

**ECONOMIC DEVELOPMENT FIRST AMENDED
AND RESTATED PERFORMANCE AGREEMENT
ACEROTECA METALS, LLC**

This First Amended and Restated Performance Agreement (this “Agreement”) is entered into to be effective as of the Effective Date (as defined in Article III below), by and between the Seguin Economic Development Corporation, located in Guadalupe County, Texas, a Texas non-profit industrial development corporation under the Development Corporation Act and governed by TEX. LOC. GOV. CODE chapters 501, 502 and 504 and the Texas Non-Profit Corporation Act (hereinafter called “SEDC”), created by, and for the benefit of the City of Seguin, Texas (hereinafter the called the “City”), and Aceroteca Metals, LLC, a Nuevo Leon, Mexico corporation authorized to do business in the State of Texas (hereinafter called “Company”; the SEDC and the Company collectively known as the “Parties” to this Agreement).

RECITALS

WHEREAS, the Development Corporation Act of 1979, as amended (Section 501.001 et seq, Texas Local Government Code, formerly the Development Corporation Act of 1979) (the “Act”) authorizes a development corporation to fund certain projects as defined by the Act and requires development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, Section 501.158 of the Act requires a performance agreement to provide at a minimum for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by a corporation under an agreement and to specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement; and

WHEREAS, the Company is a manufacturer and servicer of flat steel and metal products for the automotive, heavy industry, commercial, HVAC, white line, metal and mechanical, and construction applications and industries; and

WHEREAS, the Company is seeking to construct a new 59,000 square foot steel service center within the City of Seguin for steel coil processing a total capital investment of at least \$5,000,000.00 (the “Facility”); and

WHEREAS, the Company also commits to the creation of at least 20 new full-time jobs, at a total minimum annual payroll of \$1.2 million dollars; and

WHEREAS, the Company is seeking a Performance-Based Loan from the SEDC to help offset certain costs associated with its proposed Facility construction and commencement of local operations; and

WHEREAS, the SEDC desires to provide funding to the Company pursuant to the Performance-Based Loan, as an incentive for the construction of the Company’s Facility and

associated investment of new capital; and

WHEREAS, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of the Parties; and

WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

WHEREAS, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in accordance with Texas law; and

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the Parties agree as follows:

ARTICLE I RECITALS

1. Recitals. The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

ARTICLE II AUTHORITY AND TERM

1. Authority. The SEDC's execution of this Agreement is authorized by the Act and constitutes a valid and binding obligation of the SEDC. The Company's execution of this Agreement is authorized by the appropriate authority and constitutes a valid and binding obligation of the Company.

2. Term. This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established, unless terminated sooner or extended by written mutual agreement of the Parties in the manner provided for herein.

3. Purpose. The purpose of this Agreement is to formalize the agreements between the Company and the SEDC and specifically state the covenants and representations of the Parties, and the incentives associated with the Company's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement which has been approved by the SEDC and the Company as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction.

4. Administration of Agreement. Upon the Effective Date, the SEDC delegates the administration and oversight of this Agreement to the Executive Director of the SEDC. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the SEDC.

ARTICLE III DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

“Bankruptcy” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any party of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Business Operations” shall mean the processing of steel and steel coils into steel sheets for downstream processing; along with ancillary uses to support said operations (such as office administration and warehousing and storage of raw materials and finished product).

“Capital Investment” shall mean those items set forth in Article IV.

“Compliance Reporting Form” shall mean the certification by Company on a form provided by the SEDC that the obligations outlined within this Performance Agreement have been fulfilled.

“Effective Date” shall be the date of the last signing by a Party to this Agreement.

“Expiration Date” shall mean the date of termination provided for under Article VII of this Agreement.

“Facility” shall mean the minimum fifty-nine thousand (59,000) square foot steel service center, to be constructed by Company for the Company’s Business Operations.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party, including, without limitation, natural disasters or other acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action, fires, explosions, floods, strikes, lock-outs, slowdowns, work stoppages, unusual and unforeseeable delay that results from an interruption or failure of any public utilities, (e.g., electricity, gas, water), terrorism, bioterrorism, pandemic or epidemic.

“New Jobs” shall mean those jobs that are created for the purposes of satisfying Company’s obligations herein and shall exclude any job relocated from any other location of Company within the City of Seguin.

“Performance-Based Loan” or “PB Loan” shall have the meaning set forth in Article V, Section 1.

“Project” shall mean the Capital Investment creation as defined herein.

“Property” shall mean the real property consisting of approximately 23.2 acres, and located at the Northeast corner of Heideke Street and Seideman Street in Seguin, Texas.

ARTICLE IV PERFORMANCE OBLIGATIONS OF COMPANY

The obligation of the SEDC to pay funds from the PB Loan shall be conditioned upon the Company’s continued compliance with and satisfaction of each of the Company’s obligations under this Article IV (the “Performance Obligations”).

1. **Loan**

(a) COMPANY shall enter into a loan agreement with SEDC pursuant to the attached Promissory Note, as executed concurrently with this document and made a part hereof for all purposes. Such loan to be in the amount of Two hundred thousand dollars and no/100 (\$200,000.00) at zero percent (0%) interest for a period of five (5) years, with payment being due on the first (1st) of each month, and a five percent (5%) late fee being incurred after the tenth (10th) day of the month and other terms as identified in that Promissory Note.

2. **Improvements; Operations; Jobs.**

(a) COMPANY shall commence construction of the Facility a total capital investment of at least \$5,000,000.00 no later than September 1, 2023; commencement of construction will be evidenced by a letter of commencement from the general contractor and issuance of all required building permits by the City of Seguin.

(b) COMPANY shall commence Business Operations no later than June 1, 2024; commencement of Business Operations will be evidenced by the issuance of a Certificate of Occupancy by the City of Seguin.

(c) COMPANY shall create a minimum of 20 Full-Time jobs at a minimum Annual Payroll of \$1,200,000.00 no later than December 31, 2025.

For purposes of this Agreement: “Full-Time Jobs” shall mean the number of the Company’s employees that (a) have a regular work schedule of at least 36 hours per week as reported on the Texas Employers Quarterly Wage Report from the Texas Workforce, and (b) are entitled to at least the customary employer-sponsored benefits package afforded by the Company to its similarly situated employees at other locations; and “Annual Payroll” shall mean the total wages and bonuses paid, exclusive of benefits, to the Full-Time Jobs.

(d) In the event COMPANY fails to receive a Certificate of Occupancy from the City of Seguin and commence Business Operations as provided for in Paragraph (b) above, fails to

create the minimum full-time jobs and payroll as provided for in Paragraph (c) above, or ceases Business Operations during the term of this Agreement, COMPANY will be in default. Upon the occurrence of a default, the SEDC may declare the unpaid principal balance, interest, and any other amounts owed on the note immediately due, accelerate the note, or exercise all other rights and remedies available at law or in equity.

(g) Any repayment obligations incurred by COMPANY arising out of this Agreement shall be secured by a collateral interest in COMPANY Equipment, as evidenced by the security agreement (and filing of UCC-1 financing statement) provided in substantial form and as referenced in the Promissory Note, all attached as Exhibit A.

ARTICLE V SEDC OBLIGATIONS

1. Loan; Partial Forgiveness Option
 - a. The SEDC shall enter into a loan agreement with COMPANY pursuant to the attached Promissory Note, as executed concurrently with this document, attached as Exhibit A, hereto, and made a part hereof for all purposes. Such loan to be in the amount of Two hundred thousand dollars and no/100 (\$200,000.00) at zero percent (0%) interest for a period of ten (5) years, with payment being due on the first (1st) of each month, and a five percent (5%) late fee being incurred after the tenth (10th) day of the month and other terms as identified in that Promissory Note.
 - b. Current Revenue. The funds distributed hereunder shall be paid solely from lawfully available funds of the SEDC. Under no circumstances shall the obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.
 - c. The SEDC will forgive up to ten percent (10%) of the loan, conditioned upon the following:
 - i. If COMPANY receives a Certificate of Occupancy and commences Business Operations no later than June 1, 2024, as described by Section IV(b) above, two-and-a-half percent (2.5%, or \$5000.00) of the Loan shall be forgiven by the SEDC.
 - ii. If COMPANY creates a minimum of 20 Full-Time jobs at a minimum Annual Payroll of \$1,200,000.00 no later than December 31, 2025, as described in Section IV(c) above, seven-and-a-half percent (7.5%, or \$15,000.00) of the Loan shall be forgiven by the SEDC.

ARTICLE VI COVENANTS AND WARRANTIES

1. Covenants and Warranties. The Company makes the following covenants and warranties to the SEDC and agrees to timely and fully perform the obligations and duties contained in Article IV of this Agreement.

(a) The Company is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during any term of this Agreement.

(b) The execution of this Agreement has been duly authorized by the Company, and the individual signing this Agreement is authorized to execute such Agreement and bind the Company. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of the Company's organizational documents, or of any agreement or instrument to which the Company is a party to or by which it may be bound.

(c) The Company is not a party to any Bankruptcy proceedings currently pending or contemplated, and the Company has not been informed of any potential involuntary Bankruptcy proceedings.

(d) To its current, actual knowledge, the Company has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

(e) The Company agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the Project.

(f) The Company shall be responsible for paying, or causing to be paid, to the City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project. The Company agrees to develop the Project in accordance with the ordinances, rules, and regulations of the City in effect on the date the Project was designed, unless specified otherwise in this Agreement or in another agreement between the Parties.

(g) The Company agrees to commence and complete the Project in strict accordance with this Agreement.

(h) The Company shall cooperate with the SEDC in providing all necessary information to assist the SEDC in complying with this Agreement. Cooperation shall include, but not be limited to, providing evidence and copies of construction contracts, payments for construction, permits, construction supply purchases, and any other documentation deemed necessary by SEDC to substantiate the reported Capital Investment.

(i) During the term of this Agreement, Company agrees to not knowingly employ any undocumented workers as part of the Project, and, if convicted of a

violation under 8 U.S.C. Section 1324a (1), Company shall be in Default (as defined below). Company is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts, provided however that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Company enters into with any subsidiary, assignee, affiliate, or franchisee for which the PBC Grant provided herein will be used.

(j) Company shall not be in arrears and shall be current in the payment of all City taxes and fees.

2. SEDC's Covenants and Warranties.

(a) The SEDC represents and warrants to the Company that the execution of this Agreement has been duly authorized by the SEDC, and the individual signing this Agreement is empowered to execute such Agreement and bind the SEDC. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of the SEDC's organizational documents, or of any agreement or instrument to which the SEDC is a party to or by which it may be bound.

(b) SEDC shall cooperate with the Company in providing all necessary information and documentation to assist the Company in complying with this Agreement.

ARTICLE VII TERMINATION

1. Termination. This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

(a) The mutual agreement of the Parties, as reflected in writing signed by the Parties;

(b) The Company satisfying all the Performance Obligations set forth in Article IV, but in no event later than December 31, 2025; or

(c) The SEDC electing to terminate this Agreement by written notice to the Company following an Event of Default by the Company.

ARTICLE VIII DEFAULT

1. The Company's Events of Default. The following shall be considered an "Default" by the Company:

(a) Failure of the Company to timely perform any term, covenant, obligation, duty, or agreement contained in this Agreement, including without limitation its Performance Obligations; or

- (b) SEDC determines that any representation or warranty contained herein in or in any financial statement, certificate, report or opinion prepared and submitted to SEDC in connection with or pursuant to the requirements of this Agreement was false, incorrect or misleading in any material respect when made;
- (c) Any judgment is assessed against the Company or any attachment or other levy against the property of the Company with respect to a claim remains unpaid, unstayed on appeal, not discharged, not bonded or not dismissed for a period of ninety (90) days; or
- (d) The Company makes an assignment for the benefit of creditors; files a petition in bankruptcy; is adjudicated insolvent or bankrupt; commences any action relating to the Company under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect; or if there is commenced against the Company any such action and such action remains undismissed or unanswered for a period of ninety (90) days from such filing.

2. SEDC Events of Default. SEDC failure to fulfill any obligation set forth within the terms and conditions of this Agreement shall be deemed a “Default” by the SEDC.

3. Remedies for Default.

- (a) In the event of Default by the Company, the SEDC shall give the Company written notice of such Default and if the Company has not cured such Default within 60 days after receipt of such Notice, an “Event of Default” by the Company shall have occurred. Upon the occurrence and during the continuance of an Event of Default by the Company, the SEDC shall have the right to terminate this Agreement, declare the unpaid principal balance, interest, and any other amounts owed on the note immediately due, accelerate the note, or pursue all rights and remedies provided by applicable law. After such termination by the SEDC, the SEDC shall have no further obligation to the Company under this Agreement.
- (b) In the event of Default by the SEDC, the Company shall give the SEDC written notice of such Default and if the SEDC has not cured such Default within 60 days after receipt of such Notice, an “Event of Default” by the SEDC shall have occurred. Upon the occurrence and during the continuance of an Event of Default by the SEDC, the Company shall have the right to terminate this Agreement, and pursue all rights and remedies provided by applicable law. After such termination by the Company, the Company shall have no further obligation to the SEDC under this Agreement.

ARTICLE IX MISCELLANEOUS

1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. This Agreement is contingent upon the purchase of the Property by the Company from the SEDC. This Agreement is not binding until it has been approved by the Seguin Economic Development Corporation and the City of Seguin; upon said approval, the Executive Director of the SEDC shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the SEDC, on behalf of the Parties related thereto.

2. Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

3. Independent Contractors.

- (a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Company at no time will be acting as an agent of the SEDC and that all consultants or contractors engaged by Company respectively will be independent contractors of Company; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed the Parties hereto understand and agree that the SEDC will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Company respectively under this Agreement, unless any such claims are due to the fault of the SEDC.
- (b) By entering into this Agreement, except as specifically set forth herein, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the SEDC, with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.
- (c) No employee of the SEDC, or any board member, or agent of the SEDC, shall be personally responsible for any liability arising under or growing out of this Agreement.

Notice. Any notice required by or permitted under this Agreement must be in writing. Notice may be given by certified or registered mail, personal delivery, courier delivery, or e-mail and will be effective when received, provided that (a) any notice received on a Saturday, Sunday, or holiday will be deemed to have been received on the next day that is not a Saturday, Sunday, or holiday and (b) any notice received after 5:00 P.M. local time at the place of delivery on a day that is not a Saturday, Sunday, or holiday will be deemed to have been received on the next day that is not a Saturday, Sunday, or holiday. Any address for notice may be changed by not less than ten days' prior written notice given as provided herein.

If intended for SEDC: Seguin Economic Development Corporation
Attention: Executive Director
211 N River St.
Seguin, TX 78155

With a copy to:
Denton, Navarro, Rocha, Bernal, & Zech, PC
Attention: Allison Bastian-Rodriguez
701 E. Harrison, Suite 100
Harlingen, Texas 78550

If to Company: Aceroteca Metals, LLC.
Attention: _____
(Street Address)

With a copy to:

4. Governmental Records. All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.

5. Governing Law. The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement shall be in the Courts of Guadalupe County, Texas, United States of America. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6. Amendment. This Agreement may be amended by mutual written agreement of the Parties, as approved by the Board of Directors by the SEDC and the City of Seguin.

7. Legal Construction. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

8. Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its

meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

9. Entire Agreement. This Agreement, in conjunction with the contract governing the purchase of the Property by the Company from the SEDC, constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral, oral, or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly executed amendments to this Agreement.

10. Payment of Legal Fees. Each Party shall bear its own legal fees in connection with the negotiation of this Agreement. The Company commits to reimburse the SEDC for the necessary legal fees in the preparation of any amendment to this Agreement, if and when such amendment is requested by the Company. Timely payment shall be made within sixty (60) days of submittal of invoice to the Company by the SEDC or its assigns.

11. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

12. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

13. Exhibits. Any Exhibits attached hereto are incorporated by reference for all purposes.

14. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

15. Indemnification. **COMPANY SHALL RELEASE, HOLD HARMLESS, DEFEND AND INDEMNIFY THE SEDC, INCLUDING ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND REPRESENTATIVES, AND THE CITY COUNCIL MEMBERS AND MAYOR INDIVIDUALLY AND ACTING IN THEIR CAPACITY OF REVIEWING AND APPROVING ACTIONS OF THE SEDC (COLLECTIVELY "THE INDEMNITEES") FROM AND AGAINST ANY AND ALL SUITS, CLAIMS AND OTHER DEMANDS OF EVERY TYPE WHATSOEVER, INCLUDING ALL REASONABLE ATTORNEY'S FEES AND COSTS, ARISING FROM OR OTHERWISE RELATING TO THE SEDC CONTRIBUTION OR THE DESIGN, CONSTRUCTION OR OPERATION OF THE FACILITY, AND SUCH OBLIGATION SHALL NOT BE AFFECTED BY ANY ACTUAL OR ALLEGED NEGLIGENCE, CONTRIBUTORY NEGLIGENCE, OR STRICT LIABILITY ON THE PART OF THE INDEMNITEES (OTHER THAN AS A RESULT OF THE GROSS NEGLIGENCE, RECKLESS DISREGARD, OR WILLFUL MISCONDUCT OF THE INDEMNITEES).**

16. Additional Instruments. The Parties agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

17. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by Company, Company shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to causes of any kind whatsoever which are caused by Force Majeure.

18. Time Periods. Unless otherwise expressly provided herein, all periods for delivery or review and the like will be determined on a “calendar” day basis. If any date for performance, approval, delivery or Closing falls on a Saturday, Sunday or legal holiday (state or federal) in the State of Texas, the time therefor will be extended to the next day which is not a Saturday, Sunday or legal holiday.

19. Assignability. This Agreement may be assigned to a domestic owner, parent or subsidiary of the Company qualified to do business in the State of Texas, the assignment of which will be in writing and signed by the Company and Company’s assignee.

[SIGNATURE PAGES IMMEDIATELY FOLLOWING]

Executed on this _____ day of _____, 2023

COMPANY:

Aceroteca Metal, LLC
a Nuevo Leon, Mexico corporation

By: _____
Name:
Title:

Executed on this _____ day of _____, 2025

**SEGUIN ECONOMIC DEVELOPMENT
CORPORATION**

By: _____

Name: Joshua Schneuker

Title: Executive Director

APPROVED AS TO FORM:

By: _____
Allison A. Bastian-Rodriguez, SEDC Attorney