be paid to Nueces County Courthouse Development Partners, LLC, so long as all of the terms and conditions of the Agreement are met prior to the Agreement's expiration.

b. The grant (\$3,000,000) will be within 60 days after Courthouse provides documentation that they have received a permanent certificate of occupancy for the Project issued by the City's Development Services department. Along with the Certificate of Occupancy, Courthouse 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 Courthouse does not provide the required documentation prior to the end of the Term, this Agreement shall expire and Courthouse shall not be entitled to the grant funds.

5. Buy Local Provision.

a. Courthouse 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. Courthouse warrants and represents to Corporation the following:

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

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

f. Courthouse does not and agrees that it will not knowingly employ an undocumented worker. If, after receiving payments under this Agreement, Courthouse is convicted of a violation under 8 U.S.C. Section 1324a(f), Courthouse 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 Courthouse has been notified of the violation.

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

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

11. Indemnity. Courthouse 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 Courthouse 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. Courthouse 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 Courthouse. The following events constitute a default of this Agreement by Courthouse:

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

14. Results of Uncured Default by Courthouse. 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 Courthouse, 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. Courthouse shall immediately repay all funds paid by Corporation to them under this Agreement.
- b. Courthouse 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 Courthouse of all sums due, the Corporation and Courthouse shall have no further obligations to one another under this Agreement.
- d. Neither the City, the Corporation, nor Courthouse 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 Courthouse's default may not be considered an estoppel against the Corporation.
- d. It is expressly understood that if at any time Courthouse 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. Courthouse specifically agrees that Corporation shall only be liable to Courthouse for the actual amount of the money grants to be conveyed to Courthouse and shall not be liable to Courthouse 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 Courthouse 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:

If to Courthouse: Nueces County Courthouse Development
Partners, LLC
650 California Street, Floor 7
San Francisco, California 94704

ATTN: Stephen L. Goodman

If to the City:

City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469
ATTN: City Manager

With Copy to:

City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469
ATTN: City Attorney

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 Courthouse 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 Courthouse. 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.

The rest of this page intentionally left blank

Corpus Christi Business & Job Development Corporation

By: _____
Bart Braselton
President

Date: _____

Attest:

By: _____
Rebecca Huerta
Assistant Secretary

Courthouse

By: Nueces County Courthouse Development Partners, LLC

By: _____


Date: 4-24-18

The State of Texas

County of _____

This instrument was acknowledged before me on _____, 2018, by _____, _____ of Nueces County Courthouse Development Partners, LLC, a Texas limited partnership, on behalf of the partnership.

SEE ATTACHED CALIFORNIA NOTARY
Notary Public
State of California

California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of CONTRA COSTA } s.s.

On 4/24/18 before me, JASON CHRISTOPHER JEREMY Notary Public

personally appeared STEPHEN LEWIS GOODMAN
Name of Signer (1)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public



OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of BUSINESS INCENTIVE AGREEMENT containing 9 pages, and dated 4/24/18.

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-fact
- Corporate Officer(s) _____
Title(s)
- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: _____

representing: _____
Name(s) of Person(s) Entity(ies) Signer & Representing

Additional Information	
Method of Signer Identification	
Proved to me on the basis of satisfactory evidence:	
<input type="checkbox"/> form(s) of identification	<input type="checkbox"/> credible witness(es)
Notarial event is detailed in notary journal on:	
Page # _____	Entry # _____
Notary contact: _____	
Other	
<input type="checkbox"/> Additional Signer	<input type="checkbox"/> Signer(s) Thumbprints(s)
<input type="checkbox"/> _____	