

EXHIBIT

"A"

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("Agreement") is entered into this ___ day of ___, 2018, by and between the **City of Round Rock, Texas**, a Texas home rule municipal corporation ("City"), and **Rosco Laboratories, Inc.**, a Texas corporation ("Rosco").

WHEREAS, the City has adopted Resolution No. R--_____, attached as Exhibit A ("City Resolution"), establishing an economic development program and authorizing the Mayor to enter into this Agreement with Rosco in recognition of the positive economic benefits to the City through Rosco's purchase of a building which contains a minimum of four thousand square feet located at 1600 Chisholm Trail Road, Round Rock, Texas (the "Facility"), and the relocation of its existing business of providing lighting and lighting effects for the theater, film, and TV industry to the Facility; and

WHEREAS, Rosco previously purchased the Facility in 2016; and

WHEREAS, Rosco will maintain the employment of 30 full-time employees in the Facility; and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby Rosco will expend significant sums to renovate and install improvements in the Facility, and to 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 Rosco to defray a portion of the Facility's costs;

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 Rosco 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 Rosco proceeds with the purchase and occupation of the Facility. The City acknowledges that Rosco 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 purchase, improve and occupy the Facility.

2. Definitions.

- 2.1 **"Economic Incentive Payment(s)" ("EIPs")** means the amount paid or fees waived by the City to Rosco under the Program.
- 2.2 **"Effective Date"** is the date this Agreement is executed to be effective by the City and Rosco.

- 2.3 **“Facility”** means the building located at 1600 Chisholm Trail Road and Improvements to be constructed and installed on the Property.
- 2.4 **“Improvements”** means the renovation of the Facility costing at least \$200,000 and personal property and equipment with a minimum cost of \$750,000.
- 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 **“Property”** means the real property located at 1600 Chisholm Trail Road, on which the Facility and Improvements are located.
- 2.7 **“Recapture Liability”** means the total amount of all EIP’s that are paid or waived as result of this Agreement that are subject to recapture by the City from Rosco in the event of an Rosco default.
3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2019. In the event the City is unable to appropriate funds for a particular year pursuant to Section 5.1.3 of this Agreement, this Agreement shall be extended for another year(s).
4. **Rights and Obligations of Rosco.**
- 4.1 Purchase of Property. Rosco has previously purchased the Property in 2016.
- 4.2 Improvements. Rosco has begun the renovation of the Facility and agrees to complete the Improvements on or before January 1, 2019. Rosco agrees to spend at least \$200,000 on renovations and at least \$750,000 in personal property and equipment. Rosco agrees to provide City with documentation showing that these obligations have been satisfied. City shall have the right to audit Rosco’s records to verify that this obligation has been satisfied.
- 4.3 Jobs. Rosco agrees to transfer to the Facility at least 30 full-time employees no later than thirty days after the City issues a Certificate of Occupancy for the Facility. Rosco agrees to maintain at least 30 full-time employees for the full term of this Agreement.
- Rosco agrees to provide to the City annual employee reports on the form attached hereto as Exhibit B within sixty (60) days following the end of each calendar year during the term of this Agreement. City shall have the right to audit Rosco’s records to verify that this obligation has been satisfied.
- 4.4 Compliance with regulations. Rosco agrees that it shall comply with the City’s development approval processes and shall purchase the Facility and construct and install the improvements and occupy and operate the Facility consistent with City ordinances, development regulations and requirements.

- 4.5 Continuous operation. Rosco agrees that it will continuously operate the Facility during the term of this Agreement, including any extensions.

5. Rights and Obligations of the City.

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

5.1 Economic Incentive Payment ("EIP").

5.1.1 EIP Payment. City shall, subject to Rosco's satisfaction of its obligations set forth in Sections 4.1 and 4.2 above and the other conditions set out herein, make an EIP to Rosco in the amount of seventy-five thousand dollars. This initial EIP shall be made within thirty (30) days after the City has issued a Certificate of Occupancy for the Facility and Rosco has submitted proof that it has complied with its requirements hereunder.

5.1.2 EIP Fee Waiver. City shall, subject to Rosco's satisfaction of its obligations set forth herein waive City permit fees associated with the renovation permit up to \$3,000.

5.1.3 EIP's 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 Rosco. All EIP's by the City under this Agreement are subject to the City's appropriation of funds for such payments in the budget year for which they are made. The EIP's to be made to Rosco, 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 EIP's due under this Agreement, such failure shall not be considered a default under Section 7.3, and the City shall not be liable to Rosco for such EIP's, however, the City shall extend this Agreement for another year(s). In addition, Rosco 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 that Rosco is in default of this Agreement, the City may recapture and collect from Rosco the Recapture Liability after providing Rosco written notice and a minimum period of thirty (30) days to cure such default, and the default has not been cured within said time. In the event Rosco does not so cure, Rosco 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 Rosco may be entitled. 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 Rosco 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 Rosco 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. Rosco 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 Rosco 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, Rosco shall have the right to pursue any remedy at law or in equity for the City's breach. If Rosco remains in default after notice and opportunity to cure, City shall have the right to pursue any remedy at law or in equity for Rosco'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 Rosco 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. Other than that certain Property Tax Abatement Agreement of even date herewith, this Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the City and Rosco.
- 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. Rosco may not assign all or part of its rights and obligations to a third party without the express written consent of the City provided, however, that this Agreement may be assigned by either party without the consent of the other to an affiliate or to any third party who succeeds to substantially all of its business or assets.
- 7.8 Amendment. This Agreement may be amended by the mutual written agreement of the parties.

7.9 Termination. In the event Rosco elects not to purchase the Facility as contemplated by this Agreement, Rosco 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
citymanager@roundrocktexas.gov

With a required copy to:

Stephan L. Sheets
Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
steve@scrllaw.com

If to Rosco: Rosco Laboratories, Inc
1600 Chisholm Trail
Round Rock, Texas 78664
Attn: Richard Luce
Phone: (203) 708-8900, Ext. 221
Email: rich.luce@rosco.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, 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.

EXECUTED to be effective as of the ____ day of _____, 2018 (the "Effective Date").

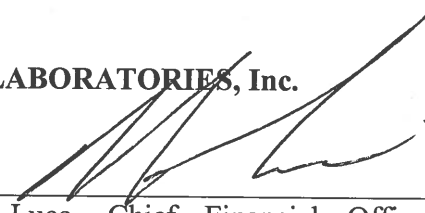
CITY OF ROUND ROCK, TEXAS,

By: _____
Craig Morgan, Mayor

APPROVED as to form:

Stephan L. Sheets, City Attorney

ROSCO LABORATORIES, Inc.

By:  _____
Rich Luce, Chief Financial Officer/Chief
Operations Officer

Date: 1/29/18

EXHIBIT "A"

RESOLUTION NO. _____

WHEREAS, Rosco Laboratories, Inc ("Rosco") is a leader in the business of providing lighting and lighting effects for the theater, film, and TV industry, and

WHEREAS, Rosco has expressed to the City of Round Rock ("City") its desire to relocate its existing facility to a new location within the City which will continue to 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 Rosco a §380.001 Program in exchange for Rosco relocating its existing business of providing lighting and lighting effects for the theater, film, and TV industry to a new location in 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 ____ day of _____, 2018.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

SARA L. WHITE, City Clerk

EXHIBIT A

ECONOMIC DEVELOPMENT PROGRAM

The terms of the \$380,001 Economic Development Program to be offered to Rosco in exchange for Rosco's relocating its existing business of providing lighting and lighting effects for the theater, film, and TV industry to a new location in the City as generally outlined below:

1. Rosco's obligations:

- 1.1. Rosco has previously purchased the property located at 1600 Chisholm Trail Road.
- 1.2. Rosco has previously begun the renovation of the Facility, and agrees to complete the Improvements on or before January 1, 2019. Rosco agrees to spend at least \$200,000 on renovations and at least \$750,000 in personal property and equipment. Rosco agrees to provide City with documentation showing that these obligations have been satisfied. City shall have the right to audit Rosco's records to verify that this obligation has been satisfied.
- 1.3. Rosco agrees to employ 30 or more full-time equivalent employees in the Facility no later than 30 days following the issuance of a Certificate of Occupancy for the Facility.
- 1.4. Rosco agrees to retain said 30 full-time equivalent employees for the term of the Agreement.

2. City's obligations:

- 2.1. City agrees to make an initial program payment to Rosco of \$75,000 upon Rosco's obtaining the Certificate of Occupancy for the Facility.
- 2.4. City agrees to make additional program payments by waiving renovation permit fees of no more than \$3,000.

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.

EXHIBIT "B"

JOB COMPLIANCE AND ANNUAL PAYROLL 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:

1. "MY NAME IS _____. I AM OVER THE AGE OF 21 YEARS AND AM CAPABLE OF MAKING THIS AFFIDAVIT. THE FACTS STATED IN THIS
2. AFFIDAVIT ARE WITHIN MY PERSONAL KNOWLEDGE AND ARE TRUE AND CORRECT.
3. "I AM THE _____ (TITLE) _____ OF ROSCO LABORATORIES, INC. AND I AM DULY AUTHORIZED TO MAKE THIS AFFIDAVIT.
4. "AS OF DECEMBER 31, 201__, ROSCO LABORATORIES, INC. HAD THE FOLLOWING JOB POSITIONS AND SALARIES:

EMPLOYEE ID NO.	JOB POSITION OR TITLE	ANNUAL SALARY
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[illegible]

_____ \$ _____

_____ \$ _____

_____ \$ _____

TOTAL JOBS _____

TOTAL ANNUAL SALARY \$ _____

TOTAL ANNUAL OVERTIME \$ _____

TOTAL ANNUAL BENEFITS \$ _____

TOTAL ANNUAL PAYROLL \$ _____

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