

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

**re: DEVELOPMENT OF FACILITIES FOR THE BACHELOR OF SCIENCE IN CIVIL AND
INDUSTRIAL ENGINEERING PROGRAMS**

This Business Incentive Agreement for Capital Investments and Job Training ("Agreement") is entered into between the Corpus Christi Business and Job Development Corporation ("Corporation") and Texas A&M University – Corpus Christi ("TAMU-CC"), a member of The Texas A&M University System, an agency of the State of Texas.

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 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, TAMU-CC is expanding its undergraduate degrees in civil and industrial engineering;

WHEREAS, the Board has 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 for expenses related to establishing the facilities for the new engineering programs, including retrofitting and outfitting the laboratories to be used in TAMU-CC's Civil and Industrial Engineering programs.

WHEREAS, TAMU-CC intends to invest approximately \$4,000,000 over a five-year period, including the funding received from the Corporation;

WHEREAS, on July 18, 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 TAMU-CC, through this Agreement with TAMU-CC, to be used by TAMU-CC to establish new engineering programs and will result in job training that will give our citizens the knowledge and skills required for the jobs of the future. New jobs will pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market.

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 five years beginning on the Effective Date.

3. *Performance Requirements and Conditions.*

a. TAMU-CC shall purchase laboratory equipment for its civil and industrial engineering programs and construct or retrofit existing labs for civil and industrial engineering as needed (the "Project").

b. The Corporation will reimburse TAMU-CC for the costs incurred by TAMU-CC related to the Project. TAMU-CC shall submit to the Corporation documentation reasonably satisfactory to the Corporation of costs incurred by TAMU-CC related to the Project and the Corporation shall provide reimbursement within 30 days of receipt of such documentation. The amount reimbursed by the Corporation may not exceed \$2,000,000.

c. On the annual anniversary of the Effective Date, TAMU-CC shall report to the Corporation the number of students enrolled in the Civil and Industrial Engineering programs at TAMU-CC during the previous year.

d. TAMU-CC will display signage that states that TAMU-CC is a recipient of Type A funding. This signage will be created at TAMU-CC's own expense, and will be displayed in a location that is visible to a visitor to the facility.

4. *Utilization of Local Contractors and Suppliers.* TAMU-CC 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. 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. TAMU-CC agrees, during the construction of the Project and for four years after its completion, to maintain written records documenting the efforts of TAMU-CC to comply with the Local Requirement, and to provide an annual report to the City Manager or designee. Failure to substantially comply with this requirement shall be a default hereunder.

5. *Utilization of Historically Underutilized Businesses ("HUBs").* TAMU-CC agrees to make good faith efforts in utilizing contractors and suppliers in the Project that are HUBs in accordance with

Texas Government Code, Chapter 2161, Subchapter F, and Comptroller of Public Accounts HUB Rules, TAC Section 20.14, with a priority made for HUBs which are local. TAMU-CC agrees to a goal of 22.82% of the total dollar amount of all construction contracts and supply agreements for the Project being paid to HUBs. TAMU-CC agrees, during the construction of the Project and for four years after its completion, to maintain written records documenting the efforts of TAMU-CC to comply with the DBE Requirement, and to provide an annual report to the City Manager or designee. Failure to substantially comply with this requirement 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 HUBs includes firms, businesses, and persons who reside in or maintain an office within a 50 mile radius of Nueces County.

6. *Health Insurance.* To qualify for this incentive, TAMU-CC certifies that it has offered a health insurance program for its employees during the term of the Agreement.

7. *Warranties.* TAMU-CC warrants and represents to Corporation the following:

a. TAMU-CC is an institution of higher education 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. 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 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. 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 parties executing this Agreement on behalf of TAMU-CC are 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 Corporation, with interest at the Wall Street Journal Prime Rate, not later than the 120th day after the date TAMU-CC has been convicted of the violation and exhausted all available appeals.

8. *Compliance with Laws.* TAMU-CC shall observe and obey all applicable laws, ordinances, regulations, and rules of the Federal, State, county, and city governments.

9. *Non-Discrimination.* TAMU-CC covenants and agrees that TAMU-CC will not illegally discriminate nor permit illegal discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in TAMU-CC 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.

10. *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.

11. *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.

12. Indemnity. To the extent authorized by law, TAMU-CC 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 TAMU-CC activities conducted under or incidental to this Agreement, except to the extent any injury, loss or damage is caused by the sole or contributory negligence of any or all of the Indemnitees. TAMU-CC 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 arising from the liability, damage, loss, claims, demands, or actions.

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

- a. The Corporation or City determines that any representation or warranty on behalf of TAMU-CC 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 related to this Agreement is assessed against TAMU-CC or any attachment or other levy against the property of TAMU-CC with respect to a claim remains unpaid, undischarged, or not dismissed for a period of 120 days.
- 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.

14. *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.

15. *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 TAMU-CC 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.

16. *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.

17. 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.

18. 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.

19. *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: Director of Contracts and Property
6300 Ocean Drive, Unit 5731
Corpus Christi, Texas 78412-5731

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 in the manner provided above.

20. *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.

21. *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.

22. *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.

23. *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.

24. *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.

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

26. *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.

27. *Survival of terms of Agreement and obligations of parties.* The terms of this Agreement and the obligation of the parties relating to Sections 14 and 15 shall survive the termination of this Agreement.

28. *Public Information.*

- a. Corporation and TAMU-CC each acknowledge that the other is obligated to comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- b. Upon written request from the other party, Corporation or TAMU-CC will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, *Texas Government Code*, to the other party in a non-proprietary format acceptable to the other party. As used in this provision, "public information" has the meaning assigned by Section 552.002, *Texas Government Code*, but only includes information to which the other party has a right of access.

(signatures on next page)

Corpus Christi Business & Job Development Corporation

By: _____
Dr. R. Bryan Gulley
President

Date: _____

Attest:

By: _____
Rebecca Huerta
Assistant Secretary

Approved as to Legal Form

By: _____
Aimee Alcorn-Reed
Assistant City Attorney
Attorney for Corporation

Date: _____

Texas A&M University–Corpus Christi

By: _____
Dr. Flavius Killebrew
President

THE STATE OF TEXAS)
COUNTY OF NUECES)

This instrument was acknowledged before me on _____, 2016 by Dr. Flavius Killebrew, President of Texas A&M University-Corpus Christi, a member of the Texas A&M University System, an agency of the State of Texas, on behalf of the University.

Notary Public for State of Texas
My Commission Expires:_____