

EXHIBIT

"A"

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("**Agreement**") is entered into this ____ day of _____, 2020, by and between the **City of Round Rock, Texas**, a Texas home rule municipal corporation ("**City**"), and **200 E. Austin Ave., LLC** ("**Developer**").

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 Developer in recognition of the positive economic benefits to the City through Developer's decision to construct a building within the City at 200 East Austin Ave., Round Rock, Texas 78664 (the "**Property**"); and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code wherein Developer intends to construct a 2,650 square foot office building (the "**Facility**"); and

WHEREAS, the City agrees to provide certain performance-based economic incentives (as defined below);

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 Developer 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 Developer proceeds to construct the Facility. The City acknowledges that Developer is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources to construct the Facility.
2. **Definitions.**
 - 2.1. "**Economic Incentive**" ("**Economic Incentive**") means the waiver of certain development fees as described in this Agreement.
 - 2.2. "**Effective Date**" is the date this Agreement is executed to be effective by the City and Developer.
 - 2.3. "**Facility**" means a 2,650 square foot office building located in the City of Round Rock at 200 East Austin Ave., Round Rock, Texas 78664.
 - 2.4. "**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.

2.5. **“Real Property Improvements”** means costs directly incurred as a result of the construction of certain *on-site and streetscape* improvements for the Facility for the purpose of supporting Developer’s business operation. The Real Property Improvements are described in Exhibit “B”, attached hereto and incorporated herein.

3. **Intention of Parties.** The City Council of Round Rock has previously determined that one of its priority goals is to encourage economic development within the City. To further these goals, the City is willing to provide EIP’s to assist Developer in constructing the Facility.

4. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2021.

5. **Rights and Obligations of Developer.**

5.1. Construction of Facility. Developer agrees to invest at least \$700,000 to construct the Facility (the “**Real Property Investment Threshold**”) prior to December 31, 2021.

5.2. Construction of Real Property Improvements. Developer agrees, concurrently with the construction of the Facility, to construct and install the Real Property Improvements pursuant to the design, plans and specifications as shown in Exhibit “B” attached hereto. Developer agrees to obtain the written consent of the City in the event of any material change to said design, plans and specifications.

6. **Economic Incentive Payments.**

6.1. Waiver of Fees. In consideration, and subject to Developer’s compliance with this Agreement, the City agrees to pay EIPs as follows: development fees due and owing the City pertaining to the construction of the Facility, including site development permit application fees, building permit application fees, tree mitigation fees and regional detention fees, are hereby waived.

7. **Miscellaneous.**

7.1. Mutual Assistance. The City and Developer 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 Developer 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. Developer 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 Developer should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party with written notice of such default and thirty (30) days' opportunity to cure, 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, Developer shall have the right to pursue any remedy at law or in equity for the City's breach. If Developer remains in default after notice and opportunity to cure, City shall have the right to pursue any remedy at law or in equity for Developer's breach.
- 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 Developer 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. This Agreement may only be amended, altered or revoked by written instrument signed by the City and Developer.
- 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. Developer 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 Developer elects not to construct the Facility or install the Real Property Improvements as contemplated by this Agreement, Developer 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. Any fees that may have been waived by the City pursuant to Section 6, above, shall be immediately due and owing.
- 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@scrllaw.com

If to Developer:

Jon E. Sloan
1802 Shadowbrook Circle
Round Rock, Texas 78681
Phone: 512-965-5870
Email: jonesloan@aol.com

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

- 7.11. 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.
- 7.12. 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.
- 7.13. 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.
- 7.14. No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 7.15. 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*.

- 7.16. 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 _____, 2020.

(signatures on the following page)

CITY OF ROUND ROCK, TEXAS

By: _____
Craig Morgan, Mayor

Attest:

Sara White

City Clerk

APPROVED as to form:

Stephan L. Sheets, City Attorney

DEVELOPER

200 E. AUSTIN AVE., LLC

By: _____
its _____

EXHIBIT "A"

RESOLUTION NO. R-_____

WHEREAS, the City Council has determined that one of its priority goals is to encourage economic development within the city of Round Rock; and

WHEREAS, 200 E. Austin Ave. LLC ("Developer") intends to construct a new office building located in the City of Round Rock at 200 East Austin Ave., Round Rock, Texas, 78668, (the "Facility"); and

WHEREAS, the Council wishes to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby Developer has leased and intends to improve the Facility; 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 encourage economic development within the City and will also meet the goals set forth in said §380.001,

NOW THEREFORE

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

That the City offers to Developer a §380.001 Program whereby the City will grant certain Economic Incentive Payments ("EIP's"), 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 _____, 2020.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

SARA L. WHITE, City Clerk

EXHIBIT A TO RESOLUTION

ECONOMIC DEVELOPMENT PROGRAM

The terms of the \$380,001 Economic Development Program to be offered to Developer in exchange for Developer's construction of a building located at 200 E. Austin Ave. are as generally outlined below:

1. Developer's intentions and obligations:
 - 1.1. Facility. Developer intends to construct an office building located at 200 E. Austin Ave. in Round Rock.
 - 1.2. Investment. Developer intends to invest at least \$700,000 in the construction of the Facility.
 - 1.3. Compliance with regulations. Developer agrees that it will comply with the City's development approval processes and shall construct the Facility consistent with City ordinances, development regulations and requirements.
 - 1.4. Construction of Real Property Improvements. Developer agrees that, concurrently with the construction of the Facility it will construct certain Real property Improvements as described in Exhibit "B" of the Agreement.
2. City's obligations:
 - 2.1. Economic Incentive Payments. In consideration of Developer's compliance with the aforesaid intentions, the City agrees to waive all development fees due and owing to the City related to the construction of the Facility.
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

REAL PROPERTY IMPROVEMENTS

**N. LAMPASAS STREET
(85' R.O.W.)**

**E. AUSTIN AVENUE
(60' R.O.W.)**

60' - 9'11" PARKING STALLS

EXISTING TRANSFORMER

EXISTING TRANSFORMER

LOT 1
8.14 AC
BLOCK "A"

NEW
2,652 S.F.
BUILDING
FFE-711.50

VEHICLE 2896 HOURS OF C.A.W.C.
2.158 ACRES

LIMITS OF
CONSTRUCTION

SECOND
FLIGHT WALKER
6.145 AC
DISTRICT
10.154 ACRES
DOCUMENT NO.
20040998
DATE 8/1/04
M1/2
RESIDENTIAL
SINGLE FAMILY

EX. CONC. SIDEWALK

ASPHALT
PAVING

9' SIDEWALK

ADA RAMP

ADA PARKING
SIGN

ADA RAMP

