

CITY OF WATONGA



RETAIL SALES AND SERVICE ENHANCEMENT PROGRAM

THE CITY OF WATONGA

Mayor – Dale Green
City Clerk – Harriette Nitzel

City Council

Council Member – Clay Loosen
Council Member – Ryan Bruner
Council Member – Herman Brown
Council Member – Gary Olsen
Council Member – Brenda Curry
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With assistance and support from:
Watonga Chamber of Commerce

Resolution Passed:
May 3, 2011

RETAIL SALES AND SERVICE ENHANCEMENT PROGRAM

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CITY OF WATONGA

RETAIL SALES AND SERVICE ENHANCEMENT PROGRAM

Section I. Description of Program

This Retail Sales and Service Enhancement Program (“Program”) is a mechanism for the City of Watonga (“City”) to increase its sales tax revenues in accordance with the laws of the State of Oklahoma.¹ The Program makes available to Merchants (as defined below) certain financial Incentives to create and/or increase consumer activity and purchasing within the City. Through these Incentives, the City is encouraging Merchants to create an environment with up-to-date conveniences and amenities, as well as provide a broader range of products and services to the community. Incentives are provided to Merchants of Qualified Businesses participating in the Program by making certain Improvements to the location and physical structures of their business operations. Attractive, safe and modern shopping facilities that provide additional goods and services, not only improve the general welfare of the community, but afford the City an opportunity to capture sales tax revenues currently lost due to local consumers electing to shop outside of the City. The City would not have the opportunity to capture and collect additional sales tax revenues without the implementation of the Program.

Merchants participating in the Program may be awarded an Incentive to assist with the costs of Improvements. The Program provides a Merchant’s Qualifying Business a limited rebate of the increase in sales tax revenues attributed to the Merchant’s Improvements. A Merchant’s ability to participate in the Program cannot exceed six (6) consecutive fiscal years nor may a Merchant be awarded Incentives totaling more than the costs of the Improvements as approved by the City Council. The Program shall be reviewed, approved, and renewed annually by the City Council of Watonga (“City Council”).

Section II. Program Objectives

The objectives of the Program are:

- Encourage and facilitate the growth of sales tax revenues within the City.
- Encourage the purchasing of local goods and services by citizens of the City as well as those of surrounding communities.
- Encourage Merchants to make investments that will create and/or increase consumer activity and purchasing.
- Enhance the collection of use taxes by the City.
- Improve the quality of life and the general welfare of the citizens and residents of the City.
- Enhance the City’s ad valorem and sales tax base.

¹ Article X, Section 14(A) of the Oklahoma Constitution; The Oklahoma Municipal Code, Title 11 O.S. § 14-101; *Burkhardt v. City of Enid*, 1989 OK 45, 771 P.2d 608; *State ex rel. Brown v. City of Warr Acres*, 1997 OK 17, 946 P.2d 1140, (Okla. 1997); and Okla. Atty. Gen. Op. 2010-4 (April 2, 2010).

- Increase employment opportunities both through the construction of Improvements and the Program's stimulated demand for additional goods and services.

Section III. Definitions

Approved Sales Tax Incentive Project. An Approved Sales Tax Incentive Project is a Merchant's proposed and/or completed Improvements for a Qualified Business as approved by the City Council in accordance with the Program.

Base Sales Tax Revenue. The Base Sales Tax Revenue is the Undedicated Sales Tax Revenue generated by a Qualified Business and collected by the City for the fiscal year prior to a Qualified Business's eligibility to participate in the Program and the proposed or completed Improvements designated as an Approved Sales Tax Incentive Project by the City Council. The City Council shall determine the Base Sales Tax Revenue within ninety (90) days of a Qualified Business's approval to participate in the Program.

Improvements. Improvements are new construction, renovations, additions, upgrades, fixtures, and installations to the real estate/location or physical structure of a Merchant's Qualified Business in an amount not less than \$5,000.00. Improvements do not include repairs or personal property with a commercial life of less than five (5) years, or any portable personal property (for example, personal computers and other electronic devices).

Incentive. The Incentive is the annual sales tax rebate a Merchant receives for participation in the Program. The annual Incentive is the amount approved by the City Council that is equal to the difference between the Undedicated Sales Tax Revenues generated by the Merchant and collected by the City for the applicable fiscal year minus the Merchant's Base Sales Tax Revenue. A Merchant may be eligible to receive a rebate for a total of six (6) fiscal years; however, the sum total of such rebates shall not exceed the costs of Improvements as approved by the City Council.

Merchant. The Merchant is an individual or legal entity recognized by the State of Oklahoma which operates a Qualified Business in accordance with applicable federal, state, and local laws within an Eligible Program Area as defined in Section VI.

Qualified Business. A Qualified Business is a business operated year-round by a Merchant that is located within an Eligible Program Area whose principal activity is to provide goods and/or services that upon purchase by a consumer generate sales tax revenues.

Qualified Reimbursable Costs. Qualified Reimbursable Costs are the costs associated with the Improvements and approved by the City Council.

Undedicated Sales Tax Revenue. For the purpose of the Program, Undedicated Sales Tax Revenue is all sales tax revenue received by the City from a Qualified Business that is determined by multiplying the taxable sales of a Qualified Business for the applicable fiscal year by the City's sales tax rate in effect during such period of time, excluding any dedicated percentage thereof.

Section IV. Qualified Business Classification

A Merchant's participation in the Program is predicated on the classification of the Merchant's Qualified Business as either a Pre-existing Business or a Newly-established Business:

- A. Pre-existing Business. A Pre-existing Business is a Qualified Business operating within the Eligible Pre-existing Business Program Area for a minimum of one fiscal year (July 1 – June 30) prior to the approval and adoption of the Program by the City Council.
- B. Newly-established Business. A Newly-established Business is a Qualified Business operating within the Eligible Newly-established Business Program Area for a minimum of one fiscal year (July 1 – June 30) subsequent to the approval and adoption of the Program by the City Council.

A Merchant may have one or more Qualified Businesses located within the Eligible Program Areas. Such a Merchant may apply to participate for each Qualified Business location. A determination of the Base Sales Tax Revenue and Incentive shall be made for each Qualified Business location and shall be independent of the Base Sales Tax Revenue and Incentive of any other Qualified Business location owned or operated by such Merchant. Each Qualified Business shall comply by the requirements of the Eligible Program Area in which it is located. Not more than one application per Qualified Business location shall be active and on file with the City Clerk.

Section V. Requirements for the Improvements

The requirements for the Improvements for Pre-existing Businesses and Newly-established Businesses are as follows:

- A. In order for any Qualified Business to be eligible to participate in the Program, the Improvements proposed and/or completed by a Merchant must satisfy the following requirements:
 - 1. The costs of Improvements must total a minimum of \$5,000.00.
 - 2. Proposed Improvements and Qualified Reimbursable Costs must be reviewed and approved in accordance with Section VII.
 - 3. Improvements made without prior approval of the City Council must have been completed within the fiscal year prior to a Merchant's submission of an application to participate in the Program.
 - 4. Improvements must have been made after the approval and adoption of the Program by City Council.
 - 5. Improvements do not qualify if made for the purpose of relocating or abandoning a location.
 - 6. Improvements do not include repairs or personal property with a commercial life of less than five (5) years, or any portable personal property (for example, personal computers and electronic devices).
 - 7. Improvements proposed and/or completed by a Pre-existing Business must be made within the Eligible Pre-existing Business Program Area; see Section IV.1.

8. Improvements proposed and/or completed by a Newly-established Business must be made within the Eligible Newly-established Business Program Area; see Section IV.2.

Section VI. Eligible Program Areas

Depending upon their classification as a Pre-existing Business or a Newly-established Business, Qualified Businesses are located within one of the two Eligible Program Areas:

- A. Eligible Pre-existing Business Program Area. The Eligible Pre-existing Business Program Area is the incorporated city limits of the City, exception for the areas annexed and commonly known as the Prison Annex and the Roman Nose Annex on file in the Office of the City Clerk.
- B. Eligible Newly-established Business Program Area. The Eligible Newly-established Business Program Area is commercially zoned tracts of land adjacent to the rights-of-way of Main Street between Clarence Nash Blvd on the west and Forrest Street on the east, and commercially zoned tracts of land adjacent to the rights-of-way of Noble Street between West 2nd Street on the North and Highway 33 on the South.

The Eligible Program Areas are illustrated on Exhibit A.

Section VII. Application, Review, and Approval

- A. Application.
 1. A Merchant desiring to participate in the Program may obtain an application from the City Clerk during the normal business hours of the City.
 2. The application must provide documentation of:
 - a. projected Qualified Reimbursable Costs, including copies of bids or estimates;
 - b. summary of the proposed Improvements;
 - c. time line for the completion of the Improvements; and,
 - d. estimate of additional projected sales and sales tax resulting from the Improvements.
 3. If the Improvements are completed prior to the submission of an application, the Merchant must provide documentation of actual costs and payment of such costs.
 4. The Merchant should attach documentation of the sales tax revenues collected and transmitted to the Oklahoma Tax Commission for the fiscal year prior to a Merchant's submission of an application, current certified copies of the entity's certificate of organization filed with the Secretary of State, a copy of the entity's most recent Oklahoma Employers Withholding Tax Return filed with the Oklahoma Tax Commission, and any applicable state or local license required for the legal operation of the Qualified Business.

5. Each question on the application should be completed. If a question is not applicable, the Merchant should answer the questions “Not Applicable”. If there is not sufficient space to appropriately answer a question, the Merchant should supplement the application with additional pages as may be appropriate. A form of application is attached hereto as Exhibit B.
6. A completed application, in and of itself, does not create a contract between the Merchant and the City, nor is the application or Program a promise of the City to award any Merchant an Incentive or a guarantee of payment.
7. The application, if approved, shall continue from fiscal year to fiscal year unless or until the occurrence of one of the following events:
 - a. the Merchant opts out of the program;
 - b. the Merchant’s business ceases to be a Qualified Business or the Merchant sells the business to another entity;
 - c. the City terminates or revises the Program;
 - d. the maximum Incentive has been paid to the Merchant or six (6) consecutive fiscal years have lapsed since the Qualified Business was eligible to receive an annual Incentive pursuant to the Program;
 - e. the Improvements have not been properly maintained.

B. Submission.

1. City Clerk’s Office.
 - a. The completed application is to be returned to the City Clerk along with any supplemental material as required by the application or that the Merchant believes is necessary and appropriate for completeness.
 - b. The application must be returned to the City Clerk’s office in accordance with the deadlines in Section VIII.
 - c. The City Clerk or the staff of the City Clerk may initially review the application for completeness and missing information and request the Merchant to provide any missing information.
 - d. The City Clerk shall maintain the Program’s records, including but not limited to Merchant applications, receipt of documentation of Merchants’ Qualified Reimbursable Costs, supplemental information, Review Committee recommendations, City Council approvals and denials, Certificates of Satisfaction, and records of annually funded Incentives.

2. Review Committee.

- a. The Review Committee is a three (3) person committee comprised of the following representatives:
 - (1) A council member of the City Council appointed by a majority of the City Council.
 - (2) Two members appointed by the Mayor of the City.

A member shall serve until such member resigns or is removed by the City Council or Mayor, respectively.
- b. The City Clerk will forward copies of the completed applications to the Review Committee for review.
- c. The Review Committee shall review the applications according to the requirements and guidelines of the Program and make recommendations to the City Council regarding approval.
- d. The Review Committee may request additional information from a Merchant which is necessary in order to make an appropriate recommendation on an application to the City Council. Such request of information may include the inspection of the location, physical structure, or completed Improvements.
- e. The Review Committee shall not approve or deny an application. The Review Committee is to review the application and supplemental information and prepare findings and recommendations regarding the approval or decline of an application by the City Council.
- f. The Review Committee shall provide the City Council its findings and recommendations for consideration.

3. City Council.

- a. The City Council shall consider each application that satisfies the requirements of the Program and application criteria.
- b. The City Council shall approve or deny the application based upon the application and supplemental information, the likelihood of the Qualified Business contributing to City and Program objectives, findings and recommendations of the Review Committee, compatibility of the Improvements with the needs of the community, the desirability of the Improvements, the likelihood that the Improvements will generate additional sales tax revenues for the City, and such other materials the City Council deems necessary and appropriate.
- c. It is within the sole discretion of the City Council to approve or deny an application.

- d. Upon the approval of an application by the City Council, the application and related Improvements shall be designated an Approved Sales Tax Incentive Project eligible to receive Incentives in accordance with the Program. Such designation shall be documented in the Program records maintained by the City Clerk.
- e. Upon approval of an application, the City Council shall determine Qualified Reimbursable Costs, or a portion thereof for an Approved Sales Tax Incentive Project.
- f. The City Council shall approve or deny the projected Qualified Reimbursable Costs based upon the application and supplemental information, the findings and recommendation of the Review Committee, the appropriateness of the costs for the proposed or completed Improvements, the likelihood that the Improvements, and such other materials the City Council deems necessary and appropriate.

Section VIII. Timelines Regarding Application Submission, Review, and Payment of Incentives

The Program shall be implemented according to the following annual schedule:

- A. On or prior to March 15th, applications must be submitted to the City Clerk's office.
- B. On or prior to March 30th, the City Clerk shall make any request for missing information. The City Clerk's request for missing information shall be in writing and shall be mailed via first-class mail to the address listed on the application and as such shall be deemed delivered and received by the Merchant.
- C. Missing information requested of the Merchant by the City Clerk must be received by the City Clerk's office no later than April 10th.
- D. No later than April 15th, the City Clerk shall provide the Review Committee completed applications for the subsequent fiscal year beginning July 1st.
- E. As appropriate, the Review Committee shall request supplemental information from the Merchant in the same manner as the City Clerk. Such request must be made no later than May 1st.
- F. No later than May 15th, the Merchant shall provide the information necessary for the Review Committee to prepare its recommendation to the City Council. After May 15th, the Merchant may not revise or supplement its application, unless the City Council makes request for further information or clarification.
- G. No later than June 1st, the City Clerk shall provide the City Council copies of the applications and supplemental information, and the Review Committee shall provide the City Council its recommendations.

- H. The City Council shall review the applications at a regular or special meeting of the City Council and provide Merchants an opportunity to speak prior to the City Council's vote to approve or deny the application. Applications shall be approved or denied by resolution of the City Council prior to July 1st.
- I. Annual Incentives for each fiscal year the Program is in force shall be funded and paid to Approved Sales Tax Incentive Projects within one hundred twenty (120) days of the end of the fiscal year pursuant to Section X.

Section IX. Funding of Incentives for Approved Sales Tax Incentive Projects

- A. Approved Sales Tax Incentive Projects shall not be eligible to receive any annual Incentives until the Building Code Inspector has provided approval in writing to the City Clerk regarding the completion of the Improvements and the City Council has confirmed the Building Code Inspector's approval.
- B. After the Building Code Inspector's approval has been received by the City Clerk and confirmed by the City Council, the Merchant must submit proof of payment of Qualified Reimbursable Costs to the City Clerk.
- C. The sum of annual Incentives shall not exceed the approved Qualified Reimbursable Costs, nor shall annual Incentives be paid toward Qualified Reimbursable Costs for more than six (6) consecutive fiscal years. The six (6) consecutive fiscal years of eligibility commences on July 1st of the fiscal year the Certificate of Satisfaction has been issued.

Section X. Funding of the Program

The City shall establish a Program fund to be administered and maintained by the City Treasurer. The Treasurer shall maintain a general ledger indicating the funds generated by the Program and such other the records and sub-ledgers the Treasurer deems appropriate to record the Base Sales Tax Revenues and the current fiscal year's Undedicated Sales Tax Revenues for each Merchant that is participating in the program. As may be required from an increase or decrease in the Undedicated Sales Tax Revenues collected by a Merchant for an Approved Sales Tax Incentive Project, the Treasurer shall apportion, deposit, or withdraw such amounts from the Program fund at the end of each quarter (September 30, December 31, March 31, and June 30) and record such transaction in the general ledger and appropriate sub-ledgers. The amounts to be deposited into the fund are determined by performing a year-to-date calculation at the end of each quarter during and for each fiscal year of the Program. If such year-to-date calculation produces a negative cash flow of Undedicated Sales Tax Revenues for a particular Approved Sales Tax Incentive Project at the end of a quarter or at the end of a fiscal year, the balance on the sub-ledger balance is zero. If a particular Approved Sales Tax Incentive Project produces a negative cash flow of Undedicated Sales Tax Revenues for the fiscal year, no annual Incentive shall be paid to such Approved Sales Tax Incentive Project and/or Merchant.

Funds apportioned to the Program fund are to be segregated and maintained in an account separate from the general funds of the City and are to be excluded from the determination and preparation of the City's budget.

Section XI. City Approval and Renewal of the Program

The City Council will annually review the program. By a resolution prior to the City's next succeeding fiscal year, the City Council may renew, amend, or take such other actions that are necessary and appropriate regarding the continuation of the Program. If the Council fails to approve a resolution authorizing the continuation of the Program, then the Program shall terminate at the end of such fiscal year in which the Program has failed to be renewed.

Exhibit A - Eligible Program Areas

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Eligible Pre-existing Business Program Area

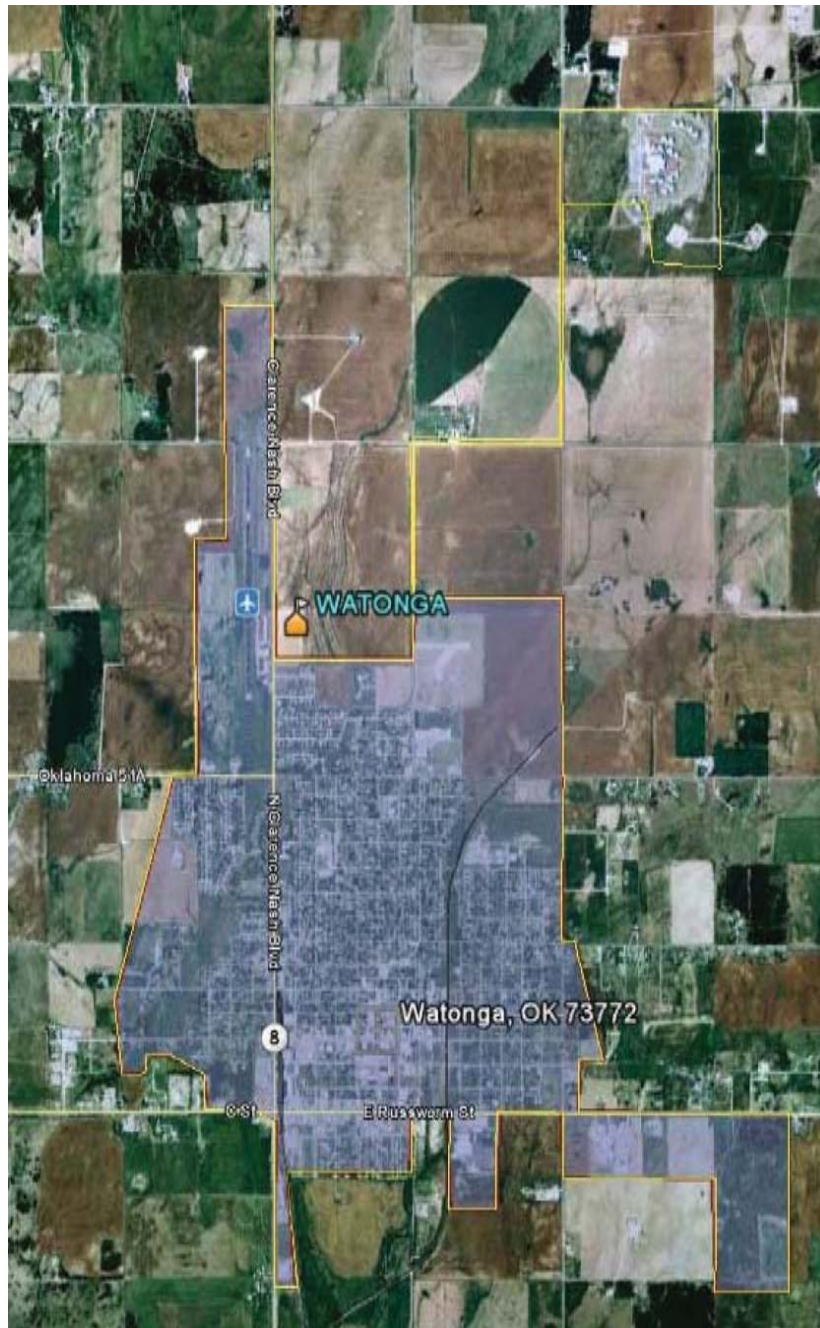


Exhibit A – Eligible Program Areas

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Eligible Newly-established Business Program Area



Exhibit B - Form of Application

**RETAIL SALES AND SERVICE ENHANCEMENT
PROGRAM APPLICATION**

(The fiscal year for the City of Watonga is July 1st to June 30th)

Date of Application: _____		
Legal Name of Business Entity:		
Federal Tax Identification Number:		
Type of Retail/Service Business Activity:		
Names and addresses of principal owners:		
Name and mailing address of manager or agent of record:		
List of possible conflicts of interest:		
Location of Business Operation:		
Length of Time at Location: _____ years; _____ months		
Proposed Improvements:		
Real Estate Infrastructure:	Buildings and Structures:	Equipment:

Projected Qualified Reimbursable Costs (attach bids, proposal, receipts, etc., as necessary)		
Real Estate Infrastructure:	Buildings and Structures:	Equipment:
Timeline for above referenced Improvements:		
Estimated increase in sales tax revenues to be generated by Improvements:		
Base Sales Tax Revenue (the amount of Undedicated Sales Tax Revenue generated at the location by the Business Entity for the fiscal year prior to the approval of this Application, actual Base Sales Tax Revenue shall be determined by the City Council):		
Please attach the following documentation and other items as may be necessary for completeness: <ul style="list-style-type: none"> • Documentation of the sales tax revenues collected and transmitted to the Oklahoma Tax Commission. • Current Certification of Organization Filed with the Oklahoma Secretary of State. • Most recent Oklahoma Employers Withholding Tax Return filed with the Oklahoma Tax Commission. • Any applicable licenses required by federal, state, or local authorities to legally operate the business. 		

The undersigned acknowledges that neither this Application, in and of itself, nor the Retail Sales and Service Enhancement Program (“Program”) create a contract with the named Business Entity and the City of Watonga and that the approval or denial of this application is the sole discretion of the City Council of Watonga (“City Council”). Any Incentives awarded pursuant to the Program or this Application are the sole discretion of the City Council and any tax liabilities due to the payment of Incentives pursuant to an approved application and the Program are the sole responsibility of the Business Entity and principal owners stated above.

For Use by the City Clerk Only:
Date of Approval or Denial: _____ <small>Circle Approval or Denial as Appropriate</small>
Amount of Qualified Reimbursable Costs: \$ _____
Base Sales Tax Revenue: \$ _____

Name of Business Entity: _____
 Submitted by: _____
 Signature: _____