

RESOLUTION NO. R-2019-0477

WHEREAS, On December 5, 2019, the Round Rock Transportation and Economic Development Corporation ("TEDCO") entered into an Economic Development Agreement ("Agreement") with Sovos Brands Intermediate, Inc., and


WHEREAS, the City desires to approve the action of TEDCO in entering into said Agreement with Sovos Brands Intermediate, Inc., Now Therefore

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

That the City Council hereby approves the action of the Round Rock Transportation and Economic Development Corporation in entering into an Economic Development Agreement ("Agreement") with Sovos Brands Intermediate, Inc., a copy of said agreement being attached hereto as Exhibit "A" and incorporated herein for all purposes.

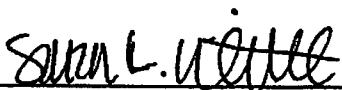
The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 5th day of December, 2019.



CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:



SARA L. WHITE, City Clerk

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement ("Agreement") is entered into this .5th day of DECEMBER, 2019, by and between the Round Rock Transportation and Economic Development Corporation, a Type B Corporation created pursuant to Chapter 505 of the Texas Local Government Code ("TEDCO"), and Sovos Brands Intermediate, Inc. a Delaware corporation ("Sovos"). The foregoing are referred to collectively as the "Parties."

WHEREAS, Sovos is the owner of Bottom Line Food Processors, Inc. d/b/a Michael Angelo's Gourmet Foods, Inc. which has had a manufacturing facility (the "Facility") located at 200 Michael Angelo Way in the City of Round Rock ("City") for many years; and

WHEREAS, Sovos intends to invest at least \$11,000,000 in the rehabilitation of the Facility, new equipment for the Facility, and in business personal property for the Facility; and

WHEREAS, TEDCO has determined that the above described expenditure is for a "project" as described by §501.101 of the Local Government Code and it will result in the creation or retention of primary jobs as contemplated by said section; and

WHEREAS, TEDCO agrees to provide performance based economic development grants to Sovos to defray a portion of Sovos' 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, TEDCO, and Sovos agree as follows:

1. **Authority.** TEDCO's execution of this Agreement is authorized by §501.158 of the Texas Local Government Code.
2. **Definitions.**
 - 2.1 "Business Personal Property" means furniture, fixtures, and equipment purchased for the purpose of supporting Sovos' business operations, including without limitation, involving preparation, processing, and packaging of Tenant's products including its line of frozen foods at the Facility.
 - 2.2 "Economic Incentive Payment(s)" ("EIPs") means the amount paid by TEDCO to Sovos under this Agreement.
 - 2.3 "Effective Date" is the date this Agreement is executed to be effective by the Parties.
 - 2.4 "Facility" means the manufacturing and warehousing facility located in the Round Rock city limits with an address of 200 Michael Angelo Way, Austin, Texas.
 - 2.5 "Real Property Improvements" means the cost of real property improvements to the Facility directly related to the design, rehabilitation, reconstruction, repair, and/or remodeling of the Facility for the purpose of supporting Sovos' business operations, including without limitation, involving preparation, processing, and packaging of

Tenant's products including its line of frozen foods at the Facility. It does not include any other costs, such as financing cost, attorney fees, insurance, and other similar costs.

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 TEDCO from Sovos in the event of a Sovos default.

2.7 "Skilled Employees" means employees who have the ability to utilize MS Office Suite for tracking of key metrics, and/or the ability to input and retrieve critical data for Sovos's enterprise resource planning system.

3. Term. This Agreement shall become enforceable upon its Effective Date and shall terminate on the date the final EIP is made in 2022, in accordance with 5.1 below.

4. Rights and Obligations of Sovos.

4.1 Investment in the Facility. Sovos agrees to spend at least \$11,000,000.00 over a three-year for Real Property Improvements and for Business Personal Property for the Facility according to the schedule set forth below:

<u>On or Before</u>	<u>Amount of Expenditure</u>
December 31, 2019	\$ 8,400,000
December 31, 2020	\$ 1,600,000
December 31, 2021	<u>\$ 1,000,000</u>
TOTAL	\$11,000,000

4.2 Evidence of Satisfaction of Investment. On or before April 15 of the following calendar year, Sovos agrees to provide proof to TEDCO that the above required expenditures have been made. TEDCO shall have the right at its expense to audit Sovos' records to verify same following reasonable advance notice to Sovos.

4.3 Jobs. Sovos agrees to create a minimum of 18 new Skilled Employee positions in accordance with the following schedule:

<u>On or Before</u>	<u>New Jobs Created</u>
December 31, 2019	3
December 31, 2020	6
December 31, 2021	<u>9</u>
TOTAL	18

- 4.4 **Job Compliance Affidavit.** On or before April 15, of 2020 and of each calendar year thereafter through April 15, 2022, Sovos agrees to provide to TEDCO a Job Compliance Affidavit, the form of such Job Compliance Affidavit being attached hereto as Exhibit A. TEDCO shall have the right, at its expense following reasonable advance notice to Sovos, to audit Sovos' records to verify that this obligation has been satisfied.
- 4.5 **Compliance with regulations.** Sovos agrees that it will comply with the City's development approval processes and shall operate the Facility consistent with City ordinances, development regulations, and requirements.
- 4.6 **Continuous operation.** Sovos agrees that it will continuously operate the Facility during the Term of this Agreement, including any extensions, subject to normal down-time and any force majeure events.

5. Rights and Obligations of TEDCO.

In consideration of Sovos' compliance with this Agreement, TEDCO agrees as follows:

5.1 Economic Incentive Payment ("EIP").

5.1.1 **EIP.** TEDCO shall, subject to Sovos' satisfaction of its obligations set forth in section 4 above, make EIPs to Sovos as set forth below. The EIP's shall be made in annual payments on or before June 1 of each year, as follows:

<u>Year</u>	<u>EIP Amount</u>
2020	\$140,000
2021	\$ 75,000
2022	\$ 75,000
TOTAL	\$290,000

5.1.2 **EIPs 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 Sovos. The EIPs by TEDCO under this Agreement are subject to TEDCO's appropriation of funds for such payments in the budget year for which they are made. The EIPs to be made to Sovos, if paid, shall be made solely from annual appropriations from the general funds of TEDCO or from such other funds of TEDCO as may be legally set aside for the implementation of Chapters 501 and/or 505 of the Local Government Code or any other economic development or financing program authorized by statute or other applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that TEDCO does not appropriate funds in any fiscal year for the EIPs due under this Agreement, such failure shall not be considered a default under Section 7.3, and TEDCO shall not be liable to Sovos for such EIPs, however, TEDCO shall extend this Agreement for another year(s), until Sovos has received all of the EIPs provided for herein. In addition, Sovos shall have the right but not the obligation to terminate this Agreement, which shall not be deemed to constitute a default by Sovos, and, in such event, Sovos

shall be permitted to retain any EIP monies received on or before the date of termination. 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 TEDCO terminates this Agreement as a result of Sovos' default, TEDCO may recapture and collect from Sovos the Recapture Liability. Sovos shall pay to TEDCO the Recapture Liability within thirty (30) days after TEDCO makes written demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which Sovos 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 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). TEDCO 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 Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.

7.2 **Representations and Warranties.** TEDCO represents and warrants to Sovos that this Agreement is within its authority, and that it is duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Sovos represents and warrants to TEDCO that it has the requisite authority to enter into this Agreement.

7.3 **Default.** If either TEDCO or Sovos 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 TEDCO remains in default after notice and opportunity to cure, Sovos shall have the right to terminate this Agreement by giving written notice thereof to TEDCO and to pursue any remedy at law or in equity for TEDCO's breach. If Sovos remains in default after notice and opportunity to cure, TEDCO as its exclusive remedy shall have the right to terminate this Agreement by giving written notice thereof to Sovos and, upon such termination, recapture EIP and interest thereon as provided in Section 6 and, in the event of litigation or a court proceeding to enforce such recapture, recovery of attorney's fees and expenses pursuant to the Terms of Section 7.4.

7.4 **Attorney's Fees.** In the event any legal action or proceeding is commenced in a court of competent jurisdiction between TEDCO and Sovos to enforce provisions of this Agreement and/or 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 Parties.
- 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.** Sovos may not assign all or part of its rights and obligations to a third party without the express written consent of TEDCO, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Sovos may assign this Agreement without the consent of TEDCO to an entity which controls, is controlled by or is under common control with Sovos, any successor entity to Sovos by way of merger, consolidation or other non-bankruptcy corporate reorganization, or an entity which acquires all or substantially all of Sovos'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 Sovos elects not to proceed with the investments as contemplated by this Agreement, Sovos shall notify the City in writing, and this Agreement and the obligations on the part of all 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 TEDCO: Round Rock Transportation and Economic Development Corporation

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 Sovos: Sovos Brands Intermediate, Inc.
1901 4th Street, Suite 200
Berkeley, CA 94701
Attn: Chief Financial Officer
Email: _____

With a required copy to:

Michael Angelo's Gourmet Foods, Inc.
200 Michael Angelo Way
Austin, TX 78728
Attn: Plant Manager
Email: _____

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

- 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, 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, 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

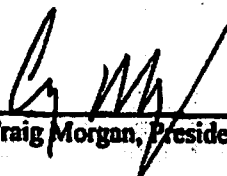
terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided, herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.

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. TEDCO, its past, present and future officers, elected officials, employees and agents of TEDCO, 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.** Sovos may request an estoppel certificate from TEDCO so long as the certificate is requested in connection with a bona fide business purpose and requests commercially reasonable certifications. TEDCO 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 Sovos, or a lessee, purchaser or assignee of Sovos, shall include, but not necessarily be limited to, statements (qualified to the best knowledge of TEDCO) 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 5th day of December 2019 (the "Effective Date").

**ROUND ROCK TRANSPORTATION AND
ECONOMIC DEVELOPMENT CORPORATION**

By: 
Craig Morgan, President

SOVOS BRANDS INTERMEDIATE, INC.


By: 
Its: CSCO / 10-28-2019

EXHIBIT A

Job Compliance 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:

"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. "I am the _____ (title) of Sovos Brands Intermediate, Inc., and I am duly authorized to make this affidavit on its behalf.

As of December 31, 202____, in compliance with Section 4.3 of the Economic Development Agreement, Sovos Brands Intermediate, Inc. had created the following Skilled Employee positions:

EMPLOYEE ID NO.

JOB POSITION OR TITLE

TOTAL JOBS _____

DATED THIS _____ DAY OF _____, 202__.

By: _____ (Signature)

_____ (Printed Name)

_____ (Title)

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS THE _____ DAY OF _____,
20__.

NOTARY PUBLIC, STATE OF TEXAS