

CONTRACT BETWEEN THE NEW BRAUNFELS ECONOMIC DEVELOPMENT CORPORATION AND THE AVIATION ACADEMY OF AMERICA, INC.

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 the Aviation Academy of America, Inc., hereinafter referred to as "Company", acting by and through its officers.

WITNESSETH:

WHEREAS, under the authority granted to the EDC by Texas Local Government Code §505.101 and §501.103, and upon the EDC's approval and recommendation for approval on October 15, 2020, and approval of the City Council on _____, 2020, financial incentives by the EDC are authorized up to \$320,000 to Company for the creation and retention of up to 20 new primary full-time jobs and \$2.8 million in infrastructure improvement and facility construction at the New Braunfels Regional Airport.

AGREEMENT

I.

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

- (1) Company shall construct or cause to be constructed at the New Braunfels Regional Airport a minimum of 22,000 square feet of hangar, office, or classroom space (hereinafter referred to as "Facility") prior to any distribution of funds made under this Agreement and must occupy the minimum space of 22,000 square

feet at the New Braunfels Regional Airport for the duration of this Agreement.

- (2) Company shall employ no fewer than 31 full-time employees at its Facility within one year of Company receiving its Certificate of Occupancy for its Facility.
- (3) Company shall maintain no fewer than 36 employees in its Facility within two years of Company receiving its Certificate of Occupancy for its Facility in New Braunfels.
- (4) Company shall maintain no fewer than 41 employees in its facility in New Braunfels, of which the 20 newest positions shall have an annual gross payroll of at least \$800,000, within three years of Company receiving its Certificate of Occupancy for its Facility and continuing for a period of five years from when Company received its Certificate of Occupancy for its Facility.
- (5) Annual Minimum Purchase. For each year of this Agreement, Company shall purchase from fixed-base operator of the New Braunfels Regional Airport at least 60,000 gallons of LL fuel ("Annual Minimum Purchase") at the discounted price as reflected in Schedule A of this Agreement.
- (6) Requests for Payment.
 - (a) Beginning within 30 days after the one-year anniversary of the issuance of the Certificate of Occupancy and continuing annually within the same timeframe for the following four years, Company shall submit a request for grant funds for reimbursement for underground utility work and associated site work at the Facility.
 - (b) 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. The statement must certify that the Minimum Annual Purchase was made and that the minimum number of employees and minimum average salary required, if applicable, were retained throughout the

year.

(7) 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. Certification of number of employees and payroll shall be submitted annually beginning one year from the issuance of the Certificate of Occupancy of the Facility and shall be in a form reasonably acceptable to the EDC. The certification 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.

(8) EDC shall grant Company as follows:

a.) For each of the five years of this Agreement, upon EDC's determination that Company has met the requirements of this Agreement, EDC shall distribute \$64,000 to Company within 60 days of Company's request for reimbursement.

b.) In no event shall total payments from EDC to Company exceed \$320,000.

c.) Beginning one year from the date of the issuance of the Certificate or Occupancy for Facility 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.

d.) Company shall permit EDC to audit Company's payroll records with regard to the Facility, without disclosing the confidential information of employees, for every year in which Company must maintain a requisite level of employment pursuant to this Agreement, subject to a notification of 15 business days prior to requested access of payroll records.

e.) 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 Company shall either repay EDC \$1,000 per position for which Company did not meet the minimum requirements of this Agreement for the or, if there are incentives from the EDC to Company yet to be paid, shall have incentives from EDC reduced by \$1,000 per position

for which Company did not meet the minimum requirements of this Agreement for the particular year. 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 is 90% or greater than the required minimum number of jobs for the compliance year. Any repayment to EDC from Company shall be paid within sixty days of EDC's request to Company for repayment. In no event shall this Agreement require Company to pay EDC more than what has been disbursed to Company by EDC pursuant to this Agreement.

f.) If EDC determines that Company has in any year of this Agreement failed to meet the Minimum Annual Purchase, then Company shall either repay EDC \$1,000 for every shortfall of 1,000 gallons below the Minimum Annual Purchase or, if there are incentives from the EDC to Company yet to be paid, shall have incentives from EDC reduced by \$1,000 for every shortfall of 1,000 gallons from the Minimum Annual Purchase. Any repayment to EDC from Company shall be paid within sixty days of EDC's request to Company for repayment. In no event shall this Agreement require Company to pay EDC more than what has been disbursed to Company by EDC pursuant to this Agreement.

g.) 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 President of the New Braunfels Economic Development Corporation, c/o City of New Braunfels, 550 Landa Street, New Braunfels, Texas 78130, with a copy being sent to the Director of Economic and Community Development, 550 Landa Street, New Braunfels, Texas 78130. Any communication to Company shall be addressed to:

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 the absence of Company's termination of this Agreement prior to disbursement of EDC funds, this Agreement shall terminate five years and sixty days from the date of commencement.

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

AVIATION ACADEMY OF AMERICA, INC.

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:

Attachment A

The Airport, as an additional performance incentive to the Company, will provide the following discounts from retail price as the Company achieves certain milestones in annual fuel purchases:

FUEL VOLUME DISCOUNT PROPOSAL

Gallons	Discount
1 - 50000	Retail - \$0.30/gal
50001 - 75000	Retail - \$0.35/gal
75001 - 99000	Retail - \$0.40/gal
100001 +	Retail - \$0.50/gal

For the initial 50K gallons purchased annually, the price per gallon (ppg) is retail minus \$0.30.

The second-tier discount applies when the annual volume purchased is 50,001 gallons.

The third-tier discount applies when the annual volume purchased is 75,001 gallons.

For annual volumes greater than 100,000 gallons, fuel discount increases to \$0.50/gal off retail.

Volume discount is based on the previous 12-month historical purchases reviewed monthly after the initial 12-month period this matrix goes into effect.