

SEDC Resolution NO. 2022-07

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SEGUIN ECONOMIC DEVELOPMENT CORPORATION
AUTHORIZING THE EXECUTION OF A PERFORMANCE
AGREEMENT WITH YUKON VENTURE PARTNERS, LLC.

WHEREAS, the Seguin Economic Development Corporation (the “SEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Texas Local Government Code, Chapters 501 and 504, *et seq.*, as amended, known as the Development Corporation Act of 1979 (the “Act”); and

WHEREAS, 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, Yukon Venture Partners, LLC (“Yukon”) is proposing a development of a warehouse facility, consisting of at least one hundred and fifty thousand (150,000) square feet, on a 15.8-acre tract of land (the “Property”) located at the northwest corner of Lawson Street and US Hwy 90 in Seguin, Texas, and is committing to a minimum capital investment of at least thirty million dollars (\$30,000,000.00) in the development of the Property (the “Project”); and

WHEREAS, the SEDC has reviewed the terms, conditions, incentives and obligations related to the Project, has considered and evaluated the Project, and has found it in compliance with the Act and meritorious of incentives in the form of a cash grant, payable in installments and conditioned upon the obligations of Yukon as provided by the performance agreement contemplated herein, in the amount of two hundred and fifty thousand dollars (\$250,000.00).

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SEGUIN ECONOMIC DEVELOPMENT CORPORATION THAT:

SECTION 1. The Board of Directors hereby finds that all the recitals above are true and correct and are incorporated herein as if restated in full.

SECTION 2. The Board approves the Project and agrees to the terms and the incentives being offered in the attached Performance Agreement as Exhibit A.

SECTION 3. The Board of Directors authorize the Director of Economic Development to take all necessary actions and to execute the Performance Agreement approved by the SEDC attorney, and any necessary subsequent documents to effectuate the performance of this Resolution.

SECTION 4. This Resolution is effective upon passage.

PASSED AND APPROVED on the 28th day of April 2022 by the Board of Directors of the Seguin Economic Development Corporation.



Carlos Moreno, President

ATTEST:



Robert Meservey, Secretary

SEDC/YUKON VENTURE PARTNERS, LLC
PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is made and entered into by and between the Seguin Economic Development Corporation (hereinafter called "SEDC"), a Texas corporation organized and existing under Chapters 501 and 504 of the Texas Local Government Code Texas non-profit corporation and Yukon Venture Partners, LLC, a Texas limited liability company (hereinafter called "Yukon") and is effective as of the date of the last required signature hereto.

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 expenditures on behalf of a business enterprise under a project; and

WHEREAS, Section 501.158 of the Act requires an incentive 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 the corporation under the 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, Yukon is proposing a development of a warehouse facility of at least one hundred fifty thousand (150,000) square feet, on a 15.8-acre tract of land (the "Property") located at the northwest corner of Lawson Street and US Hwy 90 in Seguin, Texas; and

WHEREAS, Yukon is committing to a minimum capital investment of at least Thirty Million Dollars (\$30,000,000.00) in the development of the Property; and

WHEREAS, the SEDC has been presented with details concerning the projected economic and community development benefits associated with the expansion of Yukon's operations in Seguin; and

WHEREAS, on [REDACTED], in material reliance on such economic and community development benefits associated with Yukon's proposed investment, the SEDC approved Resolution [REDACTED], thereby approving an incentive to Yukon valued at \$250,000.00 in exchange for Yukon's agreements and obligations as provided for herein.

NOW THEREFORE, in consideration of the foregoing and the mutual

promises and covenants herein, the undersigned parties agree as follows:

- 1) **Yukon's Performance Condition.** As a condition to payment of the Grant (as defined below), Yukon is required to satisfy the following conditions:
 - a) **Facility Construction and Capital Investment.** Capital investment of at least Thirty Million dollars (\$30,000,000.00) in improvements to the Property (the "Capital Investment") and the construction of a one hundred and fifty thousand (150,000) square foot warehouse (the "Facility").
 - b) **Building Permit.** Commencement of construction of the Facility will occur no later than May 15, 2023. The commencement of construction must be supported by a joint affidavit from Yukon and its General Contractor containing the date construction commenced and a general description of the improvements, and receipt of a Building Permit by the City of Seguin, for which approval of a Building Permit shall not be unreasonably withheld, conditioned or delayed.
 - c) **Certificate of Occupancy.** Yukon further covenants that the Capital Investments in the Property, and the construction of the Facility will be completed as evidenced by the receipt of a temporary or final Certificate of Occupancy from the City of Seguin no later than November 15, 2024.
 - d) **Employment and Payroll Commitment.** For purposes of this Agreement the schedule of job and payroll creation is zero.
 - e) **Payment of Taxes.** Yukon shall pay all City of Seguin, Guadalupe County, and Seguin Independent School District taxes and assessments subject to any legal remedies available to Yukon to contest or otherwise dispute in good faith such taxes and assessments.
 - f) **Legal and regulatory compliance.** Yukon shall maintain the facility in good repair and condition, and shall fully comply with all federal, state, and local laws, ordinance and regulations governing construction and operation of its facilities. Yukon currently holds, or is cognizant of and reasonably capable of, timely securing each of the permits, licenses and other material governmental approvals necessary to commence the expansion of the Facility under all applicable federal, state and local laws, ordinances and regulations.
 - g) **Required statement concerning employment of undocumented workers.** Yukon certifies that it does not, and will not, knowingly employ an undocumented worker. Under federal law, should Yukon, or any branch, division or department of Yukon, be convicted of a violation under 8 U.S.C. §1324a(f), Yukon shall repay the entire SEDC Contribution, with interest at the rate of 12% from the date of funding, not later than the 120th day after the SEDC notifies Yukon of the violation.

- h) Assignment.** Yukon shall not assign, transfer, or convey any of its rights or obligations under this Agreement except upon formal approval by the Board of Directors of the SEDC, which approval shall be at their sole discretion. Any such duly authorized assignment, transfer or conveyance shall not be effective until memorialized in writing and executed by all parties.
- i) Annual Report.** Within thirty (30) days after receipt of a written request by the SEDC regarding confirmation of Yukon's compliance with this Agreement, Yukon shall furnish a true, correct and complete written and notarized statement confirming and explaining whether or not such compliance is being, or has been, met.
- j) Notice of Enforcement.** Yukon shall provide SEDC with a copy of any notice of enforcement, involuntary permit amendment, permit suspension or revocation action, or material notice of violation by any federal, state, or local governmental agency with respect to the Facility within a period of thirty (30) days following notice or receipt thereof.
- k) Notice of Claims.** Yukon shall provide SEDC with a copy of any suit, claim or other demand by any person which, if decided adversely to Yukon or any party thereto, could materially affect the ability of Yukon or its contractors to complete the expansion of its operations in a timely manner, continue operation of the Facility, or otherwise satisfy its obligations under this Agreement, within a period of thirty (30) days following notice or receipt thereof.
- l) Right of Verification.** SEDC shall have the right to access and inspect the books and records of Yukon which evidence compliance or noncompliance with Section 1 of this Agreement. SEDC shall provide ten (10) days advance notice of any such verification activity, which shall be conducted during normal business hours and with a representative of Yukon present.
- m) Authority to Execute.** Yukon shall provide to SEDC, upon execution hereof, a resolution of the Yukon giving the undersigned the legal right, power, and authority to enter into this Agreement and to consummate the transaction contemplated herein, and evidencing that the execution, delivery and performance of this Agreement have been duly authorized and no other action by Yukon is a prerequisite to the valid and binding execution, delivery and performance of this Agreement.
- n) YUKON 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).

2) **SEDC Performance Obligations.** In consideration of Yukon entering into this Agreement and complying with its obligations herein, and as an inducement to Yukon to undertake the obligations provided herein, SEDC makes the following representations, warranties and covenants, each of which is material and being relied upon by Yukon in entering into this Agreement:

a) **SEDC Contribution.** SEDC shall provide a cash grant (the "Grant") incentive of two hundred fifty thousand dollars (\$250,000.00), which shall be payable as follows:

- i) Eighty-three thousand three hundred thirty-three dollars and thirty-three cents (\$83,333.33) shall be paid to Yukon within 30 days following SEDC's receipt from Yukon of a recorded deed confirming that Yukon has acquired the Property.
- ii) Eighty-three thousand three hundred thirty-three dollars and thirty-three cents (\$83,333.33) shall be paid to Yukon within 30 days following SEDC's receipt from Yukon of a copy of a building permit for the Facility issued by the City of Seguin.
- iii) Eighty-three thousand three hundred thirty-three dollars and thirty-four cents (\$83,333.34) shall be paid to Yukon within 30 days following SEDC's receipt from Yukon of (A) a copy of a temporary or final certificate of occupancy issued for the Facility by the City of Seguin and (B) Yukon's written, notarized verification, and evidence of, the Capital Investment. Such final payment is subject to SEDC's right to access and inspect the books and records of Yukon for the purposed of ensuring compliance as to the Capital Investment within such thirty (30) day period.

b) **No representations, warranties, or assumption of liability.**

Notwithstanding any other provision of this Agreement, SEDC hereby disclaims all representations and warranties of any kind, and Yukon hereby covenants that SEDC shall not incur any liability, obligation, or responsibility of any kind to Yukon other than the Grant provided for in this Agreement.

- c) Contribution Conditions.** The following must be satisfied as a condition of performance by SEDC under the SEDC Performance Obligations of this Agreement: (i) Yukon shall not be in default under the terms and conditions of this Agreement; (ii) neither Yukon or any guarantor are in receivership or dissolution, nor have made any assignment for the benefit of creditors, nor admitted in writing its inability to pay its debts as they mature, nor have been adjudicated a bankrupt, nor have filed a petition in voluntary bankruptcy, nor a petition or answer seeking reorganization or an arrangement with creditors under a state or federal bankruptcy law or any other rule or statute, nor may any such petition have been filed against it; and (iii) the SEDC Board of Directors and City Council of Seguin shall have approved SEDC entering into this Agreement and authorized the SEDC to expend the Grant.

3) Recapture/Default Provisions.

- a)** Should Yukon fail to acquire a building permit by May 15, 2023, then Yukon shall be in default under this Agreement and shall be required to repay the Grant, or any portion thereof as determined by the SEDC within their sole discretion, within forty-five (45) days after written demand is served upon Yukon and the SEDC shall have the right to terminate this Agreement.
- b)** Should Yukon fail to acquire a temporary or final certificate of occupancy for the Facility and comply with the Capital Investment by November 15, 2024, subject to Force Majeure, then Yukon shall be in default under this Agreement if such conditions are not satisfied within sixty (60) days following receipt of written notice from SEDC, and thereafter shall be required to repay the Grant, or any portion thereof as determined by the SEDC within their sole discretion, within forty-five (45) days after written demand is served upon Yukon and the SEDC shall have the right to terminate this Agreement.
- c)** SEDC may further declare a default hereunder and demand recapture of any portion of the Grant if Yukon fails to comply with any of the Yukon Performance Obligations. If any such default is not fully cured within a period of sixty (60) days from the date written notice thereof is provided to Yukon, SEDC may enforce the terms of any such provision in a court of competent jurisdiction and, following proof of such default, shall be entitled to injunctive relief, reasonable attorney's fees, court costs and other such expenses of enforcing this Agreement. If a default is directly caused by an act of God, industrial casualty, strike or lockout not involving Yukon or its contractors, governmental action or inaction, war, act of the public enemy, insurrection, riot, civil disturbance, epidemic or other cause of the kind

enumerated herein, and such cause is beyond the reasonable control of Yukon and its contractors and does not result from the fault or negligence of Yukon or its contractors, agents or representatives (collectively, a "Force Majeure"), and written notice of such cause is served on SEDC within the sixty (60) day period, then the period to cure shall be extended for the period of time in which Yukon and its contractors institute and thereafter continuously prosecute with reasonable dispatch all actions necessary to fully curesuch default.

d) Attorney's Fees and Costs. In addition to the recapture of the Grant as provided for herein, SEDC shall be entitled to a recovery of its costs and reasonable attorney's fees in the recapture of the Grant or any portion thereof.

4) Time of Essence. Time is of the essence for each term, condition, obligation and provision herein.

5) Waiver. The waiver of failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of such provision or other provision herein.

6) Service of Notice. Any notice required to be given a party pursuant to this Agreement shall be in writing and duly served when deposited with the Yukon States Postal Service, enclosed in a wrapper with proper postage affixed thereto, duly registered or certified, return receipt requested, and addressed to Yukon or SEDC, as appropriate, at the following addresses, unless otherwise directed in writing by the party being served:

If to YUKON:

Mr. Martin Khait
Yukon Venture Partners, LLC.
316 W 12th Street, 6th Floor
Austin, TX 78701

If to Seguin Economic Development Corporation:

Mr. Joshua Schneuker
Executive Director
P.O. Box 591
Seguin, Texas 78156

7) Entire Agreement: Amendment. This Agreement supersedes any prior agreements, negotiations, and communications, oral or written, if any, and contains the entire agreement between Yukon and the SEDC as to the matters addressed herein. No subsequent agreement, representation or promise made by any party hereto, or by or to an officer, director, employee or representative of any such party, shall be of any effect unless it is in writing and executed by the party to be bound thereby. The terms of this Agreement

may not be modified or amended except by an instrument executed in writing by each of the parties hereto. Notwithstanding the foregoing, this Agreement shall not affect the terms and conditions of any tax abatement agreement, water or wastewater service agreement, specific use permit, or other agreement of the parties referenced herein and existing on the Effective Date of this Agreement.

- 8) **Independent Counsel.** All parties acknowledge that this Agreement is the result of negotiations between the parties hereto, that they have been represented by independent counsel and that they have executed this Agreement with the advice of such counsel.
- 9) **Texas Law.** This Agreement and the performance thereof shall be governed by, construed, and enforced in accordance with the laws of the State of Texas.
- 10) **Venue.** Venue for any cause of action arising under or with respect to this Agreement or the performance thereof shall reside exclusively in Guadalupe County, Texas, without regard to diversity of citizenship or any statutory provision to the contrary.
- 11) **Severability.** 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.
- 12) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
- 13) **Term.** Provided Yukon has met the terms and conditions of this Agreement, this Agreement shall expire one year from the date of its execution, or upon repayment of the entire SEDC Contribution under the Repayment Provisions, save and except the Indemnification and No Representations, Warranties or Assumption of Liability provisions, which shall survive the execution, performance, expiration and/or termination of this Agreement.
- 14) **Limitation on Damages.** Notwithstanding any provision contained herein to the contrary, in no event shall either party be liable for any consequential, special or punitive damages and in no event shall Yukon be required to pay to SEDC any amount exceeding the amount of any Grant repayment plus reasonable attorneys' fees incurred in recovering such amount.

- 15) **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement

[SIGNATURE PAGE FOLLOWS]

Yukon Venture Partners, LLC

By: _____

Name: _____

Title: _____

Date: _____

Seguin Economic Development Corporation

By: _____

Name: Joshua Schneuker

Title: Executive Director

Date: _____