

## **ECONOMIC INCENTIVES AGREEMENT**

**THIS AGREEMENT FOR ECONOMIC INCENTIVES** (this "Agreement"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, 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 owns approximately five acres of real property in the City of Kyle, Texas located at 1670 Kohler's Crossing, being more fully described in Exhibit "A" ("Property"); and

**Whereas**, Employer has applied for economic incentives for the addition of additional employees at their business located in the City; and

**Whereas**, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature the authority to provide for loans and grants of public money or assets for the development and diversification of the State's economy and the elimination of unemployment or underemployment; and

**Whereas**, pursuant to the Texas Local Government Code, 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 municipality; and

**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 state 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 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.

**Full-time Equivalent Employees or FTE** shall mean the aggregate average employees in a given year working at least a thirty-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. Employment Requirements**

5.1 RSI, Inc. owns the designated five-acre Property located at 1670 Kohler's Crossing, described in Exhibit "A" attached hereto, the site of current operations.

5.2 RSI, Inc. shall employ a minimum of fifty (50) retained full-time equivalent (FTE) employees upon the execution of this Agreement and employ an additional eighty-two (82) full-time equivalent (FTE) employees for a grand total of one hundred thirty-two (132) full-time equivalent (FTE) employees at the end of this Agreement. Employer shall meet the following employment minimum at the end of each full year of the Agreement:

<b><u>Year</u></b>	<b><u>New FTE's</u></b>	<b><u>Total # FTE's Required</u></b>
1	7	57
2	7	64
3	7	71
4	7	78
5	7	85
6	7	92
7	7	99
8	10	109
9	11	120
10	12	132

5.3 Employer shall pay the ad valorem taxes on the real property and any improvements located on the Property, subject to any applicable exemptions.

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

6.1. Employer will employ at least fifty (50) retained FTEs upon the execution of this Agreement and hire an additional eighty-two (82) FTE per Section 5.2 subject to the provisions below. FTE's on Employer's payroll upon the execution of this Agreement apply towards fulfillment of this obligation.

6.2. Employer agrees to make annual payments to City in the amount of \$48,423.40 to pay back the interest free loan pursuant to the covenants of this agreement (herein "Employer's Annual Property Payment"), subject to the annual FTE job credit offset provisions of Section 8.2 providing for up to a maximum annual credit amount of \$48,423.40. Any excess employees for a particular year will be accrued to meet the requirement of the following year (s).

6.3. Employer expects to employ a minimum of fifty (50) employees plus an additional eighty-two (82) full-time equivalent (FTE) employees for a grand total of one hundred thirty-two (132) full-time equivalent (FTE) employees per Section 5.2 of this Agreement. In the event that Employer does not meet the fifty (50) retained employees plus additional FTE's per year of the agreement requirement per Section 5.2 of this Agreement either yearly or by determining the yearly average number of FTE's, **Employer shall pay to the City the full balance of the Loan payment upon thirty days after receiving notice from the City.** This full balance shall include any annual payments offset by FTE job credits per Section 8.2.

6.4. Employer will continue to 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.

6.5. 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 retain and maintain a local intern program and provide opportunity for at least two (2) Hays CISD students for a summer internship each year of this Agreement.

6.10. **In the event that Employer (a) allows its ad valorem taxes owed the City to become delinquent, or (b) violates any of the terms and conditions of this Agreement or (c) fails to maintain existing jobs and create the new jobs per this Agreement, then the Agreement may be terminated by the City, and all monies loaned that have not been repaid will be recaptured and paid to the City by Employer within sixty (60) days of the termination.**

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

7.1. As a condition of the Employer investing in the additional employees, the City will provide four hundred eighty-four thousand two hundred and thirty four dollars (\$484,234) interest-free financing for fulfillment of the Employer's obligations.

7.2. The City will hold a second lien on the existing property at 1670 Kohlers Crossing, Kyle, Texas, that will secure performance by Employer and will provide that if any first lien holder forecloses on the Plant and Property during years one through ten of this Agreement, following the execution of this Agreement, such lender will make all reasonable efforts to sell the Property at full market value and recover as much of the City's remaining original investment in the property under the economic incentive agreement (up to \$484,234.00).

## **Section 8. Economic Incentives**

8.1. Within ten ( 10 ) days after the execution of this Agreement by both parties, the City will provide four hundred eighty-four thousand two hundred and thirty four dollars (\$484,234) interest-free cash financing for fulfillment of the Employer's Obligations during the term of this Agreement.

8.2. Employer's Annual Payments shall be offset by FTE job credits up to a maximum of \$48,423.40 per year. The City shall provide a credit against the annual payments pursuant to the employment requirements for each FTE, with a maximum credit toward the Loan balance for any given year being \$48,423.40 (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 plus the additional FTE per Section 5.2 of this Agreement subject to the credit being granted. The total credits for FTEs cannot exceed the total payments due before credit against payment for number of FTE's.

8.3. The City will provide Employer for an additional means of earning credits toward Employer's Annual Payments. For every meeting Employer sets up between the City and executive level decision makers from other companies that the City agrees are potential economic development prospects for the City, the City will credit Employer \$1,000 per qualified meeting. The maximum of these meeting credits is \$25,000 for the ten (10) year period of this Agreement.

8.4. The interest free loan from the City will be deemed paid in full at the expiration of a ten (10) year period upon fulfillment of all obligations and performance requirements of this Agreement.

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

The City and Hays County already participate 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 make a decision regarding School District participation in Freeport Exemption from ad valorem tax. The City will use its best efforts to secure HCISD Freeport Tax Exemption participation.

## **Section 10. 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 11. Assignment**

11.01 Employer shall have the right, without the City's consent, to transfer or assign this Agreement to an Affiliate (or any other business entity that will occupy the Property for the purpose of operating the current provided that Employer shall notify the City in writing of such transfer or assignment within ten (10) days after the effective date thereof. For purposes of this Agreement, **Affiliate** (herein so called) shall mean:

- (1) A parent corporation of Employer
- (2) Any wholly-owned subsidiary of Employer
- (3) Any business entity succeeding to substantially all of Employer's assets as a result of a consolidation or merger; or
- (4) Any business entity to which all or substantially all of Employer's assets have been sold.

11.02 The transfer or assignment of this Agreement to an entity which does not satisfy the requirements of Section 11.01 above shall require the City's consent as evidenced by an ordinance duly enacted by the City Council after receipt by the City of Employer's written notification of such proposed transfer at least sixty (60) days before the effective date thereof, provided that the City's consent shall not unreasonably be withheld, conditioned, or delayed.

11.03 Any attempted transfer or assignment of this Agreement in violation of the terms set forth in Section 11 shall be void ab initio, and shall entitle the City to terminate this Agreement by written notice to Employer, whereupon the parties hereto shall be relieved of all duties hereunder except that City shall be able to recover the loaned funds per Section 6.10; provided, however, that such termination shall not be effective if, within ten (10) days after its receipt of the City's termination notice, Employer shall notify the City that Employer has rescinded such attempted transfer or assignment.

11.04 Effective as of the effective date of a transfer or assignment pursuant to Section 11.01 or 11.02 above, Employer will be released of any further duties or obligations under this Agreement, provided however, that the transferee or assignee must agree in writing to assume and be bound by the terms of this Agreement before Employer will be so released.

## **Section 12. Termination**

12.1 This Agreement shall terminate upon the earliest occurrence of any one or more of the following: (a) The written agreement of the Parties; (b) The Agreement's Expiration Date; or (c) an uncured Default by the Employer.

12.2 A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to perform, observe or comply with any of its covenants,

agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement. Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within fifteen (15) days of the receipt of such notice. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

### **Section 13. 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 14. Employment of Undocumented Workers**

During the term of this Agreement, the Employer agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), the Employer shall be in Default and repay the amount of the payment from the Reimbursement Fund received by the Employer from the City as of the date of such violation within one hundred twenty (120) days after the date the Employer is notified by the City of such violation, plus interest at the rate of six percent (6.00%) compounded annually from the date of the violation until paid in full. The Employer is not liable for an unknown violation of this section by a contractor or subcontractor of the Employer or by a person with whom the Employer contracts provided however that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Employer enters into with any contractor or subcontractor which Grants provided herein will be used. Employer shall cause each contractor, subcontractor or other entity engaged in the construction of the Improvements provided by this Agreement to verify the employment status of each employee so engaged with the e-verify service provided by the United States Citizenship and Immigration Services and shall annually certify such compliance to the City.

### **Section 15. 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 16. 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 17. Hold Harmless and Indemnification**

**EMPLOYER SHALL INDEMNIFY, DEFEND AND HOLD CITY (INCLUDING CITY'S AGENTS, SERVANTS, EMPLOYEES, OFFICERS AND DIRECTORS) HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, LOSSES, DAMAGES LIABILITIES, FINES, COSTS, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ACTUAL AND REASONABLE ATTORNEYS FEES, REASONABLE INVESTIGATIVE COSTS, COURT COSTS, ALL OTHER DEFENSE COSTS AND INTEREST, AND ALL OTHER SUMS WHICH CITY MAY PAY OR BECOME OBLIGATED TO PAY ON ACCOUNT OF ANY CLAIM OR ASSERTION OF LIABILITY ARISING OR ALLEGED TO HAVE ARISEN OUT OF ANY ACT OR OMISSION OF EMPLOYER (INCLUDING EMPLOYER'S AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, CONTACTORS, AND SUBCONTRACTORS) IN CONNECTION WITH THE PERFORMANCE UNDER THE TERMS OF THIS AGREEMENT, UNLESS SUCH CLAIM OR LIABILITY ARISES OUT OF ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF CITY OR ITS AGENTS, SERVANTS, EMPLOYEES, INVITEES, OR CONTRACTORS.**

**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 FOR THE APPLICABLE LIMITATIONS PERIOD PER CLAIM TYPE, AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND ITS OFFICERS, EMPLOYEES AND ELECTED OFFICIALS PERMITTED BY LAW.**

**Section 18. Mediation**

If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, Dallas, Texas, before resorting to litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation, mediation, collectively known as alternate dispute resolution ("ADR")

shall be assessed equally between the City and Employer with each party bearing their own costs for attorney's fees, experts, and other costs of ADR and any ensuing litigation.

**Section 19. Force Majeure**

The duties of the Employer and City to observe and to perform any of the provisions of this Agreement on its part to be performed or observed, shall be excused for a period equal to the period of prevention, delay or stoppage due to causes beyond the control of the Employer and or City by reasons of strikes, civil riots, water, invasions, fire other casualty, or Acts of God ("Force Majeure").

**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 RSI, Inc.  
                  1670 Kohler's Crossing  
                  Kyle, TX 78640

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

With copy to: Davidson Troilo Ream & Garza  
                  City Attorney  
                  601 NW Loop 410, Suite 100  
                  San Antonio, TX 78216

**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 final attorney review by the Parties' respective attorneys; and all other formal approvals required by law.

**Agreed and executed upon this \_\_\_\_\_ day of \_\_\_\_\_, 2016.**

**RSI, Inc.**

**City of Kyle**

\_\_\_\_\_  
By: Harish Malkani  
Title: Chief Executive Officer and  
President  
RSI, Inc.

\_\_\_\_\_  
By: R. Todd Webster  
Title: Mayor for the City of Kyle

**Attest:**

\_\_\_\_\_  
Jennifer A. Vetrano, City Secretary