

## ECONOMIC INCENTIVES AGREEMENT

THIS AGREEMENT FOR ECONOMIC INCENTIVES (this "Agreement"), is made and entered into this 15<sup>th</sup> day of FEBRUARY, 2007, by and between the CITY OF KYLE, Texas, a home rule municipal corporation (the "City") and RSI, Inc. ("Employer") (Employer and the City are sometimes collectively referred to herein as the "Parties"), who agree follows:

### FACTUAL RECITALS AND FINDINGS:

Whereas, Employer has applied for economic incentives for the development of a business located in the City;

Whereas, the City and Employer entered a letter of intent in which the City would purchase property for Employer and convey such property to the Employer subject to Employer being the best responsive bidder to a competitive bid request offered in compliance with the State bidding requirements;

Whereas, Employer was the only responsive bidder and was awarded the right to purchase the property from the City by compliance with this economic incentives agreement which memorializes Employers bid and understanding of the Parties of the terms of the economic incentives;

Whereas, in consideration of the representations made by Employer to the City, the City Council has approved and authorized this Agreement for economic financial incentives; and,

Whereas, the City desires to promote local economic development and to stimulate business and industrial activity in the City;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereby contract, covenant and agree as follows:

#### Section 1. Authorization

This Agreement is authorized by law and is within the authority of the City and its Charter.

#### Section 2. Factual Recitals and Findings

The factual recitals and findings set forth above are found to be true and correct for all purposes, and incorporated into the body of this Agreement.

#### Section 3. Term

This Agreement shall be effective as of the date of execution by both parties. This Agreement shall remain in full force and effect until the City and Employer have completed their respective obligations hereunder and as set out in the Deed of Trust or has been earlier terminated by the parties in writing (the "Term").

#### Section 4. Definitions

City shall mean the City of Kyle, Texas.

Employer shall mean RSI, Inc.

Employer Project shall mean the construction of an approximately 40,000 square foot manufacturing facility building and improvements on the Property, currently estimated at a cost of \$3,000,000.00; install up to \$500,000.00 in furnishings and equipment; and employ a minimum of fifty (50) full-time equivalent (FTE) employees.

Full-time Equivalent Employees or FTE shall mean the aggregate average employees in a given year working a forty hour work week for the minimum salary established herein. ←

Year shall mean a twelve month period of time utilizing the effective date of this agreement as day one of the twelve months and extending there from for a period of twelve months.

Property shall mean that parcel indicated on Exhibit "A" and the legal description thereto.

### INCENTIVES AND OBLIGATIONS

#### Section 5. Property

5.1 The City has purchased the previously designated five acre Property, described in Exhibit "A" attached hereto, at a total cost of \$762,300.00. The City has advertised the same for bids with minimum qualifications for bidders, e.g. construct at least an approximately 40,000 square foot manufacturing facility building and improvements on the ground, currently estimated at a cost of \$3,000,000.00; install up to \$500,000.00 in furnishings and equipment; and employ a minimum of fifty (50) full-time equivalent (FTE) employees or a yearly average of 50 FTE's or an aggregate of 250 employees or any period up to five (5) years. Employer was the successful bidder.

5.2 After bid acceptance, the City agreed to convey the Property to Employer via deed and deed of trust, with covenants to secure performance of this economic incentive agreement based on the letter of intent and bid documents, restated herein. The City shall provide Employer with five (5) year financing for the Property, subject to up to three one year extensions. Employer shall pay the ad valorem taxes on the real property and improvements located on the Property ← ✓

5.3 The City will hold a second lien that will secure performance by Employer, (see agreed Deed of Trust attached hereto as Exhibit "B" referred to here in as "Deed of Trust") and will provide that if any first lien holder forecloses on the Plant and Property during years one through five, following the execution of this agreement, or if Employer defaults or fails within years one through five to perform under this agreement with the City, such lender will make all reasonable efforts to sell the Property at full market value and recover as much of the City's original investment in the Property as possible (up to \$762,300.00). The City will enter into a subrogation agreement with the lender that finances the Employer Project subject to the covenants to give effect to and secure performance of the deed of trust held by the City. ← ✓

## **Section 6. Employer's Obligations**

6.1. Employer will begin construction on the approximately 40,000 square foot manufacturing facility building and associated improvements, currently estimated at a cost of \$3,000,000.00 (the "Plant") by April 1, 2007, or as soon thereafter as practicable subject to Employer securing acceptable financing, plan drafting, site preparation, City invert elevation determination for wastewater service installation, and pursue construction and final completion of the Plant in a timely manner without unreasonable delay after such start-up.

6.2. Once Employer completes construction of the Plant, Employer will employ at least fifty (50) FTE subject to the provisions below. FTE's on Employer's payroll prior to commencement date of this Agreement applies towards fulfillment of this obligation.

6.3. Employer will invest up to \$500,000.00 in new manufacturing equipment, special building modifications to support manufacturing, computer equipment and/or software (herein "New Equipment").

6.4. Employer agrees to make annual payments to City in the amount of \$152,460.00 pursuant to the covenants of the Deed and Deed of Trust (herein "Employer's Annual Property Payment"), subject to the provisions of Clause 6.5 and 8.2.

6.5. Employer expects to employ a minimum of fifty (50) employees at any given time based upon present economic and market conditions; provided, however, that if any combination of Kyle and non-Kyle FTE credits equal or exceed \$152,460.00 per year, Employer shall be deemed to have met the average yearly employment of FTEs for that year for credit of annual payment to City. To elaborate, if the yearly average number of FTE's is at least fifty (50), the City shall provide the maximum credit of \$152,460.00 per year, totaling \$762,300.00 over five (5) years and Employer shall have been deemed to have satisfied the fifty (50) employee requirement for the five (5) year period. Alternatively, Employer being deemed to have satisfied the yearly FTE's if in the aggregate Employer has employed a total of 250 FTE's over the five year period. In the event that Employer does not meet the fifty (50) employee requirement either yearly or by determining the yearly average number of FTE's, Employer shall pay to the City the balance of purchase price, if any, after total yearly job credits for land are granted in the aggregate at the end of all yearly extensions of this agreement, to satisfy the covenants regarding purchase price credits for land. The City shall grant Employer one year extensions, up to three (3), of this agreement in order for Employer to comply with the yearly fifty (50) FTE requirement.

6.6. Employer will register Employer and the address of the Property and Plant as the point of sale for all products produced on, or transported from, the Plant and the Property, and to take such action with the State of Texas, Comptroller of Public Accounts, and such other entities as necessary, to assure that the City sales tax is legally billed and payable, as provided by law for sales within the City, on all products that are produced on the property.

6.7. Employer will reasonably cooperate with the City with respect to the procedures and structure necessary to give effect to this agreement, and accomplish the intended purposes at the earliest date, or on or before an agreed date.

6.8. Employer will keep the Property and the Plant fully insured for loss and property damage during the term of this Agreement; and will maintain adequate liability insurance.

6.9. Employer will create and maintain a local intern program, and provide summer internships to at least two (2) Hays CISD students each year.

**Section 7. City's Obligations.**

7.1. As a condition of the Employer investing in New Equipment, the City will provide \$100,000.00 interest-free cash financing for fulfillment of the Employer's obligations.

7.2. City shall transfer the Property to the Employer subject to the Deed of Trust and restrictions in the Deed.

7.3. City shall construct the Infrastructure described below.

**Section 8. Economic Incentives.**

8.1. The City will provide \$100,000.00 interest-free cash financing for fulfillment of the Employer's obligations. ✓

8.2. Employer's Annual Payments shall be offset by FTE job credits up to a maximum of \$152,460.00 per year. The City shall provide a \$3,050.00 credit against the annual payments pursuant to the covenants of the Deed and Deed of Trust for each FTE and a \$6,100.00 annual credit against the Purchase Price for every FTE that resides within the corporate limits of Kyle, with a maximum credit toward the Purchase Price for any given year being \$152,460 (herein "Annual Credit"); provided that the Annual Credit will not be granted for years in which the average yearly FTE count is not at least fifty (50) FTEs subject to the credit being granted at the end of a five year period or if three (3) one year extensions are exercised when a determination is made that the average yearly FTE's for each year is fifty (50). Alternatively, Employer being deemed to have satisfied the yearly FTE's if in the aggregate Employer has employed a total of 250 FTE's over the five year period.

- a.) Every Kyle resident employee of Employer shall count as two employees for purposes of Employer maintaining an average yearly employment of fifty (50) FTEs.
- b.) Average yearly employment of fifty (50) FTE's shall be determined by adding the total number of FTE's over a five (5) year period or the aggregate number of employees and dividing by five (5) years. The quotient shall constitute the yearly average number of FTEs.
- c.) City and Employer agree to extend the term of this Agreement and conveyance of the real property by Deed and Deed of Trust by one (1) year extensions of up to three (3) or such other instrument that is appropriate in the event that the average of the aggregate number of employees for a given year is less than fifty (50) FTE's.

- d. The Employer's Annual Credit for each FTE is doubled (\$6,100.00) for each Employer employee that resides within the corporate limits of Kyle commencing upon execution of this Agreement and each Employer employee who is a Kyle resident shall count as two employees for purposes of determining the average yearly number of employees.

← who verifies city limits  
b/c I need address of

The total credits for FTEs cannot exceed the total payments due before credit against payment for number of FTE's.

### 8.3. Equipment Funding

- a.) Employer shall invest up to \$500,000.00 in equipment, including but not limited to, manufacturing equipment, computer equipment, special building modifications to support manufacturing, and/or software/training for the new Kyle facility. In anticipation of this Agreement between Employer and City, Employer may purchase new computer software/equipment compatible to the scope of the future expansion. Certain building improvements that are directly related to the operation of said equipment may also be considered for reimbursement under this section.
- b.) The City shall provide partial interest-free, cash financing for new equipment to Employer not to exceed \$100,000.00, payable by the City to Employer in \$20,000.00 increments per every \$100,000.00 of documented Employer expenditures for equipment up to the maximum of \$500,000.00. Employer can receive credit for such equipment that is purchased as part of the ramp-up for the first fourteen (14) months following the execution of this Agreement. The City will make the \$100,000.00 payment or incremental \$20,000.00 payment after start-up of construction upon Employer documenting the expenditure of up to \$500,000.00 on equipment.
- c.) Employer agrees to reimburse the City in the amount of \$20,000.00 (herein the "Employer's Annual Reimbursement") each year with the City providing a full credit against the reimbursement for each year Employer has a minimum of fifty (50) FTEs, subject to each Kyle FTE counting as two (2) FTE's or Employer being deemed to have satisfied the fifty (50) FTE requirement if in the aggregate Employer has employed a total of 250 FTE's over the five (5) year period. Employer shall reimburse City for any remaining balance after all FTE credits, yearly or in the aggregate, if any.

1. City provides full credit against annual payment for each year Employer has a minimum of fifty (50) FTE's on the payroll at the Plant.

2. The maximum credit, whether automatic or calculated per year, for any given year is \$20,000.00 for a five (5) year period.

8.5. The Purchase Price of the Property from City will be deemed paid in full at the expiration of a five (5) year period upon fulfillment at any time of all covenants in the Deed and Deed of Trust by Employer; provided, however, that the City and Employer may extend the five (5) year period in one (1) year increments per yearly failure of Employer to meet the requirement of an yearly average of fifty (50) FTE's.

- a.) There shall be no more than three (3) extensions in one year increments of the initial five (5) year period for yearly failure of Employer to meet the requirement of a yearly average of fifty (50) FTE's.

8.6. At the end of five (5) years or at the end of a yearly extension period, assuming "payment schedule" and all Employer obligations are met by Employer, the City will issue a release of lien to Employer and the real property will transfer to Employer in fee simple subject only to the first lien holder.

#### **Section 9. Freeport Tax Exemption**

The City already participates in Freeport Exemption from ad valorem tax on business inventories destined for out-of-state shipment within 175 days. Based on preliminary discussions with the appropriate officials, it is believed that the Hays CISD will also participate in Freeport Exemption from ad valorem tax in support of the Employer Project, thereby resulting in significant annual tax savings. The City will use its best efforts to secure HCISD Freeport Tax Exemption participation. City will also use its best efforts to obtain HUB Zone designation for the Property and/or project and its environs.

#### **Section 10. Reduced Impact Fees**

All City construction projects obtaining new water and/or wastewater services are assessed CIP (Capital Improvement Program) Impact Fees to offset expense for capital projects related to the provision of water and wastewater services for the entire system. City proposes to provide 50% credit toward required CIP Impact Fees for the Employer Project, currently estimated at \$43,408, making the net credit to Employer \$21,704 (This is a real cost to the City. The use of Impact Fees is restricted by State law. If the City grants a credit against the Impact Fees the General Fund must pay to the Impact Fee Fund an amount equal to the credit granted.)

#### **Section 11. Infrastructure**

11.1. Existing Fiber Optic Services and technology are provided to the Property by Time-Warner of San Marcos, directly north of the project site, across Kohler's Crossing.

11.2. The Employer Project, as described, includes the construction of at least the initial section of what is currently referred to as General Burleson Drive, providing a new entrance/intersection of Kohler's Crossing at the Plum Creek site. The new road will also serve as the eastern boundary of the Property. Costs associated with the construction of said roadway are currently estimated at \$81,600.00. Such costs will be paid for by the City. The City will complete construction of the road on or before February 1, 2007, or as soon thereafter as reasonably practicable; provided however, City agrees to complete the new access road no later than six (6) months after construction completion of the Plant.

#### **Section 12. Utility Infrastructure**

12.1. Water service will be provided to the Property by the City of Kyle. Current plans call for the extension of an existing twelve-inch (12") water main from the area on the new elevated storage tank on Kohler's Crossing to the Property. The City will endeavor to complete the water main extension no later than April 20, 2007.

12.2 Wastewater services will be provided to the Property by the City of Kyle. Current CIP plans call for the eventual extension of services from the Kyle Market Place area to the Property. City agrees, however, that it will pay the full costs of installation of an adequate and functioning septic system appropriate to the dimensions and occupancy of the Plant to be constructed. The City will extend wastewater service to the Plant site, with completion scheduled on or before July 30, 2007 or 45 days prior to completion of construction as determined by Employer's general contractor, whichever date is earlier.

12.3. City agrees that it must determine whether the appropriate invert elevation exists prior to commencement of Employer Plant construction. City further agrees that should the Property lack the appropriate invert elevation to make the installation of wastewater services practicable or feasible, then City will pay the amount necessary to install a septic system of a size and construction as required by building and/or city codes and regulations. If at any point after construction of a septic system on the Property, it is determined that wastewater services can be provided to the Property, City agrees to waive any tap fees that may otherwise apply to Employer.

12.4. City agrees that should it fail to timely extend wastewater and/or water service that it shall pay all rental costs incurred by Employer in its current or other rented offices and warehouse during the term of the delay or during the term of the additional necessary lease period, if an additional lease is required.

#### **Section 14. State Programs**

City staff will provide assistance, and guidance to facilitate applications and help Employer access various state and/or federal programs including, but not limited to, the Texas Enterprise Zone Program, Sales & Use Tax Benefits, Employee Training Resources, the Skills Development Fund, and the Self-Sufficiency Fund.

#### **Section 15. Assignment**

This Agreement includes an understanding by the Parties that all terms included herein will be extended to any and all heirs, executors, representatives, successors, purchasers, and assigns of Employer. Employer may assign this Agreement with all terms herein and if Employer sells the business, Employer and its directors and officers shall be relieved of any future liability once the assignee/purchaser assumes in writing all obligations and liabilities of Employer to City.

#### **Section 16. Mutual Assistance**

The parties shall do all things reasonably 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. The Company hereby consents to and agrees to cooperate in any request by the City to obtain copies of Sales/Use tax returns from the State. The parties shall execute any additional documents and agreement reasonably necessary to implement this Agreement. The Company shall execute a Waiver of Sale Tax Confidentiality or such other form as required by the State Comptroller to allow the City to monitor this Agreement.

**Section 17. Representations and Warranties**

The City represents and warrants to Employer that this Agreement is within the scope of its authority and the provisions of the City's Charter and it is duly authorized and empowered to enter into this Agreement. Employer represents and warrants to the City that it has the requisite authority to enter into this Agreement.

**Section 18. Sections or Other Headings**

Sections or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**Section 19. Hold Harmless and Indemnification**

Employer agrees to protect, defend, hold harmless and indemnify the City, any member of its government body, its officers, employees and agents, from and against any and all claims, actions, liabilities and damages brought by third parties actually suffered by a person or persons and actually arising out of this Agreement due to the actions of Employer. The City agrees, to the extent permitted by law, to protect, defend, hold harmless and indemnify Employer, its officers, directors, shareholders, employees and agents, from and against any and all claims, actions, liabilities and damages brought by third parties actually suffered by a person or persons and actually arising out of this Agreement due to the direct actions of the City.

**Section 20. Entire Agreement**

This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

**Section 21. Amendment**

This Agreement may only be amended or altered by written instrument signed by the parties.

**Section 22. Notice**

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified mail with return receipt requested, postage prepaid, or upon receipt by nationally recognized overnight courier, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties by notice under this Section:

RSI Inc.:                   Attn: Harish Malkani  
                                  7901 Riverside Drive  
                                  Building 2, Suite 150  
                                  Austin, TX 78744-1661

City:                        City of Kyle  
                                  Attn: City Manager  
                                  PO Box 40  
                                  Kyle, TX 78640-0040



With copy to: Knight & Partners  
Executive Office Terrace  
223 West Anderson Lane, Suite A-105  
Austin, TX 78752

**Section 23. Interpretation**

Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

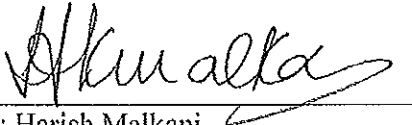
**Section 24. Applicable Law**

This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and venue shall lie in state courts located in Hays County, Texas.

This agreement is subject to acceptable bank financing and final attorney review by the Parties' respective attorneys; and all other formal approvals required by law.

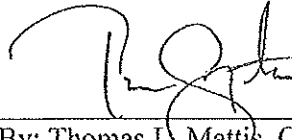
Agreed and executed upon this 15<sup>th</sup> day of FEBRUARY, 2007.

RSI, Inc.



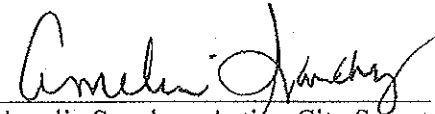
By: Harish Malkani  
Title: President

City of Kyle



By: Thomas L. Mattis, City Manager  
Title: City Manager  
for the City of Kyle

Attest:



Amelia Sanchez, Acting City Secretary