

**CONTRACT BETWEEN THE NEW BRAUNFELS INDUSTRIAL DEVELOPMENT  
CORPORATION AND US REAL ESTATE LIMITED PARTNERSHIP I-35 LOGISTICS,  
LLC.**

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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 Industrial Development Corporation, a Non-Profit Corporation of the State of Texas, hereinafter called "IDC", acting by and through its duly authorized officers, and US Real Estate Limited Partnership I-35 Logistics, LLC, a Limited Liability Company, of the State of Texas, hereinafter called the "COMPANY", 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 IDC 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 IDC allows for the President and Secretary of the IDC to execute any contract which the Board has approved and authorized to be executed; and

WHEREAS, pursuant to the authority in Local Government Code, Chapter 501.101 and upon the recommendation of the IDC at a special called meeting on February 11, 2016, the City Council of New Braunfels, Texas on February 22, 2016 approved the IDC's determination that an amount not to exceed \$500,000 be allocated to COMPANY or their qualified tenant(s) for reimbursement for qualified improvements later defined, that are associated with the construction of a +/- 396,000 square foot industrial building and related utility and road infrastructure, the "PROJECT," and as illustrated in Exhibit A.

## AGREEMENT

### II.

Grant funds shall be provided by IDC to the COMPANY or its qualified tenant(s) for reimbursement for costs associated with the qualified improvements to the PROJECT site under the following conditions:

- (1) A grant in an amount not to exceed \$500,000.00 to be distributed on a performance basis to:
  - (a) The qualified TENANT, pending verification of its status as a primary employer as defined below; or
  - (b) The COMPANY, if COMPANY first provides evidence of a current lease agreement with a primary employer who is occupying the premises at the PROJECT site at the time of the grant and for the prior twelve month period.
- (2) The qualified improvement costs that the IDC will reimburse the COMPANY or a qualified TENANT for are those improvements or expenditures that fall within one of the following categories:
  - (a) Construction costs of water, wastewater, electric utilities to the PROJECT site; and
  - (b) Road construction to access the Project site; or
  - (c) Costs related to leasehold improvements undertaken for a qualified tenant. Qualified leasehold improvements are those alterations or improvements to the interior of the building as they relate to ceilings, floors, inner walls and mechanical, electrical and plumbing systems; or
  - (d) Impact fees, permit charges and other regulatory fees associated with constructing the infrastructure.
- (3) The amount of reimbursement delivered annually will be calculated relative to the tenant's industry classification and the amount of square footage leased according to the following factors:
  - (a) Wholesale trade, transportation, or warehousing industries (NAICS codes of 42,

48-49): \$1.25 multiplied by square footage of area leased by tenant

- (b) Manufacturing (NAICS codes of 311-339), information (NAICS codes of 51 excluding 512131 and 512132), architectural, engineering and related services, computer system design and related services; management, scientific and technical consulting services; scientific research and development services; other professional, scientific, and technical services (5413, 5415, 5416, 5417, 5419): \$2.00 multiplied by square footage area leased by tenant.

(4) In consideration of the grant, the recipient must:

- (a) Maintain, or provide a guarantee of the creation and maintenance of a minimum of 10 jobs annually and up to 50 jobs total over a 5 year period. If the project's total job count falls below the scheduled increases or does not add 10 jobs on an annual basis, COMPANY or the other entities will not be eligible for the payment that year.
  - (b) Provide documentation in a form acceptable to the City of New Braunfels, Finance Director that substantiates the COMPANY'S expenditure and payment for the infrastructure improvements, including all invoices and receipts of payment; and
  - (c) Incentive amounts available for use until five (5) years from the date the first tenant occupies; and
  - (d) Provide documentation in a form acceptable to the City of New Braunfels, Finance Director that demonstrates how the IDC funds are being utilized to reduce the tenant's lease rate or tenant improvement costs.
- (5) The funds are to be delivered on an annual basis, one year from the date the Certificate of Occupancy is issued for the use. The maximum to be paid to any entity or entities eligible for funds in any given year is \$100,000 cumulatively and shall be divided on a pro-rata share (based upon square footage leased) amongst those entities eligible to receive funds.
- (6) Any proposed expenditure under this Agreement shall be presented to the IDC for final approval.

(7) COMPANY shall at all times comply with the ordinances of City of New Braunfels and the laws of the State of Texas.

(8) All funds received by COMPANY from IDC as herein provided shall be expended solely for the purposes stated herein.

### III.

Any breach of the terms and conditions of this grant by COMPANY will result in the termination of the distribution of funds as well as require the immediate re-payment of any funds used for an un-authorized purpose, unless IDC and COMPANY agree, in writing, to modify the terms of the grant.

### IV.

The IDC, acting through the City of New Braunfels, reserves the right to audit applicable COMPANY employment and financial records related to the performance of this Contract with at least ten (10) days prior written Notice to COMPANY.

### V.

If IDC determines that any of the preceding provisions and requirements detailed above are not fulfilled, the IDC shall send Notice to COMPANY regarding default hereunder. Should COMPANY fail to correct any deficiency in its performance of the requirements of this Contract within thirty (30) days, IDC, as its sole and exclusive remedies, reserves the right to declare the COMPANY in breach, to terminate this Contract, and demand repayment of any portion of the funds paid hereunder.

### VI.

In the performance of this contract, COMPANY shall not discriminate against any employee 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.

### VII.

Employment of Undocumented Workers. During the term of this Agreement, COMPANY

agrees not to knowingly employ an undocumented worker and if convicted of a violation of 8 U.S.C. Sec. 1324a(f). COMPANY shall repay the amount of the Grant and any other funds received by COMPANY from the IDC as of the date of such violation within sixty (60) days after the date COMPANY is notified by the IDC 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 IDC) as its prime or base commercial lending rate, from the date of such notice until paid.

#### VIII.

It is expressed and understood and agreed by both parties hereto that each acts independently of each other, and neither has the authority to bind the other or to hold out to a third party that it is the authority for the other. The parties hereto understand and agree that the City shall not be liable for any claims, which may be asserted by any third party occurring in connection with the performance of the IDC.

Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal agent, joint ventures or any other similar such relationships, between the parties hereto.

#### IX.

All communications between IDC and COMPANY shall be addressed to the President of the New Braunfels Industrial Development Corporation, c/o City of New Braunfels, 550 Landa Street, New Braunfels, Texas 78130 with a copy being sent to the President of the IDC at his/her residential or business address.

Any communication to COMPANY shall be addressed to the \_\_\_\_\_ at \_\_\_\_\_.

Any notice required to be given a party pursuant to this Agreement shall be in writing and duly served when deposited with the United States Postal Service, enclosed in a wrapper with proper postage affixed thereto, duly registered or certified, return receipt requested, and addressed

as indicated above.

X.

If any provision of this Agreement, or the application thereof to any person or circumstance, shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and, if such action does not destroy the basis of the bargain between the parties, then the remainder of this Agreement, and the application of such provisions to other persons or circumstances, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

XI.

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 IDC being expressly waived by COMPANY.

XII.

This Agreement and the performance thereof shall be governed by and construed and enforced in accordance with the laws of the State of Texas.

Venue for any cause of action arising under or with respect to this Agreement, or the performance thereof, shall reside exclusively in Comal County, Texas, without regard to diversity of citizenship or any statutory provision to the contrary.

IN WITNESS WHEREOF, the parties hereto execute this agreement in duplicate originals on this \_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF NEW BRAUNFELS  
INDUSTRIAL DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
STUART HANSMANN, *President*  
550 Landa Street  
New Braunfels, Texas 78130

ATTEST:

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APPROVED AS TO FORM:

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US REAL ESTATE LIMITED PARTNERSHIP I-35 LOGISTICS, LLC

By: \_\_\_\_\_

\_\_\_\_\_;

ATTEST:

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\_\_\_\_\_, Secretary

STATE OF TEXAS §

COUNTY OF COMAL §

Before me, \_\_\_\_\_, on this day personally appeared Stuart Hansmann, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that Stuart Hansmann executed the same as the act of the New Braunfels





By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

Before me, \_\_\_\_\_, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that \_\_\_\_\_ executed the same on behalf of US Real Estate Limited Partnership I-35 Logistics, LLC as its \_\_\_\_\_, for the purposes and consideration therein expressed.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_

My commission expires:

\_\_\_\_\_