



Agenda Commentary

Item Title/ Subject: Agreement with Oklahoma Tax Commission

Staff Source: Lisa Anders, City Clerk

History/Background Information:

This agreement is with the Oklahoma Tax Commission for the collection of city sales and use tax. Due to the change in tax rate, a new agreement is necessary.

Item/Subject Summary:

Consider agreement with the Oklahoma Tax Commission to collect the new tax rate for sales tax and use tax.

Price/Cost: None

Recommendation: Approval of Sales Tax and Use Tax collection agreements

AGREEMENT FOR ADMINISTRATION
OF THE SALES TAX ORDINANCES
OF THE CITY/TOWN OF

Clinton

THIS AGREEMENT is entered into this 1st day of April, 2011, pursuant to the provisions of Sections 2701 et seq. of Title 68 of the Oklahoma Statutes, between the Oklahoma Tax Commission, hereinafter referred to as "Commission," and the City/Town of Clinton, Oklahoma, hereinafter referred to as "Municipality," for the administration of Ordinance(s) No. 896, hereinafter referred to as "Ordinances," levying a municipal sales tax of _____ percent (3.05%) upon sales within the Municipality.

1. This Agreement is based upon the Ordinances, certified copies of which are attached hereto and made a part hereof. The Municipality may, at any time and from time to time, amend or repeal the Ordinances and, to the extent that the Municipality amends or repeals the Ordinances, the Municipality shall promptly provide the Commission with a certified copy of the ordinance effecting such amendment or such repeal.

An increase or a decrease in the municipal sales tax rate shall become effective only on the first day of a calendar quarter. Provided, however, the sales and use tax rates levied by the Municipality if the Municipality levies both a sales and use tax, must be identical. The Municipality shall notify the Commission of an increase or a decrease at least seventy-five (75) days prior to the close of the prior calendar quarter and shall provide the Commission with a certified copy of the ordinance effecting such increase or such decrease and a certified copy of the election results, if any, with respect thereto.

2. The Commission shall administer and shall enforce the Ordinances and shall collect the municipal sales tax, and the interest and penalties with respect thereto, as provided in the Ordinances and as herein provided. It is recognized and acknowledged that: (a) the Ordinances levy municipal sales tax upon all sales within the Municipality which are subject to the state sales tax levied by Sections 1350 et seq. of Title 68 of the Oklahoma Statutes, hereinafter referred to as "Oklahoma Sales Tax Code;" (b) the term "sale" as used in the Ordinances has the same meaning as the term "sale" has in the Oklahoma Sales Tax Code; and (c) any sale exempt from state sales tax is exempt from the municipal sales tax, unless otherwise provided by the Oklahoma Sales Tax Code.

To facilitate such administration, such collection and such enforcement, as well as the administration, the collection and the enforcement of local taxes, the Commission shall designate a Local Tax Coordinator of the Commission who shall be generally responsible for matters related to the collection of local taxes and, with respect to such matters, shall directly advise the Administrator of the Commission. The duties which may be performed by the Local Tax Coordinator and/or other employees of the

Commission under his or her supervision, shall include, without limitation, (a) acting as liaison between the Commission and municipalities and counties with respect to the administration, the collection and the enforcement of local taxes, (b) addressing concerns of the Commission and/or taxpayers with respect to the administration, the collection and the enforcement of municipal taxes by municipalities and county taxes by counties, (c) consulting with municipalities and counties on concerns and trends with respect to local taxes, (d) coordinating collection and enforcement actions by the Commission, municipalities and counties with respect to local taxes, (e) coordinating the provision by the Commission to municipalities and counties of information and (f) providing educational and other support to municipalities and counties in their collection and enforcement efforts. In making decisions with respect to the administration of local taxes, the Commission will consider the view, if any, expressed by the Municipality; provided, however, the Commission may accept or reject any such views expressed by the Municipality.

Notwithstanding anything else contained herein, the Local Tax Coordinator shall not perform any duties which are the sole responsibility of the Municipality.

3. The method of computing sales tax to be used by vendors in collecting both state and municipal sales tax, is prescribed in Section 1362 of the Oklahoma Sales Tax Code.

4. The discount (deduction) allowed to vendors in Section 1367.1 of the Oklahoma Sales Tax Code shall be applicable to both state and local sales tax remittances. Monetary allowances provided for in 68 O.S. § 1354.31 shall also be applicable to both state and local sales tax remittances.

5. The Commission shall retain, as its sole compensation for its services rendered hereunder, an amount equal to the applicable percentage of the amount of the municipal sales taxes, and the interest and penalties with respect thereto, collected by the Commission hereunder. The applicable percentage is set forth in Exhibit A as incorporated herein.

6. Except as otherwise provided herein, the Commission shall give no preference in applying an amount received for state, municipal and county sales taxes owed by a taxpayer to the extent that such amount is less than the aggregate state, municipal and county sales tax liability of the taxpayer. Any such amount shall be applied pro rata to the satisfaction of the claims of the Commission, the claims of the Municipality and the claims of other municipalities and counties based on the portions of the aggregate state, municipal and county sales tax liability of the taxpayer represented by their respective claims.

7. The municipal sales tax received and collected by the Commission pursuant to this Agreement shall be deposited in the State Treasury as required by law. The Commission shall use its best efforts to cause to be paid to the Municipality no later than the tenth day of each calendar month all municipal sales tax, and the interest and

the penalties with respect thereto, received and collected by the Commission during the immediately preceding calendar month, less any amount withheld by the Commission under Paragraph 5 and less any amounts deducted by the Commission in connection with refunds hereunder.

8. The Commission shall require reports of municipal sales tax from vendors, shall maintain records of reports by, and receipts and collections from, vendors, and shall maintain the records in such a manner that the total amount due the Municipality each month can be determined by the Commission and can be verified by the Municipality. The requirement for the Commission to maintain its records in a verifiable form is not intended to require the Commission to maintain its records in any particular form; the Commission may use any form which is capable of being understood by a person reviewing such records with the assistance of the Commission (which assistance shall be provided through the Local Tax Coordinator). The Commission shall transmit to the Municipality a monthly statement of the municipal sales tax, and interest and penalties with respect thereto, received and collected by the Commission during the immediately preceding calendar month, the amounts, if any, refunded by the Commission to taxpayers during the immediately preceding calendar month and the amount withheld by the Commission under Paragraph 5.

9. In the event a vendor remits sales tax due but fails to submit city/county attachments, or submits a report from which the sales tax due Municipality can not be determined, the Commission will allocate to Municipality such sales tax received pro rata based on the vendor's percentage allocation for the most recent report filed or, if no report has been filed, according to the best information available to the Commission. Such amount, and any interest and penalty as provided in Section 217 of Title 68 of the Oklahoma Statutes with respect thereto, shall be paid to the Municipality in accordance with Paragraph 7. Interest will begin as of the date the vendor remittance is deposited to the State Treasury.

10. The Municipality acknowledges that the Commission is responsible for making refunds to taxpayers of municipal sales taxes previously collected by the Commission on behalf of the Municipality. The term "refunds" as used herein shall include payments made pursuant to filed claim for refund(s) or amended return(s) approved by the Commission. The Commission's determination of any taxpayer's liability for sales and use taxes shall be binding as between the Municipality and the taxpayer.

Any refund of municipal sales tax previously paid by the Commission to the Municipality shall be paid from subsequent collections of the municipal sales tax. Such refund shall be deducted from the collections payable by the Commission to the Municipality in the immediately following calendar month (unless the taxpayer entitled to such refund otherwise agrees).

Subject to any provisions included in a rider to this Agreement, the Commission shall use its best efforts to give written notice to the affected municipality or

municipalities at least five (5) days prior to the mailing of a refund check in an amount of \$5,000 or more of state, county and municipal sales taxes. In addition, the Commission shall generate internal reports with respect to adjustments and amended returns and shall use its best efforts to provide at least five (5) days' prior notice of payments based thereon; provided however, if the Commission can not give at least five (5) days' prior notice, it shall give such notice as it can.

11. Any municipal sales tax, and/or any interest and penalties with respect thereto, paid under protest by a taxpayer to the Commission during the immediately preceding calendar month shall be paid by the Commission to the Municipality as part of the payment being made by the Commission to the Municipality. If the protested municipal sales tax, interest or penalties are required to be refunded, such amount and any interest required to be paid thereon will be paid out of subsequent collections by the Commission. Such refund shall be deducted from the collections payable by the Commission to the Municipality in the immediately following calendar month (unless the taxpayer entitled to such refund otherwise agrees).

In the event the Commission conducts a hearing on a claim for refund or a taxpayer files a protest to an audit proposed assessment which involves \$10,000 or more of local taxes and an affected municipality shall have requested such notice in writing, the Commission shall, at the same time the parties are notified of the scheduled hearing, provide notice to the municipality affected.

12. Simultaneously with the execution and the delivery of this Agreement, the Commission shall, upon written request of the Municipality, provide to the Municipality a full and complete list of the names and the addresses of the persons and the entities which or who report doing business within the boundary of the Municipality during the preceding calendar year.

The Commission shall, upon written request of the Municipality, report to the Municipality on a monthly basis all of the following information:

(a) additions to, and deletions from, the full and complete list of the names and the addresses of persons and entities which or who report doing business during the preceding calendar year within the boundary of the Municipality;

(b) a full and complete list of the persons and the entities specified in paragraph 12(a) which or who are more than sixty (60) days delinquent in remitting municipal sales taxes pursuant to the Ordinances; and

(c) a full and complete list of all persons and all entities paying municipal sales tax under the Ordinances, and/or interest and penalties with respect thereto, and the amount of such remittances.

The Commission shall, upon written request of the Municipality, report to the Municipality on a quarterly basis all of the following information

- (a) the number of audits completed and assessments determined by the Commission with respect to municipal sales taxes, and/or interest and penalties with respect thereto, under the Ordinances during the preceding calendar year; and
- (b) the amount of additional municipal sales taxes, and/or interest and penalties with respect thereto, under the Ordinances collected by the Commission during the preceding calendar year.

Notwithstanding the foregoing, Commission and Municipality may agree to reports in lieu of or in addition to those listed above. Reports other than the reports listed above will be addressed in a rider to this Agreement.

The Commission shall monitor the administration, the collection and the enforcement of municipal sales taxes, and/or interest and penalties with respect thereto, under the Ordinances. The Commission shall provide the Municipality such information as may be requested by the Municipality with respect to any protest or any refund of municipal sales taxes levied by the Municipality. The Municipality shall also be entitled to consult with the Commission's legal staff about protests and refunds and, to the extent that a protest or a refund involves one or more hearings, the Municipality shall, through legal counsel or other designated staff employed by the Municipality, be entitled to be present and observe such hearing(s); provided, however, the administrative law judge or the Commission may limit the number of counsel or other designated staff, if any, who may be present to the extent necessary to permit the hearing to be conducted in an orderly fashion and without undue trepidation on the part of the taxpayer.

To the extent that such documents and/or such information relates to municipal sales taxes, and/or interest and penalties with respect thereto, and is requested, at any time and from time to time by the Municipality, the Commission shall promptly provide to the Municipality (a) copies of applications for sales tax permits, (b) copies of sales tax reports, (c) copies of installment or other payment plans, if any, with taxpayers and (d) other documents and other information.

The Commission shall promptly notify the Municipality of any conduct which the Commission believes might be the basis for a criminal prosecution by the Municipality under the Ordinances and shall provide to the Municipality all of the documents and the information in the possession of the Commission with respect thereto, including, without limitation, the names of employees of the Commission who might be witnesses with respect thereto.

The Municipality acknowledges that Section 205 of Title 68 of the Oklahoma Statutes, which makes the records and the files of the Commission confidential (subject

to specified exceptions) and which prohibits disclosure of such records and such files (subject to specified exceptions), includes the Commission's records and files with respect to the receipt and the collection of municipal sales tax. Nothing contained herein is intended to require the Commission to disclose to the Municipality any information whose disclosure to the Municipality is prohibited by Section 205.

The Commission acknowledges that (a) Section 205(c)(7) of Title 68 of the Oklahoma Statutes permits the Commission to furnish information disclosed by the records and the files of the Commission to an official person or body of this state who is concerned with the administration or the assessment of certain taxes, such as the Municipality, (b) Section 205(c)(22) of Title 68 permits the disclosure to the governing body or municipal attorney, if so designated by the governing body, of information directly involved in the resolution of issues arising out of the enforcement of a municipal sales tax ordinance, such as the Ordinances, pursuant to a municipal tax collection agreement, such as this Agreement, and (c) Section 22-107 of Title 11 of the Oklahoma Statutes and Section 205.1 of Title 68 of the Oklahoma Statutes permits the Commission to release specified information to municipalities.

The Municipality acknowledges that Section 205 of Title 68 of the Oklahoma Statutes may prevent the disclosure by the Municipality and persons associated with the Municipality of information which is provided by the Commission to the Municipality and that improper disclosure by the Municipality or any such person of such information may result in civil and criminal liability. The Municipality shall comply with the restrictions imposed by Section 205.

13. In the event of termination of this Agreement, the Commission will cause to be paid over to the Municipality, all municipal sales tax funds in its possession then due and payable under this Agreement. The Municipality shall thereafter be liable for and shall pay any refunds of municipal sales tax required by law to be made, including refunds of municipal sales tax, penalty and interest paid under protest that must be refunded and any interest required thereon. After such termination, the Commission's liability shall extend only to the amount of such funds being held by it. The Municipality agrees to pay any interest required by law to be paid on such refunds.

14. The Commission shall have the authority to assess and to collect, on behalf of the Municipality, the municipal sales tax levied by the Ordinances, and the interest and the penalties with respect thereto, including, without limitation, any municipal sales tax, interest and/or penalty existing on the date hereof.

The Municipality agrees to refrain from contacting directly persons or entities doing business within the boundary of the Municipality unless and until such contact is agreed to by Commission and Municipality in a rider to this Agreement.

The Municipality may inquire into the compliance of persons and entities with the Ordinances and, to the extent that the Municipality determines that any person or any entity has not complied with the Ordinances, the Municipality may request the

Commission to issue a proposed assessment against such person or such entity. To the extent that the Commission receives any such request, the Commission shall review such request within 90 days and, to the extent that the Commission believes that such request presents a basis for a proposed assessment, shall issue a proposed assessment. Any such proposed assessment shall be resolved as provided in Sections 201 et seq. of Title 68 and the procedural rules promulgated by the Commission.

The Municipality may, at the option of the Municipality, request the Commission to initiate a show cause proceeding against a person or an entity which the Municipality believes, in good faith, not to be in compliance with the Ordinances or any provision thereof. To the extent that the Commission receives any such request, the Commission shall review such request within 90 days and, to the extent that the Commission believes that such request presents a basis for a show cause proceeding, shall initiate a show cause proceeding. Such show cause proceeding shall be conducted as provided in the procedural rules promulgated by the Commission.

The Commission and the Municipality acknowledge the mutual interest of the Commission and the Municipality in maximizing compliance with the Ordinances and the collection of local taxes thereunder. The Municipality may, at any time and from time to time, either alone or in conjunction with other municipalities, submit a written proposal for supplemental audit, collection and enforcement activities for consideration by the Commission; provided, however, it is expressly understood that any such written proposal must provide for coordination with the collection and enforcement activities of the Commission, provide for the use of the then applicable audit standards of the Commission and otherwise be in form and in substance to the Commission. In the event that Municipality's proposal is accepted by Commission, Municipality will be authorized to conduct the activities included in such proposal on behalf of Commission and no other action will be authorized by the Commission by a municipality or municipalities not included in the accepted proposal.

15. It is recognized and acknowledged that the Ordinances include criminal sanctions for violation of the Ordinances. Notwithstanding anything else contained herein, the Municipality shall have the exclusive authority to prosecute any criminal violations of the Ordinances and the Commission shall refrain from taking any such action. Nothing contained herein shall prevent the State of Oklahoma from prosecuting persons for crimes under state law, including, without limitation, embezzlement by a vendor of a municipal sales tax.

16. To the extent that the Municipality decides to prosecute criminally any action under this Agreement, the Commission and the Municipality shall cooperate, in good faith, to maximize collections under the Ordinances and to minimize duplicative effort by the Commission and the Municipality.

17. Any payment of municipal sales tax, and/or the interest and the penalties with respect thereto, generated as a result of action by the Municipality hereunder, shall be paid by the taxpayer directly to the Commission.

18. The Commission has the exclusive authority to enter into an installment or other payment agreement with any taxpayer, including a taxpayer prosecuted under a municipal sales tax ordinance, for state and local taxes owed by the taxpayer.

19. The Municipality agrees that, if there is a challenge to the constitutionality or the legality of the Ordinances or any provision thereof (other than a challenge based on the application by the Commission of the Ordinances or any provision thereof), the Municipality shall be responsible for the resolution of such challenge. If such a challenge is based on the application by the Commission of the Ordinances or any provision thereof, the Commission shall be responsible for the resolution of such challenge. The party responsible for the resolution of any challenge shall make all decisions with respect to the prosecution and the settlement of any litigation with respect to such challenge and the other party shall cooperate with the responsible party with respect to the resolution of such challenge.

20. The change in the boundary of Municipality shall be effective for sales tax purposes only, on the first day of a calendar quarter. Municipality shall give the Commission notice in writing of any annexation or de-annexation of territory to the municipality at least seventy-five (75) days prior to the close of the prior calendar quarter. The notice shall include a verified copy of the street or physical boundaries of the newly annexed or de-annexed territory. All Municipality limit lines shall be designated by street names, or other physical boundaries, shown in map form, and certified to the Commission.

21. Neither Municipality nor Commission has entered into this Agreement with the intention of violating state law or the provisions of the Streamlined Sales Tax Agreement. If it is determined by either party that any provision violates either state law or the Streamlined Sales Tax Agreement, such provision of the Agreement shall be null and void. The remaining provision of the Agreement shall be in effect until the expiration or termination of the Agreement.

22. This Agreement shall be in effect from April 1, 2011, until June 2014, and shall renew without action of the parties for additional terms of one (1) year provided that the current rate has not been changed and neither party has given written notice to the other party of its intent to terminate this Agreement prior to the expiration of the then current term. Either party may terminate this contract for any reason upon thirty (30) days written notice of its intent to terminate to the other party.

IN WITNESS WHEREOF, the parties have set their hands and affixed their official seals the day and year first above written.

THE MUNICIPALITY OF

OKLAHOMA TAX COMMISSION



A Municipal Corporation

Thomas E. Kemp, Jr., Chairman



Mayor

Jerry Johnson, Vice-Chairman

ATTEST: (CITY SEAL)



Municipal Clerk

Constance Irby, Secretary-Member

ATTEST: (STATE SEAL)

APPROVED:

Assistant Secretary – OTC

Director, Taxpayer Assistance Division

APPROVED BY THE CITY OF _____ LEGAL DEPARTMENT

BY _____ DATE _____

EXHIBIT A

RETENTION FEE AS OF 8/1/1989 PER TITLE 68-SEC.2702

<u>RATE (%)</u>		<u>FEE</u>		<u>RATE (%)</u>		<u>FEE</u>
1%-1.99%	=	1.75%		2.5%	=	1.25%
2%	=	1.50%		2.75%	=	1.12%
2.25%	=	1.37%		3% % or >	=	1.00%

AGREEMENT FOR ADMINISTRATION
OF THE USE TAX ORDINANCES
OF THE CITY/TOWN OF

Clinton

THIS AGREEMENT is entered into this 1st day of April, 2011 pursuant to the provisions of Sections 1411 and 2701 et seq. of Title 68 of the Oklahoma Statutes, between the Oklahoma Tax Commission, hereinafter referred to as "Commission," and the City/Town of Clinton, Oklahoma, hereinafter referred to as "Municipality," for the administration of Ordinance(s) No. 896, hereinafter referred to as "Ordinances," levying a municipal use tax of _____ percent (3.05%) upon sales within the Municipality.

1. This Agreement is based upon the Ordinances, certified copies of which are attached hereto and made a part hereof. The Municipality may, at any time and from time to time, amend or repeal the Ordinances and, to the extent that the Municipality amends or repeals the Ordinances, the Municipality shall promptly provide the Commission with a certified copy of the ordinance effecting such amendment or such repeal.

An increase or a decrease in the municipal use tax rate shall become effective only on the first day of a calendar quarter. Provided, however, the sales and use tax rates levied by the Municipality if the Municipality levies both a sales and use tax, must be identical. The Municipality shall notify the Commission of an increase or a decrease at least seventy-five (75) days prior to the close of the prior calendar quarter and shall provide the Commission with a certified copy of the ordinance effecting such increase or such decrease and a certified copy of the election results, if any, with respect thereto.

2. The Commission shall administer and shall enforce the Ordinances and shall collect the municipal use tax, and the interest and penalties with respect thereto, as provided in the Ordinances and as herein provided. It is recognized and acknowledged that: (a) the Ordinances levy municipal use tax upon all transactions within the Municipality which are subject to the state use tax levied by Sections 1401 et seq. of Title 68 of the Oklahoma Statutes, hereinafter referred to as "Oklahoma Use Tax Code;" (b) the terms as used in the Ordinances have the same meaning as the terms have in the Oklahoma Use Tax Code; and (c) any transaction exempt from state use tax is exempt from the municipal use tax, unless otherwise provided by the Oklahoma Use Tax Code.

To facilitate such administration, such collection and such enforcement, as well as the administration, the collection and the enforcement of local taxes, the Commission shall designate a Local Tax Coordinator of the Commission who shall be generally responsible for matters related to the collection of local taxes and, with respect to such matters, shall directly advise the Administrator of the Commission. The duties which

may be performed by the Local Tax Coordinator and/or other employees of the Commission under his or her supervision, shall include, without limitation, (a) acting as liaison between the Commission and municipalities and counties with respect to the administration, the collection and the enforcement of local taxes, (b) addressing concerns of the Commission and/or taxpayers with respect to the administration, the collection and the enforcement of municipal taxes by municipalities and county taxes by counties, (c) consulting with municipalities and counties on concerns and trends with respect to local taxes, (d) coordinating collection and enforcement actions by the Commission, municipalities and counties with respect to local taxes, (e) coordinating the provision by the Commission to municipalities and counties of information and (f) providing educational and other support to municipalities and counties in their collection and enforcement efforts. In making decisions with respect to the administration of local taxes, the Commission will consider the view, if any, expressed by the Municipality; provided, however, the Commission may accept or reject any such views expressed by the Municipality.

Notwithstanding anything else contained herein, the Local Tax Coordinator shall not perform any duties, which are the sole responsibility of the Municipality.

3. The discount (deduction) allowed to vendors in Section 1410.1 of the Oklahoma Use Tax Code shall be applicable to both state and local use tax remittances. Monetary allowances provided for in 68 O.S. § 1354.31 shall also be applicable to both state and local use tax remittances.

4. The Commission shall retain, as its sole compensation for its services rendered hereunder, an amount equal to the applicable percentage of the amount of the municipal use taxes, and the interest and penalties with respect thereto, collected by the Commission hereunder. The applicable percentage is set forth in Exhibit A as incorporated herein.

5. Except as otherwise provided herein, the Commission shall give no preference in applying an amount received for state, municipal and county use taxes owed by a taxpayer to the extent that such amount is less than the aggregate state, municipal and county use tax liability of the taxpayer. Any such amount shall be applied pro rata to the satisfaction of the claims of the Commission, the claims of the Municipality and the claims of other municipalities and counties based on the portions of the aggregate state, municipal and county use tax liability of the taxpayer represented by their respective claims.

6. The municipal use tax received and collected by the Commission pursuant to this Agreement shall be deposited in the State Treasury as required by law. The Commission shall use its best efforts to cause to be paid to the Municipality no later than the tenth day of each calendar month all municipal use tax, and the interest and the penalties with respect thereto, received and collected by the Commission during the immediately preceding calendar month, less any amount withheld by the Commission

under Paragraph 4 and less any amounts deducted by the Commission in connection with refunds hereunder.

7. The Commission shall require reports of municipal use tax from consumers and vendors, shall maintain records of reports by, and receipts and collections from, consumers and vendors, and shall maintain the records in such a manner that the total amount due the Municipality each month can be determined by the Commission and can be verified by the Municipality. The requirement for the Commission to maintain its records in a verifiable form is not intended to require the Commission to maintain its records in any particular form; the Commission may use any form which is capable of being understood by a person reviewing such records with the assistance of the Commission (which assistance shall be provided through the Local Tax Coordinator). The Commission shall transmit to the Municipality a monthly statement of the municipal use tax, and interest and penalties with respect thereto, received and collected by the Commission during the immediately preceding calendar month, the amounts, if any, refunded by the Commission to taxpayers during the immediately preceding calendar month and the amount withheld by the Commission under Paragraph 4.

8. In the event a consumer or vendor remits use tax due but fails to submit city/county attachments, or submits a report from which the use tax due Municipality can not be determined, the Commission will allocate to Municipality such use tax received pro rata based on the vendor's percentage allocation for the most recent report filed or, if no report has been filed, according to the best information available to the Commission. Such amount, and any interest and penalty as provided in Section 217 of Title 68 of the Oklahoma Statutes with respect thereto, shall be paid to the Municipality in accordance with Paragraph 6. Interest will begin as of the date the vendor remittance is deposited to the State Treasury.

9. The Municipality acknowledges that the Commission is responsible for making refunds to taxpayers of municipal use taxes previously collected by the Commission on behalf of the Municipality. The term "refunds" as used herein shall include payments made pursuant to filed claim for refund(s) or amended return(s) approved by the Commission. The Commission's determination of any taxpayer's liability for sales and use taxes shall be binding as between the Municipality and the taxpayer.

Any refund of municipal use tax previously paid by the Commission to the Municipality shall be paid from subsequent collections of the municipal use tax. Such refund shall be deducted from the collections payable by the Commission to the Municipality in the immediately following calendar month (unless the taxpayer entitled to such refund otherwise agrees).

Subject to any provisions included in a rider to this Agreement, the Commission shall use its best efforts to give written notice to the affected municipality or municipalities at least five (5) days prior to the mailing of a refund check in an amount of

\$5,000 or more of state, county and municipal use taxes. In addition, the Commission shall generate internal reports with respect to adjustments and amended returns and shall use its best efforts to provide at least five (5) days' prior notice of payments based thereon; provided however, if the Commission can not give at least five (5) days' prior notice, it shall give such notice as it can.

10. Any municipal use tax, and/or any interest and penalties with respect thereto, paid under protest by a taxpayer to the Commission during the immediately preceding calendar month shall be paid by the Commission to the Municipality as part of the payment being made by the Commission to the Municipality. If the protested municipal use tax, interest or penalties are required to be refunded, such amount and any interest required to be paid thereon will be paid out of subsequent collections by the Commission. Such refund shall be deducted from the collections payable by the Commission to the Municipality in the immediately following calendar month (unless the taxpayer entitled to such refund otherwise agrees).

In the event the Commission conducts a hearing on a claim for refund or a taxpayer files a protest to an audit proposed assessment which involves \$10,000 or more of local taxes and an affected municipality shall have requested such notice in writing, the Commission shall, at the same time the parties are notified of the scheduled hearing, provide notice to the municipality affected.

11. Simultaneously with the execution and the delivery of this Agreement, the Commission shall, upon written request of the Municipality, provide to the Municipality a full and complete list of the names and the addresses of the persons and the entities which or who report doing business within the boundary of the Municipality during the preceding calendar year.

The Commission shall, upon written request of the Municipality, report to the Municipality on a monthly basis all of the following information:

(a) a full and complete list of the persons and entities which or who are more than sixty (60) days delinquent in remitting municipal use taxes pursuant to the Ordinances; and

(b) a full and complete list of all persons and all entities paying municipal use tax under the Ordinances, and/or interest and penalties with respect thereto, and the amount of such remittances.

The Commission shall, upon written request of the Municipality, report to the Municipality on a quarterly basis all of the following information:

(a) the number of audits completed and assessments determined by the Commission with respect to municipal use taxes, and/or interest and penalties with respect thereto, under the Ordinances during the preceding calendar year; and

- (b) the amount of additional municipal use taxes, and/or interest and penalties with respect thereto, under the Ordinances collected by the Commission during the preceding calendar year.

Notwithstanding the foregoing, Commission and Municipality may agree to reports in lieu of or in addition to those listed above. Reports other than the reports listed above will be addressed in a rider to this Agreement.

The Commission shall monitor the administration, the collection and the enforcement of municipal use taxes, and/or interest and penalties with respect thereto, under the Ordinances. The Commission shall provide the Municipality such information as may be requested by the Municipality with respect to any protest or any refund of municipal use taxes levied by the Municipality. The Municipality shall also be entitled to consult with the Commission's legal staff about protests and refunds and, to the extent that a protest or a refund involves one or more hearings, the Municipality shall, through legal counsel or other designated staff employed by the Municipality, be entitled to be present and observe such hearing(s); provided, however, the administrative law judge or the Commission may limit the number of counsel or other designated staff, if any, who may be present to the extent necessary to permit the hearing to be conducted in an orderly fashion and without undue trepidation on the part of the taxpayer.

To the extent that such documents and/or such information relates to municipal use taxes, and/or interest and penalties with respect thereto, and is requested, at any time and from time to time by the Municipality, the Commission shall promptly provide to the Municipality (a) copies of use tax reports, (b) copies of installment or other payment plans, if any, with taxpayers and (c) other documents and other information.

The Commission shall promptly notify the Municipality of any conduct which the Commission believes might be the basis for a criminal prosecution by the Municipality under the Ordinances and shall provide to the Municipality all of the documents and the information in the possession of the Commission with respect thereto, including, without limitation, the names of employees of the Commission who might be witnesses with respect thereto.

The Municipality acknowledges that Section 205 of Title 68 of the Oklahoma Statutes, which makes the records and the files of the Commission confidential (subject to specified exceptions) and which prohibits disclosure of such records and such files (subject to specified exceptions), includes the Commission's records and files with respect to the receipt and the collection of municipal use tax. Nothing contained herein is intended to require the Commission to disclose to the Municipality any information whose disclosure to the Municipality is prohibited by Section 205.

The Commission acknowledges that (a) Section 205(c)(7) of Title 68 of the Oklahoma Statutes permits the Commission to furnish information disclosed by the records and the files of the Commission to an official person or body of this state who is

concerned with the administration or the assessment of certain taxes, such as the Municipality, (b) Section 205(c)(22) of Title 68 permits the disclosure to the governing body or municipal attorney, if so designated by the governing body, of information directly involved in the resolution of issues arising out of the enforcement of a municipal use tax ordinance, such as the Ordinances, pursuant to a municipal tax collection agreement, such as this Agreement, and (c) Section 22-107 of Title 11 of the Oklahoma Statutes and Section 205.1 of Title 68 of the Oklahoma Statutes permits the Commission to release specified information to municipalities.

The Municipality acknowledges that Section 205 of Title 68 of the Oklahoma Statutes may prevent the disclosure by the Municipality and persons associated with the Municipality of information, which is provided by the Commission to the Municipality, and that improper disclosure by the Municipality or any such person of such information may result in civil and criminal liability. The Municipality shall comply with the restrictions imposed by Section 205.

12. In the event of termination of this Agreement, the Commission will cause to be paid over to the Municipality, all municipal use tax funds in its possession then due and payable under this Agreement. The Municipality shall thereafter be liable for and shall pay any refunds of municipal use tax required by law to be made, including refunds of municipal use tax, penalty and interest paid under protest that must be refunded and any interest required thereon. After such termination, the Commission's liability shall extend only to the amount of such funds being held by it. The Municipality agrees to pay any interest required by law to be paid on such refunds.

13. The Commission shall have the authority to assess and to collect, on behalf of the Municipality, the municipal use tax levied by the Ordinances, and the interest and the penalties with respect thereto, including, without limitation, any municipal use tax, interest and/or penalty existing on the date hereof.

The Municipality agrees to refrain from contacting directly persons or entities doing business within the boundary of the Municipality unless and until such contact is agreed to by Commission and Municipality in a rider to this Agreement.

The Municipality may inquire into the compliance of persons and entities with the Ordinances and, to the extent that the Municipality determines that any person or any entity has not complied with the Ordinances, the Municipality may request the Commission to issue a proposed assessment against such person or such entity. To the extent that the Commission receives any such request, the Commission shall review such request within 90 days and, to the extent that the Commission believes that such request presents a basis for a proposed assessment, shall issue a proposed assessment. Any such proposed assessment shall be resolved as provided in Sections 201 et seq. of Title 68 and the procedural rules promulgated by the Commission.

The Municipality may, at the option of the Municipality, request the Commission to initiate a show cause proceeding against a person or an entity which the Municipality

believes, in good faith, not to be in compliance with the Ordinances or any provision thereof. To the extent that the Commission receives any such request, the Commission shall review such request within 90 days and, to the extent that the Commission believes that such request presents a basis for a show cause proceeding, shall initiate a show cause proceeding. Such show cause proceeding shall be conducted as provided in the procedural rules promulgated by the Commission.

The Commission and the Municipality acknowledge the mutual interest of the Commission and the Municipality in maximizing compliance with the Ordinances and the collection of local taxes thereunder. The Municipality may, at any time and from time to time, either alone or in conjunction with other municipalities, submit a written proposal for supplemental audit, collection and enforcement activities for consideration by the Commission; provided, however, it is expressly understood that any such written proposal must provide for coordination with the collection and enforcement activities of the Commission, provide for the use of the then applicable audit standards of the Commission and otherwise be in form and in substance to the Commission. In the event that Municipality's proposal is accepted by Commission, Municipality will be authorized to conduct the activities included in such proposal on behalf of Commission and no other action will be authorized by the Commission by a municipality or municipalities not included in the accepted proposal.

14. It is recognized and acknowledged that the Ordinances include criminal sanctions for violation of the Ordinances. Notwithstanding anything else contained herein, the Municipality shall have the exclusive authority to prosecute any criminal violations of the Ordinances and the Commission shall refrain from taking any such action. Nothing contained herein shall prevent the State of Oklahoma from prosecuting persons for crimes under state law, including, without limitation, embezzlement by a vendor of a municipal use tax.

15. To the extent that the Municipality decides to prosecute criminally any action under this Agreement, the Commission and the Municipality shall cooperate, in good faith, to maximize collections under the Ordinances and to minimize duplicative effort by the Commission and the Municipality.

16. Any payment of municipal use tax, and/or the interest and the penalties with respect thereto, generated as a result of action by the Municipality hereunder, shall be paid by the taxpayer directly to the Commission.

17. The Commission has the exclusive authority to enter into an installment or other payment agreement with any taxpayer, including a taxpayer prosecuted under a municipal use tax ordinance, for state and local taxes owed by the taxpayer.

18. The Municipality agrees that, if there is a challenge to the constitutionality or the legality of the Ordinances or any provision thereof (other than a challenge based on the application by the Commission of the Ordinances or any provision thereof), the

Municipality shall be responsible for the resolution of such challenge. If such a challenge is based on the application by the Commission of the Ordinances or any provision thereof, the Commission shall be responsible for the resolution of such challenge. The party responsible for the resolution of any challenge shall make all decisions with respect to the prosecution and the settlement of any litigation with respect to such challenge and the other party shall cooperate with the responsible party with respect to the resolution of such challenge.

19. The change in the boundary of Municipality shall be effective for use tax purposes only, on the first day of a calendar quarter. Municipality shall give the Commission notice in writing of any annexation or de-annexation of territory to the municipality at least seventy-five (75) days prior to the close of the prior calendar quarter. The notice shall include a verified copy of the street or physical boundaries of the newly annexed or de-annexed territory. All Municipality limit lines shall be designated by street names, or other physical boundaries, shown in map form, and certified to the Commission.

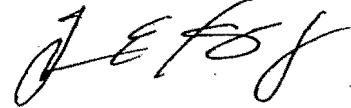
20. Neither Municipality nor Commission has entered into this Agreement with the intention of violating state law or the provisions of the Streamlined Sales Tax Agreement. If it is determined by either party that any provision violates either state law or the Streamlined Sales Tax Agreement, such provision of the Agreement shall be null and void. The remaining provision of the Agreement shall be in effect until the expiration or termination of the Agreement.

21. This Agreement shall be in effect from April 1, 2011, until June 2014, and shall renew without action of the parties for additional terms of one (1) year provided that the current rate has not been changed and neither party has given written notice to the other party of its intent to terminate this Agreement prior to the expiration of the then current term. Either party may terminate this contract for any reason upon thirty (30) days written notice of its intent to terminate to the other party.

IN WITNESS WHEREOF, the parties have set their hands and affixed their official seals the day and year first above written.

THE MUNICIPALITY OF

OKLAHOMA TAX COMMISSION



A Municipal Corporation

Thomas E. Kemp, Jr., Chairman



Mayor

Jerry Johnson, Vice-Chairman



ATTEST: (CITY SEAL)

Constance Irby, Secretary-Member

Municipal Clerk

APPROVED:

ATTEST: (STATE SEAL)

Director, Taxpayer Assistance Division

Assistant Secretary – OTC

APPROVED BY THE CITY OF _____ LEGAL DEPARTMENT

BY _____ DATE _____

EXHIBIT A

RETENTION FEE AS OF 8/1/1989 PER TITLE 68-SEC.2702

<u>RATE (%)</u>		<u>FEE</u>		<u>RATE (%)</u>		<u>FEE</u>
1%-1.99%	=	1.75%		2.5%	=	1.25%
2%	=	1.50%		2.75%	=	1.12%
2.25%	=	1.37%		3% % or >	=	1.00%