

**CONTRACT BETWEEN THE NEW BRAUNFELS INDUSTRIAL DEVELOPMENT  
CORPORATION AND CBE COMPANIES, INC.**

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

THIS CONTRACTUAL AGREEMENT (the "CONTRACT"), 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 officers, and CBE COMPANIES, INC. hereinafter called "COMPANY," acting by and through its officers:

**WITNESSETH:**

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

II.

WHEREAS, under the authority granted to the IDC by §501.101 and §505.155 of the Texas Local Government Code and upon the recommendation of the IDC which occurred on July 31, 2014, the City Council of New Braunfels, Texas on August 11, 2014, determined that an amount up to \$650,000 in economic development funds to be provided to COMPANY for costs associated with the establishment and startup of its facility in New Braunfels. Specifically, up to \$400,000 shall be provided for the purchase and installation of an electrical generator, uninterruptible power supply unit and costs associated with installation of said equipment. Ownership of the generator



and uninterruptible power supply shall remain the property of the IDC by separate agreement. Additionally, up to \$250,000 in cash grants shall be delivered to COMPANY if it fulfills the conditions of this CONTRACT. The conditions of said allocation being as follows:

#### AGREEMENT

- (1) COMPANY agrees to occupy the premises located at 607 South Business 35, Suite 105, New Braunfels, Texas 78130 on or before December 31, 2014 and commence operations. Commencement of Operations shall mean that the Company has employed at least 20 full-time employees at its premises.
- (2) The IDC shall provide up to \$400,000 for the purchase and installation of an electrical generator, uninterruptible power supply unit and other qualified expenses associated with installation of said equipment. If the sum of these expenses is less than \$400,000, COMPANY shall be entitled to utilize the balance of proceeds on Qualified Expenses as more fully detailed in Exhibit A. IDC will only provide these monies to COMPANY after having received a reimbursement request and invoice from COMPANY for the applicable items and IDC has verified the purchase and installation of such items.
- (3) Beginning December 31, 2016, and annually thereafter until December 31, 2018, the COMPANY is eligible to submit a Sworn Employment Report ("Report") detailing each Eligible Position. To receive the Payment Per Job, the Report shall fulfill all the conditions listed below.
- (4) The Report shall specify details as to the position, title, and annual compensation of each position included, excluding the cash value of non-monetary benefits such as health insurance.
- (5) Provided that the Sworn Employment Report includes the information detailed in paragraph (3) above, the IDC shall provide up to \$4,400 ("Payment Per

Job") to COMPANY for each Eligible Position. The IDC shall determine the number of Eligible Positions that meet certain qualifications specified in Paragraph 6 below.

(6) To determine the Eligible Positions, the IDC shall review the Report to ensure that:

- a. Each position included on the Report provides a minimum annual compensation of \$37,000, excluding the cash value of non-monetary benefits such as health insurance; and,
- b. The Average Annual Compensation, excluding non-monetary benefits, of all positions listed on the Report is greater than or equal to \$53,000 annually. Average Annual Compensation shall be determined by dividing the gross annual compensation, excluding non-monetary benefits, of all positions detailed on the Report by the number of total positions included on the Report. If this calculation is greater than or equal to \$53,000, the COMPANY shall be entitled to receive a payment of \$4,400 per position detailed on the Report; and,
- c. Each position included on the Report shall have been performed by an employee during at least 18 months (75%) of the previous two year period. IDC shall not provide a Payment Per Job if the position detailed on the report has been vacant for more than six months during the two year compliance period; and,
- d. The Company shall have a total employment of
  - i. at least 400 employees on or before December 31, 2016; and
  - ii. at least 500 employees by December 31, 2017.

(7) Payments Per Job received by COMPANY between January 1, 2017 and January 1, 2018 shall not be subject to Paragraph 6(d)(ii) above.

- (8) In no event, shall the aggregate of Payments per Job received by COMPANY exceed \$250,000. Each Eligible Position is entitled to a single Payment Per Job.
- (9) The City of New Braunfels may audit COMPANY employment records prior to any payment being made to the COMPANY.
- (10) COMPANY will use its best efforts to hire employees from Comal, Guadalupe, and Hays Counties.
- (11) COMPANY can only qualify to receive up to \$250,000 in economic development funds by fulfilling the requirements as detailed above. If COMPANY is found to be in violation of any of the preceding paragraphs, the IDC can exercise its ability to offer the property owner and/or COMPANY the first right of refusal to purchase the generator equipment at Fair Market Value. In the event the IDC offers the first right of refusal and neither party agrees to compensate the IDC at a mutually agreed upon Fair Market Value, the IDC will remove the generator and corresponding uninterruptible power supply from the premises after a 120 day written notification to the COMPANY and property owner.
- (12) The New Braunfels Industrial Development Corporation will retain ownership of the electrical generator and uninterruptible power supply (UPS) pursuant to an Agreement which will be executed between IDC, tenant (COMPANY) and property owner. COMPANY shall be responsible for ensuring that all required maintenance on the electrical generator and UPS is performed in compliance with the manufacturer's requirements and/or will reimburse the City for performing such required maintenance. If COMPANY fails to do so, IDC will take possession of the generator.

### III.

This contract shall terminate on July 31, 2019. After this date, the parties may, but are not required, to negotiate the purchase of the generator and UPS at fair market value. Further, during the duration of this Agreement in the event of a breach or if COMPANY vacates the premises the IDC is entitled to remove the generator and UPS. After the termination of this CONTRACT, the IDC is entitled to remove the generator and UPS.

### IV.

In the performance of this contract, COMPANY shall not discriminate against any employee or applicant for employment or with any customer with respect to his hire, tenure, terms, conditions or privileges because of his 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.

### V.

All communications between the IDC and COMPANY shall be addressed to the President of the New Braunfels Industrial Development Corporation, c/o City of New Braunfels, 424 S. Castell Ave., New Braunfels, TX 78130. Any communication to COMPANY shall be addressed to the General Counsel, CBE Companies, 1309 Technology Parkway, Cedar Falls, Iowa 50613.

### VI.

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), the COMPANY shall repay the amount of the Grant and any other funds received by the COMPANY from the IDC as of the date of

such violation within sixty (60) days after the date the 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.

#### VII.

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. This agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Exclusive venue shall be in a court of competent jurisdiction in Comal County, Texas. No provision of this agreement shall affect or waive any sovereign or governmental immunity available to the City of New Braunfels or the IDC and/or its elected officials, officers, employees and agents under Federal or Texas law nor waive any defenses or remedies at law available to the City of New Braunfels or the IDC and/or its elected officials, officers, employees and agents under Federal or Texas law.

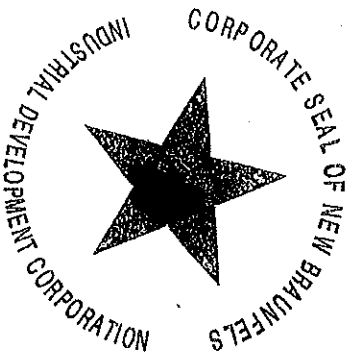
#### VIII.

The foregoing instrument in writing and that certain Security Agreement Between Rush Real Estate Holdings, Inc., The New Braunfels Industrial Development Corporation and CBE Companies, Inc. Regarding Ownership and Maintenance of a Generator and Uninterruptible Power Supply among 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.

IN WITNESS WHEREOF, the parties hereto execute this agreement in duplicate originals on this 1 day of ~~November~~ December, 2014.

NEW BRAUNFELS INDUSTRIAL  
DEVELOPMENT CORPORATION



By: [Signature]  
BOB GRAY, President  
424 S. Castell Ave  
New Braunfels, Texas 78130

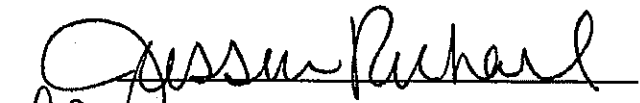
By: [Signature]  
JULIE MARTINEZ, Corporate Secretary  
424 S. Castell Ave  
New Braunfels, Texas 78130

ATTEST:

[Signature]  
PATRICK D. ATEN, City Secretary



APPROVED AS TO FORM:

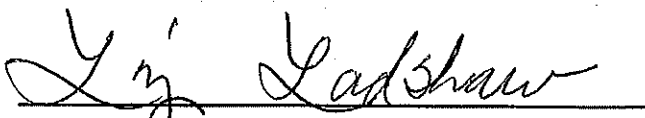
  
for VALERIA M. ACEVEDO, City Attorney

STATE OF TEXAS §

COUNTY OF COMAL §

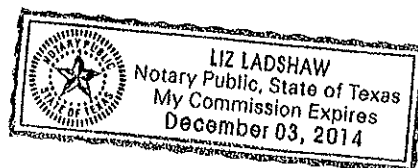
Before me, Robert Scott Gray on this day personally appeared Bob Gray, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that Bob Gray executed the same as the act of the New Braunfels Industrial Development Corporation as its President, for the purposes and consideration therein expressed.

Subscribed and sworn to before me this 1 <sup>December</sup> day of November, 2014.

  
Notary Public, State of Texas

My commission expires:

12-03-14



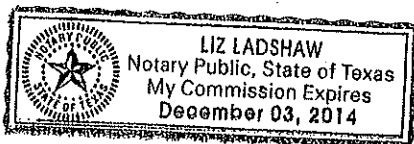


STATE OF TEXAS §

COUNTY OF COMAL §

Before me, Julie Martinez, on this day personally appeared Julie Martinez, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that Julie Martinez executed the same as the act of the New Braunfels Industrial Development Corporation as its Secretary, for the purposes and consideration therein expressed.

Subscribed and sworn to before me this 1 day of December, 2014.

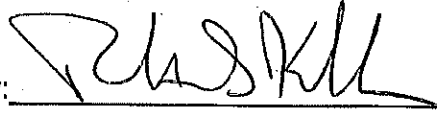


Liz Lashaw  
Notary Public, State of Texas

My commission expires:

12-03-14

CBE COMPANIES, INC.

By: 

Robert S. Kahler

1309 Technology Parkway

Cedar Falls, Iowa 50613


STATE OF IOWA

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Before me, Debra Reinhardt, on this day personally appeared Robert S. Kahler, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that Robert Kahler executed the same as the act of CBE Companies as its CFO, for the purposes and consideration therein expressed.

Subscribed and sworn to before me this 20<sup>th</sup> day of November, 2014.



  
Notary Public, Iowa

My commission expires:

June 25, 2015

## **Exhibit "A"**

### **Qualified Expenses**

- Costs and fees associated with establishing a business in New Braunfels, including but not limited to permits, tap fees, usage fees, road impact fees and registration fees; and
- Additional building modifications and expenditures associated with relevant tenant improvements as a result of COMPANY'S location; and
- Moving expenses associated with the transfer of personal property, equipment and personnel; and
- Site selection expenses including, but not limited to, consultant fees, owners representation fees and travel expenses; and