

**CONTRACT BETWEEN THE NEW BRAUNFELS ECONOMIC DEVELOPMENT
CORPORATION AND SPARK SMALL BUSINESS CENTER**

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF COMAL §

THIS CONTRACTUAL AGREEMENT, is made and entered into by and between the New Braunfels Economic Development Corporation, a Non-Profit Corporation of the State of Texas, hereinafter called "EDC", acting by and through its duly authorized officers, and Spark Small Business Center, formerly known as the Center for Entrepreneurship, a Non-Profit Corporation of the State of Texas, hereinafter called "SPARK", acting by and through its officers:

W I T N E S S E T H:

I.

WHEREAS, Texas Local Government Code §501.054 provides the EDC with the powers of non-profit corporations incorporated under the Texas Non-Profit Corporation Act, as amended, and Section Seven of the Bylaws of the EDC allows for the President and Secretary of the EDC to execute any contract which the Board has approved and authorized to be executed; and

II.

WHEREAS, upon the recommendation of the EDC at its meeting on October 19, 2023 and the City Council of New Braunfels, Texas on **Month Day**, 2023 approved the EDC's determination that the following funds be allocated to SPARK to participate in a funding arrangement to continue operation of a Small Business Development Center ("SBDC") satellite center to the University of Texas at San Antonio's SBDC in New Braunfels:

- (1) A grant in an amount up to \$250,000 to SPARK for the costs to continue the operation of a Small Business Development Center satellite office to September 30, 2024;
- (2) The grant funds, or parts thereof, shall be distributed to SPARK within thirty (30) days after receiving a request(s) from SPARK with attached invoice from SPARK for operation of the satellite center;
- (3) SPARK shall at all times comply with the ordinances of City of New Braunfels and the laws of the State of Texas;
- (4) All funds received by SPARK from EDC as herein provided shall be expended

solely for the purposes stated herein and as attached as Exhibit A with regard to the costs of establishing and operating the satellite center in New Braunfels. Any proven breach of this covenant shall be cause for immediate termination of the distribution of funds.

III.

SPARK will provide written quarterly reports due to the NBEDC by:

Quarter 1	12/31/2023
Quarter 2	3/31/2024
Quarter 3	6/30/2024
Quarter 4	9/30/2024

The reports will deliver information on SPARK's activities as it deems necessary, as well as information about the performance objectives and measurements as further detailed in Appendix B.

SPARK shall make at least two presentations annually to the NBEDC board about its fulfillment of the performance measures in Appendix B by the following deadlines:

Presentation 1	By 3/31/2024
Presentation 2	By 9/30/2024

IV.

Any breach of the terms and conditions of this grant by SPARK will result in the repayment of the grant unless EDC and SPARK agree, in writing, to modify the terms of the grant.

V.

In the performance of this contract, SPARK shall not discriminate against any user, performer, or customer of the SPARK because of his/her race, color, religion, national origin, sex, disability or ancestry. Proven breach of this covenant may be regarded as a material breach of the contract causing its termination.

VI.

Employment of Undocumented Workers. During the term of this Agreement, SPARK agrees not to knowingly employ an undocumented worker and if convicted of a violation of 8 U.S.C. Sec. 1324a(f), the SPARK shall repay the amount of the Grant and any other funds received by the SPARK from the EDC as of the date of such violation within sixty (60) days after the date the SPARK is notified by the EDC of such violation, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial rate, or if the Wall Street Journal shall ever cease to exist or cease to

announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the EDC) as its prime or base commercial lending rate, from the date of such notice until paid.

VII.

All communications between EDC and SPARK shall be addressed to the President of the New Braunfels Economic Development Corporation, c/o City of New Braunfels, 550 Landa Street, New Braunfels, Texas 78130. Any communication to SPARK shall be addressed to the President, The Spark Small Business Center, 800 W. San Antonio, St. New Braunfels, TX 78130.

VIII.

It is understood and agreed that in the event any provision of this contract is inconsistent with requirements of law, the requirements of law will control and the parties shall revert to their respective positions, which would otherwise be enjoyed or occupied by the respective parties for the terms of this contract.

IX.

The foregoing instrument in writing between the parties herein, constitutes the entire agreement between the parties, relative to the funds made the basis hereof, and any other written or oral agreement with the EDC being expressly waived by SPARK.

IN WITNESS WHEREOF, the parties hereto execute this agreement in duplicate originals on this ____ day of _____, 2023.

NEW BRAUNFELS ECONOMIC
DEVELOPMENT CORPORATION

By: _____
Kathy Meurin, *President*

By: _____
Stuart Hansmann, *Secretary*

APPROVED AS TO FORM:

Valeria Acevedo, City Attorney

SPARK SMALL BUSINESS CENTER

By: _____
Ron Richardson, Business Advisor

By: _____
Spark Board President

Appendix A
2023-2024 Proposed Budget

Spark Small Business Center			
Cash Flow Projections with Funding Requests			
Item	10/1/23-9/30/24 Fiscal Year		
<i>New Braunfels EDC Funding</i>	\$250,000		
Subtotal	<u>\$250,000</u>		
UTSA 1st Quarter Payment (Jan- Mar)	-\$43,394		
UTSA 2nd Quarter Payment (Apr - Jun)	-\$43,394		
UTSA 3rd Quarter Payment (Jul - Sep)	-\$43,394		
UTSA 4th Quarter Payment (Oct - Dec)	-\$43,394		
Alarm Expense	-\$600		
Cleaning Expense	-\$2,000		
NBU Utilities Expense	-\$1,800		
Rent Expense	-\$28,000		
Insurance Expense	-\$2,000		
Internet Expense	-\$2,000		
Phone Expense	-\$1,200		
Equipment	-\$2,500		
Office Supplies	-\$6,000		
Miscellaneous office expenses	-\$4,750		
Community Outreach	-\$4,225		
Website Maintenance	-\$3,000		
Website Upgrade	-\$2,000		
Marketing Materials, Signage, Client Photos	-\$4,000		
5% contingency for unexpected expenses & opportunities	<u>-\$12,349</u>		
Expense Total	<u>-\$250,000</u>		
Ending Balance	\$0		

Appendix B

Performance objectives and measurements

Key Measurements required in Quarterly Reporting:

- Number of business plans created
- New business starts
- Number of jobs created
- Number of jobs retained
- Amount of financing closed

SPONSORED PROGRAM AGREEMENT
between
THE UNIVERSITY OF TEXAS AT SAN ANTONIO
and
THE SPARK SMALL BUSINESS CENTER

This AGREEMENT is entered into by and between THE UNIVERSITY OF TEXAS AT SAN ANTONIO, an institution of the University of Texas System and an agency of the State of Texas, located at One UTSA Circle, San Antonio, Texas 78249 ("UTSA"), and the SPARK SMALL BUSINESS CENTER, a non-profit corporation located at 940 West San Antonio Street, Suite A, New Braunfels, Texas 78130 ("THE CENTER").

WHEREAS, THE CENTER was created by public and private partnership to provide potential entrepreneurs a comprehensive program of education, support, assistance, and training in all areas of business development; and

WHEREAS, as part of its community service mission, UTSA operates outreach-based small business development programs through its Institute for Economic Development (IED), dedicated to foster small business success; and

WHEREAS, the program contemplated by this AGREEMENT is of mutual interest and benefit to UTSA and to THE CENTER, and will further the objectives of UTSA in a manner consistent with its status as an agency of the State of Texas; and

WHEREAS, UTSA, through its IED, in collaboration with THE CENTER, is uniquely suited in the region to perform the tasks enumerated herein given its existing consistent mission, professional and support staff, and its technical, administrative, and small business support structures.

NOW, THEREFORE, the parties hereto agree as follows:

1. STATEMENT OF WORK. Refer to Attachment "A" incorporated herein for a description of the Program, entitled "UTSA SBDC Satellite Office—New Braunfels".

2. PROJECT DIRECTOR. The Program will be supervised by Richard Sifuentes, Director of the UTSA Small Business Development Center ("SBDC Director"), and operated within the IED. If, for any reason, the SBDC Director is unable to continue to serve as Project Director, and a successor acceptable to both UTSA and THE CENTER is not available, this AGREEMENT shall be terminated as provided in Article 6.

3. EFFECTIVE DATE AND PERIOD OF PERFORMANCE. The effective date of this AGREEMENT ("Agreement Effective Date") shall be October 1, 2023. The Program shall be performed during the period of October 1, 2023, through September 30, 2024 ("Period of Performance"). This AGREEMENT shall remain in effect through the end of the Period of Performance and will be subject to renewal only by mutual written agreement of both parties.

4. PRICE AND PAYMENT. As consideration for UTSA's performance, THE CENTER will pay UTSA an amount equal to its expenditures and reasonable overhead in conducting the Program subject to a maximum expenditure limitation of \$173,578. This AGREEMENT will operate according to the BUDGET attached as Attachment "B" herein, to include the normal operating expenses relative to the Program SCOPE OF WORK attached as Attachment "A" herein. THE CENTER will allow UTSA to transfer up to 10 percent (\$17,357) of the total budget between line items without prior approval of the Spark Small Business Center board in order to allow some flexibility in use of funds during the term of the agreement. This is in line with the amount allowed by the U.S. Small Business Administration through their Cooperative Agreement with UTSA. Both the SCOPE OF WORK and BUDGET are subject to negotiation and administrative approvals by both parties, and may be amended by mutual written concurrence of authorized representatives, consistent with the intent of this overall AGREEMENT. Operating budget expenditures will be processed according to routine UTSA policy and procedure, and with complete reporting transparency to both parties.

Actual expenditures incurred by UTSA pursuant to performance of this AGREEMENT will be billed to THE CENTER on a quarterly basis using UTSA's invoice form. THE CENTER shall remit payment within 30 days of the delivery date of an invoice, referencing the Project Director and Program, delivered to the following address:

The University of Texas at San Antonio
Attn: Financial Services and University Bursar, FLN 1.04.08
One UTSA Circle
San Antonio, TX 78249

5. DELIVERABLES. Refer to Attachment "A" incorporated herein for a description of deliverables.

6. TERMINATION. Performance under this AGREEMENT may be terminated by THE CENTER or UTSA upon sixty (60) days written notice. UTSA will be reimbursed as specified in Article 4 for all costs and non-cancelable commitments incurred in the performance of the Program, such reimbursement not to exceed the total cost specified in Article 4.

7. PUBLICATIONS AND COPYRIGHTS. UTSA and THE CENTER will be free to publish the results of any research under this AGREEMENT, relative to the Program, but specifically omitting any intellectual property or confidential information of UTSA SBDC ("SBDC") clients not otherwise related to UTSA. Title to and the right to determine the disposition of any copyrights, or copyright enabled material, first produced or composed in the performance of this program shall remain with UTSA, provided that UTSA shall grant to THE CENTER an irrevocable, royalty-free non-exclusive right to reproduce, translate and use all such copyrighted material for its own non-commercial purposes.

8. PATENTS. Title to any invention conceived or reduced to practice in the performance of this program relative to SBDC business assistance activities, but specifically omitting any intellectual property of SBDC clients not otherwise related to UTSA, will remain with UTSA. UTSA shall have the sole right to determine the disposition of any patents or other rights resulting there from, provided that upon issue of any patent on any such invention or discovery (relative to SBDC business assistance activities, but specifically omitting any intellectual property of SBDC clients not otherwise related to UTSA), UTSA shall grant to THE CENTER an irrevocable, royalty-free non-exclusive license for use of such invention or discovery for its own non-commercial purposes.

9. RELEASE OF INFORMATION. UTSA shall have the right to acknowledge THE CENTER, the SBDC Director, the nature of the Program, and the dollar value of this AGREEMENT in UTSA records and reports. No press release will be made regarding the Program unless agreed to in writing by both UTSA and THE CENTER in advance.

10. TITLE TO EQUIPMENT. THE CENTER shall retain title to all furnishings and equipment purchased with funds provided by THE CENTER under this AGREEMENT.

11. NOTICES. All notices or communications to either party by the other will be delivered personally or sent by U.S. registered or certified mail, postage prepaid, addressed to such party at the following respective addresses for each and will be deemed given on the date so delivered or so deposited in the mail unless otherwise provided herein.

UTSA:

Technical Richard Sifuentes
 Director
 UTSA SBDC
 Institute for Economic Development
 The University of Texas at San Antonio
 501 W. Cesar E. Chavez Blvd., Suite 2.312
 San Antonio, TX 78207

Contractual Silvia E. Cano
 Sr. Director, Financial and Administration
 Downtown Campus
 The University of Texas at San Antonio
 501 W. César E. Chávez Blvd.
 San Antonio, TX 78207

THE CENTER:

Technical & SPARK SMALL BUSINESS CENTER
Contractual ATTN: Dani Hensley, President
 940 W San Antonio St Ste A
 New Braunfels, TX 78130

12. EXPORT ADMINISTRATION. It is understood that UTSA is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations hereunder are contingent upon compliance with applicable United States export laws and regulations. Furthermore, it is understood that the transfer of certain technical data and commodities may require a license from one or more agencies of the United State Government.

Both UTSA and THE CENTER hereby agree and warrant that the Program contemplated hereunder, and any exchange of technical data, computer software or other commodities resulting there from, shall be conducted in full compliance with the export control laws of the United States Government.

13. INDEPENDENT CONTRACTOR. For the purposes of this AGREEMENT and all services to be provided hereunder, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be explicitly provided for herein or authorized in writing.

14. SEVERABILITY. If any of the provisions of this AGREEMENT in the application thereof to any person or circumstance, is rendered or declared illegal for any reason, or shall be invalid or unenforceable, the remainder of this AGREEMENT and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

15. DISPUTE RESOLUTION.

(A) To the extent that Chapter 2260, Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this AGREEMENT and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by UTSA and THE CENTER to attempt to resolve any claim for breach of contract made by THE CENTER:

(1) THE CENTER's claims for breach of this AGREEMENT that the parties cannot resolve pursuant to other provisions of this AGREEMENT or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, THE CENTER shall submit written notice, as required by subchapter B of Chapter 2260, to UTSA in accordance with the notice provisions in this AGREEMENT. THE CENTER's notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date

and nature of the event giving rise to the claim, the specific contract provision that UTSA allegedly breached, the amount of damages THE CENTER seeks, and the method used to calculate the damages. Compliance by THE CENTER with subchapter B of Chapter 2260 is a required prerequisite to THE CENTER's filing of a contested case proceeding under subchapter C of Chapter 2260. The Chief Business Officer of UTSA, or such other officer of UTSA as may be designated from time to time by UTSA by written notice thereof to THE CENTER in accordance with the notice provisions in this AGREEMENT, shall examine THE CENTER's claim and any counterclaim and negotiate with CENTER in an effort to resolve such claims.

(2) If the parties are unable to resolve their disputes under subparagraph (A) of this section, the contested case process provided in subchapter C of Chapter 2260 is THE CENTER's sole and exclusive process for seeking a remedy for any and all of THE CENTER's claims for breach of this AGREEMENT by UTSA.

(3) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this AGREEMENT by UTSA nor any other conduct, action or inaction of any representative of UTSA relating to this AGREEMENT constitutes or is intended to constitute a waiver of UTSA's or the state's sovereign immunity to suit and (ii) UTSA has not waived its right to seek redress in the courts.

(B) The submission, processing and resolution of THE CENTER's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

(C) UTSA and THE CENTER agree that any periods set forth in this AGREEMENT for notice and cure of defaults are not waived.

16. **LIABILITY LIMITATION.** Each Party shall bear all costs, expenses, risks and liabilities incurred by it arising out of or relating to its obligations, efforts or performance under this Agreement. No Party shall have a right to any reimbursement, payment or compensation of any kind from the other in relation to this Agreement, except as provided herein. Each Party agrees to be responsible and assume liability for its own willful or negligent acts or omissions, or those of its officers, agents, or employees, to the full extent authorized by law, and each Party agrees to hold the other harmless from any such liability to the extent allowed by applicable law.

17. MISCELLANEOUS.

(A) **Governing Law** This AGREEMENT constitutes the entire agreement between the parties relative to the subject matter, and may only be modified or amended by a written amendment signed by both parties. It shall be construed in accordance with the laws of the State of Texas.

(B) **Order of Precedence.** In the event of any conflict between this AGREEMENT and its attachments, the terms of the AGREEMENT shall prevail.

(C) **Force Majeure.** Neither party shall be liable for any delay in performance under this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence, provided that notice of such force majeure is delivered in accordance with this Agreement within 15 days following such event.

(D) **Compliance with Laws and Policy.** UTSA and THE CENTER each certify and represents that its conduct under this Agreement shall be in conformity with all applicable laws, rules, regulations, and ordinances.

(E) **Authority.** Each of the Parties certifies and represents that this Agreement reflects its full and correct name, that it is fully authorized to enter into this Agreement, and that the person signing this document on its behalf is authorized to commit that Party to the obligations hereunder.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their authorized representative.

THE UNIVERSITY OF TEXAS AT
SAN ANTONIO

SPARK SMALL BUSINESS CENTER

Sandra D. Garcia, Ed.D.
Signature

Dani Hensley
Signature

Sandra D. Garcia, Ed.D., CRA
Assistant Vice-President for the Office of Sponsored
Project Administration

Dani Hensley
President

05/22/2023
Date

5/18/23
Date

ATTACHMENT A
STATEMENT OF WORK
for
UTSA SBDC Satellite Office—New Braunfels

1. Purpose and Effect of the Program

The purpose of this STATEMENT OF WORK under the Agreement to which it is attached, is to continue operating the UTSA SBDC Satellite Office—New Braunfels as a cooperative effort of the San Antonio Small Business Development Center operated by the Institute of Economic Development of The University of Texas at San Antonio, and Spark Small Business Center. UTSA and THE CENTER will contribute as described below toward such purpose.

2. Responsibilities of the Parties:

a. University of Texas at San Antonio (UTSA SBDC)

UTSA agrees that its SBDC will perform the following activities and provide the following resources to support the Program:

- (1) Employ staff (Project Manager, Program Specialist) to operate the SBDC Satellite Center in New Braunfels;
- (2) Provide UTSA benefits for Project Manager and Program Specialist;
- (3) UTSA will provide IT systems, servers, desktop/laptop computers, and software support of UTSA owned computers;
- (4) Copier and related equipment;
- (5) Provide ongoing direction to Project Manager and Program Specialist, relative to tasking, work schedules, functional responsibilities and the like for activities such as, but not limited to, the following:
 - a. One-on-one confidential business advising to existing and potential clients;
 - b. Training classes on small business issues for existing and potential business clients;
 - c. Additional deliverables as UTSA and THE CENTER may agree from time to time.

b. Spark Small Business Center

THE CENTER will perform the following activities and provide the following resources to support the Program:

- (1) Ms. Dani Hensley, President will be available to represent THE CENTER in discussions with UTSA concerning the Program;
- (2) Funding as stated in the Agreement;
- (3) Office space at 940 West San Antonio in New Braunfels to house the UTSA SBDC Satellite Office including the cost of utilities;
- (4) Facility and administrative support; such as, but not limited to, cleaning, security, supplies, etc.;
- (5) Support, such as, connectivity, internet & wireless service;
- (6) Access to phone system and other shared office equipment;
- (7) Additional deliverables that UTSA and THE CENTER from time to time may agree upon.

ATTACHMENT B

Budget

PROPOSED BUDGET FOR FY 2024 (October 1, 2023 - September 30, 2024)	
UTSA SBDC Satellite Center for Comal and Guadalupe Counties	
DESCRIPTION	BUDGET
A. PERSONNEL	
Project Manager	\$ 62,000
Program Specialist	\$ 44,000
Cost of Living or Merit Increases	\$ 4,240
Total Salaries and Wages	\$ 110,240
B. FRINGE BENEFITS	
Staff rate 31.73%	\$ 34,979
Total Fringe Benefits	\$ 34,979
C. TRAVEL	
In-State:	
(1) Travel to staff meetings (3,000 miles @ \$.655/mile)	\$ 1,965
(2) Staff Mileage: Community and client outreach (10,00 miles @ \$.655/mile)	\$ 6,550
Total Travel	\$ 8,515
D. EQUIPMENT	
No additional equipment will be needed	\$ -
Total Equipment	\$ -
E. OTHER	
	\$
Professional activities & development	
(1) Attendance at ASBDC National Conference for Project Manager	\$ 2,500
(2) Professional development activities (2 @ \$626 each)	\$ 1,252
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
Total Other	\$ 4,064
I. TOTAL UTSA DIRECT COSTS	\$ 157,798
J. TOTAL UTSA IN-DIRECT COSTS (10.0% of total modified direct costs of payments to UTSA)	\$ 15,780
TOTAL UTSA COSTS	\$ 173,578