

**FIRST AMENDMED PERFORMANCE AGREEMENT BETWEEN THE SEGUIN
ECONOMIC DEVELOPMENT CORPORATION AND UNITED ALLOY TEXAS,
LLC**

This First Amended Performance Agreement (the “Agreement”) is made and entered into by and between the Seguin Economic Development Corporation, a Texas non-profit corporation (“SEDC”), VME, LLC, a Texas limited liability company (“VME”), and United Alloy Texas, LLC, a Texas limited liability company (“UAT”), and is effective as of the date of the last required signature hereto. Hereinafter, VME and UAT may be individually referred to herein as “Owner” and collectively referred to as the “Owners.” Owners and the SEDC may be referred to herein individually as a “Party” and collectively as “Parties”.

WHEREAS, the Parties previously entered into a performance agreement (the “Original Agreement”) to incentivize Owners for the construction and operation of a new production facility in Seguin, said Original Agreement attached hereto as Exhibit A; and

WHEREAS, the Owner has complied with certain obligations under the Original Agreement; and

WHEREAS, due to impacts from the COVID-19 Pandemic, Owners can no longer to commit to the original construction deadlines for Phase 2 and Phase 3 of the additional capital investment/facility expansion performance obligations outlined in Section 1.a of the Original Agreement; and

WHEREAS, Owners are willing to commit to the required total Capital Investment, and Employment and Payroll Commitment of the Original Agreement; and

WHEREAS, the Owners have requested an amendment to the Original Agreement revising their obligations related to building of a new facility in Seguin, on land which was previously owned by the SEDC and more particularly described as a 27.28-acre tract of land situated in the Humphries Branch, Survey No. 17, Abstract 6, City of Seguin, Guadalupe County, Texas, as depicted on Exhibit “A” (the “Property”); and

WHEREAS, the SEDC has transferred the Property to Owners at no cost to the Owners; and

WHEREAS, the Parties agree that the value of the Property transferred eight hundred fifty-nine thousand three hundred and twenty dollars (\$859,320.00) said value forming the basis for the consideration of the first lien deed of trust attached hereto as Exhibit B and the consideration for the incentives herein; and

WHEREAS, the SEDC agrees to an amendment to the Original Agreement as requested by Owners; and

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants herein, the undersigned parties agree as follows:

1. Performance Obligations. In consideration of the SEDC entering into this Agreement, and as an inducement to the SEDC to undertake the obligations provided herein, the Owners make the following representations, warranties, and covenants, each of which is material and being relied upon by the SEDC in entering into this Agreement:
 - a. Phase 1 Capital Investment. The Parties agree that Phase 1 of the Original Agreement has been met.
 - b. Phase 2 Capital Investment. The Owners commit to a minimum capital investment of \$18,000,000 in the expansion of the Facility (Phase 2). Phase 2 total minimum capital investment represents a minimum \$9,000,000, 100,000 square foot expansion of the Facility, and an additional minimum \$9,000,000 in new machinery and equipment.
 - c. Construction Deadlines. Phase 2 shall be completed By December 31, 2023, the Owners will complete construction of the 100,000 square foot expansion of the Facility. The 100,000 square foot expansion will bring the Owners' total building footprint to at least 200,000 square feet. Completion of Phase 2 shall be evidenced by the receipt of a temporary or final Certificate of Occupancy.
 - d. UAT's Employment and Payroll Commitment. For purposes of this Agreement, "payroll" may include the gross salaries of employees, plus the cost of benefits for those employees. "Full-time job" means a job which requires a minimum of 1,820 hours of work averaged over a 12-month period and may include employees that are from a UAT contractor or from a staffing employment agency. At the Facility, UAT will create and maintain the following minimum number of full-time jobs by their respective deadlines and with their respective payroll figures, calculated as of the referenced date on an annualized basis (the "UAT Employment and Payroll Commitment"):
 - (i) By December 31, 2021, UAT will employ a minimum of 40 full-time jobs at a Total Annualized Payroll of at least \$2,400,000;
 - (ii) By December 31, 2022, UAT will employ a minimum of 60 full-time jobs at a Total Annualized Payroll of at least \$3,600,000;

(iii) By December 31, 2023, UAT will employ a minimum of 80 full-time jobs at a Total Annualized Payroll of at least \$4,800,000; and

(iv) By December 31, 2024, UAT will employ a minimum of 100 full-time jobs at a Total Annualized Payroll of at least \$6,000,000.

Provided, however, should UAT achieve greater employment and payroll than the minimum required in any given year of this Agreement, UAT shall be allowed to roll over said excess employment and/or payroll to be added onto successive year's annual requirements, and said excess employment and/or payroll shall be allowed to be cumulative and such excess shall not expire and be applicable toward any year in the future during the term of this Agreement, provided that the minimum cumulative employment and payroll requirements of each year continue to be met (the "Rollover Provision").

- e. The Owners covenant that all funds and/or contributions in kind contributed by the SEDC to the Owners under this Agreement or the Original Agreement shall be used solely for the acquisition of the real estate for the Facility, and agree to allow the SEDC, at its option, to review the Owners' books and records to ensure that any funds or property are being used in accordance with this subsection. SEDC's right to review the Owners' books and records shall terminate upon the expiration of this Agreement.
- f. Payment of Taxes. Subject to the terms of any tax related agreements entered with the City of Seguin and Guadalupe County, Texas, the Owners shall pay all City of Seguin, Guadalupe County, and Seguin Independent School District taxes and assessments subject to any legal remedies available to the Owners to contest or otherwise dispute in good faith such taxes and assessments.
- g. Attorney's Fees. Each party shall be responsible for its own attorney's fees in the negotiation of this Agreement.
- h. Legal and regulatory compliance. The Owners 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. The Owners currently hold, or are 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. The SEDC will cooperate and assist with the Owners in order to obtain all the licenses or authorizations required for the construction and operation of the Facility.

- i. Required statement concerning employment of undocumented workers. UAT certifies that it does not, and will not, knowingly employ an undocumented worker. Under federal law, should UAT, or any branch, division or department of UAT, be convicted of a violation under 8 U.S.C. §1324a(f), UAT shall repay the entire SEDC Contribution, with interest at the rate of 12% from the date of closing of the property, not later than the 180th day after the SEDC notifies UAT of the violation.
- j. Assignment. With the approval of the Board of Directors of the SEDC and the Seguin City Council, which approval shall not be unreasonably withheld, the Owners may assign this Agreement for the purpose of obtaining or enhancing New Markets Tax Credits. Except as provided in the preceding sentence, the Owners shall not assign, transfer or convey any of the Owners' rights or obligations under this Agreement except upon formal approval by the Board of Directors of the SEDC and the Seguin City Council, which approval shall not be unreasonably withheld, provided that any proposed assignee meets or exceeds the financial worthiness of the Owners as of the date of this Agreement. Any authorized assignment, transfer or conveyance shall not be effective until memorialized in writing and executed by all parties. Notwithstanding the foregoing, each Owner shall be entitled to totally or partially assign any and all rights, benefits, interests, claims and obligations derived from this Agreement to any company which is from time to time an affiliate. For the purposes of this Agreement, Affiliates shall include companies:(i) which either Owner holds directly or indirectly more than 50% of the shares or interests conferring voting rights at general meetings of holders of shares or interests, as the case may be; or (ii) more than 50% held directly by a corporation which itself holds more than 50% of shares or interests conferring voting rights at general meetings of holders of shares or interests in either Owner.
- k. Annual Report. The Owners shall submit to SEDC, by February 15th of each year during the term of this Agreement, an annual report in a form established by the SEDC certifying the extent to which the obligations of this Agreement have been timely and fully satisfied by the Owners and providing any internal backup as the SEDC may request; and such annual report shall be true, correct, and complete in all material respects. Within thirty (30) days after receipt of a written request by either the City or the SEDC regarding confirmation of whether the Owners are in compliance with any particular obligation of the Owners set forth in this Agreement, the Owners shall furnish a true, correct and complete written statement confirming and explaining whether or not such obligation is being complied with.

- l. Notice of Enforcement. Each Owner 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.
- m. Notice of Claims. Each Owner shall provide SEDC with a copy of any suit, claim or other demand by any person which, if decided adversely to either Owner or any party thereto, could materially affect the ability of either Owner or their contractors to complete the expansion of their operations in a timely manner, continue operation of the Facility, or otherwise satisfy their obligations under this Agreement, within a period of thirty (30) days following notice or receipt thereof.
- n. Right of Verification. SEDC shall have the right to access and inspect the books and records of the Owners sufficient to 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 the Owners present.
- o. Authority to Execute. Each Owner shall provide to SEDC, upon execution hereof, a Unanimous Consent of the members of the limited liability company giving each Owner 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 either Owner is a prerequisite to the valid and binding execution, delivery and performance of this Agreement.
- p. Security for Performance. At closing of the transfer of the Property, the Owners shall provide SEDC with security for the repayment of the SEDC Contribution in the form of a first lien deed of trust covering the Property, which shall have a term that starts on the date of closing of sale of the Property and ends upon the substantial completion of the Facility, as certified in writing by the Owners' general contractor on construction of the Facility.
- q. EACH OWNER 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 the Owners entering into this Agreement and agreeing to expand UAT's operations in the City of Seguin, and as an inducement to the Owners to undertake the obligations provided herein, SEDC makes the following representations, warranties, and covenants, each of which is material and being relied upon by the Owners in entering into this Agreement:

- a. SEDC Contribution. SEDC shall convey the Property to VME at no cost, which constitutes an \$859,320.00 incentive being provided to the Owners (the "SEDC Contribution"), which shall form the basis for the consideration of the lien described in subsection 1(m) herein. Said Property shall be transferred to VME within sixty (60) days of the execution of this Agreement. Any closing costs associated with the transfer shall be the responsibility of the Owners. The conveyance shall be by special warranty deed. If necessary, this Agreement will be held in escrow by Five Star Title of Seguin, Texas, and said title company will conduct the closing of the purchase/sale transaction in accordance with a real estate sale contract between the parties.
- 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 the Owners hereby covenant that SEDC shall not incur any liability, obligation or responsibility of any kind (save and except the SEDC Contribution obligation) with respect to the Owners' expansion or operation of the Facility.
- c. Contribution Conditions. The following must be satisfied as a condition of performance by SEDC under the SEDC Performance Obligations of this Agreement: (i) the Owners shall not be in default under the terms and conditions of this Agreement; (ii) neither the Owners nor any guarantor are in receivership or dissolution, nor have made any assignment for the benefit of creditors, nor admitted in writing their inability to pay its debts as they mature, nor have been adjudicated 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 them; (iii) the SEDC Board of Directors and City Council of Seguin shall have approved SEDC entering into this Agreement and authorized the SEDC to advance the SEDC Contribution.

3. Repayment/Default Provisions.

- a. Should UAT cease its manufacturing operations in the City of Seguin, or should it fail to meet the UAT Employment and Payroll Commitment, UAT shall be in default under this Agreement and shall be required to repay the value of the SEDC Contribution within forty-five (45) days after written demand is served upon UAT, subject to the following schedule and conditions:

(i) Failure to meet Phase 2 Capital Investment obligations; Construction Deadlines; Cessation of Operations – The Owners shall repay to the SEDC the entire amount of the SEDC Contribution plus interest at the rate of 12% per annum if they: a) fail to meet the Phase 2 Capital Investment obligations, b) fail to complete the construction of the expansion of the Facility by December 31, 2023, or c) permanently cease business operations at the Facility during the term of this Agreement.

(ii) Failure to meet UAT Employment and Payroll Commitment – The Owners shall repay to SEDC the entire amount of the SEDC Contribution plus interest at the rate of 12% per annum if UAT fails to meet subsection (i) of the UAT Employment and Payroll Commitment. If after initially achieving subsection (i) of the UAT Employment and Payroll Commitment, should UAT's full-time employees and/or payroll at the Facility fall below the amounts scheduled in subsections (ii) or (iii) of said paragraph, and subject to the Rollover Provision contained in that paragraph, UAT shall immediately reimburse the SEDC the amount of the SEDC Contribution plus interest at the rate of 12% per annum, subject to proration as follows: UAT shall earn a pro rata credit of twenty percent (20%) toward the SEDC Contribution for each full year during the term of this Agreement in which it can be proven that the UAT Employment and Payroll Commitment was met.

- b. SEDC may further declare a default hereunder if UAT fails to comply with any of the remaining UAT Performance Obligations. If any such default is not fully cured within a period of forty-five (45) days from the date written notice thereof is provided to UAT, 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.

- c. If a default is directly caused by an act of God, industrial casualty, strike or lockout not involving the Owners or their 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 the Owners and their contractors and does not result from the fault or negligence of the Owners or their contractors, agents or representatives, and written notice of such cause is served on SEDC within the thirty (30) day period, then the period to cure shall be extended for the period of time in which the Owners and their contractors institute and thereafter continuously prosecute with reasonable dispatch all actions necessary to fully cure such default.
- c. Remedies. SEDC's remedies hereunder are in addition to those contained in its Deed of Trust securing the Owners' obligations. Although the provisions of this section are intended to be cumulative, the SEDC shall be entitled to only one financial recovery, not to exceed the unpaid balance of the SEDC Obligation at the time of such default, plus any attorney's fees, costs and related expenses as provided in paragraph 3(b).
4. Time of Essence. Time is of the essence for each and every 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 United States Postal Service, enclosed in a wrapper with proper postage affixed thereto, duly registered or certified, return receipt requested, and addressed to UAT or SEDC, as appropriate, at the following addresses, unless otherwise directed in writing by the party being served:

If to UAT :

United Alloy Texas, LLC
Attention: Thomas R. Baer (as to UAT)
c/o United Alloy, Inc.
4100 Kennedy Road
Janesville, Wisconsin 53545

With copy to:

Duffy Dillon Law Office LLC
466 Midland Court
Janesville, Wisconsin 53546

If to VME:

VME, LLC
Attention: Thomas R. Baer (as to UAT)
c/o United Alloy, Inc.
4100 Kennedy Road
Janesville, Wisconsin 53545

With copy to:

Duffy Dillon Law Office LLC
466 Midland Court
Janesville, Wisconsin 53546

If to SEDC:

Executive Director
P.O. Box 591
Seguin, Texas 78155

With copy to:

Denton, Navarro, Rocha, Bernal & Zech P.C.
SEDC General Counsel
2500 W. William Cannon
Suite 609
Austin Texas, 78745

7. Entire Agreement; Amendment. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, if any, and contains the entire agreement between the Owners 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. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by any of the parties and any receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.
13. Term. Provided the Owners have met the terms and conditions of this Agreement, this Agreement shall expire on December 31, 2024, 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. Original Agreement Terminated. By execution of this Agreement the Parties specifically terminate the Original Agreement.

VME, LLC

SEGUIN ECONOMIC
DEVELOPMENT CORPORATION

By: _____
Thomas R. Baer
Manager

By: _____
Joshua Schneuker
Executive Director

UNITED ALLOY TEXAS, LLC

By: _____
Thomas R. Baer
Manager