

**MEETING OF THE BOARD OF
DIRECTORS OF THE
ARLINGTON ECONOMIC DEVELOPMENT CORPORATION**

**Agenda
October 20, 2023 AT 11:00a.m.
ARLINGTON CITY HALL
COUNCIL BRIEFING ROOM
3RD FLOOR
101 W. ABRAM STREET
ARLINGTON, TX 76010**

Members of the public who wish to speak on a listed agenda item for action will be asked for their comments at the appropriate time.

I. Call to Order

II. Items for Action

Following a public hearing held in accordance with Section 505.159 of the Texas Local Government Code, consider a resolution authorizing a Performance Agreement with Sportec Solutions, Inc.

1. Resolution

Approve a resolution authorizing the Executive Director or his designee to execute a Performance Agreement with Sportec Solutions, Inc. relative to the creation and retention of primary jobs.

III. Adjourn

Staff Report



Arlington Economic Development Corporation Performance Agreement – Sportec Solutions, Inc.	
Arlington Economic Development Corporation Meeting Date: 10-20-2023	Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution authorizing the Executive Director or his designee to execute a Performance Agreement with Sportec Solutions, Inc. relative to the creation and retention of primary jobs.

PRIOR BOARD OR COUNCIL ACTION

The Economic Development Corporation Board was previously briefed on the proposed Agreement on September 19 and October 17, 2023.

ANALYSIS

Sportec Solutions, Inc. (“Sportec Solutions”) is a sports technology company based currently in New York City. Sportec Solutions is wholly-owned subsidiary of Sportec Solutions AG, based in Germany, which was founded as a joint venture between Deltatre Group, Ltd, a leading global sports technology company, and the top German soccer league (“Bundesliga”).

Sportec Solutions has requested funding from the Arlington Economic Development Corporation to support relocation of its headquarters to Arlington, as well as to establish new full-time primary jobs in Arlington as the company expands its operations in support of Major League Soccer and other major soccer tournaments and confederations.

Under the proposed Performance Agreement, Sportec Solutions would be required to relocate its headquarters and have its new headquarters facility up and running by December 31, 2024. Additionally, Sportec Solutions would be required to create and maintain at least ten full-time primary jobs at its Arlington headquarters through the end of calendar year 2029. The agreement also includes a 30% MWBE goal for all contractors and subcontractors who perform renovation activities should First Rate improve or expand their existing facilities.

The AEDC would provide a performance grant of up to \$500,000 as reimbursement for startup costs for its headquarters, \$250,000 at the start of operations at its headquarters, and \$250,000 at the first anniversary of startup with timely satisfaction of performance requirements and provision of required documentation. The AEDC would also provide up to \$32,500 for hiring full-time employees who are residents of Arlington.

FINANCIAL IMPACT

The total financial impact of this agreement is \$1,032,500. Funding is available in the AEDC account no. 973005.

ADDITIONAL INFORMATION

Attached:	Resolution with Performance Agreement attached
Under separate cover:	None
Available in the City Secretary’s office:	None

STAFF CONTACTS

Broderick Green
Executive Director
Arlington Economic Development Corporation
817-459-6432
Broderick.Green@arlingtontx.gov

ARLINGTON ECONOMIC DEVELOPMENT CORPORATION
Resolution No. _____

A resolution of the Board of Directors authorizing the Executive Director to execute a Performance Agreement with Sportec Solutions, Inc. relative to the creation and retention of Primary Jobs.

WHEREAS, the Arlington Economic Development Corporation is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are (1) for the creation or retention of primary jobs; . . .;” and

WHEREAS, Sportec Solutions, Inc., a sports technology company, seeks to establish a new national headquarters in Arlington, Texas (the “Premises”); and

WHEREAS, Sportec Solutions, Inc. intends to create new jobs at the Premises as a result of the creation of its new national headquarters in Arlington; and

WHEREAS, the Board of Directors for the Arlington Economic Development Corporation have determined that that the financial assistance provided to Sportec Solutions, Inc.. pursuant to the Performance Agreement is consistent with and meets the definition of “project” as that term is defined in Chapter 501 of the Texas Local Government Code, and in particular Section 501.101; and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, pursuant to Section 505.159 of the Texas Local Government Code a public hearing on the proposed project was held on October 20, 2023;
NOW THEREFORE

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ARLINGTON ECONOMIC DEVELOPMENT CORPORATION:

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this body and as part of its official record.

II.

That the Executive Director of the Arlington Economic Development Corporation is hereby authorized to execute a Performance Agreement with Sportec Solutions, Inc., of Arlington, Texas, to provide a performance grant in an amount not to exceed \$1,032,500 relative to the relocation of its headquarters and the creation and retention of Primary Jobs.

III.

A substantial copy of the Performance Agreement is attached hereto and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the ____ day of _____, 2023, by a vote of ____ ayes and ____ nays at a regular meeting of the Board of Directors of the Arlington Economic Development Corporation.

Michael Jacobson, President

ATTEST:

Alex Busken, Assistant Secretary

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

BY _____

Performance Agreement

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

Performance Agreement

THIS Performance Agreement (hereafter referred to as “Agreement”) is executed on _____, 2021 (the “Effective Date”), by and between **SPORTEC SOLUTIONS, INC.**, 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**”).

W I T N E S S E T H:

WHEREAS, the AEDC is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are (1) for the creation or retention of primary jobs;. . .;” and

WHEREAS, the AEDC’s Board of Directors have determined that 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 Chapter 501 of the Texas Local Government Code, and in particular Section 501.101; and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code;

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

- A. “Headquarters” is defined as the primary site of OWNER’s operations in the United States of America, including the site of OWNER’s Major League Soccer Video Assistant Referee Replay Center and Major League Soccer Data Operations Center.
- B. “Job” is defined as a permanent, full-time employment position that results in actual paid employment of an employee, not independent contractor, at the Project of at least 1,820 hours per position in a year. It shall not include part time employees.
- C. “Premises” are defined as the real property, land and improvements located at 1701 E Lamar Boulevard, Suite 100, Arlington, Texas.

- E. “Project” is defined as the relocation of the OWNER’s Headquarters to Arlington, Texas and the creation and maintenance of thirteen (13) full-time jobs located in Arlington, Texas.
- F. “Startup Costs” are the reasonable costs for OWNER creating an operational Headquarters facility at the Premises. Startup costs include, but are not limited to, costs of building technology systems for the Major League Soccer Video Assistant Referee Replay Center, Major League Soccer Data Operations Center, and associated activities, costs of constructing improvements for adapting the Premises to the necessary uses of the Headquarters, and other costs necessary for finishing out the Premises for use as Owner’s Headquarters.

II.
Term

This Agreement shall be effective on the date of execution and shall expire on December 31, 2029 (the “Term”), unless otherwise sooner terminated in accordance with the terms of this Agreement.

III.
Improvement Conditions and Requirements

- A. OWNER shall commence the Project by no later than June 30, 2024. Commencement of the Project shall be evidenced by the issuance of a notice to proceed by OWNER to OWNER’s general contractor.
- B. OWNER shall complete construction of its Headquarters by no later than December 31, 2024. Completion of the Project shall be evidenced by OWNER sending written certification to the AEDC that the Headquarters is operation on the Premises.
- C. OWNER shall maintain its Headquarters in Arlington, Texas through the end of the Term of the Agreement.
- D. OWNER shall hire or assign no less than ten (10) Jobs at the Premises, and/or at another rented or owned location(s) located in the City of Arlington that are used by OWNER for fulfilling the obligations of this Project under this Agreement, with a minimum average salary of Fifty-Five Thousand Dollars (\$55,000) annually, by no later than December 31, 2025. OWNER shall maintain such Jobs count and minimum average salary for the remainder of the Term of this Agreement. At all times a majority of the Jobs hired and assigned pursuant to this Section III.D shall be included in the following sector of the North American Industry Classification System: 5415.
- E. During the Term of this Agreement, OWNER shall refer to its Headquarters, Major League Soccer Video Assistant Referee Replay Center, and Major League Soccer Data Operations Center in all marketing and advertising efforts as being located in

the City of Arlington and shall not use any other proper geographic name (i.e., Dallas, Fort Worth, etc.) or informal geographic name (i.e. Metroplex, North Texas, etc.) to market or advertise the location without AEDC's prior written permission.

- F. Throughout the Term, all activity on the Premises shall conform to the applicable building codes, zoning ordinances, and all other state, federal, or local laws, ordinances, and regulations. OWNER shall apply for and obtain all necessary governmental permits and approvals for construction and operation of the Project.
- G. Throughout the Term, OWNER shall not fail to render for taxation any property owned by OWNER and located within the City of Arlington.
- H. Throughout the Term, OWNER shall not allow the ad valorem taxes owed 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.
- I. During design and construction of the Project OWNER agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. OWNER also agrees to develop a policy that establishes a goal of thirty percent (30%) use by OWNER of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for design and construction of the Project, which such policy shall contain reasonable exclusions. Beginning in the first full calendar quarter after this Agreement is executed and continuing until the Project has been completed, OWNER shall provide the AEDC with a quarterly report detailing its progress towards the thirty percent (30%) goal.
- J. OWNER agrees to cooperate with City of Arlington on business recruitment efforts by the City of Arlington to attract other companies in the sports industry to locate or expand in the City of Arlington.

IV. Incentive Program

In exchange for OWNER's development of the Project, AEDC agrees to provide the following incentive program:

- A. Grants.
 - 1. If all Improvement Conditions and Requirements set forth in Article III are satisfied, to the extent applicable at that point in time, AEDC agrees to provide grants up to One Million and 00/100 Dollars (\$1,000,000.00).

Grants will be paid by AEDC to OWNER based upon the following schedule:

- a. Up to Five-Hundred Thousand and 00/100 Dollars (\$500,000.00) within thirty (30) days of OWNER submitting proof to the AEDC of reasonable costs for the startup of OWNER's Headquarters as reimbursement for said startup costs. Proof of all startup costs must be provided within ninety (90) days of the issuance of a certificate of occupancy by the City of Arlington for the Premises or such grant shall be waived by OWNER.
 - b. Two-Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00) within thirty (30) days of OWNER submitting proof to the AEDC of the issuance of a certificate of occupancy by the City of Arlington for the Premises.
 - c. Two-Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00) within thirty (30) days of OWNER submitting certification to the AEDC of the beginning of operations of the Headquarters and the maintenance of at least eight (8) full-time jobs at the Headquarters; however, the earliest date such payment shall be made is one (1) year from the date of the issuance of the certificate of occupancy for the Premises.
2. Arlington Hire Grant – On an annual basis, beginning 2024 and ending in 2030, AEDC agrees to pay OWNER a grant payment as calculated below.
- a. By April 1 of the year following each calendar year of the agreement, Appellant shall submit a Certification for hired Full-Time Employees to the AEDC. Certification shall be accompanied by an employment report generated by OWNER that documents the number of new hired Full-Time Employees for the previous calendar year, their position title, and their residential address.
 - b. The AEDC shall submit a grant payment of Two Thousand, Five Hundred and 00/100 dollars (\$2,500) for each employee hired who resides in Arlington, Texas. Such grant payment shall be made by June 1 of the calendar year in which the Certification is submitted.
 - c. In no case will the total grants under Subsection IV.A.2. exceed Thirty-Two Thousand and Five Hundred and 00/100 dollars (\$32,500). Once the AEDC has paid to the Owner grants totaling \$32,500, OWNER shall no longer be eligible to receive payments under this subsection IV.A.2.

V.

Records, Audits, and Inspections

- A. Additional Records and Information - Throughout the Term of this Agreement, OWNER shall furnish AEDC any additional records and information reasonably requested to support the Improvement Conditions and Requirements set forth in Article III of this Agreement.
- B. Right to Audit Books and Records - AEDC shall have the right to audit the books and records of OWNER related to the grants. AEDC shall notify OWNER in advance in writing of their intent to audit 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 is 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 the operation of the Premises. The inspections shall be conducted within a reasonable time after notice by AEDC.

VI.

Use of Premises

The Premises always shall be used in a manner that is consistent with City of Arlington's Unified Development Code and all other applicable federal, state, and local laws.

VII.

Breach and Recapture

- A. Breach - Subject to Section VII.B. below, a breach of this Agreement by OWNER may result in termination or modification of this Agreement and recapture by AEDC of grant payments made as set forth in Section VII.C below. OWNER's failure to satisfy any of the Conditions and Requirements as specified in Article III or OWNER's failure to provide records and information necessary to support the Improvement Conditions and Requirements, as specified in Article V, shall constitute a breach of this Agreement.
- B. Notice of Breach - If AEDC makes a reasonable determination that OWNER has breached this Agreement, then AEDC shall give OWNER written notice of such. OWNER has 60 days following receipt of said written notice to cure such breach or this Agreement may be terminated by AEDC, and recapture of grant payments made may occur pursuant to Section VII.C. below. Notice of breach and opportunity to cure shall be in writing and shall be delivered by personal delivery or certified mail to OWNER at its address provided in Article X of this Agreement.

- C. Recapture - During the Term of this Agreement, should OWNER fail to timely cure a breach of this Agreement, AEDC may terminate this Agreement and recapture a percentage of the total amount of grant payments made under this Agreement set forth in this Section VII.C. If OWNER fails to timely cure a breach of this Agreement and the AEDC opts to terminate this Agreement, AEDC may recapture the following percentages of the grant payments made under this Agreement: One Hundred Percent (100%) if terminated from the Effective date through December 31, 2024; Eighty-three Percent (83%) if terminated between January 1, 2025 and December 31, 2025; Sixty-seven Percent (67%) if terminated between January 1, 2026 and December 31, 2026; Fifty Percent (50%) if terminated between January 1, 2027 and December 31, 2027; Thirty-three Percent (33%) if terminated between January 1, 2028 and December 31, 2027; Seventeen Percent (17%) if terminated between January 1, 2029 and December 31, 2029. It shall be the duty of AEDC to determine whether to require recapture 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 grants made and the obligation of OWNER to pay such, shall survive termination of this Agreement. The City Attorney has the authority, on behalf of the AEDC, to initiate any litigation necessary to pursue payment of recaptured grants pursuant to this Agreement.

VIII. **Undocumented Workers**

OWNER covenants and certifies that OWNER does not and will not knowingly employ an undocumented worker at the Project 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 132a(f), OWNER shall repay to the AEDC all grant payments provided under Article IV of this Agreement, plus 10% per annum from the date such 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.

IX. **Effect of Sale or Lease of Property**

The incentive program authorized by this Agreement shall not be assignable to any new owner or lessee of all or a portion of the Project unless such assignment is approved in writing by the AEDC with approval of the AEDC Board of Directors and Arlington City Council, which approval shall not be unreasonably withheld.

X.
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: Sportec Solutions, Inc.
Attention:

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

cc: Arlington Economic Development Corporation
Attention: City Attorney's Office
Post Office Box 90231
Arlington, Texas 76004-3231

XI.
City Council Authorization

This Agreement was authorized by resolution of the AEDC Board of Directors and Arlington City Council authorizing the President of the AEDC to execute this Agreement on behalf of the AEDC.

XII.
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.

XIII.
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.

XIV.
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, AEDC Board of Directors or City Council actions authorizing same, and OWNER shall be entitled to intervene in said litigation.

XV.
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.

XVI.
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.

XVII.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

XVIII.
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.

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.
Publicity and Press Releases

The parties to this Agreement agree not to release any press or news release pertaining to the content of this Agreement or Project without the prior written consent of the other party, such consent will not be unreasonably withheld.

[Signature Page to Follow]

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

SPORTEC SOLUTIONS, INC.

BY _____
[Name]
[Title]
Date _____

WITNESS:

**ARLINGTON ECONOMIC
DEVELOPMENT CORPORATION**

BY _____
MICHAEL JACOBSON
President
Date _____

ATTEST:

_____, AEDC Secretary

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

BY _____

THE STATE OF TEXAS §
§
COUNTY OF _____ §

SPORTEC SOLUTIONS, INC.
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (*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 **SPORTEC SOLUTIONS, INC.**, an entity duly authorized to do business in the State of Texas, and as the _____ 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 _____ day of _____, 2021.

Notary Public in and for
The State of Texas

My Commission Expires

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 _____, 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**, a non-profit corporation of Tarrant County, Texas, and as the **President** 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 _____ day of _____, 2021.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name