

STATE OF TEXAS §

KNOW ALL BY THESE PRESENTS:

COUNTY OF HAYS §

CITY OF KYLE/IMAGE MICROSYSTEMS

This Chapter 380 Economic Development Agreement (“Agreement”), is made and entered into this 29th day of December, 2011, (the “Effective Date”), by and between the City of Kyle, Texas, a home rule municipal corporation (the “City”) and Image Microsystems, its successors and assigns (“Image Microsystems”).

RECITALS

WHEREAS, the City is establishing an economic development program and authorizing the City Manager to make economic development grants to Image Microsystems as an inducement by the City for the Project; and

WHEREAS, The City is interested and desirous of promoting economic development within its boundaries pursuant to a development agreement with Image Microsystems; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the City; and

WHEREAS, as part of the Project, the City seeks to induce Image Microsystems to create at least 131 new full-time jobs in year one, create an additional 50 new full-time jobs in year two and maintain 181 full-time jobs for the remainder of the term of this agreement in connection with the Project and the operations of Image Microsystems in Kyle, Texas; which jobs shall promote state and local economic development and stimulate business and commercial activity in Kyle; and

WHEREAS, as part of the Project, the City seeks to induce Image Microsystems to invest at least \$3.375 million by December 30, 2012, in real property, real property improvements, and new equipment and machinery, at its site at 3700 Kyle Crossing, Kyle, Texas; and

WHEREAS, The City, after due and careful consideration, has concluded that the Project as provided for herein will further the growth of the City, improve the environment of the City, increase the assessed valuation within the City, foster increased economic activity within the City, increase employment opportunities within the City, upgrade public infrastructure serving the Property, and otherwise be in the best interests of the City by furthering the health, safety and welfare of its residents and taxpayers, and that entering into this Agreement is necessary and convenient to implement the Project and achieve its economic development purposes.

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which hereby acknowledged, the City

and Image Microsystems agree as follows:

I. AUTHORITY

1.01 The City's execution of this agreement is authorized by Chapter 380 of the Texas Local Government Code and constitutes a valid and binding obligation of the City. Image Microsystems' execution and performance of this Agreement constitutes a valid and binding obligation of Image Microsystems in the event Image Microsystems proceeds to locate the Project at the site, 3700 Kyle Crossing, Kyle, Texas; the City acknowledges that Image Microsystems is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to invest its funds, and expand employment in Kyle.

II. DEFINITIONS

2.01 "E-waste Recycling Plant" means an e-waste recycling, data asset recovery and sign material manufacturing plant to be purchased and improved by Image Microsystems at 3700 Kyle Crossing, Kyle, Texas as attached as Exhibit "A".

2.02 "Additional Property Tax Notice" means the written notice provided by Image Microsystems to the City of any additional amounts of Property Tax paid by Image Microsystems over and above the amount of Property Tax paid by Image Microsystems in any given year.

2.03 "Certificate of Compliance" means the written certification by Image Microsystems under which it warrants to the City that it is in full compliance with each of its obligations under this Agreement, including the number of new full-time jobs maintained by Image Microsystems for the preceding year under Section 4.01 of this Agreement. The Certificate shall be substantially in the form and contain the information specified in the sample Certificate attached to this Agreement as Exhibit "C".

2.04 "Certified Appraised Value of Eligible Property" means the final appraised value of eligible property as determined by Hays County Appraisal District after the resolution of any contests or disputes concerning property valuation.

2.05 "Chapter 380 Payment" means the amounts paid by the City to Image Microsystems under the Program.

2.06 "County Tax Collector" means the Tax Assessor Collector for Hays County or its successor.

2.07 "Effective Date" means the effective date of this Agreement and is December 31, 2011.

2.08 "Existing Fab" means existing manufacturing plant that is located at 3700 Kyle Crossing,

Kyle, Texas as of the date of this agreement, including, without limitation, the expansion and improvements of the original plant currently under construction.

2.09 "Full-time Job(s)" means full-time jobs performed at the Image Microsystems campus by employees of Images Microsystems and created as the result of the purchase, improvements and operations by Image Microsystems to an E-waste Recycling Facility at 3700 Kyle Crossing, Kyle, Texas.

2.10 Gender: The gender of the wording throughout this Agreement shall always be interpreted to mean either sex, and, where the context requires, the plural of any word shall include the singular.

2.11 "Grant" shall mean, pursuant to the Agreement the payment of monies in the manner provided Section 5.01 Property Tax Incentive and Section 5.02 Sales Tax Incentive from the City's portion of the sales and use taxes that result from the one and one-half percent (1.5%) general City Sales Tax on the sales of taxable items collected on-site by Image Microsystems and remitted to the Comptroller of the State of Texas for the purpose of promoting new or expanded Image Microsystems development and the creation of new jobs in the City.

2.12 "Year One" means a period of one year beginning December 31, 2011 and ending December 30, 2012.

2.13 "Year Two" means a period of one year beginning December 31, 2012 and ending December 30, 2013.

2.14 "Remainder of the Term of this Agreement" means December 31, 2013 and ending December 30, 2016.

2.15 "Term of this Agreement" means a period of five years beginning December 31, 2011 and ending December 30, 2016.

2.16 "Original Investment" means the investment by Image Microsystems of at least \$3,375,000 in real property, real property improvements and new equipment and machinery at its site at 3700 Kyle Crossing, Kyle, Texas by December 30, 2012.

2.17 "Program" means the economic development program for this Project established by the City pursuant to Texas Local Government Code Chapter 380 to promote local economic development and stimulate business and commercial activity within the City.

2.18 "Project" means Image Microsystems' proposal to create new jobs and make an additional capital investment for the Existing Fab. to be located and to be maintained at 3700 Kyle Crossing, Kyle, Texas.

2.19 "Property tax" means amount of City Property Tax paid by Image Microsystems to the Hays County Tax Collector.

2.20 "Property Tax Notice" means the written notice provided by Image Microsystems to the City of the amount of Property Tax paid by Image Microsystems to the Hays County Tax Collector.

2.21 "Sales Tax" or "Sales Tax Revenues" means the City's share received from the State of Texas Comptroller of Public Accounts Office ("Comptroller") of municipal sales taxes, such as that presently in effect pursuant to Texas Tax Code §§ 321.101 and 321.103, resulting from (i) sales tax collected by Image Microsystems located at 3700 Kyle Crossing, Kyle, Texas, and (ii) sales/use tax paid directly by a business or person located on the Property under its sales tax permit.

2.22 "HCAD" means Hays Central Appraisal District or its successors.

III. TERM

3.01 This Agreement shall become enforceable upon execution by the City and Image Microsystems. Unless terminated earlier in accordance with its terms, the Agreement shall terminate five years from the first date above written.

IV. IMAGE MICROSYSTEMS OBLIGATIONS

In consideration of the City's participation in the Program, Image Microsystems agrees that the following performance guidelines shall apply:

4.01 Existing Fab employment and Local Businesses. The obligation of the City to pay Grants shall be conditioned upon the Image Microsystems continued compliance with and satisfaction of each of the conditions set forth in this Agreement, as solely and finally determined by City without recourse.

4.01.1 Image Microsystems shall create new jobs as follows:

(a) Between the Effective Date and the end of year one, Image Microsystems shall create at least 131 new full-time jobs, create an additional 50 new full-time jobs in year two and maintain 181 full-time jobs for the remainder of the term of this Agreement

(b) Each full time job created shall be located in the City and pay no less than \$16.00 per hour.

(c) Each full time employee hired by Image Microsystems pursuant to this Agreement shall be eligible for full company benefits.

(d) In the event of a voluntary or involuntary termination or elimination of a Full-time Job after December 30, 2012, that causes the number of people

employed in Full-time Jobs to fall below 131, Image Microsystems shall continue to receive the incentives set out in Sections 5.01 and 5.02 below, provided the required number of people employed in said Full-time Jobs is re-established within 90 days after the date of termination or elimination occurs that results in the number of people employed in said Full-time Jobs to fall below 131.

(e) If the total number of the Full-time Jobs falls below 131 and is not restored at the conclusion of the 90 day period, then, at the option of the City, this Agreement shall terminate.

(f) Image Microsystems shall provide written notification to the City within two weeks of the reduction referenced in this Section; the notice shall contain the reduction in levels of Full-time Jobs and Image Microsystems' plan for restoring the levels. Image Microsystems shall provide the City written notification at the conclusion of the 90 day period as to the status of Image Microsystems' efforts in this regard.

4.01.2 Image Microsystems shall make its best efforts to employ a well represented workforce of citizens of the City of Kyle. Such well represented work force shall to the extent possible using commercially reasonable business hiring practices include veterans of the armed services, individuals with disabilities as recognized by the Americans with Disabilities Act, women, and racial minorities. During the term of the Agreement, Image Microsystems shall work with its local employment recruiting agency to enhance recruiting of citizens of Kyle job applicants. Image Microsystems shall work with the Texas Workforce Commission to assist in the recruitment and hiring of individuals who are from the City of Kyle.

4.01.3 Audit. The City shall, upon reasonable prior written notice to Image Microsystems and during normal Image Microsystems hours, have the right to audit and inspect the Image Microsystems's records, books, and all other relevant records related to this Agreement.

4.01.4 Recapture. In the event of Default, the City shall, after providing Image Microsystems notice of its failure to complete all performance requirements contained within this Agreement and an opportunity to cure, have the right to recapture all Grant funds provided herein for the creation of full time jobs pursuant to this Agreement. The recapture of any Grant funds from the Image Microsystems shall be in like manner and subject to the same penalties as provided by Section 4.11 hereof.

4.02 E-waste Recycling Plant Investment. By December 30, 2012, Image Microsystems shall invest at least \$3,375,000 in new real property improvements and new equipment and machinery for the E-waste Recycling Plant, 3700 Kyle Crossing, Kyle, Texas.

4.02.1 For purposes of this Section 4 and the City's obligations under Section 5, new equipment and machinery shall be considered to be:

- (a) equipment placed into service to for or related to or supporting the manufacture of products based in a new technology or a new generation of an existing technology deployed at the Image Microsystems Plant in Kyle and attributed to the operation of a E-waste Recycling Plant, or
- (b) equipment supporting or conducting research and development or manufacturing operations not in existence prior to the execution of this Agreement deployed at the Image Microsystems plant in Kyle and attributable to the operations of an E-waste Recycling Plant.

4.02.2 For purposes of this Section 4 and the City's obligation under Section 5, new real property improvements shall be considered to be new building additions located at the Image Microsystems Plant, 3700 Kyle Crossing, Kyle, Texas that are attributed to the operation of E-waste Recycling Plant.

4.03 Compliance with Regulations. For the construction or remodeling of the Existing Fab and related facilities, which are the subject of this Agreement, and any future facilities in the City's planning jurisdiction during the term of this Agreement, Image Microsystems shall comply with all City Code regulations in effect at the time any site plan application is filed.

4.04 Certificate of Compliance. At the time that Image Microsystems delivers to the City the annual Property Tax Notice required under Section 5.03 below, Image Microsystems shall also deliver a Certificate of Compliance to the City. The City has the right to inspect pertinent records of Image Microsystems to verify compliance with all requirements of this Agreement. Inspections shall be preceded by at least two week's notice by telephone or in writing to Image Microsystems. The Certificate shall be substantially in the form and contain the information specified in the sample Certificate attached to this Agreement as Exhibit "C".

4.05 Failure to Meet Obligations. In the event that Image Microsystems fails to fulfill its obligations under the performance guidelines in Sections 4.01, 4.02 and 4.03 above, after receipt of notice and the expiration of the cure period described in Section 6.06 of this Agreement, and upon written notice to Image Microsystems whereupon:

- (a) the City shall not be required to pay, and Image Microsystems shall not be entitled to receive, any further payments under this Agreement; and
- (b) Both shall be released from any further compliance with the provisions of this Agreement.

4.06. Insurances; Subcontractors.

4.06.1 Image Microsystems shall maintain, at its own cost and expense, such usual, customary, and appropriate insurance as will protect Image Microsystems and City from all claims for damages to persons and to property which may arise from any operations under this Agreement, or any of its amendments. The following are the types of insurance policies and the minimum limits of insurance coverage which shall be maintained by

Image Microsystems and its contractors and subcontractors during the construction of the E-waste Recycling Plant. All insurance shall contain a provision that the coverage afforded will not be cancelled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to the City . All such insurance shall remain in effect during the term of this Agreement as appropriate. Other than worker's compensation insurance, the City shall be named as an additional insured on all insurance policies required by this article and paragraph.

4.06.2 Prior to commencing any work, Image Microsystems shall request from and provide to the City at the address shown above, their contractors Certificates of Insurance under all such policies, certifying compliance with the minimum coverage outlined below. All policies shall be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, thirty (30) days advance written notice of such cancellation or reduction will be mailed to the City of Kyle.

4.06.3 Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A(-) or better.

4.06.5 If the coverage period shown on Image Microsystems or its contractors or sub contractors current certificate of coverage ends during the duration of the Project, Image Microsystems must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

4.06.6 Such policies shall include blanket waivers of subrogation as to the City.

4.07 Comprehensive General Liability Insurance. With limits of liability for bodily injury of not less than \$1,000,000.00 any one occurrence, and for property damage of not less than \$1,000,000.00 any one occurrence, and \$2,000,000.00 aggregate. Such insurance shall include the following:

4.07.1 Entity's protective liability, covering liability for work sublet.

4.07.2 Image Microsystems has the contractual liability, insuring the indemnity agreements contracted in this Agreement.

4.08 Coverage for damage due to collapse of or structural injury to any buildings or structure due to excavation, tunneling, pile driving, cofferdam or caisson work or dredging; to moving, shoring, underpinning, raising, or demolition of any building or structure, or removal or rebuilding of any structural support thereof; to blasting or explosions; or to wires, conduits, pipes, mains, sewers, tanks, tunnels, or any other property below the surface of the ground.

4.08.1 Waiver of subrogation as to the City.

4.09 Comprehensive Automobile Liability Insurance. With limits of liability for bodily injury of not less than \$1,000,000.00 any one person, and \$2,000,000.00 any one occurrence, and for property damage of not less than \$1,000,000.00 any one occurrence. Such coverage shall include owned, hired, and non-owned vehicles. Policy shall be endorsed as follows:

4.09.1 Waiver of subrogation as to the City.

4.10 The failure of Image Microsystems at anytime, after timely notice and opportunity to cure, to provide the insurance required herein shall be considered a material breach of this Agreement for which the City and shall be entitled to damages, including termination of the Agreement for uncured violations.

4.11 Employment of Undocumented Workers. During the term of this Agreement, Image Microsystems agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(f), Image Microsystems shall be in Default and repay the amount of the Grant and any other funds received by Image Microsystems from the City as of the date of such violation within one hundred twenty (120) days after the date Image Microsystems is notified by the City of such violation, plus interest at the rate of six percent (6%) compounded annually from the date of the violation until paid in full. Image Microsystems is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Image Microsystems or by a person with whom Image Microsystems contracts provided however that identical federal law. Image Microsystems shall provide a certification in the form attached as Exhibit D. hereto.

4.12 INDEMNIFICATION. IMAGE MICROSYSTEMS COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, OR RESULTING FROM OR RELATED TO IMAGE MICROSYSTEMS'S NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF IMAGE MICROSYSTEMS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF IMAGE MICROSYSTEMS, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY AND UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IMAGE MICROSYSTEMS SHALL PROMPTLY ADVISE CITY, IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY AND RELATED TO OR ARISING OUT OF IMAGE MICROSYSTEMS'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT IMAGE MICROSYSTEMS'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING IMAGE

MICROSYSTEMS OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, IS AN INDEMNITY EXTENDED BY IMAGE MICROSYSTEMS TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE; PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED IN THIS PARAGRAPH SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. IMAGE MICROSYSTEMS FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.

IMAGE MICROSYSTEMS SHALL ALSO INDEMNIFY THE CITY, AND ITS RESPECTIVE OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS AND LIABILITIES ARISING OUT OF IMAGE MICROSYSTEMS' AND IMAGE MICROSYSTEMS' GENERAL CONTRACTORS ACTIONS RELATED TO THE CONSTRUCTION OF THE E-WASTE RECYCLING PLANT.

IMAGE MICROSYSTEMS SHALL REQUIRE ITS GENERAL CONTRACTOR OR GENERAL CONTRACTORS WORKING ON THE CONSTRUCTION AND IMPROVEMENTS FOR THE E-WASTE RECYCLING PLANT TO INDEMNIFY THE CITY AND ITS OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS AND LIABILITIES ARISING OUT OF THEIR ACTIONS RELATED TO CONSTRUCTION OF THE E-WASTE RECYCLING PLANT AS REQUIRED BY THIS AGREEMENT, UTILIZING THE SAME INDEMNIFICATION LANGUAGE CONTAINED HEREIN, IN ITS ENTIRETY.

IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY SHALL SURVIVE THE TERMINATION AND/OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY PERMITTED BY LAW.

**V.
CITY OBLIGATIONS**

In consideration of Image Microsystems' establishment of the Project, the City agrees to make Chapter 380 Payments under the following terms and conditions:

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5.01 Property Tax Incentive. As consideration for Image Microsystems' creating and maintaining the new Full-time Jobs as described in Section 4.01.1, and complying with the other provisions of this Agreement, the City, during the Five-Year Period: shall rebate 100% of the City property taxes levied on:

- (a) All new equipment and machinery acquired after the Effective Date, and
- (b) the incremental increase after the Effective Date in taxable value of all new real property improvements. Exhibit A includes a plat of the site that indicates the location at which improvements to the Existing Fab are constructed, and dimensions of the structure.

5.02 Sales Tax Incentive. As consideration for Image Microsystems' creating and maintaining the new Full-time Jobs as described in Section 4.01.1, and complying with the other provisions of this Agreement, the City, during the Five-Year Period: shall rebate 100% of the City's portion of the sales and use taxes that result from the one and one-half percent general City Sales Tax on the sales of taxable items collected on-site by Image Microsystems and remitted to the Comptroller of the State of Texas for the sales occurring from December 31, 2011 and December 30, 2016:

- (a) Payment of Annual Sales Tax Incentive Payments. The City, by and through its Finance Department, shall pay each Annual Incentive Payment to the Company by March 31st which follows the end of each respective Annual Incentive Payment Year. As an example the City of Kyle Annual Incentive Payment related to the sales and use taxes reimbursed to the City for the sales occurring during the period beginning January 1, 2012 and ending December 31, 2012 is due on March 31, 2013. The City Manager shall adopt appropriate procedures to implement the provisions of this subparagraph.
- (b) City Sales Tax Reporting. Image Microsystems shall cooperate with the City and assist the City in any manner required by the Comptroller to release and all information related to City Sales Tax collected within the Development. The City will request quarterly, or monthly if available, from the Comptroller all sales tax reports for City Sales Taxes collected within the Development. Image Microsystems shall use reasonable efforts to ensure timely submission of City Sales Taxes to the Comptroller and execution of any document reasonably required for the release of such information to the City, including registering the E-waste Recycling Plant as the point of sale for all products sold on-site at 3700 Kyle Crossing, Kyle, Texas, and to take such action with the Comptroller, and other entities as necessary, to assure the City Sales Tax is legally billed and payable, as provided by law for sales within the City, on all products that are sold on-site at the E-waste Recycling Plant.

5.03 Schedule for Chapter 380 Payments.

5.03.1 To properly identify the property eligible for rebate of City taxes, Image Microsystems shall work with HCAD to create a separate HCAD account for both new real property improvements, and personal property acquired after the Effective Date. Image Microsystems and the City agree that HCAD records shall be conclusive both as to the property specified by this Agreement as eligible for tax incentives and as to the value of the property specified by this Agreement as eligible for tax incentives under this Section 5.

5.03.2 With respect to the tax described in Sections 5.01 and 5.02 above, on or before March 1st of each year during the term of this Agreement, Image Microsystems shall deliver the Property Tax Notice to the City Finance Department.

5.03.2.1 The Chapter 380 Payments with respect to the property taxes shall be based on the amount stated in the Property Tax Notice.

5.03.2.2 Both real property and personal property Chapter 380 Payments shall be paid to Image Microsystems by the City on an annual basis for the preceding year, on or before October 30th following the tax hear for which they were paid. For example,

(a) the first Chapter 380 payment shall be based on taxes paid for the calendar year 2012, and shall be paid on or before October 30, 2013.

5.03.2.3 If Image Microsystems is required to pay more Property Tax on the Certified Appraised Value of Eligible Property than the amount stated in the Property Tax Notice for the year preceding the applicable October 30 payment date, then Image Microsystems shall provide the City with the Additional Property Tax Notice, and the City shall pay Image Microsystems the amount stated in the Additional Property Tax Notice at the same time as the next payment is due to Image Microsystems under this section 5.03. A summary explanation and examples of schedules for rebates of taxes and fees under this Agreement is attached as Exhibit "B".

5.04 Permit Fee Rebates. The City shall provide rebates for fees for building permits and re-zoning application fees, to Image Microsystems for the initial investment in construction for the E-waste Recycling Plant, 3700 Kyle Crossing, Kyle Texas. Rebates of fees are subject to compliance with all terms of this Agreement, and are reimbursed at the same time as the rebates of property taxes. Image Microsystems must submit a request for reimbursement of fees paid during prior calendar year at the same time that the request for rebate of property tax is submitted, for the City to budget funds for next fiscal year. Failure of Image Microsystems to timely submit a request for reimbursement may result in the City delaying payments of the reimbursement to accommodate its budget process requirements. A summary explanation and examples of schedules for rebates of

taxes and fees under this Agreement is attached as Exhibit "B". A summary of estimated building permit and inspection needs and re-zoning application fees under this Agreement is attached as Exhibit "E".

5.05 Permitting and Inspections. The City shall work with Image Microsystems to expeditiously process building and related permit applications, and to expedite inspections of construction and related activity at the Existing Fab.

5.06 Additional Program Assistance. The City shall work with Image Microsystems and the Texas Governor's Office of Economic Development and Tourism to facilitate the process for submittal to the Texas Enterprise Zone Program. The City shall utilize on staff expertise to assist in completion of the Enterprise Project Application, which is typically the responsibility of the Company; and the City will cover the cost of the application fee not to exceed \$700, which is also typically the responsibility of the company. The City shall assist in facilitating conversations with outside agencies such as, but not limited to, the Texas Governor's Office of Economic Development and Tourism regarding the possibility of utilizing additional program resources that may be applicable to Image Microsystems.

VI. GENERAL TERMS

6.01 Payments Subject to Future Appropriation.

6.01.1 This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to Image Microsystems.

6.01.2 All payments or expenditures made by the City, under this Agreement are subject to the City's appropriation of funds such payments or expenditures to be paid in the budget year for which they are made.

6.01.3 The payments to be made to Image Microsystems, or other expenditures under the Agreement, 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 applicable limitations or procedural requirements. Image Microsystems represents that it understands that any contributions made by Image Microsystems in anticipation of reimbursement from Grant funds shall not be, nor shall be construed to be, financial obligations of the City. Image Microsystems shall bear all risks associated with reimbursement, including, but not limited to: pre-development agreement costs, incorrect estimates of Grant funds, changes in tax rates or tax collections, changes in State law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, default by tenants, unanticipated effects covered under legal doctrine of force majeure, and/or other unanticipated factors.

6.01.4 To the extent there is a conflict between this Section and any other language or covenant in this Economic Development Agreement, this section shall control.

6.02 Grant Limitations. The City shall not be obligated to pay any monies beyond the Grant amount, unless otherwise agreed by the Parties, and is only obligated to make Grants from City approved sources. Image Microsystems represents that it understands that any expenditures by the Image Microsystems in anticipation of reimbursement from Grant funds shall never be obligations of the general funds of the City, but are only obligations of the Grant funds and are subject to the extent of Grant approval by the City. Under no circumstances shall Image Microsystems be entitled to any reimbursements under this Agreement on any property other than the project property described in Section 2.18 hereof.

6.03 No Bonds or Notes. The City and Image Microsystems represent that they understand and agree that the City shall not issue any bonds or notes to cover any Project costs directly or indirectly related to the Image Microsystems in its completion of the Improvements and associated with the Project under this Agreement. The City understands that Image Microsystems may choose to issue notes utilizing Grant funds for Project costs directly or indirectly related to Improvements made by the Image Microsystems under this Agreement. The City will not be party to the Image Microsystems's notes.

6.04 Mutual Assistance. The City and Image Microsystems shall do those things commercially reasonable, necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions to put each other in the same economic condition contemplated by this Agreement regardless of changes in public policy, the law or taxes or assessments attributable to Image Microsystems facilities.

6.05 Representations and Warranties. The City represents to Image Microsystems 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. Image Microsystems represents and warrants to the City that it has the requisite authority to enter into this Agreement.

6.06 Default. If either the City or Image Microsystems should default in the performances of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of 90 days after the receipt of said notice to cure such default, prior to instituting an action for breach or pursuing any other remedy for default; provided, however, in the event the breach that occurs is not reasonably susceptible of being cured within said 90-day period, then said 90 day period shall automatically be extended for the reasonable period of time required to cure such breach so long as the breaching party shall have commenced to cure said breach during said 90-day period and thereafter diligently pursues the cure thereof until cured. The defaulting party shall provide the other party written notification of the status of the defaulting party's efforts to cure the default every 30 days following the event of default and shall provide a final disposition of its efforts to cure the default on or before the 90th day.

6.07 Attorney's Fees. In the event any legal action or proceeding is commenced between the City and Image Microsystems 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 as may be awarded by the court, unless prohibited by law.

6.08 Entire Agreement. The Agreement contains the entire agreement between the parties. All prior negotiations, discussions, correspondence, and preliminary understandings between the Parties and others relating hereto as superseded by this Agreement. The Agreement may only be amended, altered or revoked by written instrument signed by the City and Image Microsystems.

6.09 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

6.10 Assignment. Except as provided, Image Microsystems may not assign all or part of its rights and obligations to a third party without prior written approval of the City, which approval shall not be unreasonably withheld or delayed. Notwithstanding anything contained herein to the contrary, Image Microsystems may assign all or part of its rights and obligations without the prior consent of the City to a third party lender advancing funds for the acquisition, construction or operation of Image Microsystems facilities. Except as provided in the previous sentence, Image Microsystems shall be obligated to perform each and every condition of this Agreement unless and until City grants a release under this Agreement which shall condition its ratification upon receipt of adequate assurances of performance including financial assurances by Image Microsystems' assignee(s).

6.11 Termination. In the event that Image Microsystems elects not to proceed with the Project as contemplated by this Agreement, Image Microsystems 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.

6.12 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 a return receipt requested, postage prepaid, addresses to the appropriate party at the following address:

Image Microsystems: Image Microsystems
 3700 Kyle Crossing
 Kyle, TX 78640
 Attn:

Re: Economic Development Agreement

With copies to:
City: City Manager
100 West Center Street
Kyle, TX 78640

(PO Box 40)
512-262-1010

With copies to:
Director of Economic Development
100 West Center Street
Kyle, TX 78640
(PO Box 40)
512-262-3926

With copies to:
City Attorney
Frank J. Garza
Davidson & Troilo, P.C.
7550 W. IH10, Ste. 800
San Antonio, Texas 78229

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

6.13 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 final 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.

6.14 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and exclusive venue shall lie in the State courts of Hays County, Texas.

6.15 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 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.

6.16 Section Headings. The section headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several sections.

6.17 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

6.18 No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture

among the parties. The City, its past and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with Image Microsystems facilities or the design, construction or operation of any portion of the facilities.

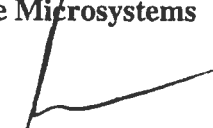
6.19 Exhibits. The following Exhibits, "A", "B", and "C" are attached and incorporated by reference for all purposes:

- Exhibit "A": Plat and Drawing with outline of E-waste Recycling Plant
- Exhibit "B": Summary of Schedules and Examples for Rebates of Taxes and Fees
- Exhibit "C": Form of Certificate of Compliance
- Exhibit "D": Undocumented Worker Certification
- Exhibit "E": Example of Building Permits and Rezoning Application Fees Rebates

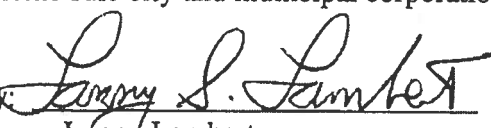
This Agreement may be executed in Multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

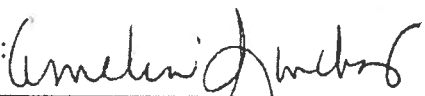
EXECUTED by the authorized representatives of the parties to be effective this 29th day of December, 2011.

Image Microsystems

By: 
Printed Name: Alex Abadi
Title: CEO

CITY OF KYLE, TEXAS,
a home-rule city and municipal corporation

By: 
Lanny Lambert
City Manager

Attest: 
Amelia Sanchez
City Secretary

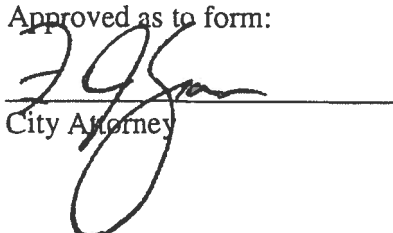
Approved as to form:

City Attorney

Exhibit A
Image Microsystems E-waste Recycling Plant
3700 Kyle Crossing, Kyle, Texas

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Plat

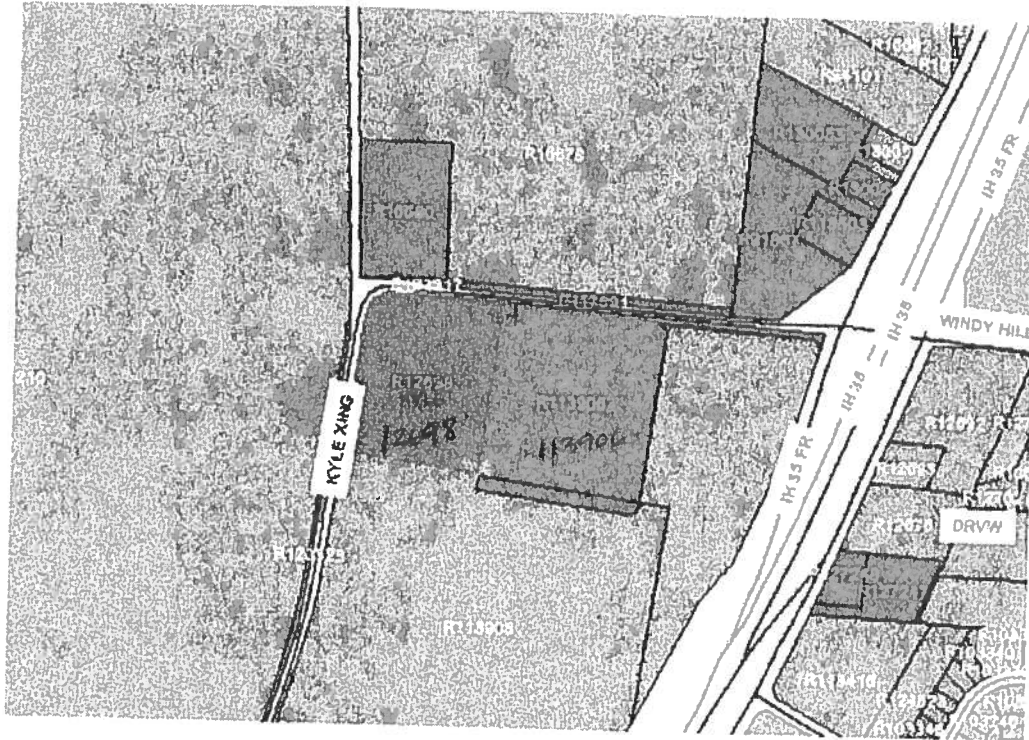


Exhibit B
Summary of Schedules and Examples for Rebates of Taxes and Fees

12003343 Bk Vol Pg
OPR 4277 262

Exhibit B

Bk Vol Pg
12003343 OPR 4277 263

Incentive Program Methodology

Property Tax Grant

1. Image Microsystems makes investment/improvements
2. HCAD appraises value of investment/improvements and records
3. Image Microsystems pays property taxes each year
4. City budgets each year for incentive payment based on taxes paid for previous year
5. City makes economic development grant each year to Image Microsystems based on taxes paid for previous year

Note: Only property taxes on investments/improvements to the property are eligible for rebate.

Note: Only Fees paid by Image Microsystems for initial building permits and zoning application are eligible for rebate. Any additional fees during the period of this agreement do not qualify for rebate.

Example Property Tax Grant

| | |
|------------------|--|
| December, 2011 | Image Microsystems invest in building, machinery and equipment |
| January 1, 2012 | HCAD appraises Image Microsystems fixed assets |
| December, 2012 | Image Microsystems pays property tax |
| March 1, 2013 | Image Microsystems informs City of Kyle via letter of taxes paid on new investment |
| June, 2013 | City of Kyle prepares budget |
| October 30, 2013 | City of Kyle pays economic development property tax grant to Image Microsystems |

Example Sales Tax Grant

| | |
|--------------------|--|
| December, 2011 | Image Microsystems registers the E-waste Recycling Plant as the point of sale for all products sold on-site and cooperates with the City of Kyle in any manner required by the Comptroller to release information related to City Sales Tax collected by the Company |
| March 31, 2012 | |
| June 30, 2012 | |
| September 30, 2012 | |

December 31, 2012 City of Kyle requests quarterly sales tax report from State of Texas Comptroller (CoK will request monthly sales tax reports if available.)

January 1, 2013 Image Microsystems informs City of Kyle via letter of payment

March 31, 2013 City of Kyle pays economic development sales tax grant to Image Microsystems

Example Fee Grant

December, 2011 Image Microsystems pays fees associated with new investment.

March 1, 2012 Image Microsystems informs City of Kyle via letter of payment

June, 2012 City of Kyle prepares budget

October 30, 2013 City of Kyle pays fee rebate to Image Microsystems.

Note: Image Microsystems will prepare a letter itemizing all rebate items for the city's review and will be responsible for completing and submitting certificate of compliance form (exhibit C).

Exhibit C
Certificate of Compliance Form

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Exhibit C
Certificate of Compliance Form

12003343 Bk Vol Pg
 OPR 4277 266

Economic Development Agreement Reporting Form
City of Kyle

REPORTING YEAR _____

(YEAR _____ OUT OF 5)

1.0 Employment

1.1 Total number of employees at facility for reporting year. Agreement requires at least 131 new full-time jobs in year one, create an additional 50 new full-time jobs in year two and maintain 181 full-time jobs for the remainder of the term of this agreement in connection with the Project and the operations of Image Microsystems in Kyle, Texas

Number of FTE's for reporting year

1.2 Average Annual Salary

Avg. annual salary for reporting year

\$ _____

1.3 Total Payroll

Total annual payroll for reporting year

\$ _____

1.4 Diverse Workforce (Section 4.01.2)
Please attach information addressing this section including: 1) Enhancement of recruiting effort for minority job applicants; 2) Recruiting fairs; for new hires in the city; and 3) Texas Workforce Commission assistance in recruiting job seekers and citizens of the city of Kyle.

2.0 Investment

~ Agreement requires \$3,375,000 by December 30, 2012 in new real property improvements and new equipment and machinery for the E-waste Recycling Plant during term of agreement (Section 4.02)

2.1 Total investment since project start.

| | Real Property | Business Personal Property |
|--|----------------------|-----------------------------------|
| | \$ _____ | \$ _____ |

2.2 Reporting year investment

| | | |
|--|----------|----------|
| | \$ _____ | \$ _____ |
|--|----------|----------|

3.0 Reimbursement Request

Agreement requires grant equal to City taxes paid on eligible real and business personal property over the Five-Year Period (Section 5.01), and grant 100% of the City's portion of the sales and use taxes that result from the one percent general City Sales Tax on the sales of taxable items collected on-site over the Five-Year Period (Section 5.02), and shall provide rebates for fees for building permits and re-zoning application fees, to Image Microsystems for the initial investment in construction for the E-waste Recycling Plant

(Section 5.04).

| | | | |
|------------|----------------------------|-------------------------|-----------------------------------|
| 3.1 | Property Taxes Paid | Real Property | Business Personal Property |
| | (reporting year) | \$ _____ | \$ _____ |
| | -or- | | |
| 3.2 | Sales Taxes Paid | City Sales Taxes | 1% of CoK Portion |
| | (reporting year) | Collected | of Sales Tax Collected |
| | | \$ _____ | \$ _____ |

*Note: Property and sales tax reporting periods and payments fall on different calendar dates (exhibit B).

| | | |
|------------|--|----------|
| 3.3 | Building Permit Fees Paid | \$ _____ |
| 3.4 | Re-zoning Application Fees Paid | \$ _____ |

*Note: Building permit and re-zoning application rebates apply to initial investment/improvements only, reporting year 2012 (exhibit E).

3.5 Total Reimbursement Request for Reporting Year \$ _____

[City may request additional information or on-site visits to confirm compliance, per Section 4.05 of the Economic Development Agreement.]

I, as the authorized representative of Image Microsystems, hereby certify that the above information is correct and accurate pursuant to the terms of this Agreement:

Signature: _____

Printed Name: _____

Date: _____

Title: (Chief Financial Officer or equivalent) _____

**Exhibit D.
Undocumented Worker Certification**

| | Bk | Vol | Pg |
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| 12003343 | OPR | 4277 | 268 |

STATE OF TEXAS §

KNOW ALL BY THESE PRESENTS:

COUNTY OF HAYS §

Chapter 2264, Subchapter B, Texas Government Code requires that any public agency or economic development corporation shall require a business that submits an application to receive a public subsidy to include a statement certifying that the business does not and will not knowingly employ an undocumented worker.

Image Microsystems certifies that its operation within the City of Kyle, Texas ("City") does not and will not knowingly employ an undocumented worker, as defined in Chapter 2264, Subchapter A, Texas Government Code, as amended (the "Act");

Pursuant to the Act, Image Microsystems is convicted of a violation under 8 U.S.C. Section 1324a(f), after receiving any public subsidy, Image Microsystems shall promptly give the City written notice of such violation and shall repay the amount of the Grants provided for herein with interest, at a rate of 6% per annum not later than the 120th day after the date Image Microsystems notifies the City of the violation.

I am authorized to make this application on behalf of Image Microsystems. I hereby certify that the information set forth herein is true and correct.

Image Microsystems

Signature

Type or Print Name

Title: _____

Date: _____

Before me _____ on this day personally appeared _____ proved to me on the oath of _____ to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____ 2011.

(SEAL) _____
Notary Public in and for the State of Texas
My Commission Expires: _____

Exhibit E.
Example of Building Permits and Rezoning Application Fees Rebates

| | Bk | Vol | Pg |
|----------|-----|------|-----|
| 12003343 | OPR | 4277 | 270 |

Exhibit E

Example of Building Permits and Rezoning Application Fees Rebates

Estimated Building Permit Needs

Inspections:

Plumbing Rough-In (x2)

Frame/Exterior Sheathing (1)

Plumbing Top-out/Gas Line Rough (x2)

Mechanical Rough (1)

Electrical Rough (x2)

Frame Re-inspection and/or Insulation (1)

Wallboard (1)

Final Gas Line and/or Electrical Meter Loop and/or Change over to New System (1)

Building Final (1)

Plumbing Final (1)

Mechanical Final (1)

Electrical Final (1)

| | Bk | Vol | Pg |
|----------|-----|------|-----|
| 12003343 | OPR | 4277 | 271 |

Base Fee

Plan Review

Total Area: 90,000 (+/-) sq. ft.

**Note: Example of Rough Estimate of Building Permit/Inspection Needs for Initial Investment/Improvements based on existing staff information at time of Development Agreement.*

Re-zoning Application Fees

Application Fee for Re-Zoning submitted October 28, 2011

***Note: Image Microsystems will prepare a letter itemizing all rebate items for the city's review and will be responsible for completing and submitting reimbursement requests for fees for the initial investment in construction for the E-waste Recycling Plant (exhibit E). Rebates of fees are subject to compliance with all terms of this Agreement, and are reimbursed at the same time as the rebates of property taxes.*