

STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

PERFORMANCE AGREEMENT

This Performance Agreement (the “Agreement”) is made effective on February 6, 2024, by and between LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC., a Texas nonprofit corporation (hereinafter referred to as “LEDA”) and Vulpes Group Holding Corporation, a for-profit corporation, (hereinafter referred to as “Recipient”), by and through their duly authorized officers and affiliate organizations under the terms and conditions that follow.

1. **Applicable Law:** It is understood by and between the parties that the term “Act,” as used herein, is intended to mean the Development Corporation Act of 1979, as amended. (Sec 501.001 *et seq*, Local Government Code, formerly Sec 5190.6, VACS.) The parties hereto covenant and agree to comply with the terms of the Act applicable to this Agreement.

2. **Parties:**

- A. LEDA, a Texas non-profit corporation as well as a tax exempt 501(c) 4 entity, was created by the City of Lubbock, Texas, as an Industrial Development Corporation under the Act for the purpose of creating and retaining positions and encouraging new businesses to be established in Lubbock, Texas, to stimulate business and commercial activities, as well as all other purposes allowed by the Act.
- B. Recipient is preparing a new “Project” which shall include the expansion and remodel of an existing facility located at 9712 4th Dr., BLDG 930, Lubbock, TX 79416, (NAICS 325320). Its business project is anticipated to result in 62 new Primary Jobs for the City of Lubbock with a Target Annual Compensation of \$3,668,354 at full operation. Total capital investment is estimated to be \$9,920,000.
- C. Recipient is a for-profit corporation authorized to do business in Texas.

3. **Purpose:** The purpose for this Agreement is to formalize the agreements between LEDA and Recipient for the payment of certain costs associated with Recipient's Project and specifically state the covenants, representations of the parties, and the incentives associated with Recipient'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 Board of Directors of LEDA as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction even though payments thereunder are divided into multiple installments as annually earned. A failure to perform any obligation by Recipient may constitute a breach of the entire Agreement and terminate any further commitments by LEDA.

4. **Definitions:**

- A. The “Act” shall refer to the Development Corporation Act of 1979, as amended, as Sec 501.001 *et seq*, Local Government Code, formerly Sec 5190.6, VACS.
- B. “LEDA” shall refer to Lubbock Economic Development Alliance, Inc., a Texas non-profit corporation, created by the City of Lubbock as an “Industrial Development Corporation,” pursuant to the Act.
- C. “Recipient” shall refer to Vulpes Group Holding Corporation, a for-profit corporation authorized to do business in Texas, and the recipient party to this Agreement.
- D. “Project” shall mean the project identified in Paragraph 2B, above.
- E. “Recipient Request” may include the identification of the cost of the project by Recipient to the facility or other purpose within Section 2(4) of the Act.
- F. “Term”, as used herein, shall begin with the Start Date of the execution of this Agreement, and continue for a period of seven (7) years thereafter (the “Termination Date”), unless earlier completed.
- G. “Payback Provisions” shall mean forfeiture of all unpaid incentives in accordance with the terms of this Agreement.
- H. “Baseline Employment Level” is defined to mean the employee census on the day preceding the Term of this Agreement; the parties agree that because the Project is a new company, the Baseline Employment Level shall be zero.
- I. “Census” is defined as a compilation listing of the employee name, address, date of hire, date of termination, position, base pay, and indication of full-time or part-time status. (Such information is preferred to be presented in Excel format) which shall be made available to LEDA’s accountant performing the review.
- J. “Measurement Date” shall mean the date upon which the determination is made as to whether Recipient is in compliance with this Agreement:
- (1) Year One: January 1, 2024 – December 31, 2024
 - (2) Year Two: January 1, 2025 – December 31, 2025
 - (3) Year Three: January 1, 2026 – December 31, 2026
 - (4) Year Four: January 1, 2027 – December 31, 2027
 - (5) Year Five: January 1, 2028 – December 31, 2028
 - (6) Year Six: January 1, 2029 – December 31, 2029
 - (7) Year Seven: January 1, 2030 – December 31, 2030
- K. “Primary Full-Time Jobs” shall include individuals employed by Recipient in the City of Lubbock as defined by the Act.

- L. “Layoff” is defined as an event, due to adverse or changing business conditions, that result in the loss of employment and shall exclude loss of employment due to casualty at the Project if the Recipient chooses to rebuild the Project. Employees meeting this definition shall have lost their jobs through no fault of their own.
- M. “Target Job Positions” shall refer to an increase in 62 Primary Jobs in excess of the Baseline Employment Level.

5. Representations of Recipient:

- A. Recipient represents that it will utilize the incentive provided towards costs involved and associated with the Project.
- B. Recipient represents that it is authorized to do business in Texas and has authorization to enter into this Agreement on its behalf.
- C. Recipient represents that it has sought from LEDA economic assistance pursuing Recipient's Project.
- D. Recipient represents that it has conferred with attorneys of its own choosing and is fully knowledgeable of the terms of the Act and understands the reporting requirements of the Act, as well as all conditions precedent and subsequent as required to be eligible for the incentives offered by LEDA, including the Payback Provisions.
- E. Recipient represents that it acknowledges that its failure to perform any reporting requirements within a reasonable period of time after the request is made could result in payment adjustments.
- F. Recipient understands and agrees that any variations as to any term of this Agreement or any terms or conditions of the incentives as stated must be mutually agreed to in written supplements or addenda since no oral agreements, amendments, or representations will be binding on either party.
- G. Recipient agrees to participate in any LEDA sponsored wage and benefit surveys, as well as any marketing materials that focus on economic development for the City of Lubbock.

6. Representations by LEDA:

- A. LEDA represents that it is established as an Industrial Development Corporation under the Act and further represents that the costs applied toward Recipient's Project as stated in this Agreement have been found by the Board of Directors of LEDA sitting as fact finders have determined the Project to be in compliance with the requirements and

purposes of the Act, the provisions of LEDA's charter, as well as for the benefit of the City of Lubbock, Lubbock County, Texas, and trade area.

- B. LEDA represents that it has authority to enter into this Agreement. LEDA understands and agrees that any variation in terms of this Agreement or the incentives offered to Recipient or commitment by Recipient will only be binding if mutually agreed to in writing.

7. **Job Creation Incentive to be Awarded and Terms of Award**

LEDA hereby grants to Recipient a potential incentive of \$186,000 (through job creation) with payments to be expressly made under the following terms and conditions:

- A. LEDA agrees to pay up to a maximum of \$186,000 for Job Creation incentives to Recipient at the rate of \$3,000 for each Primary Full-Time Job created and maintained in the first five (5) years, to be paid out over three (3) years as the jobs are created. The incentive payments may be made during the term of the Agreement, if needed.
- B. The payments are conditioned upon the creation of Primary Jobs after Recipient's written substantiation of such employment and under the following terms and conditions:
 - 1. Recipient agrees to establish a Baseline Employment Level and Census and shall timely provide such information to LEDA's designated accounting representative when requested. Recipient agrees to maintain the Baseline Employment Level through the term of this Agreement and create and maintain the additional full-time Target Job Positions intended to qualify for the incentive, as offered by LEDA.
 - 2. Should Recipient fail to meet its Target Job Positions during any year or years, but ultimately meet its overall Target Job Positions by the end of year five (5), LEDA, shall at its discretion have the right to allow recapture of forfeited incentives not to exceed the maximum amount approved by the Board. Should Recipient exceed its Target Job Positions during any year or years, LEDA, shall at its discretion have the right to allow accelerated job creation incentive payments, not to exceed the maximum amount approved by the Board.

8. **Payback Provisions and Events of Default:** Recipient acknowledges that LEDA and Recipient are required to remain in conformance with the statutory provisions of the Act. The parties hereto agree that in the event Recipient fails to comply with the provisions of this Agreement, including but not limited to Paragraphs 2.B, 5E, 7B and 9, and after written notice and failure to cure the violation, then LEDA, in its sole discretion, may terminate this Agreement and permanently suspend all future

payments to Recipient.

9. **Assignment, Merger, and Termination Due to Merger, Etc.:** This Agreement shall not be assignable, either in whole or in part, except this Agreement may be assigned to any affiliate of Recipient or any successor or assign of Recipient by merger, consolidation or transfer of all or substantially all of the assets. Any assignment not authorized by this Agreement shall not disqualify the remaining or new entity from applying to LEDA for new incentive consideration.

10. **No Privity of Endeavor Nor Joint Venture:** It is specifically agreed that there shall be no privity of endeavor nor joint venture whatsoever between LEDA and Recipient and the sole connection between the parties is the contribution of the economic assistance by LEDA under the restricted conditions as set forth herein and that such contributions as stated herein are for the sole purposes as set forth herein and it shall in no way be construed as a continuing basis of financial support by LEDA to Recipient. The parties hereto have entered into this Agreement in an arms-length transaction. No agency relationship or fiduciary relationship is intended to be created by this Agreement and no such relationship shall be determined to exist.

11. **Good Faith -Normal Business Operations:** The parties agree that this Agreement has been entered into in good faith and that each party shall act in good faith in complying with its provisions. The parties further agree to transact all their business under and that which relates to this Agreement in accordance with their normal business operations.

12. **Miscellaneous Provisions:**

A. **Notices:** For the purposes of any notices to be given, pursuant to the terms of this Agreement, the parties shall use the following addresses, or any other address as may be changed by the parties, upon written notice to the other party, as follows:

(1) John Osborne
CEO and President
LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC.
1500 Broadway, 6th Floor
Lubbock, TX 79401

(2) With a copy to:
Ann Manning
Attorney at Law
UNDERWOOD LAW FIRM
P.O. Box 16197
Lubbock, Texas 79490

(3) With a copy to:
Rick Shang, CEO
Vulpes Group Holding Corporation
9712 4th Dr., BLDG 930

Lubbock, TX 79416

Notices shall be deemed to be given upon the placing in the United States Mail, Certified Mail, Return Receipt Requested, to the above-described addresses or as may be changed, pursuant to the terms and conditions hereof.

- B. No Waiver of Immunity. Notwithstanding any other provision of this Agreement, including, without limitation, the provisions of Section 9 of this Agreement, nothing in this Agreement shall or may be deemed to be or shall or may be construed to be, a waiver or relinquishment of any immunity, defense or tort limitation to which LEDA and the City, its elected officials, its officers, employees, representatives and agents are or may be entitled, including without limitation, any waiver of immunity suit.
- C. Venue; Governing Law. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in the City of Lubbock, Lubbock County, Texas. Exclusive venue for any action, cause of action, lawsuit, or other proceeding under or in connection with this Agreement shall be and lie in Lubbock County, Texas and the parties hereby submit themselves to the jurisdiction thereof; and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof. Recipient hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action, or proceeding, any claim that (i) it is not subject to such venue or the jurisdiction of the courts of Lubbock County, Texas, (ii) the suit, action, or proceeding is brought in an inconvenient forum or (iii) the venue of the suit, action or proceeding is improper.
- D. Entire Agreement: This instrument constitutes the entire agreement between the parties hereto and neither this Agreement nor any of the Exhibits attached hereto, if any, can be altered, changed, or amended in any respect except by an instrument in writing duly executed by both parties.
- E. Partial Invalidity: In the event that any portion of this Agreement should be found or declared to be invalid for any reason, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties. The parties agree that it is their intent for this Agreement to be determined as being an indivisible obligation of the parties.
- F. Binding Effect: This Agreement shall be binding upon the undersigned, their successors and assigns, subject to the express terms of this Agreement concerning assignment.
- G. Force Majeure: If any default or performance of any other covenant or term of this Agreement is delayed by reason of strike, riots, shortages of labor, materials, supplies, or transportation, war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire, or other casualty, or any other circumstances beyond

a signatory party's control, then the duty to do or perform the term or covenant, regardless of whether the circumstance is similar to any of those enumerated above or not, is excused during the delay period.

H. Time is of the Essence: The parties agree that time is of the essence in the execution of this Agreement.

EXECUTED in multiple counterparts, each of which is an original, on this 28th day of February, 2024.

LUBBOCK ECONOMIC DEVELOPMENT
ALLIANCE, INC.



John Osborne, CEO and President

ATTEST:

RECIPIENT:

Vulpes Group Holding Corporation



Rick Shang, CEO

ATTEST:
