

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("*Agreement*") is entered into this 27th day of April, 2023, by and between the **Round Rock Transportation and Economic Development Corporation**, a Type B Corporation ("*TEDCO*") created pursuant to Chapter 505 of the Texas Local Government Code (the "*Code*"), and **Toppan Photomasks Round Rock, Inc.** a Delaware corporation ("*Toppan*"). The foregoing are referred to collectively as the "*Parties*."

WHEREAS, Toppan has an existing manufacturing facility located in the City of Round Rock, Texas ("*City*") at 400 Texas Ave., Round Rock, Texas 78664, (the "*Facility*"); and

WHEREAS, Toppan is in the business of manufacturing photomasks; and

WHEREAS, Toppan is planning to construct, in three separate phases, significant additions, expansions, and improvements to the Facility, and to increase the number of its employees; and

WHEREAS, in the first phase, Toppan agrees to invest at least \$11,588,217 in Real Property Improvements (as defined in Section 2.6) to the Facility, and to invest \$42,161,783 in the purchase of Business Personal Property, (as defined in Section 2.1) to be installed in the Facility, and to increase the number of employees by twenty-four (24), for a total of 255, (the "*Phase 1*"); and

WHEREAS, in the second phase, Toppan agrees to invest a total of \$100,161,783 in the purchase of Business Personal Property, to be installed in the Facility, and to increase the number of employees to 261, (the "*Phase 2*"); and

WHEREAS, in the third phase, Toppan agrees to invest at least a total of \$28,014,550 in Real Property Improvements to the Facility, including any such investment made as part of Phase 1 and Phase 2, and agrees to invest \$157,481,975 in the purchase of Business Personal Property, to be installed in the Facility, including any such investment made as part of Phase 1 and Phase 2, and to increase the number of employees to 281, (the "*Phase 3*"); and

WHEREAS, TEDCO conducted a public hearing as required by §505.159 of the Code and has determined that the above-described expenditures are for a "project" as described by §501.101 of the Code, and that it will result in the creation or retention of "primary jobs" as defined by §501.002 of the Code; and

WHEREAS, TEDCO agrees to provide performance based Economic Incentive Payments ("*EIPs*") (as defined in Section 2.2) to Toppan in order to defray a portion of Toppan's development 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 Toppan agree as follows:

1. **Authority.** TEDCO's execution of this Agreement is authorized by §501.158 of the Code, any by resolution of its Board of Directors. Toppan's execution of this Agreement is authorized by its Articles of Incorporation, its Bylaws, and or resolution adopted by its Board of Directors.
2. **Definitions.**
 - 2.1 **"Business Personal Property"** means equipment which costs at least \$5,000 per unit and has a model number and/or serial number and is purchased new or pre-owned for the purpose of supporting Toppan's manufacturing operations at the Facility.
 - 2.2 **"Economic Incentive Payment(s)" ("EIPs")** means the amounts paid by TEDCO to Toppan pursuant to Section 7.1 of this Agreement.
 - 2.3 **"Effective Date"** is the 27th day of April, 2023.
 - 2.4 **"Employee"** means an employee who is hired by Toppan to perform a Primary Job, as that term is defined by § 501.002 of the Code.
 - 2.5 **"Facility"** means the building located in the Round Rock city limits with an address of 400 Texas Ave., Round Rock, Texas 78664.
 - 2.6 **"Real Property Improvements"** means the real property improvements to the Facility directly related to the design, new construction, additions, rehabilitation, reconstruction, repair, finish out and/or remodeling of the Facility for the purpose of supporting Toppan's manufacturing operations. It does not include any other costs, including, but not limited to, financing cost, attorney fees, architect fees, insurance, and other similar costs.
 - 2.7 **"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 Toppan in the event of a default by Toppan pursuant to this Agreement.
3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on the date the final EIP is made in accordance with Section 7.1 below, or upon Toppan's failure to complete any of the three phases.
4. **Project Phases.** The Project will consist of three phases as described below.
 - 4.1 Phase 1. On or before December 31, 2025, Toppan agrees to complete Phase 1 by:
 - 4.1.1 Investing at least \$11,588,217 in Real Property Improvements to the Facility,
 - 4.1.2 Investing at least \$42,161,783 in the purchase of Business Personal Property, to be installed in the Facility; and
 - 4.1.3 Relocating to the City or otherwise adding sufficient new primary jobs, for a total of 255 primary jobs, including the current 231 primary jobs.

- 4.2 Phase 2. On or before December 31, 2028, Toppan agrees to complete Phase 2 by:
 - 4.2.1 Investing at least a total of \$100,161,783 in Business Personal Property, including any such investment made as a part of Phase 1, or subsequent thereto, to be installed in the Facility; and
 - 4.2.2 Relocating to the City or otherwise adding sufficient new primary jobs, for a total of 261 primary jobs, including the current 231 primary jobs, plus the number of primary jobs added in Phase 1, or subsequent thereto.
- 4.3 Phase 3. On or before December 31, 2029, Toppan agrees to complete Phase 3 by:
 - 4.3.1 Investing at least at least a total of \$28,014,550 in Real Property Improvements to the Facility, including any such investment made as part of Phase 1, or subsequent thereto;
 - 4.3.2 Investing at least a total of \$157,481,975 in Business Personal Property, including any such investment made as part of Phase 1 and Phase 2, or subsequent thereto, to be installed in the Facility, and
 - 4.3.3 Relocating to the City or otherwise adding sufficient new primary jobs, for a total of 281 jobs, including the current 231 primary jobs plus the number of primary jobs added in Phase 1 and Phase 2.

5. Evidence of Satisfaction of Toppan's Obligations regarding the Three Phases

- 5.1 Evidence of Satisfaction of Investment.
 - 5.1.1 Real Property Improvements. On or before April 15 of each calendar year of this Agreement, with respect to the Real Property Improvements, Toppan agrees to provide proof satisfactory to TEDCO showing the dollar amount of said expenditures, if any, that were made in the preceding calendar year.
 - 5.1.2 Business Personal Property. On or before April 15 of each calendar year of this Agreement, with respect to the Business Personal Property, Toppan agrees to provide proof satisfactory to TEDCO showing the dollar amount of said expenditures, if any, that were made in the preceding calendar year.
 - 5.1.3 Documentary Evidence. The foregoing proof shall be in the form of receipts for the purchase, installation, and construction cost of Real Property Improvements, and for the cost of the Business Personal Property installed in the Facility. The documentation shall be provided as a summary schedule with receipts or other evidence attached in an easy-to-follow, professional format. TEDCO shall have the right, at its expense to audit Toppan's records to verify same following reasonable advance notice to Toppan.
- 5.2 Employees. Over the term of this Agreement, Toppan agrees to relocate to the City or otherwise create a minimum of 50 new primary jobs with a starting average annual salary

of \$70,000, plus industry standard benefits. It is agreed that for the purposes of determining the number of new primary jobs, the base number of jobs is agreed to be 231.

5.3 Job Compliance Affidavit. On or before April 15 of 2023, and of each calendar year thereafter through April 15, 2030, Toppan agrees to provide to TEDCO a completed Job Compliance Affidavit, the form of such Job Compliance Affidavit being attached hereto as **Exhibit A**. TEDCO shall have the right, at its expense and following reasonable advance notice to Toppan, to audit Toppan's records to verify that this obligation has been satisfied.

6. **Miscellaneous Obligations**

6.1 Compliance with regulations. Toppan agrees that it will comply with the City's development regulations and ordinances and shall operate the Facility in compliance with City ordinances, regulations, and requirements.

6.2 Continuous operation. Toppan 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.

7. **Rights and Obligations of TEDCO.**

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

7.1 Economic Incentive Payments ("EIPs").

7.1.1 EIPs. TEDCO shall, subject to Toppan's satisfaction of its obligations set forth in sections 4, 5, and 6 above, make EIPs to Toppan as set forth below. The EIPs shall be made on or before June 1 of the calendar year following Toppan's satisfactory completion of each of the three phases, as described below.

7.1.2 EIP for Phase 1. TEDCO agrees to make an EIP payment to Toppan in the amount of \$600,000 on or before June 1 of the year following satisfactory completion of Phase 1. If Toppan does not complete Phase 1, including the creation of the required primary jobs, on or before December 31, 2025, then TEDCO shall have no obligation to pay the \$600,000 EIP to Toppan for Phase 1. In addition, Toppan's failure to complete Phase 1 shall render Toppan ineligible to receive either the Phase 2 or Phase 3 EIP's; and shall result in the termination of this Agreement.

7.1.3 EIP for Phase 2. TEDCO agrees to make an EIP payment to Toppan in the amount of \$150,000 on or before June 1 of the year following satisfactory completion of Phase 2. If Toppan does not complete Phase 2, including the creation of the required primary jobs, on or before December 31, 2028, then TEDCO shall have no obligation to pay the \$150,000 EIP to Toppan for Phase 2. In addition, Toppan's failure to complete Phase 2 shall render Toppan ineligible to receive the Phase 3 EIP, and shall result in the termination of this Agreement..

7.1.4 EIP for Phase 3. TEDCO agrees to make an EIP payment to Toppan in the amount of \$500,000 on or before June 1 of the year following satisfactory completion of Phase 3. If Toppan does not complete Phase 3, including the creation of the required primary jobs, on or before December 31, 2029, then TEDCO shall have no obligation to pay the \$500,000 EIP to Toppan for Phase 3, and shall result in the termination of this Agreement.

7.1.5 EIPs Subject to Future Appropriations. This Agreement shall not be construed as a commitment or obligation of any specific taxes or tax revenues for payment to Toppan. 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 Toppan, 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 Sec. 7.3, and TEDCO shall not be liable to Toppan for such EIP's; however, TEDCO shall extend this Agreement for another year(s), until Toppan has received all the EIPs provided herein. In addition, Toppan shall have the right but not the obligation to terminate this Agreement, which shall not be deemed to constitute a default by Toppan, and, in such event, Toppan 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.

8. **EIP Recapture.**

8.1 Recapture. In the event that TEDCO terminates this Agreement as a result of Toppan's default, TEDCO may recapture and collect from Toppan the Recapture Liability. Toppan 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 Toppan 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 Sec. 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.

8.2 Recapture Exception. Notwithstanding Section 8.1, TEDCO shall have no right to terminate this Agreement and/or collect from Toppan the Recapture Liability as a result of Toppan's failure to meet its obligations to complete the three phases. Once Toppan has completed a phase, Toppan shall be entitled to receive and retain any EIP paid by TEDCO to Toppan for that phase. By way of example, and for the avoidance of doubt, if Toppan

satisfactorily completes Phase 1, but subsequently fails to satisfactorily complete Phase 2 or Phase 3, TEDCO shall have no right to recapture the EIP paid for Phase 1.

9. Miscellaneous.

- 9.1 Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.
- 9.2 Representations and Warranties. TEDCO represents and warrants to Toppan 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. Toppan represents and warrants to TEDCO that it has the requisite authority to enter into this Agreement.
- 9.3 Default. If either TEDCO or Toppan should default in the performance of any obligations of this Agreement, then 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, Toppan 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 Toppan 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 Toppan and, upon such termination, recapture EIPs and interest thereon as provided in Sec. 8.1 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 Sec. 9.4.
- 9.4 Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between TEDCO and Toppan 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.
- 9.5 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may only be amended, altered or revoked by written instrument signed by the Parties.
- 9.6 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors, and assigns.
- 9.7 Assignment. Toppan 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 Toppan may assign this Agreement without the consent of TEDCO to an entity which controls, is controlled by or is under common control with Toppan, any successor entity to Toppan by way of merger, consolidation or other non-bankruptcy corporate reorganization, or an entity

which acquires all or substantially all of Toppan's assets, partnership or membership interests, or capital stock.

- 9.8 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.
- 9.9 Termination. In the event Toppan elects not to proceed with the investments as contemplated by this Agreement, Toppan 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.
- 9.10 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, electronic mail transmission, 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 Toppan:

Toppan Photomasks Round Rock, Inc.
400 Texas Ave.
Round Rock, TX 78664
Attn: John Nykaza
Email: John.Nykaza@us.photomask.com

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

- 9.11 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 nor against any Party.

- 9.12 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.
- 9.13 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.
- 9.14 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.
- 9.15 No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.
- 9.16 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; epidemic; pandemic; 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*.
- 9.17 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.
- 9.18 Estoppel Certificate. Toppan 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 Sec. 9.18. The certificate, which will upon request be addressed to Toppan, or a lessor, lessee, purchaser or assignee of Toppan or the Facility, or any lender associated with any of the foregoing, and shall include, but not necessarily be limited to, statements (qualified to the best knowledge of

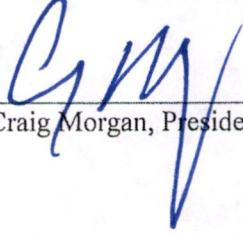
TEDCO) that this Agreement is in full force and effect without default (or if a default exists, the nature of such default and any curative action which should be undertaken to cure same), the remaining term of this Agreement, and such other matters reasonably requested by the party(ies) to receive the certificate.

- 9.19 Term of This Agreement. The term of this Agreement shall begin on the effective date of this Agreement and terminate on December 31, 2029. However, TEDCO's obligation, if any, to pay EIPs for calendar year 2029, shall survive said termination date.

EXECUTED to be effective as of the Effective Date.

**ROUND ROCK TRANSPORTATION AND
ECONOMIC DEVELOPMENT CORPORATION**

By: _____


Craig Morgan, President

TOPPAN PHOTOMASKS ROUND ROCK, INC.

By: _____

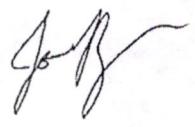

John Nykaza, President

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 Toppan, 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, Toppan Inc. had created the following 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 _____,
202__.

NOTARY PUBLIC, STATE OF TEXAS