

## **CORPUS CHRISTI B CORPORATION GUIDELINES & CRITERIA FOR GRANTING BUSINESS INCENTIVES**

WHEREAS, the attraction of long-term investment and the establishment of primary jobs in Corpus Christi would enhance the City's economic base bringing new revenues into the economy; and,

WHEREAS, Corpus Christi must compete with other communities across the nation currently offering a variety of business incentives to attract jobs and business; and,

WHEREAS, the Texas Legislature in Section 4B 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, ("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 8, 2016, residents of the City of Corpus Christi ("City") passed Proposition 1, Adopt Type B Sales Tax to Replace Expiring Type A Sales Tax, 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 20 years;

WHEREAS, Proposition 1 limited the use of the 1/8<sup>th</sup> cent sales tax to the following:

- 1) 50% for economic development, specifically the promotion and development of new and expanded business enterprises to the full extent allowed by Texas law;
- 2) Up to \$500,000 annually on affordable housing; and
- 3) Balance of proceeds to be used for the construction, maintenance and repair of arterial and collector streets and roads;

WHEREAS, the 1/8th cent sales tax authorized by passage of Proposition 1 was subsequently enacted by the City Council and filed with the State Comptroller of Texas, effective April 1, 2018, to be administered by the City's Section Type B board of directors (Corpus Christi B Corporation Board);

WHEREAS, it is stated desire of the Corporation's Board of Directors that funds approved for the promotion and development of new and expanded business enterprises can only be used for any eligible project under Texas Local Government Code Chapters 501 and 505.

WHEREAS, to assure a common, coordinated effort to promote economic development, these Guidelines and Criteria have been circulated among the City of Corpus Christi, other governmental entities, the Corpus Christi Regional Economic Development Corporation, area chambers of commerce and the Corpus Christi community in general for consideration;

NOW, THEREFORE, BE IT RESOLVED by the Corpus Christi B Corporation that these Guidelines and Criteria for Granting Business Incentives be adopted:

## **Section 1. Definitions.**

(a) "Agreement" means a contractual agreement between a property owner and/or lessee within the City of Corpus Christi City Limits and the "Corporation" for the purposes of granting business incentives.

(b) "Basic Manufacturing or Service Facility" means buildings and structures, including fixed machinery and equipment not elsewhere described, used or to be used for the production of products or services.

(c) "Board" means the Corpus Christi B Corporation Board (Section 4B Board) as established by "City" Resolution 031343 and pursuant to the "Act".

(d) "Business Incubator" means a program established with the primary objective of improving the potential success of emerging primary employers, preferably through the transfer or application of technology, and in doing so, creates jobs, ensures self-sufficiency and invigorates the local economy. Through such programs, small business owners typically have access to assistance which might include items such as rental space, administrative support services, on-site business consulting, workshops, enterprise facilitation, and business management seminars.

(e) "Capital Investment" means the increase in the assessed value of an eligible property as a result of "expansion" or "modernization" of an "existing facility" or construction of a "new facility." It does not mean or include "deferred maintenance".

(f) "City" means the City of Corpus Christi, Texas.

(g) "CCREDC" means the Corpus Christi Regional Economic Development Corporation which serves as a professional economic development advisor to the City, the Corporation, and the Board:

(h) "Corporation" means the City of Corpus Christi B Corporation established by "City" Resolution 031343.

(i) "Deferred Maintenance" means improvements necessary for continued operations which do not improve productivity or are performed to meet regulatory obligations.

(j) "Economic Driver" means a project that will add at least 50 full time employees and at least 50% of their sales and revenue come from outside a 50-mile radius from the intersection of Staples Street and Leopard Street. These revenues will increase the wealth of the area.

(k) "Economic Life" means the number of years a property improvement is expected to be in service in a "facility".

(l) "Executive Director" means the City Manager or his/her designee.

(m) "Expansion" means the addition of buildings, structures, fixed machinery or equipment for the purposes of increasing capacity.

(n) "Facility" means property improvements completed or in the process of construction which together compromise an integral whole, as well as new fixed machinery or equipment.

(o) "Jobs" means employment of a full-time employee, contractor, consultant, or leased employee who has a home address in the Corpus Christi MSA.

(p) "Living wage" means the annual amount determined by the U.S. Department of Health and Human Services for the Corpus Christi area as being at the poverty level for a family of three, divided by 2,080 hours per year.

(q) "Modernization" means the replacement and upgrading of existing "facilities" which increase the productive input or output, updates the technology or substantially lowers the unit cost of the operation, and extends the economic life of the "facilities". Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing, repairing or completion of "deferred maintenance".

(r) "New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with an "expansion" or "modernization".

(s) "Owner" means the owner of a "facility" or "program" subject to business incentives. If the "facility" is constructed on a leased property, the owner shall be the party which owns the property subject to the business incentive. The other party to the lease shall join in the execution of the "agreement" but shall not be obligated to assure performance of the party receiving business incentive.

(t) "Petrochemical Facility" means buildings and structures, including fixed machinery and equipment, the primary purpose of which is or will be the manufacture or processing of petrochemicals or fuels by physical or chemical change.

(u) "Primary Employer" means a business in which at least 50% of its goods and/or services are sold to customers that are located more than 50 miles from the intersection of Staples Street and Leopard Street and (1) whose goods and/or services are in one of the following two-digit NAICS codes 31-33 Manufacturing; 42 Wholesale Trade; 48-49 Transportation and Warehousing; 52 Finance and Insurance; 54 Professional and Technical; or 55 Management of Companies; or (2) which is a supplier of who supplies at least 50% of its non-retail goods and/or services to local primary employer(s) that are located within a 50 mile radius away. Professional services companies qualifying for incentives must have more than 50% of their contract work (i.e. the location where the physical work/construction/manufacturing, etc. resulting from the professional services is done) located outside of a 50-mile radius of the region. The inability of a company to satisfactorily document the "primary" nature of the jobs shall be deemed ineligible for this incentive agreement payments.

(v) "Regional Distribution Center Facility" means buildings and structures, including fixed machinery and equipment, used or to be used primarily to receive, store, service or distribute goods or materials owned by the Facility operator where a majority of the goods or services are distributed to points beyond a 50-mile radius of Nueces County.

(w) "Regional Telecommunications/Data Processing Center Facility" means buildings and structures used or to be used primarily for the provision of telecommunication or data

processing services by the Facility operator where a majority of the services are provided to points beyond a 50-mile radius of Nueces County.

(x) "Research and Development Facility" means buildings and structures used or to be used primarily for the purpose of product developmental engineering, testing and evaluation.

(y) "Retention" means to retain existing primary employers so that they continue their business operation within the Corpus Christi city limits and its extraterritorial jurisdiction (ETJ).

(z) "Small Business" means an employer that employs 49 or less full time (2,080 hours/year) permanent jobs at the time of application.

(aa) "Small Business Primary Employer" means a primary employer that employs 49 or less full time permanent jobs at the time of application and complies with the requirement(s) set forth under "Definitions" letter (z).

## **Section 2. Mission & Goals**

(a) It shall be the mission of the Board in administration of these Guidelines and Criteria to promote, encourage and enhance the expansion of the City tax base and economy through granting business incentives.

(b) The goals of the Board in administration of these Guidelines and Criteria are to:

- Create and retain jobs;
- Expand the City tax base and economy;
- Strengthen and diversify the local economy.

(c) The role of the Corporation in carrying out this mission and goals is to review and approve applications for business incentives, recognizing that the Corpus Christi Regional Economic Development Corporation exists for the purpose of organizing, coordinating and leading the City's economic development efforts. CCREDC shall be responsible for accepting and processing all Type B incentive applications and forwarding to the Board and Corporation with recommendations for action. When applications are received, CCREDC will provide a courtesy copy to the Mayor, the Mayoral appointee to the CCREDC Board of Directors, and the City Manager. All completed applications filed with CCREDC that meet the qualifying standards of the Type B Program, ~~and~~ provided that funds allocated and budgeted funds are available, will be ~~forwarded-presented~~ to the Type B Board along with a recommendation on course of action at an appropriate meeting following the review of the CCREDC Board. CCREDC will provide a monthly report to the Board of any application that was deemed ineligible and the reason.

## **Section 3. Business Incentives Authorized.**

(a) Primary Employer and Small Business Primary Employer Business Incentives Authorized. Incentives granted by Agreement under these guidelines pursuant to Section 4 below may include, but are not limited to the following:

- land, facilities, equipment & infrastructure grants;
- loan participation/guarantees;
- direct low interest loans;

- rent subsidies;
- relocation and moving expense grants;
- job training grants/loans;
- business incubation activities; and
- Projects located in a tax increment reinvestment zone will be given preference.

(b) Small Business Incentives Authorized. Incentives granted by Agreement for Small Business under these guidelines pursuant to Section 5 below may include, but are not limited to the following:

- Small Business start-up grants/loans;
- Business Incubation grants/loans; and
- Business Incubator development.

(c) Education Skills Development (defined below)

**Section 4. Primary Employer Business Incentives.**

(a) Authorized Facilities. A Capital Investment for a Facility may be eligible for incentives by Agreement if it creates or retains jobs for a Primary Employer. Incentives may be granted for land or Capital Investment related to either New Facilities or improvements to existing Facilities for the purpose of Modernization, Expansion, or for Capital Investment necessary for the retention of an existing primary employer. The following types of property shall be ineligible for business incentives: inventories; supplies; tools; furnishings and other forms of movable personal property (not including capital production equipment); vehicles; vessels; aircraft; deferred maintenance investments; improvements to real property which have an economic life of less than 15 years; and, with the exception of the City of Corpus Christi, property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the State of Texas.

(b) Annual Certification. The Business Incentive Agreement shall require annual certification of capital investment as required by the Agreement.

(c) Completion of Facility Construction. The completion of Facility construction or installation of Capital Investment shall be deemed to occur upon the earliest of the following events (as determined by the Board):

- when a permanent certificate of occupancy is issued for the project;
- when commercial production of a product or provision of a service is achieved at the Facility;
- when the architect or engineer supervising construction issues a certificate of substantial completion, or some similar instrument; or,
- two (2) years after the date of the Agreement.

(d) Average Wage Requirement. In determining an incentive based on net jobs, the following matrix shall be considered as a guiding principal for incentive reviews.

Gross Payroll Incentive per Job for employees, leased employees, contractors, and consultants. Benefits shall not be included in the gross payroll calculations.

<\$30,000 per job	A maximum of \$750 per net job*
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\$30,000 to \$40,000 per job	\$751 to \$5,000 per job*
\$40,001 to \$50,000 per job	\$5,001 to \$10,000 per job*
>\$50,000 per job	\$10,001+ per job*

\*up to, or not-to-exceed amounts, based on projected economic impact report and CCREDC staff recommendations.

(e) For each project an economic impact report using accepted industry standards will be completed. For purposes of calculating the impact, only direct and indirect (not induced) revenue impacts shall be considered. As a guiding principle, no company creating fewer than 50 net jobs (FTEs) should receive more than 50% of the positive economic impact value calculated and paid over a five-year period.

Companies creating over 50 net jobs may be eligible to receive greater than 50% of the net positive economic impact. As a guiding principle, major employment projects (over 50 net jobs) will have a significant city-wide economic impact and may be generally considering multiple cities or metro areas and shall be designated as Economic Driver projects. When there is clear and direct evidence that the City is in direct competition with another region for such a major project (over 50 net jobs) the guiding principle may require the Board and City to extend incentives offers beyond 50% of the direct and indirect economic impact of the project. The CCREDC staff will present to the Board a recommendation including the summary economic impact report, based on careful analysis and negotiations with the applicant company along with a clear acknowledgement when a project may require (or has requested) incentives in excess of the 50% direct and indirect positive benefits for the project. As a further guiding principle, incentives should not exceed 100% of the direct and indirect project benefits unless clear evidence exists that the project will bring further investments or is a “game changer” deal that will significantly and positively impact the wider Corpus Christi economy.

(f) Job Creation Qualification. In order to be eligible for business incentives, the planned Capital Investment must create and maintain the minimum number of 50 full-time (2,080 hours/year) permanent jobs within the agreed time of an effective date as set out in the Agreement. Annual validation of wage rates shall be provided as set forth in Section 11 (b) herein. With regard to job training, an exception to this requirement may be granted by the Board on a case by case basis.

(g) Health Insurance. To qualify for incentives, a primary employer shall certify that it has offered a health insurance program that meets federal and/or state standards for its employees during the term of the Agreement.

**Section 5. Small Business Incentives.**

(a) Authorized Projects/Dedicated Allocation. For projects which may not meet the requirements of Section 4 above, business incentives may also be granted to Small Business to create jobs through Small Business start-up and/or Business Incubation. On an annual basis, the Board may budget a separate allocation for funding all small business start-up and/or business incubation incentives.

(b) Wage and Job Creation Requirements. Wage and job creation requirements for Small Business start-up and Business Incubation shall be evaluated and determined by the Board on a case by case basis.

(c) Each Small Business incentive application shall be accompanied by an economic impact report prepared by CCREDC and each company shall adequately report job and payroll numbers to CCREDC for reporting and compliance. The CCREDC staff shall prepare a recommendation to the Board on an appropriate course of action on levels of incentives to be offered.

### **Section 6. Small Business Primary Employer Incentives.**

Authorized Projects/Dedicated Allocation. For projects which may not meet the requirements of Section 4 above, business incentives may also be granted to Small Business Primary Employers to create jobs through Small Business start-up and/or Business Incubation. On an annual basis, the Board may budget a separate allocation for funding all small business start-up, expansion, retention, and/or business incubation incentives.

### **Section 7. Small Business Support**

- (a) Small business support programs are programs designed to help small businesses grow in the community to create jobs. These programs may include technical assistance, business assistance, loan programs, and internships.
- (b) Internships will be funded at a maximum of 50% of the wage plus FICA.
- (c) The programs must report at a minimum; the number of interns, the companies using interns, intern duties, whether the intern received a job at that company, and whether the intern received a job in the area. Companies cannot use this as a supplement to their workforce. Interns must be used in their academic major field. Internship programs shall not be used as a substitute for permanent job or position creation. Companies cannot use interns more than two years without creating a job. If they do not create a job in that time they will be removed from the list for one year. No company shall receive an intern if another company, who has never had an intern, is requesting one.
- (d) Small business support program grants will not automatically be renewed; organizations must reapply annually.

### **Section 8. Education/Skills Development.**

- (a) Requests for education/skills development grants must be made through the application process adopted for all other business applicants.
- (b) Education/Skills Development projects must target job skills that are currently needed or will become needed within the next three years as identified by WorkForce Solutions, Inc.
- (c) The Education/Skills Development grant must be matched by the applicant by at least 50% of the cash contributed. In-kind donations/contributions will not count toward this minimum.
- (d) The programs must report the number of students, the number of graduates, and their location and average salary when they are ultimately hired. Failure to do so may jeopardize future applications.
- (e) Economic Impact, given the unique nature of these projects, may include direct, indirect and even induced economic impact, but awarded incentive grants should be matched with the educational institution's actual cash (not in-kind) participation, or exceed 50% of the value of the economic impact.
- (f) The grant shall be used for capital expenditures and not for operations.
- (g) Economic impact report should be completed by an independent third party deemed acceptable by CCREDC, on behalf of the Board.

(h) Grants for internships made through the Education/Skills Development portion of the sales tax fund must meet following requirements:

- Requests must be made through the application process adopted for all other business applicants.
- The internships must target job skills that are currently needed or will become needed within the next three years as identified by WorkForce Solutions, Inc. unless it is under the internships for business.
- The companies using interns must pay a portion of the wage and applicable FICA payroll tax portion
- The internship must be through an approved academic or training program
- The grant agreement will be with that academic or training program.
- The grant recipient must implement a program to educate companies that can make use of interns, of the program specifics and how those companies may participate.

### **Section 9. Certain targeted infrastructure**

These projects will promote or develop new or expanded business enterprises. The grants are limited to streets and roads, rail spurs, water and sewer utilities, and electric utilities, gas utilities, drainage, site improvements, and related improvements, telecommunications and internet improvements, especially in locations that eliminate blight or areas of high unemployment such as Texas Enterprise zones, Tax Increment Reinvestment Zones (TIRZ #2 and #3), other reinvestment zones, and Opportunity Zones.

### **Section 10. Other Projects.**

Projects under this section can be any project allowed under Texas Local Government Code Chapter 505.

### **Section 11. Universal Requirements.**

(a) Project Implementation. An authorized project funded by a business incentive under this Section must be implemented within two (2) years from the date of the Agreement.

(b) Location or Residency Requirement. Facilities or land may be eligible for business incentives only in the event that any associated Capital Investment is located within the City. Property which is covered by an executed industrial district agreement shall be considered to be within the City for purposes of determining if a project meets location requirements. With regard to job training incentives, these may be eligible outside of the City only in the event that at least 51% of the jobs created during the term of the Agreement are held by residents of the City. Incentives for any property not within City limits, including properties in the Industrial District will require permission from the governing body who controls the property in accordance with Texas law.

(c) Living Wage Requirement. In order to count as a permanent full-time job under this incentive program, the job should provide a “living wage” for the employee. The target living wage under this abatement program is that annual amount equal to 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. The City has the right to adjust the



living wage target under these Guidelines and insert a specific target in each property Agreement to govern the abatement offered under that Agreement.

(d) Health Insurance. To qualify for any incentive, an employer shall certify that it has offered a health insurance program for its employees during the term of the Agreement and in compliance with state and federal standards for healthcare coverage.

(e) Utilization of Local Contractors and Suppliers. Developer must agree 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 for elements that are not owner-provided or owner affiliate-provided being paid to local contractors and suppliers within the 50 mile radius of Leopard Street and Staples Street intersection. 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 the 50-mile radius of Leopard Street and Staples Street intersection. The Developer agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of the Developer to comply with the Local Requirement.

(f) Utilization of Disadvantaged Business Enterprises. Developer must agree 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 the construction of elements of the Project that are not owner-provided or owner affiliate-provided. 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. The Developer agrees to a goal of 30% of the total dollar amount of all construction contracts and supply agreements, for elements of the Project that are not owner-provided or owner affiliate-provided, being paid to disadvantaged business enterprises, with a priority made for disadvantaged business enterprises which are local. The Developer agrees, during the construction of the Project and for four years after Completion, to maintain written records documenting the efforts of the Developer to comply with the DBE Requirement. 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.

(g) Insurance Requirements. Each recipient of business incentives shall carry worker's compensation insurance and other appropriate insurance coverage as the Board may determine is appropriate and required in the Business Incentive Agreement.

(h) Performance Agreement. Each recipient of a business incentive will enter into a performance agreement with the Corporation. The performance agreement will provide, at a minimum, a schedule of additional payroll or jobs to be created or retained and the capital investment to be made as consideration for an incentive provided or expenditure made by the Corporation under the agreement. Additionally, the performance agreement will specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement.

## **Section 12. Application.**

(a) Written Application. Any present or potential Owner or sponsor may request business incentives by filing an authorized and signed application with the President of the CCREDC, who will provide a courtesy copy to the Mayor, the Mayoral appointee to the CCREDC Board of Directors, the City Manager and appropriate City staff.

(b) Contents of Application. The application shall consist of a completed application form accompanied (when applicable) by the following:

- a general description of proposed Capital Investments to the Facility;
- a descriptive list of the improvements or program for which business incentives are requested;
- a list of the kind, number and location of all proposed improvements of the property;
- a map and property description; and,
- a time schedule for undertaking and completing the proposed improvements or programs.

In the case of a Modernization or Expansion project, a statement of the assessed value of the Facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information as the Corporation or City deems appropriate for evaluating the financial capacity and other relevant factors of the applicant.

(c) Feasibility/Economic Impact Study. After receipt of a completed application, the President of the CCREDC shall cause to be performed an economic impact report. This report may be completed by CCREDC (or its consultant) using established accepted economic impact models such as IMPLAN, RIMS II, EMSI, or similar model. This study shall include, but not be limited to, an estimate of the economic effect of incentives, including job creation, employment enhancement and capital investment. Once completed, the study and the application will be forwarded to the Board for review ~~and discussion~~ before consideration of any Agreement. The costs and expenses of the feasibility/economic impact study shall be borne by the Economic Development Corporation. The economic impact report should clearly identify the direct and indirect economic impact of each project.

(d) No Business Incentives if Construction or Program has commenced. No business incentive Agreement shall be approved if the application was filed after the commencement of any construction, alteration or installation of improvements related to the proposed Facility Modernization, Expansion or New Facility. Similarly, no business incentive Agreement shall be approved for any program if the application was filed after the program has been ~~establishment~~ established or program activity has commenced.

(e) Financial Information. The applicant shall provide to the Corporation, or the Corporation's appointed agent, the last three years of financial statements—company and/or personal financial statements for review and evaluation to assess the financial strength of the applicant. After receipt of the financial statements, the President of the CCREDC may cause a financial review to be performed. Upon completion, any negative findings from the financial review will be forwarded to the City Manager and the Board for review ~~and discussion~~ before consideration of an Agreement. The applicant will be allowed to address, and explain in writing, any negative findings before the Corporation takes action on an Agreement.

### **Section 13. Approval.**

~~(a)~~ Reservation of Rights. The Board reserves the right to determine the eligibility of a project and the terms and conditions of any loan, grant or guarantee based on the mission, goals and objectives in Section 2 above. Nothing herein shall be construed to limit the authority of the Board to examine each application for business incentives before it on a case-by-case basis and determine in its sole and absolute discretion whether or not the proposed project should be granted any business incentive and whether or not it complies with these Guidelines and Criteria, is feasible, and whether or not the proposed business incentives will be to the long-term benefit of the City.

~~(b) Project Agreement Required. Each Agreement shall also include and be accompanied by a separate Project Agreement executed between the Corporation and the City.~~

### **Section 14. Agreement.**

(a) Contents of Business Incentive Agreement. The Agreement shall include (when applicable):

- the estimated value of Capital Investment;
- the commencement date and termination date of the business incentive;
- the proposed use of the Facility, nature of construction, time schedule, map, property description and improvements list as provided in the application as required;
- in the case of programs, the proposed program description, targeted employment market, nature and schedule of activities, facilities and equipment used to carry out activities, and complete program budget listing all sources of funding and projected expenditures;
- the contractual obligations in the event of default, delinquent taxes, recapture, administration and assignment as provided in these Guidelines or other provisions that may be required for uniformity or by state law; and,
- the number of permanent jobs, and wage/salary minimums for jobs created.
- Commencement must occur within the time frame specified and agreed to in the agreement.

(b) Time of Execution. The business incentive Agreement shall normally be considered by the Board within 60 days after the applicant has provided all necessary information and documentation.

(c) Deadline for Execution. If the incentive proposal is approved by the Corporation Board of Directors, then the Owner will have ninety (90) days from the date the final Business Incentive Agreement is received by the Owner to execute the Agreement.

Failure to execute the Business Incentive Agreement within ninety (90) days from date of receipt will result in the Agreement being null and void and of no effect.

### **Section 15. Recapture.**

(a) Failure to Timely Comply and Continue Operations. In the event that the Owner of a Facility or program fails to timely, fully and completely comply with any one or more of the Agreement requirements, obligations, duties, terms, conditions or warranties, such failure shall be an act of default and, if not fully and completely cured and corrected, Corporation and/or City may terminate the Agreement and pursue all legal remedies as provided by law. If the Owner is not in compliance during any compliance reviews, then the Corporation, in its sole discretion, shall determine the incentives that the Owner shall be required to refund. As a best practice, incentive agreements should include an appropriate graded scale of penalties negotiated on a case-by-case basis to ensure applicants adhere to performance goals and to ensure any penalties are reflective of the level of non-performance.

(b) Employment Verification. Owner shall annually provide documentation, in the form of quarterly Texas Workforce Commission payroll reports or other mutually acceptable employment and payroll report, to verify compliance with job and payroll commitments. The four quarterly reports, required to be filed with the Texas Workforce Commission, shall be due not later than the fifteenth day after the deadline for filing the fourth quarter report with the Texas Workforce Commission, each year. Corporation may request Owner to provide such documentation at any time.

(c) Delinquent Taxes. In the event that the Owner allows its ad valorem taxes to become delinquent and fails to timely and properly follow the legal procedures for its protest and/or contest, the Agreement shall terminate and so shall the business incentives.

(d) Utility Payments. In the event that the Owner allows its utility billing payments to become delinquent, the Agreement shall terminate and so shall the business incentives.

(e) Notice of Default. Should the Corporation and/or City determine that the Owner be in default according to the terms and conditions of its Agreement, it shall notify the Owner in writing at the address stated in the Agreement that if such is not cured within 60 days from the date of such notice (the "Cure Period"), then the Agreement may be terminated. In the event the Owner fails to cure said default during the Cure Period, the Agreement may be terminated. If default on new construction occurs at the fault of the Owner, then the Owner must provide a written explanation of the reason for the default to the Corporation. This written explanation, and any legitimate reasons for delay, will be taken into consideration as a possible remedy for the default. The Owner shall also notify the Corporation, in writing, explaining any delays in completing any required Agreement milestones as soon as the delays are realized. These Agreement milestones would include deadlines for completion of new construction, hiring new employees, or any other required Agreement milestones.

(f) Potential Liability. After exhausting good faith attempts to address any perceived default during the Cure Period, and taking into account any extenuating circumstances that might have occurred through no fault of the Owner as determined by the Board, potential liability under an Agreement may include the immediate return of all money grants and consideration previously paid, the maximum lawful rate of interest on all money paid until fully repaid, reasonable attorney fees and costs of court to collect such money, and the termination of all further

obligations made under Agreement. In addition, City and/or Corporation shall not be liable for any alleged consequential damages.

#### **Section 16. Administration.**

(a) Access to Facility. The Agreement shall stipulate that employees and/or designated representatives of the City will have access to the Facility or program during the term of the Agreement for inspection to determine if the terms and conditions of the Agreement are being met. All inspections will be made only after giving 24-hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the Facility or program. Inspections will be made with one or more representatives of the Owner and in accordance with its safety standards.

(b) Annual Reviews. Business Incentive Agreement reviews will be conducted annually to ensure that the Owner is in compliance with the provisions of the Agreement. If the Owner is not in compliance or is in default, then the appropriate provision of the Agreement, as outlined in Section 9 herein and the Agreement, will be enforced to recover incentives paid to Owner, unless the Owner remedies the default on or before the conclusion of any Cure Period.

(c) Annual Evaluation. The City, or designee, acting on behalf of the Corporation, shall annually evaluate compliance with the Agreement and report possible violations of the Agreement. As part of this evaluation, the Owner shall provide information sufficient to ensure compliance.

(d) Right to Modify or Cancel. Notwithstanding anything herein or in any agreement to the contrary, the Board may cancel or modify the Agreement if the Owner fails to comply with the Agreement.

#### **Section 17. Waivers/Variances**

The Corporation shall have discretion to vary, alter, and/or waive any guideline or criteria set forth herein when such variance, alteration, and/or waiver shall be in the public interest and in furtherance of the purposes and goals of the Corporation as set forth in its Certificate of Formation, its By-laws, Ordinance 030930, and the Act.