

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is entered into this 24th day of February 2022, by and between the **Round Rock Transportation and Economic Development Corporation**, a Type B Corporation created pursuant to Chapter 505 of the Texas Local Government Code ("**TEDCO**"), and **SDC Austin LLC**, a Delaware limited liability company ("**SDC**"). The foregoing are referred to collectively as the "**Parties**."

WHEREAS, SDC is a company in the business of data center, and it intends to locate its business in two newly constructed buildings (the "Facility") to be located at 1300 Louis Henna Blvd., in the City of Round Rock, Texas ("City"); and

WHEREAS, SDC intends to demolish an existing building located on the site (the "Existing Building") and replace it with a new building that is more suitable for its purposes (the "New Building"); and

WHEREAS, SDC intends to invest at least \$185,000,000 in Real Property Improvements (as defined in Section 2.6), and \$5,000,000 in new equipment and Business Personal Property (as defined in Section 2.1) for the Facility; and

WHEREAS, TEDCO has determined that the above-described expenditures are for a "project" as defined by §501.101 of the Local Government Code and that it will result in the creation or retention of "primary jobs" as defined by Section 501.002 Texas Local Government Code; and

WHEREAS, TEDCO agrees to provide performance based Economic Incentive Payments (as defined in Section 2.2) to SDC in order to defray a portion of SDC's development expenses;

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TEDCO, and SDC agree as follows:

1. **Authority.** TEDCO's execution of this Agreement is authorized by §501.158 of the Texas Local Government Code.
2. **Definitions.**
 - 2.1 "**Business Personal Property**" means equipment which costs at least \$5,000,000 and has a model number and/or serial number and is purchased and used for the purpose of supporting SDC's data center operations at the Facility.
 - 2.2 "**Economic Incentive Payment(s)**" ("**EIPs**") means the amounts paid by TEDCO to SDC under this Agreement.
 - 2.3 "**Effective Date**" is the date this Agreement is executed to be effective by the Parties.
 - 2.4 "**Employee**" means an employee who is hired by SDC to perform a Primary Job, as that term is defined by § 501.002 of the Texas Local Government Code.

- 2.5 “Facility” means the two buildings to be constructed on land located in the Round Rock city limits with an address of 1300 Louis Henna Blvd.
- 2.6 “Real Property Improvements” means the real property improvements to the Facility directly related to the design, construction, and finish out of the Facility for the purpose of supporting SDC’s data center operations, including data center specific electrical and HVAC equipment. It does not include any other costs, including, but not limited to, financing cost, attorney fees, architect fees, insurance, and other similar costs.
- 2.7 “Recapture Liability” means the total amount of all EIP’s that are paid as result of this Agreement that are subject to recapture by TEDCO from SDC in the event of a default by SDC pursuant to this Agreement.

3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on May 1, 2028.

4. **Rights and Obligations of SDC.**

- 4.1 Demolish Existing Building. SDC agrees to demolish the Existing Building on or before the 31st day of December, 2022.
- 4.2 Construction of New Building. SDC agrees to construct the New Building on or before the 30th day of June 2024.
- 4.3 Employees. Prior to and over the term of this Agreement, SDC, or Sabey Data Center Properties LLC and its affiliates, agrees to relocate to the City or otherwise create a minimum of 20 new primary jobs with an average salary of \$90,000, plus industry standard benefits in accordance with the following schedule:

| <u>On or Before</u> | <u>New Jobs Created</u> | <u>Total</u> |
|---------------------|-------------------------|--------------|
| December 31, 2023 | 5 | 5 |
| December 31, 2024 | 5 | 10 |
| December 31, 2025 | 5 | 15 |
| December 31, 2026 | 3 | 18 |
| December 31, 2027 | 2 | 20 |

4.4 Job Compliance Affidavit. On or before April 15 of 2024, and of each calendar year thereafter through April 15, 2028, SDC agrees to provide to TEDCO a completed Job Compliance Affidavit, the form of such Job Compliance Affidavit being attached hereto as **Exhibit A**. TEDCO shall have the right, at its expense and following reasonable advance notice to SDC, to audit SDC’s records to verify that this obligation has been satisfied.

- 4.5 Compliance with regulations. SDC agrees that it will comply with the City's development approval processes and shall operate the Facility consistent with City ordinances, development regulations, and requirements.
- 4.6 Continuous operation. SDC, or its successors and assigns, agrees that it will continuously operate the Facility during the Term of this Agreement, including any extensions, subject to normal down-time and any *force majeure* events.

5. Rights and Obligations of TEDCO.

In consideration of SDC's compliance with this Agreement, TEDCO agrees as follows:

5.1 Economic Incentive Payments ("EIPs").

5.1.1 EIPs. TEDCO shall, subject to SDC's satisfaction of its obligations set forth in section 4 above, make EIPs to SDC as set forth below. The EIPs shall be made as follows:

(i) a payment to SDC of \$500,000 upon the completion of the demolition of the Existing Building; and

(ii) a payment to SDC of \$500,000 upon the issuance of a Certificate of Occupancy for the New Building or any portion thereof.

5.1.2 EIPs Subject to Future Appropriations. This Agreement shall not be construed as a commitment, issue, or obligation of any specific taxes or tax revenues for payment to SDC. The EIPs by TEDCO under this Agreement are subject to TEDCO's appropriation of funds for such payments in the budget year for which they are made. The EIPs to be made to SDC, if paid, shall be made solely from annual appropriations from the general funds of TEDCO or from such other funds of TEDCO as may be legally set aside for the implementation of Chapters 501 and/or 505 of the Local Government Code or any other economic development or financing program authorized by statute or other applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that TEDCO does not appropriate funds in any fiscal year for the EIPs due under this Agreement, such failure shall not be considered a default under Sec. 7.3, and TEDCO shall not be liable to SDC for such EIP's; however, TEDCO shall extend this Agreement for another year(s), until SDC has received all of the EIPs provided herein. In addition, SDC shall have the right but not the obligation to terminate this Agreement, which shall not be deemed to constitute a default by SDC, and, in such event, SDC shall be permitted to retain any EIP monies received on or before the date of termination. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

6. **EIP Recapture.** In the event that TEDCO terminates this Agreement as a result of SDC's default, which has not been cured after any applicable cure period, TEDCO may recapture and collect from SDC the Recapture Liability. SDC shall pay to TEDCO the Recapture Liability within forty-five (45) days after TEDCO makes written demand for same, subject to any and all lawful

offsets, settlements, deduction, or credits to which SDC may be entitled. Notwithstanding anything herein to the contrary such Recapture Liability shall not exceed, in the aggregate, an amount equal to all EIPs that were paid pursuant to this Agreement from the Effective Date to the date of termination (together with interest thereon to be charged at the rate for delinquent taxes as determined by Sec. 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). TEDCO shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

7. Miscellaneous.

- 7.1 Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.
- 7.2 Representations and Warranties. TEDCO represents and warrants to SDC that this Agreement is within its authority, and that it is duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. SDC represents and warrants to TEDCO that it has the requisite authority to enter into this Agreement.
- 7.3 Default. If either TEDCO or SDC should default in the performance of any obligations of this Agreement, then the other Party shall provide such defaulting Party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If TEDCO remains in default after notice and opportunity to cure, SDC shall have the right to terminate this Agreement by giving written notice thereof to TEDCO and to pursue any remedy at law or in equity for TEDCO's breach. If SDC remains in default after notice and opportunity to cure, TEDCO as its exclusive remedy shall have the right to terminate this Agreement by giving written notice thereof to SDC and, upon such termination, recapture EIP and interest thereon as provided in Sec. 6 and, in the event of litigation or a court proceeding to enforce such recapture, recovery of reasonable attorney's fees and expenses pursuant to the Terms of Sec. 7.4.
- 7.4 Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between TEDCO and SDC to enforce provisions of this Agreement and/or recover damages for breach, the prevailing Party in such legal action shall be entitled to recover its reasonable attorneys' fees and expenses incurred by reason of such action, to the extent allowed by law.
- 7.5 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may only be amended, altered or revoked by written instrument signed by the Parties.
- 7.6 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.

- 7.7 Assignment. SDC may not assign all or part of its rights and obligations to a third party without the express written consent of TEDCO, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that SDC may assign this Agreement without the consent of TEDCO to an entity which controls, is controlled by or is under common control with SDC, any successor entity to SDC by way of merger, consolidation or other non-bankruptcy corporate reorganization, or an entity which acquires all or substantially all of SDC's assets, partnership or membership interests, or capital stock, or any purchaser of the Facility, including the land upon which it is located.
- 7.8 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.
- 7.9 Termination. In the event SDC elects not to proceed with the investments as contemplated by this Agreement, SDC shall notify the City in writing, and this Agreement and the obligations on the part of all Parties shall be deemed terminated and of no further force or effect.
- 7.10 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, electronic mail transmission, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to TEDCO:

Round Rock Transportation and Economic Development Corporation
221 E. Main Street
Round Rock, TX 78664
Attn: City Manager
Phone: (512) 218-5400
Email: lhadley@roundrocktexas.gov

With a required copy to:
Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
Email: steve@scrrlaw.com

If to SDC:

SDC Austin LLC
c/o Sabey Corporation
12201 Tukwila Int'l Blvd, 4th Floor
Seattle, WA 98168
Attn: Mikel Hansen

Email: mikelh@sabey.com

With a required copy to:
Sabey Corporation
12201 Tukwila Int'l Blvd, 4th Floor
Seattle, WA 98168
Attn: General Counsel
Email: generalcounsel@sabey.com

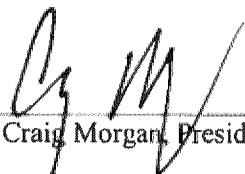
Either Party may designate a different address at any time upon written notice to the other Party.

- 7.11 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, be interpreted fairly and reasonably and neither more strongly for or against any Party.
- 7.12 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.
- 7.13 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 7.14 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.
- 7.15 No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 7.16 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a "*force majeure* event"). A *force majeure* event for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; epidemic; pandemic; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided, herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.

- 7.17 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. TEDCO, its past, present and future officers, elected officials, employees and agents of TEDCO, do not assume any responsibilities or liabilities to any third party in connection with the development of the Facility or the design, construction, or operation of any portion of the Facility.
- 7.18 Estoppel Certificate. SDC may request an estoppel certificate from TEDCO so long as the certificate is requested in connection with a bona fide business purpose and requests commercially reasonable certifications. TEDCO agrees to promptly execute and deliver any estoppel certificate reasonably requested pursuant to this Sec. 7.18. The certificate, which will upon request be addressed to SDC, or a lessor, lessee, purchaser or assignee of SDC or the Facility, or any lender associated with any of the foregoing, and shall include, but not necessarily be limited to, statements (qualified to the best knowledge of TEDCO) that this Agreement is in full force and effect without default (or if a default exists, the nature of such default and any curative action which should be undertaken to cure same), the remaining term of this Agreement, and such other matters reasonably requested by the party(ies) to receive the certificate.

EXECUTED to be effective as of the 24th day of February, 2022 (the "Effective Date").

**ROUND ROCK TRANSPORTATION AND
ECONOMIC DEVELOPMENT CORPORATION**

By: 
Craig Morgan, President

**SDC AUSTIN LLC
By Sabey Data Center Properties LLC
By Sabey Properties LLC
By Sabey Corporation**

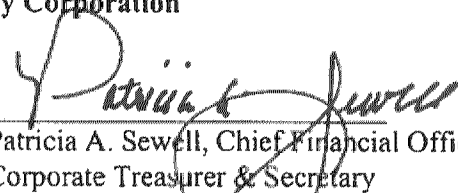
By: 
Patricia A. Sewell, Chief Financial Officer,
Corporate Treasurer & Secretary

EXHIBIT A

Job Compliance Affidavit

Before me, the undersigned authority, on this day personally appeared _____ (name), known to me to be the person whose name is subscribed below and after having been duly sworn, on his/her oath stated as follows:

“My name is _____. I am over the age of 21 years and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. I am the _____ (title) of SDC Austin LLC, and I am duly authorized to make this affidavit on its behalf.”

As of December 31, 202__, in compliance with Section 4.3 of the Economic Development Agreement, SDC Austin LLC had created the following Employee positions:

EMPLOYEE ID NO.

JOB POSITION OR TITLE

TOTAL JOBS _____

DATED THIS ____ DAY OF _____, 202__.

By: _____ (Signature)

_____ (Printed Name)

_____ (Title)

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS THE ____ DAY OF _____,
20__.

NOTARY PUBLIC, STATE OF TEXAS