

ECONOMIC INCENTIVES AGREEMENT

THIS AMENDED 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, the City and Employer entered into a certain Agreement for Economic Incentives dated October 19, 2016, and now wish to restate the certain terms contained within, in their entirety, to clarify provisions and requirements of the agreement; and,

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, 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 City, the City Council has approved and authorized this Agreement for economic financial incentives; and,

Whereas, 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 Amended Agreement shall replace the original agreement dated October 19, 2016 in its entirety, and 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 number of employees employed at the Property in a given year working at least a thirty-hour work week for the average salary established herein as \$42,000 annually.

Year shall mean a twelve-month period of time utilizing December 31 following the effective date of this agreement as the starting date, and extending for the remaining term of the agreement for increments of twelve months.

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

INCENTIVES AND OBLIGATIONS

Section 5. Employer's 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. currently employs fifty (50) or less full-time equivalent employees and shall employ at least fifty-seven (57) retained full-time equivalent (FTE) employees by the end of Year 1 of this agreement. From Years 2 thru 10, employer shall employ an additional seventy-five (75) full-time equivalent (FTE) employees according to the following schedule, for a grand total of one hundred thirty-two (132) full-time equivalent (FTE) employees at the end of this Agreement. Only FTE's employed at the Property shall count towards this total. FTE's on Employer's payroll upon the execution of this Agreement apply towards fulfillment of this obligation. The specific requirements of this section are enumerated in Table 1, below.

Table 1. Specific Annual FTE Commitments by Employer

<u>Year</u>	<u>New FTE's</u>	<u>Total # FTE's Required</u>
1 (Dec 31, 2017)	7	57
2 (Dec 31, 2018)	7	64
3 (Dec 31, 2019)	7	71
4 (Dec 31, 2020)	7	78
5 (Dec 31, 2021)	7	85
6 (Dec 31, 2022)	7	92
7 (Dec 31, 2023)	7	99
8 (Dec 31, 2024)	10	109
9 (Dec 31, 2025)	11	120
10 (Dec 31, 2026)	12	132

Section 6. City's Obligations.

6.1 As a condition of the Employer investing in the additional employees outlined in Section 5.2 of this agreement, and subject to the terms of Section 8 below, City will provide two hundred forty-six thousand dollars (\$246,000) lump sum Forgivable Grant ("Forgivable Grant") up front for fulfillment of the Employer's employment obligations, which is comprised of \$123,000 from the City, and \$123,000 from Hays County.

6.2 City will also provide two hundred thirty-four dollars (\$234,000.00) Interest-Free Loan ("Interest-Free Loan") payable in equal annual installments over ten (10) years.

6.3 City will hold a second lien on the existing Property at 1670 Kohler's 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 City's remaining original investment in the Property under the economic incentive agreement (up to \$234,000.00).

Section 7. Employer's Obligations

7.1. Employer will be subject to "Section 5. Employer's Employment Requirements" above, subject to all additional provisions herein.

7.2. After Year 1, Employer shall maintain no fewer than fifty (50) qualified existing positions ("Existing Positions") during the terms of this agreement, otherwise Employer shall be subject to Default.

7.3. By January 31 of each year, Employer shall provide to City a certified payroll list ("Annual Employer Report") in table format showing each filled fulltime position, title, and actual annual salary earned by the person filling the position, along with certification by the Employer's Chief Financial Officer, or their appointee, that the commitments of Section 5.2 have been fulfilled.

7.4. Employer agrees to make annual payments to City by each January 31, in the amount of \$23,400.00 per year for ten total payments to fully repay the Interest Free Loan pursuant to the covenants of this agreement (herein "Employer's Annual Payment").

7.5. Employer agrees to pay in a lump sum any remaining Forgivable Grant balance that is outstanding after the final credits for employment in Year 10 have been given by City to Employer.

7.6. 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 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.

7.7. Employer will reasonably cooperate with 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.

7.8. 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.

7.9. Employer will retain and maintain a local intern program and provide opportunity for at least two (2) Hays CISD students for an internship each year of this Agreement. Reporting of the progress of this deliverable shall include the age, gender, ethnicity and school of each participant and shall be included in the Annual Employer Report.

7.10. In order to qualify for "Section 8. Economic Incentives", Employer shall pay their 2015 Ad Valorem taxes and deliver to City a tax receipt of such. Employer shall also pay the annual ad valorem taxes on the real property during the term of this Agreement, subject to any applicable exemptions, and provide a tax receipt each year as a part of the Annual Employer Report, or be subject to Default.

Section 8. Economic Incentives.

8.1. Within ten (10) days after the execution of this Amended Agreement by both parties, City will provide a single payment to Employer of four hundred eighty thousand dollars (\$480,000) which is comprised of the two hundred forty-six thousand dollars (\$246,000) Forgivable Grant and the two hundred thirty-four thousand dollars (\$234,000) Interest-Free Loan in exchange for fulfillment of the Employer's Obligations during the term of this Agreement.

8.2. For each year that the Employer meets the commitments of Section 5.2, City will forgive 10% of the outstanding balance of the Forgivable Grant.

8.3. For each year that Employer does not meet the retained employees required by the schedule in Section 5.2, a liability of 10% of the Forgivable Grant shall accrue for that year, payable to City by Employer at the end of Year 10, subject to the True Up provision below.

8.4. For determining the Employer's performance in regards to the employment commitment and Table 1 in Section 5.2, there shall be a "True Up" provision whereby any excess employees beyond those required for a particular year will be accrued to meet the requirement of the following year(s). For any years that the employment commitment is not met, there shall be the opportunity for excess employees for future years to count retroactively, up to three years beyond the year that the employment commitment was not met except that the three year look back shall not extend beyond the end of Year 10.

8.5. City will provide Employer for an additional means of earning credits toward reducing the balance of the Forgivable Grant. For every meeting Employer sets up between City and executive level decision makers from other companies with a relationship with the Employer that City agrees are potential economic development prospects for City, City will credit Employer \$1,000 per qualified meeting. The determination as to which economic development prospects qualify is the sole decision of City. The maximum of these meeting credits is \$25,000 for the ten (10) year period of this Agreement.

8.6. The Interest-Free Loan from 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, and payment to City for any accrued liability less any credits.

Section 9. Freeport Tax Exemption

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. 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

11.1 Employer shall have the right, without 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 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.

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

11.3 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 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 City's termination notice, Employer shall notify City that Employer has rescinded such attempted transfer or assignment.

11.4 Effective as of the effective date of a transfer or assignment pursuant to Section 11.1 or 11.2 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.

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

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 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 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 City as of the date of such violation within one hundred twenty (120) days after the date the Employer is notified by 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 City in the Employers Annual Report.

Section 15. Representations and Warranties

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 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 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
RSI, Inc.

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

Attest:

Jennifer A. Vetrano
City Secretary