

**BUSINESS INCENTIVE AGREEMENT BETWEEN
THE CORPUS CHRISTI BUSINESS AND JOB DEVELOPMENT CORPORATION AND
TEXAS A&M UNIVERSITY – CORPUS CHRISTI**

This Business Incentive Agreement for ("Agreement") is entered into between the Corpus Christi Business and Job Development Corporation ("Corporation") and Texas A&M University - Corpus Christi, a Texas institution of higher education ("TAMU-CC").

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 to assist small and start-up companies carries the heading "Business Development/Incubation;"

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, the Federal Aviation Administration (FAA) has proposed to designate six regional test sites for the purpose of developing technologies, policies and procedures that will safely integrate unmanned aerial systems UAS into the national airspace that would be located in Texas;

WHEREAS, it is critical for Texas to compete successfully for this designation in order to reap its share of UAS national industrial development and economic growth estimated at 150,000 jobs and \$8 billion annually by 2020;

WHEREAS, Texas is proposing a statewide test site that will be comprised of five test ranges, with the principal range and command center located in Corpus Christi;

WHEREAS, TAMU-CC is the lead entity preparing to submit a bid for one of these test sites. The cost of securing and preparing the bid to the University could be as high as \$600,000. This

cost is being matched by in-kind and in-cash contributions from the Texas Engineering Experiment Station and the lead systems integrator on the project, Camber Inc.;

WHEREAS, given its role as lead test range and command center for Texas, Corpus Christi could realize more than 300 well-paying jobs. These jobs will be created by private-sector investment in UAS manufacturing and technology research and development.

WHEREAS, TAMU-CC will increase its capacities for UAS-related research funding from public and private sources;

WHEREAS, TAMU-CC students at all levels will benefit from this upgrade as they prepare for careers related to UAS industries, from high-tech maintenance bays to research labs and advanced flight-testing.

WHEREAS, on March 18, 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 TAMU-CC, through this Agreement with TAMU-CC, to be used by TAMU-CC to fund an application to be an FAA Test Center for UAS for the purpose of developing technologies, policies and procedures that will safely integrate UAS into the national airspace;

In consideration of the covenants, promises, and conditions stated in this Agreement, Corporation and TAMU-CC 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 one year beginning on the Effective Date.
3. **Performance Requirements and Grants.** Corporation shall provide a grant not to exceed \$600,000 to TAMU-CC. TAMU-CC must use the grant to fund activities in support of an application to become one of six regional FAA Test Sites for the purpose of developing technologies, policies and procedures that will safely integrate UAS into the national airspace. As grant funds are expended, TAMU-CC must deliver invoices for payment. The Corporation shall pay invoices within 30 days.
4. **Warranties.** TAMU-CC warrants and represents to Corporation the following:
 - a. TAMU-CC is an institution of higher education established under the laws of the State of Texas, has all power and authority to carry on its activities as presently conducted in Corpus Christi, Texas.
 - b. TAMU-CC has the authority to enter into and perform, and will perform, the terms of this Agreement to the best of its ability.
 - c. TAMU-CC 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. TAMU-CC 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 TAMU-CC is duly authorized to execute this Agreement on behalf of TAMU-CC.

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

5. Compliance with Laws. During the Term of this Agreement, TAMU-CC shall observe and obey all applicable laws, ordinances, regulations, and rules of the Federal, State, county, and city governments.

6. Non-Discrimination. TAMU-CC covenants and agrees that TAMU-CC 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.

7. Force Majeure. If the Corporation or TAMU-CC 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 TAMU-CC 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.

8. Assignment. TAMU-CC 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.

9. Indemnity. TAMU-CC covenants, to the extent authorized by law, 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 TAMU-CC 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. TAMU-CC must, to the extent authorized by law, 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.

10. Events of Default by TAMU-CC. The following events constitute a default of this Agreement by TAMU-CC:

- a. Any representation or warranty by TAMU-CC contained in this Agreement or in any financial statement, certificate, or report submitted to the Corporation by TAMU-CC under this Agreement was incorrect or misleading in any material respect when made;
- c. TAMU-CC makes an assignment for the benefit of creditors.
- d. TAMU-CC files a petition in bankruptcy, or is adjudicated insolvent or bankrupt.
- e. If taxes owed by TAMU-CC become delinquent, and TAMU-CC fails to timely and properly follow the legal procedures for protest or contest.
- f. TAMU-CC changes the general character of business as conducted as of the date this Agreement is approved by the Corporation.
- g. TAMU-CC fails to comply with one or more terms of this Agreement.

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

12. Results of Uncured Default by TAMU-CC. 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 TAMU-CC, 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. TAMU-CC shall immediately repay all funds paid by Corporation to them under this Agreement.
- b. TAMU-CC shall, to the extent authorized by law, 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 TAMU-CC of all sums due, the Corporation and TAMU-CC shall have no further obligations to one another under this Agreement.
- d. Neither the City, the Corporation, nor TAMU-CC may be held liable for any consequential damages.

13. 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 TAMU-CC's default may not be considered an estoppel against the Corporation.

d. It is expressly understood that if at any time TAMU-CC 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.

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

15. 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.

16. Notices.

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

TAMU-CC:

Texas A & M University – Corpus Christi
Attn: President/CEO
6300 Ocean Drive, Unit 5756
Corpus Christi, Texas 78412-5756

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.

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

18. 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.

19. Relationship of Parties. In performing this Agreement, both the Corporation and TAMU-CC 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.

20. 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.

21. 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.

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

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

24. Survival of terms of Agreement and obligations of parties. The terms of this Agreement and the obligation of the parties relating to Section 21.a and b shall survive the termination of this Agreement.

Corpus Christi Business & Job Development Corporation

By: _____
Robert Tamez
President

Date: _____

Attest:

By: _____
Armando Chapa
Assistant Secretary

Texas A&M University – Corpus Christi

By:  _____
Flavius C. Killebrew
President/CEO

Date: 3-18-13