

EXHIBIT

"A"

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("Agreement") is entered into this ____ day of _____, 2015, by and between the **City of Round Rock, Texas**, a Texas home rule municipal corporation ("City"), and **Houghton Mifflin Harcourt Publishing Company**, a Massachusetts corporation ("HMH").

WHEREAS, the City has adopted Resolution No. _____, attached as Exhibit A ("City Resolution"), establishing an economic development program and authorizing the Mayor to enter into this Agreement with HMH in recognition of the positive economic benefits to the City through HMH's leasing space in a new building to be constructed by La Frontera Plaza, Ltd, ("Plaza") to be located in the City and locating one of HMH's office facilities in said lease space; and

WHEREAS, HMH will employ at least two hundred seventy (270) employees when the Facility (as hereinafter defined) is complete, and during the term of this Agreement; and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby HMH will expend significant sums to install improvements to and equip the Facility and lease, occupy, and operate the Facility in conformance with the City's development approvals for the Facility; and

WHEREAS, the City agrees to provide performance based economic development grants to HMH to defray a portion of HMH's 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, the City and HMH agree as follows:

1. Authority. The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code, and the City Resolution, and constitutes a valid and binding obligation of the City in the event HMH proceeds with the lease and occupation of the Facility. The City acknowledges that HMH is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to lease, improve and occupy the Facility.

2. Definitions.

2.1 **"Economic Incentive Payment(s)" ("EIPs")** means the amount paid by the City to HMH under the Program.

2.2 **"Effective Date"** is the date this Agreement is executed to be effective by the City and HMH.

- 2.3 **“Facility”** means the portion of the building to be constructed by Plaza located in the La Frontera shopping and office development in Round Rock, Texas to be leased by HMH.
- 2.4 **“Improvements”** means the finish out of and additions to the Facility, and personal property and equipment with a minimum value of \$3,000,000.00.
- 2.5 **“Program”** means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the City Resolution to promote local economic development and stimulate business and commercial activity within the City.
- 2.6 **“Recapture Liability”** means the total amount of all EIP’s that are paid as result of this Agreement that are subject to recapture by the City from HMH in the event of a HMH default.
3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2026.
4. **Rights and Obligations of HMH.**
- 4.1 Lease of Facility. HMH agrees to provide City with documentation showing that it has leased the Facility until at least December 31, 2026.
- 4.2 Improvements. HMH agrees to spend at least \$3,000,000 to construct and/or install the Improvements. HMH agrees to provide City with documentation showing that this obligation has been satisfied. City shall have the right, following reasonable advance notice to HMH, to audit HMH’s records to verify that this obligation has been satisfied.
- 4.3 Jobs.
- 4.3.1 Job Creation. Within thirty (30) days after the City issues a Certificate of Occupancy for the Facility, HMH agrees to employ in the Facility at least two hundred seventy (270) full-time employees. In addition, HMH agrees to retain at least 270 employees for the full term of this Agreement.
- 4.3.2 Salaries and Benefits. HMH agrees that the full-time jobs will have an average annual salary of at least \$70,000, including industry standard benefits.
- 4.3.3 Job Compliance Affidavit. HMH agrees to provide to the City an annual Job Compliance Affidavit by March 1 of each calendar year during the term of this Agreement. A copy of the Job Compliance Affidavit form is attached hereto as Exhibit B. City shall have the right, following reasonable advance notice to HMH, to audit HMH’s records to verify that this obligation has been satisfied.

- 4.4 Compliance with regulations. HMH agrees that it will comply with the City's development approval processes and shall lease the Facility and construct and install the Improvements and occupy and operate the Facility consistent with City ordinances, development regulations and requirements.
- 4.6 Continuous operation. HMH agrees that it will continuously operate the Facility and employ the number of employees set out in section 4.3.1 during the term of this Agreement, including any extensions.

5. Rights and Obligations of the City.

In consideration of HMH's compliance with this Agreement, the City agrees as follows:

5.1 Economic Incentive Payment ("EIP").

5.1.1 EIP. City shall, subject to HMH's satisfaction of its obligation to execute a lease for the building, and to employ 270 employees set forth in Section 4 above, make EIPs to HMH as follows:

<u>Date</u>	<u>Amount</u>
April 1, 2017	\$100,000.00
April 1, 2018	\$100,000.00
April 1, 2019	\$100,000.00
April 1, 2020	\$ 50,000.00

5.1.2 EIP Reduction. Regardless of anything contained herein to the contrary, the failure of HMH to provide 270 jobs shall not be considered an event of default as defined in Section 7.3 below unless the number of jobs actually provided is less than 75% of 270, or 203. If the actual number of jobs provided at the end of any year is less than 270 but 203 or more, then the EIP for the following year shall be reduced as follows: The amount of the EIP shall be reduced by the same percentage that the actual number of jobs bears to the required number of jobs. By way of illustration, if on December 31, 2018, HMH has provided 243 jobs, then the requirement to provide 270 jobs will be short by 27 jobs, or 10%. Therefore HMH's EIP for 2019 shall be reduced by 10 percent, (i.e. from \$100,000 to \$90,000.) Failure of HMH to provide at least 203 jobs shall be considered a default on the part of HMH, and the City may exercise its rights under Sections 6 and 7.3.

5.1.2 EIP 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 HMH. The EIP by the City under this Agreement is subject to the City's appropriation of funds for such payments in the budget year

for which they are made. The EIP to be made to HMH, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that the City does not appropriate funds in any fiscal year for the EIP due under this Agreement, such failure shall not be considered a default under Section 7.3, and the City shall not be liable to HMH for such EIP, however, the City shall extend this Agreement for another year(s), until HMH has received all of the EIPs provided for herein. In addition, HMH shall have the right but not the obligation to rescind this Agreement. 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 the City terminates this Agreement as a result of HMH's default, the City may recapture and collect from HMH the Recapture Liability. HMH shall pay to the City the Recapture Liability within thirty (30) days after the City makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which HMH 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 statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). The City 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 City and HMH will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.
- 7.2 Representations and Warranties. The City represents and warrants to HMH that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. HMH represents and warrants to the City that it has the requisite authority to enter into this Agreement.
- 7.3 Default. If either the City or HMH should default in the performance of any obligations of this Agreement, 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 the City remains in default after notice and opportunity to cure, HMH shall have the right to terminate this Agreement by giving written notice

thereof to City and to pursue any remedy at law or in equity for the City's breach. If HMH remains in default after notice and opportunity to cure, City shall have the right to terminate this Agreement by giving written notice thereof to HMH and to pursue any remedy at law or in equity for HMH's breach, in addition to the right of EIP recapture set forth above.

- 7.4 Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between the City and HMH to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's 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 EIP. This Agreement may only be amended, altered or revoked by written instrument signed by the City and HMH.
- 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. HMH may not assign all or part of its rights and obligations to a third party without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that HMH may assign this Agreement without the consent of the to an entity which controls, is controlled by or is under common control with HMH, any successor entity to HMH by way of merger, consolidation or other non-bankruptcy corporate reorganization, or an entity which acquires all or substantially all of HMH's assets, partnership or membership interests, or capital stock.
- 7.8 Amendment. This Agreement may be amended by the mutual written agreement of the parties.
- 7.9 Termination. In the event HMH elects not to lease the building as contemplated by this Agreement, HMH shall notify the City in writing, and this Agreement and the obligations on the part of both 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, 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 City: City of Round Rock
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 HMH: Houghton Mifflin Harcourt Publishing Company
222 Berkeley Street
Boston, MA 02116
Attn: General Counsel

With a required copy to:

Houghton Mifflin Harcourt Publishing Company
9400 South Park Center Loop
Orlando, FL 32819
Attn: Manager of Lease Administration

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, however its meaning or application, 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, and in that event, 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; 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. The City, its past, present and future officers, elected officials, employees and agents of the City, 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. HMM may request an estoppel certificate from City so long as the certificate is requested in connection with a bona fide business purpose and requests commercially reasonable certifications. City agrees to promptly execute and deliver any estoppel certificate reasonably requested pursuant to this Section 7.18. The certificate, which will upon request be addressed to HMM, or a lessee, purchaser or assignee of HMM, shall include, but not necessarily be limited to, statements (qualified to the best knowledge of the City) 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 11th day of June, 2015 (the "Effective Date").

CITY OF ROUND ROCK, TEXAS,

By: _____
Alan McGraw, Mayor

APPROVED as to form:

Stephan L. Sheets, City Attorney

**Houghton Mifflin Harcourt Publishing
Company**, a Massachusetts corporation

By: _____
Name: _____
Its: _____

EXHIBIT “A”
TO THE ECONOMIC DEVELOPMENT AGREEMENT

RESOLUTION NO. R-_____

WHEREAS, Houghton Mifflin Harcourt Publishing Company, (“HMH”) has expressed to the City of Round Rock (“City”) its desire to locate an office facility to the City which will provide jobs and additional tax base to the City, and

WHEREAS, §380.001 Local Government Code provides that a municipality may establish an economic development program (“Program”) to promote local economic development and to stimulate business and commercial activity in the municipality, and

WHEREAS, the City Council has determined that the Program described in Exhibit “A” will meet the goals set forth in said §380.001 and will be of mutual benefit to both parties, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the City offers to HMH a §380.001 Program in exchange for HMH locating an office facility to the City, and

BE IT FURTHER RESOLVED

That the offer of the Program shall be as generally outlined in Exhibit “A” attached hereto and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was

open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 11th day of June, 2015.

ALAN MCGRAW, Mayor

City of Round Rock, Texas

ATTEST:

SARA L. WHITE, City Clerk

EXHIBIT A
TO THE RESOLUTION

ECONOMIC DEVELOPMENT PROGRAM

The terms of the §380.001 Economic Development Program to be offered to Houghton Mifflin Harcourt Publishing Company, ("HMH") in exchange for HMH's locating an office facility in the City of Round Rock are as generally outlined below:

1. HMH's obligations:
 - 1.1. HMH agrees to lease and occupy a majority of a building to be constructed in the La Frontera shopping and office development, in Round Rock, Texas (the "Facility").
 - 1.2. HMH agrees to invest at least \$3,000,000 in Facility improvements and personal property.
 - 1.3. HMH agrees to employ at least 270 full-time equivalent employees in the Facility.
2. City's obligations:
 - 2.1. City shall, subject to HMH's satisfaction of its obligation to execute a lease for the office facility and to employ 270 employees, make the following EIP's to HMH:

<u>Date</u>	<u>Amount</u>
April 1, 2017	\$100,000.00
April 1, 2018	\$100,000.00
April 1, 2019	\$100,000.00
April 1, 2020	\$ 50,000.00

3. The terms and provisions of this Program will be set out in more detail in the Economic Development Program Agreement of even date herewith.

JOB COMPLIANCE AFFIDAVIT

1. **“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.**
2. **“I AM THE _____(TITLE)_____ OF HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY AND I AM DULY AUTHORIZED TO MAKE THIS AFFIDAVIT.**
3. **“AS OF DECEMBER 31, 201__, HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY HAD THE FOLLOWING JOB POSITIONS AND SALARIES:**

EMPLOYEE ID NO.
SALARY

JOB POSITION OR TITLE

ANNUAL

[illegible]

_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

TOTAL JOBS _____ AVG. SALARY \$ _____

4. **“IN ADDITION TO THE SALARY, ALL FULL TIME JOBS INCLUDED INDUSTRY STANDARD EMPLOYEE BENEFITS.**

DATED THIS ____ DAY OF _____, 201__.

(PRINTED NAME)

(TITLE)

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS THE ____ DAY OF _____, 201__.

NOTARY PUBLIC, STATE OF TEXAS