

**CONTRACT BETWEEN THE NEW BRAUNFELS ECONOMIC DEVELOPMENT
CORPORATION AND UNITED TRAINING CAREER LLC**

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

THIS CONTRACTUAL AGREEMENT ("this 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 referred to as "EDC", acting by and through its duly authorized officers, and United Training Career, LLC, hereinafter referred to as "Company", acting by and through its officers.

W I T N E S S E T H:

WHEREAS, under the authority granted to the EDC by Texas Local Government Code §505.101, and upon the EDC's approval and recommendation for approval on July 16, 2020, and approval of the City Council on August 10, 2020, financial incentives by the EDC are authorized up to \$85,000 to Company for the creation and retention of up to 40 primary full-time jobs at its New Braunfels facility and \$2.4 million in rehabilitation of the facility in New Braunfels which will serve as the Company's corporate headquarters.

A G R E E M E N T

I.

All funds received by Company from EDC as herein provided shall be expended solely for the purposes stated herein and in accordance with the following terms:

- (1) Company shall employ no fewer than 40 full-time employees in its facility in New Braunfels ("Facility") by September 1, 2021, with average wages for the 40 full-time employees of \$60,000 per year, exclusive of benefits.
- (2) Company shall maintain no fewer than 40 employees in its facility in New Braunfels with wages for at least 40 full-time employees averaging at least \$60,000 per year,

exclusive of benefits, for the year preceding September 1, 2021.

- (3) Company shall maintain its corporate headquarters (Comal Appraisal ID 71471) within the City of New Braunfels for at least five years from the execution of this Agreement.
- (4) Company shall invest a minimum of \$2.4 million in the rehabilitation of its corporate headquarters building located within the City of New Braunfels, including business personal property but excluding costs to acquire the building, by September 1, 2020.
- (5) Beginning in 2021 and continuing through 2024, Company shall submit a request for grant funds to the EDC by September 1st of each year if Company has met the requirements of this Agreement. Accompanying the Company's request for grant funds must be a notarized statement from an officer of Company that Company has fulfilled the requirements of this Agreement and that the minimum number of employees and minimum average salary required was retained throughout the year for which Company is requesting grant funds.

(6) Definitions.

For purposes of this Agreement, the following definitions shall apply:

- (a) a "full-time employee" shall mean an employee of the Company or an Affiliate, or Temp for Hire of the Company or an Affiliate who is scheduled to work a minimum of thirty (30) hours per week at the Facility (i.e., annual scheduled hours of at least 1,500), and who is offered benefits commonly associated with full-time employment, including but not limited to, healthcare, paid and unpaid leave benefits, and the right to participate in Company's qualified retirement plan. Following the opening of the Facility, Company shall provide a certification of the number of its full-time employees and payroll at the Facility no later than June 8th of each year. The required certification shall be in a form reasonably acceptable to the EDC and shall include information pertaining to Company's achievement of the above described minimum requirements for the number of jobs and payroll expenses. Notwithstanding the foregoing, Company shall not

be required to disclose confidential personnel information regarding individual employees or their compensation.

- (b) "Payroll expense" means the total amount of compensation paid to all full-time employees, including but not limited to, salaries and wages, bonuses, and payroll taxes.
- (c) "Affiliate" means (1) any entity 50% or more owned or controlled by the Company, or any of its principal shareholders or any trust created for their benefit, (2) any entity taking over Company's interest in this Agreement as a result of a merger or consolidation, (3) any entity acquiring all or substantially all of the assets of Company, or (4) any entity which has acquired a majority of the outstanding stock or equity of Company.
- (d) "Temp for Hire" means an individual that is employed by a temporary employee agency (or similar business) who is working at the Facility pursuant to a contract between Company or its Affiliate and such temporary employee agency or other similar business.

(7) EDC shall grant Company as follows:

- a.) For the first year of this Agreement, EDC shall grant Company \$28,333 upon EDC's verification that Company has complied with subsections 1, 3 and 4 above by September 1, 2021.
- b.) For the second year of this Agreement, EDC shall grant Company \$28,333 upon EDC's verification that Company has complied with subsections 2, 3, and 4 above for the preceding year ending September 1, 2022.
- c.) For the third year of this Agreement, EDC shall grant Company \$28,334 upon EDC's verification that Company has complied with subsections 2, 3, and 4 above for the preceding year ending September 1, 2023.
- e.) In no event shall total payments from EDC to Company exceed \$85,000.
- f.) Beginning September 1, 2021, and continuing annually through the term

of this Agreement, Company shall, without disclosing information confidential to employees, provide a notarized report to the EDC of employment taxes paid to the IRS to verify employment and payroll for the preceding two quarters.

g.) Company shall permit EDC to audit Company's payroll records with regard to the Facility, without disclosing the confidential information of employees, for the three years of this Agreement beginning September 1, 2021, subject to a notification of 15 business days prior to requested access of payroll records.

h.) If EDC determines that Company has in any year of this Agreement failed to meet the minimum jobs requirement or the minimum payroll requirement, then the incentives to be paid to Company shall be reduced by \$1,000 per position for which Company did not meet the minimum requirements of this Agreement for the particular year. For purposes of reducing incentives to be paid to Company, Company shall not be determined to have failed to meet the minimum jobs requirement so long as Company's average number of full-time employees located at the Facility as of the last day of the month for each month of operation in the reporting year or the number of full time employees as of September 1 is 90% or greater than the required minimum number of jobs for the compliance year.

i.) If EDC determines that Company has not fulfilled the investment or headquarters requirements of paragraphs 3 or 4 above, the Company forfeits the right to receive all unpaid and future incentives.

j.) Company is encouraged to hire employees from Comal, Guadalupe and Hays Counties, subject to required workforce skillsets readily available in these locations.

II.

Any breach of the terms and conditions of this grant by Company, other than a failure to maintain the requisite number of employees as enumerated in this Agreement for which Company has made required reimbursement payments, will result in the termination of distribution of funds and immediate repayment of the grant unless EDC and Company agree, in writing, to modify the terms of the grant.

III.

In the performance of this contract, Company shall not discriminate against any person 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.

IV.

All communications between EDC and Company shall be addressed to the City Manager of the City of New Braunfels, 550 Landa Street, New Braunfels, Texas 78130, with a copy being sent to the President of the EDC at his/her residential or business address as provided by the EDC. Any communication to Company shall be addressed to: Jamie Fiely, President, United Training, 707 Landa Street, New Braunfels, Texas 78130.

V.

Chapter 2264 of the Texas Government Code requires Company to certify that Company will agree not to knowingly employ any undocumented workers during the term of the Agreement. If Company is convicted of a violation under 8 U.S.C. Section 1324a(f), Company shall repay the amount of the financial incentives it has received from EDC with six percent (6%) interest, at the rate and according to the other terms provided by an agreement under Section 2264.053, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies Company of the violation. If convicted, Company shall repay the amount of all financial incentives for the year(s) in which the violation occurred.

VI.

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.

VII.

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 Company.

VIII.

This Agreement cannot be assigned by Company without the prior written consent of the EDC, which consent may not be unreasonably denied, delayed, conditioned or withheld (it being understood that reasonable reasons for the EDC to deny such consent include, without limitation, the lack of financial viability of the assignee, the business reputation of the assignee, the assignee's engaging in a type of business that would reflect poorly on the EDC, the assignee's lack of compliance with City ordinances and laws). Notwithstanding the foregoing, Company may assign this Agreement (in whole or in part), without the prior written consent of the EDC to any affiliate of Company (currently existing or later formed), provided that such assignee assumes the obligations and liabilities of Company in writing in a form reasonably approved by the EDC.

IX.

At any time prior to the receipt of EDC funds hereunder, Company may terminate this Agreement, without any further obligation to the EDC, by providing written notice of the termination to the EDC.

IN WITNESS WHEREOF, the parties hereto execute this Agreement in duplicate originals on this ____ day of _____, 2020.

United Training Career LLC

By: _____

STATE OF _____ §

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 as the act of _____ as its _____, for the purposes and consideration therein expressed.

Subscribed and sworn to before me this _____ day of _____, 2020.

Notary Public, State of _____

My commission expires:

NEW BRAUNFELS ECONOMIC
DEVELOPMENT CORPORATION

By: _____
R. Neal Linnartz,
President

NEW BRAUNFELS ECONOMIC
DEVELOPMENT CORPORATION

By: _____
Jim Poage,
Secretary

DRAFT

STATE OF TEXAS §

COUNTY OF COMAL §

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

Subscribed and sworn to before me this _____ day of _____, 2020.

Notary Public, State of Texas

My commission expires:

STATE OF TEXAS §

COUNTY OF COMAL §

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

Subscribed and sworn to before me this _____ day of _____, 2020.

Notary Public, State of Texas

My commission expires:

DRAFT