



## **Agenda Commentary**

**Item Title/ Subject:** TH Rogers Tax Incentive Agreement

**Staff Source:** City Manager, Steve Hewitt

**History/Background Information:** City Council approved the Tax Incentive Application for TH Roger's new facility back in May of 2010. The final agreement is required, which has been reviewed by our City Attorney. The agreement has been sent to TH Rogers.

**Item/Subject Summary:** This is the final agreement (pending an occupancy permit) which provided TH Rogers a sales tax rebate from the City of 60% of new sales. This incentive is for a balance of 5 years.

**Price/Cost:** (rebate of sales tax above the past 3 average sales)

**Recommendation:** Recommend approval.

**TAX INCENTIVE AGREEMENT  
(PRE-EXISTING BUSINESS)**

THIS Tax Incentive Agreement (the "Agreement") is entered into by and among the City of Clinton, Oklahoma (the "City") and T. H. Rogers Lumber Company (the "Owner").

**RECITALS:**

**WHEREAS**, the City adopted Resolution IA09-02 to provide a means to attract business and economic growth within the Clinton Community;

**WHEREAS**, Owner owns the real property described in Exhibit "A" and has made application for the Tax Incentives as contained in Resolution IA09-02;

**WHEREAS**, Owner's application has been approved and Owner meets the qualification requirements within Resolution IA09-02;

**NOW THEREFORE**, in consideration of the mutual benefits and promises contained herein and for good and other valuable consideration, the adequacy and receipt of which is hereby acknowledged, including the expansion of primary employment, the attraction of major investment in the City, which contributes to the economic development of the City and the enhancement of the tax base in the City, the parties agree as follows:

**GENERAL PROVISIONS**

**DEFINITIONS**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

- A. "Interior business premises" means the square footage of the covered retail establishment and any associated storage/preparation areas.
- B. "Net Tax" means monies collected on a Quarterly Basis by the City from the Oklahoma Tax commission, which have been paid as City Sales Tax by a qualifying business, less monies earmarked, (including the three (3) cents of permanent sales tax) and less monies retained by the Oklahoma Tax Commission as collection fees.

**TERM**

This Agreement shall be effective from the date executed for the period of one (1) year, but shall be renewable for a period of four (4) additional terms.

## **TAX INCENTIVE AUTHORIZED**

Prior to the effective date of this agreement, Owner occupied \_\_\_\_\_ square feet of interior business premises. As of the date of this agreement, Owner will occupy \_\_\_\_\_ square feet. The expansion has increased the interior business premises in excess of 25%.

The average sales tax paid by Owner over the past three (3) years is \$\_\_\_\_\_. Owner will be refunded 60% of the net tax collected in excess of \$\_\_\_\_\_, during the next fiscal year. Said payments shall be distributed to the business quarterly within 30 days of receipt of the funds from the City.

## **DEFAULT: RECAPTURE OF REBATED TAX**

If Business should abandon or close business operations for a period of thirty (30) calendar days or fail to maintain the minimum square footage interior expansion for a period of thirty (30) calendar days, the Business shall lose their Incentive qualification for the quarter during which the abandonment or closing or reduction of interior square footage occurred and for the remainder of that fiscal year. If the business is reopened or the expansion is re-established before the next application date of May 1, then, the business may re-apply for Incentives for the succeeding fiscal year; however, it will only be eligible for Incentives for the balance of the five (5) year period that business is entitled to receive incentives. Exceptions may be made by the City Manager for natural disasters and circumstances beyond the control of the business.

Upon breach by Owner of any obligations under this Agreement, the City shall notify the "Defaulting Party" in writing. Owner shall have five (5) days from receipt of the notice in which to cure any such breach. If the breach cannot reasonably be cured within a five (5) day period, and the Owner has diligently pursued such remedies as shall be reasonably necessary to cure such breach, then the City may extend the period in which the breach must be cured.

## **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may be assigned with the written consent of the City Council. After any permitted assignment, all references to Owner herein shall thereafter be a reference to such successor with respect to any obligations or liabilities occurring or arising after the date of such assignment.

**NOTICE**

All notices required by this Agreement shall be addressed to the following, or other such party or address as either party designates in writing, by certified mail, postage prepaid, or by hand or overnight delivery:

If intended for Owner, to:  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CITY COUNCIL AUTHORIZATION**

This Agreement was authorized by resolution of the City Council approved by its Council meeting authorizing the City Manager to execute this Agreement on behalf of the City.

**SEVERABILITY**

In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

**APPLICABLE LAW**

This Agreement shall be construed under the laws of the State of Oklahoma. Venue for any action under this Agreement shall be in Custer County, Oklahoma.

**COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**ENTIRE AGREEMENT**

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

**INCORPORATION OF RECITALS**

The determination recited and declared in the preambles to this Agreement is hereby incorporated herein as part of this Agreement.

**INCORPORATION OF EXHIBITS**

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

**EXECUTED** in duplicate originals this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

City of Clinton, Oklahoma

By: \_\_\_\_\_  
Allen Bryson, Mayor

ATTEST:

By: \_\_\_\_\_  
Secretary

**EXECUTED** in duplicate originals this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

T. H. Rogers Lumber Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY'S ACKNOWLEDGEMENT**

State of Oklahoma    )  
                                  ) :ss  
County of Custer    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by Allen Bryson, Mayor of the City of Clinton, an Oklahoma municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

OWNER'S ACKNOWLEDGEMENT

State of Oklahoma    )  
  ) :ss  
County of Custer     )

      This instrument was acknowledged before me on the \_\_\_\_\_ day of  
\_\_\_\_\_, 2011, by \_\_\_\_\_, being the \_\_\_\_\_ of  
\_\_\_\_\_, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_