

THE STATE OF TEXAS     §  
  §  
COUNTY OF TARRANT   §

**Performance Agreement**

THIS Agreement is executed on May 21, 2024, by and between **Eden Cooper LP**, an entity duly authorized to do business in the State of Texas, acting by and through its authorized officer (hereafter referred to as “OWNER”), and the **ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation acting by and through its authorized officer (hereafter referred to as “AEDC”).

WITNESSETH:

WHEREAS, OWNER is seeking to develop land on South Cooper Street in Arlington into commercial properties; and

WHEREAS, In order to bring the property into a state of usefulness as commercial property, significant improvements need to be made to the property, including the construction of public drainage improvements and an extension to Eden Road to allow for access to the property; and

WHEREAS, OWNER has requested the AEDC’s assistance in constructing improvements that will be located on land dedicated to public right of way, as well as land dedicated to public drainage easements; and

WHEREAS, The AEDC’s Board of Directors has determined that the financial assistance provided to OWNER pursuant to this Agreement is consistent with and meets the definition of “project” as that term is defined in Chapters 501 and 505 of the Texas Local Government Code, and in particular Section 501.103 and 505.155, and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code; and

NOW THEREFORE, for and in consideration of the mutual premises and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the AEDC and OWNER do hereby agree, covenant, and contract as set forth below:

**I.**  
**Definitions**

G. “Premises” are defined as the real property (land and improvements) located at 6610, 6700, 6750 and 6800 South Cooper Street, Arlington, Texas, as depicted in **Exhibit “A.”** Exhibit “A” is attached hereto and incorporated herein for all purposes.

- H. “Project” is defined as the construction of a minimum of 215,000 square feet of buildings suitable for the permitted uses of the Flex Hybrid zoning district upon the Premises along with all necessary parking, water, sewer, and stormwater drainage to remain as private property on the Premises. The Project will take place in two phases, with 140,000 square feet of buildings to be constructed in Phase 1 and an additional 75,000 square feet of buildings constructed in Phase 2. The buildings associated with each phase are identified in **Exhibit “B.”** **Exhibit “B”** is attached hereto and incorporated herein for all purposes.
- I. “Public Improvements” are defined as the construction of a new segment of Eden Road between South Cooper Street and Forest Park Drive along with water, sewer, stormwater drainage, and other public improvements made on land to be dedicated to public right of way and public drainage easements. Public Improvements also includes improvements required to be made to the intersection of South Cooper Street and Eden Road.

## II. OWNER’s Obligations

- A. OWNER will construct the Public Improvements on the Premises and dedicate the land on which the Public Improvements are constructed to the City of Arlington as public right-of-way and public drainage easements. OWNER shall commence construction of the drainage improvements no later than July 1, 2025 and shall complete all other Public Improvements and dedicate the public right-of-way no later than December 31, 2026.
- B. OWNER shall construct the Project on the Premises. Construction of Phase 1 of the Project shall commence no later than January 1, 2026 and shall be completed by no later than June 30, 2027.
- C. OWNER shall invest a minimum of Fifteen Million Dollars (\$15,000,000) in designing and constructing the Public Improvements and Phase 1 of the Project; and another Fifteen Million Dollars (\$15,000,000) in constructing the Public Improvements and completing Phase 2 of the project.
- D. All construction of the Project and operations on the Premises shall conform to the applicable building codes, zoning ordinances, and all other state, federal, or local laws, ordinances and regulations.
- E. OWNER shall not fail to render for taxation any property located within the City of Arlington.
- F. OWNER shall not allow the ad valorem taxes owed to AEDC on any property owned by OWNER and located within the City of Arlington to become delinquent beyond the last day they can be paid without assessment of penalty, as such date is generally extended to allow for any appeal.

- G. OWNER covenants and certifies that OWNER does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.001(4) of the Texas Government Code. In accordance with section 2264.052 of the Texas Government Code, if OWNER is convicted of a violation under 8 U.S.C. Section 1324(f), OWNER shall repay to the AEDC the full amount of the grant payments provided under Section IV of this Agreement, plus 10% per annum from the date the grant payments were made. Repayment shall be paid within 120 days after the date following such conviction that OWNER receives notice of violation from the AEDC as provided by 2264.101(c) of the Texas Government Code. OWNER shall not be liable for a violation by a subsidiary, affiliate, or franchisee of OWNER or by a person with whom OWNER contracts.

### **III.** **Grants**

- A. In exchange for OWNER's Obligations, AEDC covenants and agrees to pay to OWNER up to Three Million, Four Hundred and Seven Thousand and 00/100 Dollars (\$3,407,000) as reimbursement for costs constructing the Project and Public Improvements as set out below:
1. In order to begin receiving reimbursement grants, OWNER must provide to the AEDC copies of the permits necessary for commencing construction of the Project and completion of the Public Improvements. Additionally, OWNER must provide to AEDC written notice of the identify of the contractors who will be constructing the Public Improvements.
  2. Once the notices required by Section III.A.1 have been provided, OWNER may submit invoices to the AEDC for reimbursement of the costs of designing and constructing the Public Improvements. Under no circumstances shall the AEDC reimburse for the costs of designing and constructing the Project. If invoices submitted to the AEDC contain costs regarding both the Project and the Public Improvements, OWNER must identify which costs are associated with the Public Improvements and which are associated with the Project.
  3. Upon receipt of submissions for payment, the AEDC has thirty (30) days to review submissions for compliance with the terms of this Agreement and to either accept or reject the submission. If submissions comply, AEDC shall accept the submission make the required payment within sixty (60) days of receiving submission. If AEDC determines a submission does not comply with the Agreement, AEDC shall notify in OWNER in writing of the rejection, and OWNER has thirty (30) days from receipt of the rejection notice to correct the submission and re-submit to the AEDC. AEDC shall then have 30 days to review the submission and either accept or reject it.



**IV.**  
**Term**

- A. This Agreement shall be in effect from the date of the execution of this Agreement until June 30, 2030 (the "Agreement Term") unless terminated earlier according to other provisions of this Agreement.

**V.**  
**Reports, Audits and Inspections**

- A. Additional Reports and Records - Throughout the Agreement term, OWNER shall furnish AEDC any additional records and information reasonably requested to support the certifications required by this Agreement. OWNER hereby authorizes the AEDC to request and receive any and all property tax information relating to the Eligible Property from the Tarrant Appraisal District ("TAD"). OWNER agrees that release of such information will be made by TAD, upon request from AEDC, at any time from execution of this Agreement until it is terminated. OWNER agrees to provide any waivers and releases requested by TAD to the AEDC.
- B. Right to Audit Books and Records - AEDC shall have the right to audit the books and records related to the Project and Public Improvements. AEDC shall notify OWNER in advance in writing of their intent to audit in order to allow OWNER adequate time to make such books and records available.
- C. Inspection - At all times throughout the term of this Agreement, AEDC shall have reasonable access to the Premises for the purpose of inspecting the Premises to ensure that the Project and Public Improvements are constructed, installed, maintained, and operated in accordance with the terms of this Agreement. All inspections shall be conducted in a manner as to not unreasonably interfere with construction of the Project and Public Improvements or the operation of the Premises. The inspections shall be conducted within a reasonable time period after notice by AEDC, provided, however, that all inspections shall be made with one (1) or more representative(s) of OWNER present and in accordance with the safety standards of OWNER.

**VII.**  
**Breach and Recapture**

- A. Breach - A breach of this Agreement may result in termination or modification of this Agreement and recapture by AEDC of grant payments. Any failure by OWNER to substantially fulfill any obligation listed in Section II of this Agreement shall be considered breach of this Agreement.
- B. Notice of Breach - In the event that AEDC makes a reasonable determination that OWNER has breached this Agreement, then AEDC shall give OWNER written

notice of such. OWNER has sixty (60) days following receipt of said written notice to reasonably cure such breach, or this Agreement may be terminated by AEDC, and recapture of grant payments may occur. Notice of breach shall be in writing and shall be delivered by personal delivery or certified mail to OWNER at its address provided in Section IX of this Agreement.

- C. Recapture - During the term of this Agreement, should OWNER commit and fail to timely cure a breach of this Agreement, AEDC may terminate this Agreement and recapture all grant payments (if any) that were made under this Agreement in the calendar year of the termination. It shall be the duty of AEDC to determine whether to require recapture of grant payments after termination of this Agreement and to demand payment of such. Repayment of grant payments shall become due 60 days following receipt of such demand. The rights of AEDC to require recapture and demand repayment of grant payments, and the obligation of OWNER to pay such, shall survive termination of this Agreement. The Arlington City Attorney has the authority, on behalf of the AEDC, to initiate any litigation necessary to pursue payment of recaptured grant payments pursuant to this Agreement.

#### VIII.

#### Effect of Sale or Lease of Property

The grant payments authorized by this Agreement shall not be assignable to any new owner or lessee of all or a portion of the Premises unless such assignment is approved in writing by the AEDC with approval of the City Council, which approval shall not be unreasonably withheld.

#### IX.

#### Notice

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid or by hand delivery:

OWNER:

EDEN COOPER, LP  
2900 COLLARD RD  
ARLINGTON, TEX  
76017

AEDC:

Arlington Economic Development Corporation  
Attention: Executive Director  
Post Office Box 90231  
Arlington, Texas 76004-3231

**X.**  
**City Council Authorization**

This Agreement was authorized by resolution of the AEDC Board of Directors and the City Council authorizing Executive Director or his designee to execute this Performance Agreement on behalf of the AEDC.

**XI.**  
**Severability**

In the event any section, subsection, paragraph, sentence, phrase, or word is held invalid, illegal, or unconstitutional, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word.

**XII.**  
**Estoppel Certificate**

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of OWNER, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the grant payments in effect, and such other matters reasonably requested by the party(ies) to receive the certificates.

**XIII.**  
**Owner's Standing**

OWNER, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and OWNER shall be entitled to intervene in said litigation.

**XIV.**  
**Applicable Law**

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.



**XV.**  
**Indemnification**

It is understood and agreed between the parties that the OWNER, in performing its obligations hereunder, is acting independently, and AEDC assumes no responsibility or liability to third parties in connection therewith, and OWNER agrees to indemnify and hold harmless AEDC from any such responsibility or liability. It is further understood and agreed among the parties that AEDC, in performing its obligations hereunder, is acting independently, and the OWNER assumes no responsibility or liability to third parties in connection therewith, and AEDC agrees to the extent allowed by law to indemnify and hold harmless OWNER from any such responsibility or liability.

**XVI.**  
**Force Majeure**

It is expressly understood and agreed by the parties to this Agreement that the parties shall not be found in default of this Agreement if any party's failure to meet the requirements of this Agreement is delayed by reason of war, Act of God, fire, or other casualty of a similar nature.

**XVII.**  
**No Other Agreement**

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by the parties.

**XVIII.**  
**Procurement of Goods and Services from Arlington Businesses  
and/or Historically Underutilized Businesses**

In performing this Agreement, OWNER agrees to use diligent efforts to purchase all goods and services from Arlington or Tarrant County businesses whenever such goods and services are comparable in availability, quality and price.

As a matter of policy with respect to AEDC projects and procurements, AEDC also encourages the use, if applicable, of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor, or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers, or other persons or organizations proposed for work on this Agreement, the OWNER agrees to consider this policy and to use their reasonable and best efforts to select and employ such companies and persons for work on this Agreement.

**XIX.**  
**Headings**

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XX.**  
**Successors and Assigns**

The parties to this Agreement each bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement.

No successor, executor, administrator, or assign is valid in the place of the parties to this Agreement without the written consent of AEDC and such consent shall not be unreasonably withheld.

**XXI.**  
**Termination**

This Agreement shall terminate in accordance with the terms of this Agreement, unless earlier terminated.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

**Eden Cooper LP**

BY  
Signature

Type or Printed Title

Date

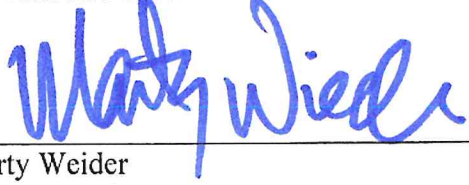
*Eden Cooper LP by*  
*[Signature]*  
*Manager / member*  
*5/1/24*

WITNESS:


*[Signature]*



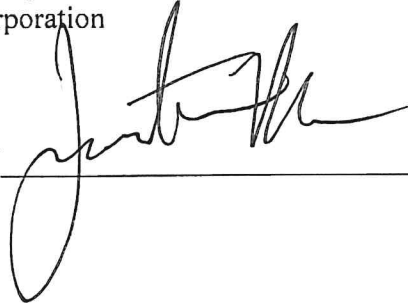
ARLINGTON ECONOMIC  
DEVELOPMENT CORPORATION

BY   
Marty Weider  
Executive Director  
Date \_\_\_\_\_

ATTEST:

  
ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:  
MOLLY SHORTALL, Counsel for the  
Arlington Economic Development  
Corporation

BY   
\_\_\_\_\_

THE STATE OF Texas §

COUNTY OF Tarrant §

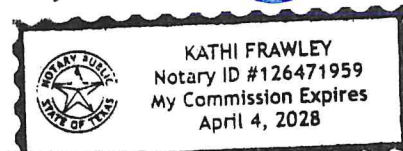
**Eden Cooper LP**  
**Acknowledgment**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared John Foster, known to me (or proved to me on the oath of \_\_\_\_\_ or through Drivers License (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **Eden Cooper LP** an entity duly authorized to do business in the State of Texas, and as the Manager thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 1 day of May, 2024.

April 4, 2028  
My Commission Expires

Kathi Frawley  
Notary Public in and for  
The State of California  
Kathi Frawley  
Notary's Printed Name

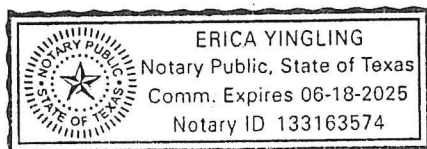


THE STATE OF TEXAS §  
COUNTY OF TARRANT §

**ARLINGTON ECONOMIC  
DEVELOPMENT CORPORATION**  
**Acknowledgment**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **MARTY WEIDER**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **ARLINGTON ECONOMIC DEVELOPMENT CORPORATION, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **Executive Director** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

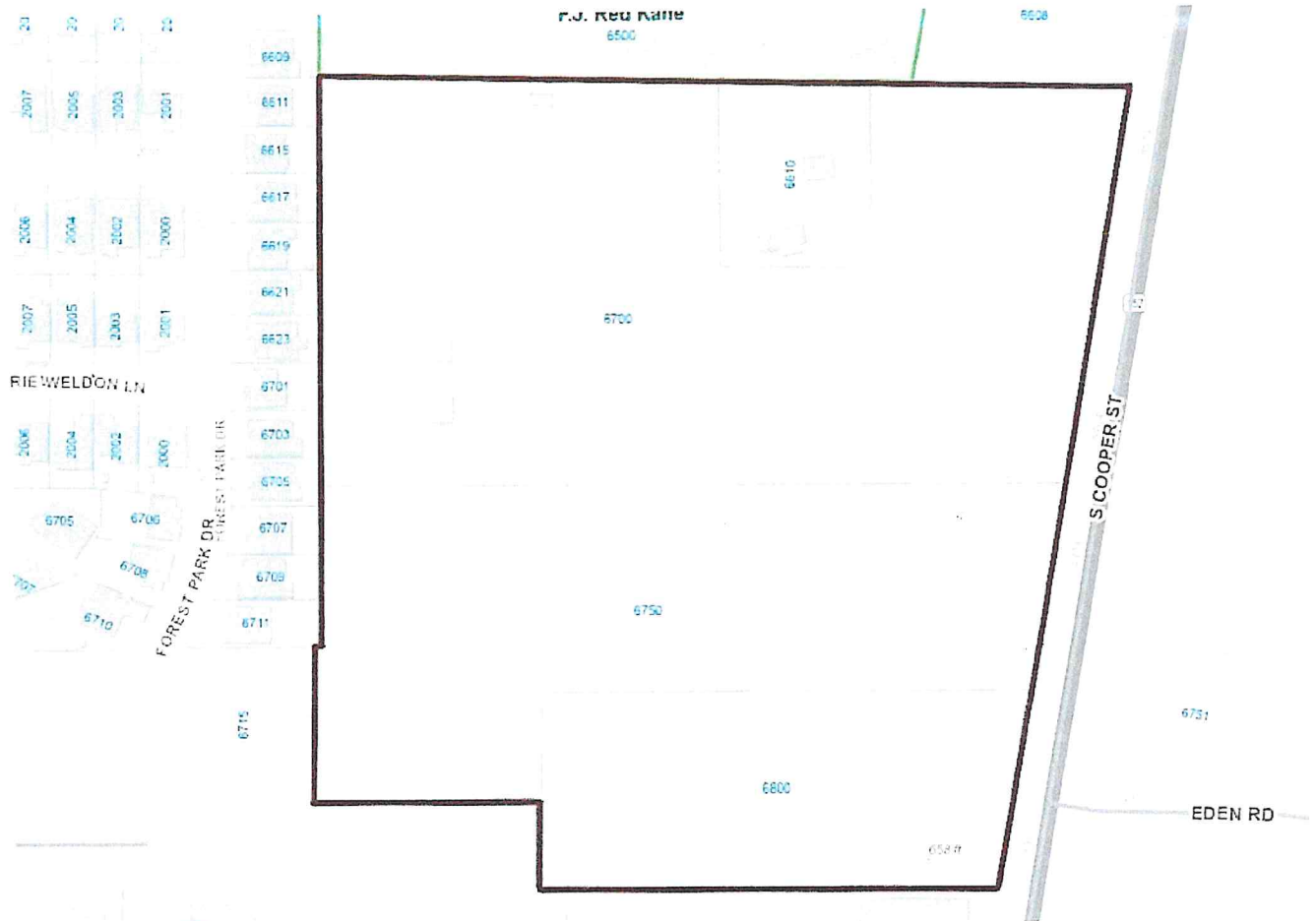
GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 6 day of May, 2024.



My Commission Expires

Erica Yingling  
Notary Public in and for  
The State of Texas  
Erica Yingling  
Notary's Printed Name

Exhibit "A"





[illegible]

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Eden Cooper LP  
Arlington, TX United States

Certificate Number:  
2024-1155072

Date Filed:  
05/01/2024

Date Acknowledged:

5/17/2024

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Arlington Economic Development Corporation

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

24-006  
EDC Agreement

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Foster, John	Arlington, TX United States	X	

5 Check only if there is NO Interested Party.

☐

### 6 UNSWORN DECLARATION

My name is JOHN FOSTER, and my date of birth is 6/15/1938.

My address is 2900 COLLARD RD, ARLINGTON, TEX, 76017, TARRANT.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in TARRANT County, State of TEXAS, on the 1 day of MAY, 20 24.  
(month) (year)

[Signature]  
Signature of authorized agent of contracting business entity  
(Declarant)