

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE SALES AND USE TAX AGREEMENT BETWEEN THE CITY OF MILPITAS AND KLA-TENCOR CORPORATION AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE SAID AGREEMENT**

WHEREAS, the State of California imposes a sales and use tax on every retailer of personal property at a rate which includes a one percent (1%) sales tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (“Bradley-Burns 1%”); and

WHEREAS, the “Bradley-Burns 1%” is collected based upon the location of the sale, not the destination of the goods sold, and the “Bradley-Burns 1%” portion of the sales and use tax is available for sales and use tax revenue sharing agreements; and

WHEREAS, KLA-Tencor Corporation (“KLA-Tencor”) manufactures and sells semiconductor equipment and currently has operations in various locations in the San Francisco Bay area; and

WHEREAS, KLA-Tencor now wishes to consolidate its existing operations to a single location in Milpitas, California, with the exception of KLA-Tencor’s existing facility in Hayward, California, in exchange for a rebate of fifty percent (50%) of Bradley-Burns sales and use tax collections from eligible transactions by KLA-Tencor above a certain baseline; and

WHEREAS, such a sales and use tax rebate arrangement would further the valid public purposes of expansion of economic opportunities for surrounding businesses in the City, expansion of the City’s employment base, generation of aggregate sales and use tax increases that the City could use to fund vital governmental services such as police, fire, street maintenance, and parks and recreation programs, and the general improvement of the economic health of the City; and

WHEREAS, as a general law city, the City of Milpitas has the authority to enter into contractual agreements, including sales and use tax revenue sharing agreements, with private companies; and

WHEREAS, approval of the proposed sales and use tax agreement does not constitute a “project” for purposes of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guideline Section 15378(b)(4).

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The Sales and Use Tax Agreement Between the City of Milpitas and KLA-Tencor Corporation is hereby approved and the City Manager or his or her designee is directed to execute said Sales and Use Tax Agreement and any related documents.
3. The Director of Finance of the City of Milpitas is directed to disburse sales and use tax rebates to KLA-Tencor pursuant to the terms of the Sales and Use Tax Agreement.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Robert Livengood, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**SALES AND USE TAX AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND KLA-TENCOR CORPORATION**

This Sales and Use Tax Agreement (“Agreement”) dated as of \_\_\_\_\_ is entered into by and between the CITY OF MILPITAS, a municipal corporation of the State of California (“City”), and KLA-Tencor, a Delaware Corporation (“Business Owner”).

**RECITALS**

A. Business Owner is in the business of manufacturing and selling semiconductor equipment. Business Owner currently has operations in Milpitas, California (Milpitas”), Hayward, California and various other places in the San Francisco Bay Area (the “Bay Area”; defined as Alameda, Contra Costa, Marin, Santa Clara, San Francisco and San Mateo Counties) and with the exception of its existing operations in Hayward California, desires to consolidate its other Bay Area operations into its existing facilities in Milpitas and, upon the completion of such consolidation, will no longer lease or own any real property for the purpose of carrying on any business operations at any Bay Area locations other than its consolidated operations in Milpitas and its ongoing operation in Hayward, California.

B. City recognizes that consolidation of Business Owner’s Bay Area operations to Milpitas will contribute to the economic vitality of the City, provide additional jobs, expand the City’s tax base and otherwise improve economic and physical conditions in Milpitas.

C. In order to assist the Business Owner with consolidation of its Bay Area business operations within Milpitas, the City is willing to provide financial assistance to the Business Owner to offset relocation costs and for other reasons described in this Agreement, provided that Business Owner locates its primary office in City, and (with the exception of its Hayward operations) consolidates its Bay Area operations in Milpitas and makes Milpitas its point of sale for products sold by Business Owner from the Bay Area during the Operating Period and designates Milpitas as the place of use for products purchased for use in Milpitas.

E. By its approval of this Agreement, the City Council of the City of Milpitas finds and determines that this Agreement serves a valid public purpose through expanding economic opportunities for businesses in the City, expanding the City’s employment base, and generating Sales and Use Tax that City can utilize to fund general governmental services such as police, fire, street maintenance, and parks and recreation programs. City and Business Owner have agreed that the respective considerations are a fair exchange.

F. The City has found that it is of benefit to the City and its citizens that certain obligations be imposed upon Business Owner’s future place of business to ensure product sales and the resulting sales and use tax revenues inure to the benefit of the City.

NOW THEREFORE, based upon the foregoing Recitals and in consideration of the mutual covenants and conditions hereinafter set forth, Business Owner and City agree as follows:

1. DEFINITIONS.

The capitalized terms and words used in this Agreement shall have the following meanings unless expressly provided to the contrary.

1.0 “Business Location” means any location in the Bay Area where the Business Owner maintains its headquarters, all offices, manufacturing facilities, warehouse facilities, maintenance facilities, research and development facilities, or other buildings or facilities that are components of Business Owner’s business of manufacturing and selling semiconductor equipment within the Bay Area, except that the term Business Location shall not include those facilities and operations of the Business Owner that are located within Hayward, California.

1.1 “Commencement Date” means the latter of January 1, 2010 and the first day of the first calendar month that more than eighty percent (80%) of the total number of all Business Owner employees at all Business Locations have their work location designated as the Milpitas Headquarters Campus on Technology Drive.

1.2 “Event of Default” means any event so designated in this Agreement.

1.3 “Calendar Year” means January 1 through December 31, for any given year.

1.4 “Laws” means all status, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or other Governmental Agency.

1.5 “Operating Period” means the period beginning with the Commencement Date and expiring fifteen (15) years later.

1.6 “Party” means any party to this Agreement. The “Parties” shall be all parties to this Agreement.

1.7 “Penalty Assessments” means penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payment of Sales Tax and which are levied, assessed, or otherwise collected from the business on the Site owning or obligated to pay Sales Tax.

1.8 “Person” means any entity, whether an individual, trustee, corporation, partnership, trust, unincorporated organization, governmental agency or otherwise.

1.9 “Sales Tax Increment” means the total sales and use tax revenues paid or caused to be paid by Business Owner and collected by the State Board of Equalization for the City of Milpitas from the imposition of the Bradley Burns Uniform Local Sales And Use Tax Law, commencing with Section 7200 of the Revenue and Taxation Code of the State of California, as amended, or its equivalent, arising from all businesses and activities conducted from or at the Site. Sales Tax Increment shall not include Penalty Assessments, any sales taxes levied by, collected for, or allocated to the State of California, the County of Santa Clara, a district or any other entity other than the City, notwithstanding that such funds as are received by City are derived or measured by such other entity based upon sales taxes and also not including administrative charges imposed by the State of California, County or any entity upon sales tax

received by the City. If the Bradley-Burns Uniform Local Sales and Use Tax Law is terminated or rescinded and replaced or partially replaced by an alternate method of generating transaction tax revenue from activities on the Site, then Sales Tax Increment shall also include those transaction tax revenues paid by the Business Owner and collected for the City from the imposition of such alternate method of transaction tax. In such event, Sales Tax Increment shall again not include Penalty Assessments, administrative charges, and tax revenues that are levied by, collected for, or otherwise allocated to another governmental agency (other than the City), including any debt issuance or other obligation of any such other governmental agency.

1.10 "Site" refers to the property within the City of Milpitas located on Technology Drive where Business Owner does and will conduct its business or elsewhere in Milpitas where such business of the Business Owner is conducted.

1.11 "Tax Base" means the amount of Sales Tax Increment derived by the City from the business operations of Business Owner from its current operations at the Site, as determined by taking the average amount of annual Sales Tax Increment received by the City from the Business Owner for Calendar Years 2006, 2007 and 2008. The Business Owner and City agree that for purposes of this Agreement the amount of the Tax Base is as set forth in the attached Exhibit A.

## 2. THE PARTIES

2.1 Business Owner. Business Owner is KLA-Tencor Corporation, a Delaware Corporation, whose mailing address for purposes of this Agreement is: 1 Technology Drive, Milpitas, CA. Wherever the term "Business Owner" is used in this Agreement, the term shall be deemed to refer to KLA-Tencor Corporation ("KLA"), and any corporate subsidiary, limited liability company, partnership, or other business entity that is wholly owned (directly or indirectly) by KLA.

Business Owner may assign the rights and obligations of this Agreement to any entity or entities which acquire substantially all the assets or controlling ownership of Business Owner, but may not otherwise assign the rights and obligations of this Agreement to any other person without the written consent of the City, which consent may be withheld in City's sole and absolute discretion.

By executing this Agreement, Business Owner warrants and represents to City that it has the full power and authority to enter into this Agreement and that all authorizations and approvals required to make this Agreement binding upon Business Owner have been duly obtained.

2.2 The City. The City is a municipal corporation of the State of California, duly organized and operating pursuant to general law.

By executing this Agreement, City warrants and represents to Business Owner that it has the full power and authority to enter into this Agreement and that all authorizations and approvals required to make this Agreement binding upon City have been duly obtained.

### 3. OBLIGATIONS OF BUSINESS OWNER

3.1 Agreement. Business Owner hereby covenants and agrees to locate its Business Location to the Site and use the Site as its headquarters and primary business sales and manufacturing location for the Bay Area during the Operating Period.

3.2 Site. Business Owner shall use reasonable efforts to complete the consolidation of the Business Locations at the Site within a reasonable time after approval of this document by the City Council of the City of Milpitas.

3.3 Maximize Sales Tax. During the Operating Period, Business Owner shall use reasonable efforts, consistent with the requirements of law, to designate the Site as the point of sale for all sales of Business Owner's products manufactured at its Business Locations and sold within the Bay Area and attribute and properly report all applicable use tax for products purchased for use at the Site in order to maximize Sales Tax Increment.

3.4 Indemnification. From the Commencement Date of this Agreement through the termination date, Business Owner shall indemnify, defend, and hold harmless City and its officers, employees and agents, from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively "Claims") imposed upon or incurred by or asserted against City arising out of any act or omission of Business Owner associated with this Agreement; provided, however, that the aforesaid obligations of Business Owner shall not apply to the extent any Claim results from the negligence or intentional misconduct of City or any of City's officials, officers, employees, agents, contractors, or subcontractors, and provided further that the City shall provide prompt written notice of the Claim, including any action suit or proceeding asserting a Claim. In the event that any action, suit or proceeding is brought against City by reason of any such occurrence which requires the Business Owner to indemnify the City pursuant to this Section 3.4, Business Owner shall, upon City's request, take sole control of the defense of such action, suit or proceeding at Business Owner's sole cost. Business Owner shall employ and engage counsel reasonably acceptable to the City, which consent shall not be unreasonably withheld, provide City with periodic status reports and consult with City regarding strategic issues, including settlement. No settlement of an action, suit or proceeding that involves a remedy to be performed by the City other than the payment of money by the Business Owner shall be entered into without the consent of the City, which consent shall not be unreasonably withheld.

3.5 Local, State and Federal Laws. Business Owner shall carry out the operation of the business in conformity with all applicable local, state and federal laws.

3.6 Anti-discrimination. Business Owner shall not discriminate against any employee or applicant for employment because of age, sex, marital status, race, handicap, color, religion, creed, ancestry, or national origin.

3.7 Business Owner's Representations and Warranties. Business Owner makes the following representations and warranties as of the date of this Agreement and agrees that such

representations and warranties shall survive and continue thereafter but shall not be remade after the date of this Agreement.

3.7.1 No Litigation. There is no litigation, action, suit, or other proceeding pending or threatened against the Business Owner or the Site that may adversely affect the validity or enforceability of this Agreement. To the best of Business Owner's knowledge, Business Owner is not in violation of any statute, law, regulation or ordinance, or of any order of any court or governmental entity the effect of which would prohibit the Business Owner from performing its obligations hereunder.

3.7.2 Authority. Business Owner has complied with all governmental requirements concerning its organization, existence and transactions. Business Owner has the right and power to own and operate its business as contemplated in this Agreement.

3.7.3 No Breach. To Business Owner's knowledge, none of the undertakings contained in this Agreement violate any applicable governmental requirements, or conflicts with, or constitutes a breach or default under, any agreement by which the Business Owner is bound or regulated.

3.7.4 Warranty Against Payment of Consideration for Agreement. Business Owner warrants that it has not paid or given, and will not pay or give, to any third person, any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as accountants and attorneys.

3.8 Release of City Officials. No member, official, agent, employee, or attorney of the City shall be personally liable to Business Owner, or any successor in interest of the Business Owner, in the event of any default or breach by the City or for any amount which may become due to the Business Owner or its successors, or on any obligations under the terms of this Agreement. The Business Owner hereby waives and releases any claim it may have personally against the members, officials, agents, employees, consultants, or attorneys of the City with respect to any default or breach by the City or for any amount that may become due to the Business Owner or its successors, or on any obligations under the terms of this Agreement.

3.9 Reports. Within ten (10) days of filing each report with the State Board of Equalization concerning Site sales and use taxes, Business Owner shall provide to the City true and correct copies of all reports filed by Business Owner with the State Board of Equalization concerning Site sales and use taxes in order to allow the City to preliminarily determine the amount of Sales Tax Increment paid by Business Owner on account of sales from the Site; provided, however, that the City shall not be deemed to have received any Sales Tax Increment until actual receipt thereof by the City.

3.10 To the extent applicable, Business Owner shall, within a reasonable period after the Commencement Date, use reasonable efforts to apply for a Use Tax Direct Payment Permit as defined in R&T Code section 7051.3, from the California State Board of Equalization and designate the City as the use location for products used at the Site.

3.11 Business Owner commits to using Milpitas businesses for as much work as possible associated with the relocation of its operations, consistent with its corporate business policies and prudent business practice.

3.12 Business Owner will work with the City to identify opportunities to support and participate in community programs and events.

#### 4. OBLIGATIONS OF CITY OF MILPITAS

4.1 Tax Rebate. Within thirty (30) days after the City confirms through the year end report of its consultant, the amount of Sales Tax Increment for each Calendar Year during the Operating Period, the City shall pay to Business Owner cash financial assistance in an amount equal to fifty percent (50%) of the amount by which the Sales Tax Increment for that Calendar Year exceeds the Tax Base. Notwithstanding the above, the City's payment of the required cash financial assistance for each Calendar Year shall be made no later than six months after the close of each Calendar Year, except for the withholding or deferral amounts listed in Section 4.3.

If the Commencement Date of the Agreement occurs after January 1, 2010, and the Operating Period includes only a portion of the 2010 Calendar Year, for purposes of calculating the amount of financial assistance for Calendar Year 2010 the Sales Tax Increment for 2010 shall reflect only the portion produced between the Commencement Date and December 31, 2010, and the Tax Base shall be reduced pro-rata, to reflect the portion of the 2010 Calendar Year that is outside of the Operating Period. Similarly if the Operating Period extends for only a portion of the 2025 Calendar Year, the Sales Tax Increment for the 2025 Calendar Year shall reflect only the portion produced between January 1, 2025 and the end of the Operating Period, and the Tax Base shall be reduced pro-rata, to reflect the portion of the 2025 Calendar Year that is outside the Operating Period. Such obligation to pay tax rebates will cease after termination of the Operating Period.

4.2 City's Obligation to Provide Financial Assistance. The City's obligation to provide Business Owner with financial assistance pursuant to 4.1 for any Calendar Year that contains a portion of the Operating Period is conditioned upon Business Owner producing Sales Tax Increment for that Calendar Year in excess of the Tax Base. To the extent Business Owner does not produce Sales Tax Increment in excess of the Tax Base for a specific Calendar Year, then the tax rebate obligations herein shall be reduced to zero for that Calendar Year.

4.3 Annual Adjustment and Provision of Financial Assistance. Promptly after the fourth quarter of each Calendar Year which includes a portion of the Operating Period, the City shall determine with respect to that Calendar Year the total amount of Sales Tax Increment received by the City and the total amount of financial assistance payments to be made to Business Owner pursuant to Section 4.1. If for any reason any portion of the Sales Tax Increment for any specific Calendar Year is withheld from the City by the State of California or another government agency (including but not limited to withholdings or deferrals for bond financing purposes of the state or another government agency (other than the City), reporting errors or other adjustments), the City shall have the discretion to withhold the same pro-rata portion of the financial assistance payment otherwise payable to the Business Owner for that

Calendar Year pursuant to Section 4.1. If the withholding or deferral is released to the City, the City shall pay to Business Owner an adjustment payment equal to the amount of such withheld deficiency at the time payment of financial assistance is due for the subsequent Calendar Year (or at the end of the Operating Period if there is no subsequent Calendar Year). If the withholding or deferral is not released to the City by the end of that subsequent Calendar Year, the pro rata portion shall be paid to the Business Owner in the first Calendar Year that it is released and becomes available to the City, regardless of whether such Calendar Year extends beyond the Operating Period.

If for any reason (including but not limited to reporting errors or other adjustments) the amount of financial assistance actually paid by the City to the Business Owner with respect to any Calendar Year (exclusive of any payment of deferral or withheld amounts applicable to prior Calendar Years) is more than the amount of financial assistance actually owed with respect to that Calendar Year under Section 4.1, then the amount of the excess shall be deducted from the next payments due under Section 4.1,

4.4 The City of Milpitas will diligently process any planning, building and fire permits required for tenant improvements associated with the consolidation of all Business Owner operations to the Site to meet the move in dates of Business Owner and will assign project managers from each discipline to work on the project through the process.

4.5 The City will recognize Business Owner at a future City Council meeting and welcome its consolidated operations to the City of Milpitas.

4.6 The City of Milpitas will provide KLA-Tencor with information on the City's Sports Complex, Recreation Services and Programs (for example – preschool and after school programs, athletic leagues, etc) and affordable housing opportunities for employees throughout the year.

4.7 Release of Personal Liability of Business Owner Personnel. No officer, agent, employee, or attorney of the Business Owner, or any successor in interest of the Business Owner, shall be personally liable to the City in the event of any default or breach by the Business Owner or for any amount which may become due to the City, or on any obligations under the terms of this Agreement. The City hereby waives and releases any claim it may have personally against the officers, agents, employees, or attorneys of the Business Owner or its successor with respect to any default or breach by the Business Owner or for any amount that may become due to the City, or its successors, or on any obligations under the terms of this Agreement.

4.8 Indemnification. From the Commencement Date of this Agreement through the termination date, City shall indemnify, defend, and hold harmless Business Owner and its officers, employees and agents, from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively "Claims") imposed upon or incurred by or asserted against Business Owner arising out of any act or omission of City associated with this Agreement; provided, however, that the aforesaid obligations of City shall not apply to the extent any Claim results from the negligence or intentional misconduct of Business Owner or any of Business Owner's officers, employees, agents, contractors, or subcontractors, and provided

further that the Business Owner shall provide prompt written notice of the Claim, including any action, suit or proceeding asserting a Claim. In the event that any action, suit or proceeding is brought against Business Owner by reason of any such occurrence which requires the City to indemnify Business Owner pursuant to this Section 4.8, City shall, upon Business Owner's request, take sole control of the defense of such action, suit or proceeding at City's sole cost. City shall employ and engage counsel reasonably acceptable to the Business Owner, which consent shall not be unreasonably withheld, provide Business Owner with periodic status reports and consult with Business Owner regarding strategic issues, including settlement. No settlement of an action, suit or proceeding that involves a remedy to be performed by Business Owner other than the payment of money by the City shall be entered into without the consent of the Business Owner, which consent shall not be unreasonably withheld.

## 5. DEFAULTS AND REMEDIES

5.1 Events of Default. The following shall initiate the default sequence:

(a) If Business Owner materially breaches any of its obligations under Sections 3.1 through 3.9 of this Agreement.

(b) If Business Owner is found by a trier of fact, after hearing, to be in violation of any Local, State or Federal law when said violation arises from the subject matter and performance of this Agreement.

(c) If City fails to timely pay its obligations hereunder.

When any of the initiating events occur, City or Business Owner shall give the other written notice to cure. Where such act or omission is not cured within thirty (30) days after that Party's receipt of written notice that such obligation was not performed, it shall constitute an Event of Default. In the event of an act covered by Section 5.1(b) that was a violation of law, the violation will be deemed cured for purposes of this Agreement if Business Owner desists from the act that had constituted the violation and begins taking action that abides by the law that had been violated.

5.2 Remedies Upon Default. Upon the occurrence of any Event of Default, and thirty (30) days after written notice of default, and after a reasonable opportunity to cure such default, such default remains, City or Business Owner, as appropriate, may terminate this Agreement and file any action available in law or equity.

Notwithstanding the above, the liability of Business Owner for any and all Events of Default shall be limited solely to the amounts of financial assistance actually received by Business Owner under Section 4.1 of this Agreement, and in no event shall any recourse against any of the other assets of Business Owner be available to the City or any other person or entity hereunder. To the extent any Event of Default by Business Owner is limited to the Business Owner's termination of all or part of its operations in City before the end of the Operating Period, City's remedies for said Default by the Business Owner will be limited to prospective cancellation of the Agreement for the remainder of the Operating Period.

## 6. GENERAL PROVISIONS

6.1 Time of the Essence. Time is of the essence of this Agreement and all Parties' obligations hereunder.

6.2 Venue. In the event of any litigation hereunder, all such actions shall be instituted in the Superior Court of the County of Santa Clara, State of California, or an appropriate Federal District Court in the Northern District of California.

6.3 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

6.4 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

6.5 Attachments Incorporated. The Attachments, if any, to this Agreement are incorporated herein by this reference.

6.6 Copies. Any executed copy of this Agreement shall be deemed an original for all purposes.

6.7 Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability, unless it affects the substantial rights of a party or defeats the purpose of this Agreement, shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

6.8 Interpretation. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any party. When the context of this Agreement requires, the neuter gender includes the masculine, the feminine, a partnership or corporation of joint venture or other entity, and the singular includes the plural.

6.9 No Partnership or Joint Venture. The Parties hereto agree that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or association between City and Business Owner; or cause City or Business Owner to be responsible in any way for the debts or obligations of the other, and no other provision contained in this Agreement nor any acts the parties hereto shall be deemed to create any relationship between City and Business Owner other than that of contracting parties. Further, nothing herein shall give or is intended to give any rights of any kind to any person not an express party hereto.

6.10 Integration. This Agreement, including any Attachments attached hereto, is the entire Agreement between and final expression of the parties, and there are no agreements or representations between the parties except as expressed herein. All prior negotiations and

agreements between City and Business Owner with respect to the subject matter hereof are superseded by this Agreement. Except as otherwise provided herein, no subsequent change or addition to this Agreement shall be binding unless in writing and signed by the parties hereto.

6.11 Nonwaiver. None of the provisions of this Agreement shall be considered waived by any party except when such waiver is given in writing. The failure of any party to insist in any one or more instances upon strict performance of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

6.12 Notices. Any notice, approval, demand or other communication required or desired to be given pursuant to this Agreement shall be in writing and shall be effective upon personal service (including by means of professional messenger service) or, five (5) days after mailing via United States first-class mail, or two (2) days after mailing via Federal Express or other similar reputable overnight delivery service. Any notice shall be addressed as set forth below:

If to City:

Director of Finance  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

If to Business Owner:

KLA-Tencor  
Mr. Brian M. Martin  
Sr. Vice President & General Counsel  
1 Technology Drive  
Milpitas, CA 95035

With copies to (which shall not constitute Notice):

City Attorney  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

and

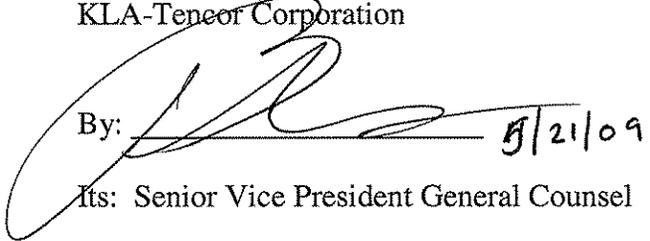
Office of the City Manager  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

Either City or Business Owner may change its respective address by giving written notice to the other in accordance with the provisions of this Section.

6.13 Legal Challenge. Should any third party successfully challenge the validity of this Agreement through a taxpayer suit or otherwise, either party may terminate this Agreement upon thirty (30) days written notice.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

BUSINESS OWNER:  
KLA-Tencor Corporation

By:  8/21/09  
Its: Senior Vice President General Counsel

CITY OF MILPITAS  
a municipal corporation of the  
State of California

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

EXHIBIT A  
TAX BASE OF THE BUSINESS OWNER  
2006-2008

Calendar Year 2006:	\$244,181
Calendar Year 2007:	\$226,214
Calendar Year 2008:	\$276,498
Average for 3 Years	\$248,964