

ORDINANCE NO. 18-1082

1
2 AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE
3 CITY OF DOUGLAS, COCHISE COUNTY, ARIZONA,
4 RELATING TO TRANSACTION PRIVILEGE TAX
5 ESTABLISHING A BUSINESS INCENTIVE AND
6 AUTHORIZING THE CITY MANAGER TO GRANT TAX AND
7 FEE REBATES TO PROMOTE ECONOMIC VITALITY AND TO
8 PROMULGATE RULES RELATED THERETO; ESTABLISHING
9 SEVERABILITY OF COMPONENTS OF ORDINANCE; AND
10 DECLARING AN EMERGENCY.

11
12 **WHEREAS**, it is the policy of the City of Douglas to encourage economic vitality and build long term
13 economic stability. The purpose of this ordinance is to establish a business incentive and TPT tax rebate
14 program that provides criteria whereby the city manager is authorized to grant certain tax and fee rebates
15 when in the judgment of the city manager these rebates will serve the economic interests and help build
16 economically sustainable community; and

17
18 **WHEREAS**, the Council recognizes that this is a business incentive rebate program and that
19 Administrative staff will be tasked with evaluating the program on an ongoing basis in order to ensure
20 that the economic trade-offs of the contemplated program are strategically prudent and in the City's best
21 interests; and

22
23 **NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City of Douglas, Arizona,
24 as follows:

25
Section 1. ELIGIBILITY

In order to be eligible for the business incentive rebate program the applicant must:

- A. Be a new or existing licensed business entity operating within the Central Business District.
- B. For a new business the rebate program will be available for a one (1) year period, and for an ongoing and established business the rebate program will only be available for a period of six (6) months. The period of time to begin upon the date of entry into the Tax Incentive Agreement (TIA).
- C. Be an employer with at least 5 full time employees earning the State mandated minimum wage.
- D. Have no outstanding fees or taxes owed to the State of Arizona or the City of Douglas.
- E. Have paid taxes and/or fees eligible for rebate under this ordinance.
- F. Agree to make its books and records available for inspection by the city to verify compliance with this ordinance.
- G. Agree to enter into a Tax Incentive Agreement.
- H. Maintain its business operations within the Douglas City Limits.
- I. The City Manager in conjunction with the Finance Director shall follow the regulations contained herein and shall apply this ordinance under the procedures outlined.

Section 1. TAX REBATE REGULATIONS

The city manager may grant rebates of sales and use taxes paid by employers as follows:

Payment of the rebated city transaction privilege tax will be conditioned upon a showing a public benefit to the City of Douglas as follows. The Program shall require the use of a Retail Tax Incentive Agreement that shall provide as a required part of the bargain that there will be a required number of new full time employment of persons living within the effective market area of the businesses located within the

1 Central Business District in the City Douglas during the period of time designated and in sufficient
2 numbers and annual wages to offset the amount of sales tax rebate being generated annually pursuant to
the terms of the Retail Tax Incentive Agreement. The Effective Market are shall be defined as an area as
within a 30-minute drive of the City limits.

3 A. City shall engage an appropriate study to demonstrate the economic effect of this bargained for
4 employment to the public treasury of the City so as to show that the benefit would equal to a TPT
and use Taxes rebate for the participating business entity of about a 2% of the salary corresponding
5 to the new employee(s). Employer/Developer shall cause the business to report quarterly the
6 number of employees living within the effective market area as described above as well as the
amount of gross wages paid to said persons to verify the public benefit received. City shall have a
7 reasonable right to inspect or audit records of these businesses to verify the information being
reported. In the event that there are two consecutive quarters in which the benefit received by the
8 City in connection with this employment is not equal to or greater than the Estimated Annual
Economic Benefit, the amount of taxes being rebated will be reduced by an amount based on the
9 relative difference between the actual economic benefit for the prior two consecutive quarters and
the Estimated Annual Economic Benefit.

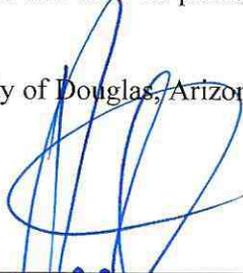
10 B. The City Manager may grant rebates of any TPT Tax or building Permit fees paid by
employer/developer pursuant to and provided it meets the criteria described herein above section B.

11 **Section 2. Effective Date:** This Ordinance shall be in full force and effect thirty (30) days from and after
12 its passage by the Mayor and Council.

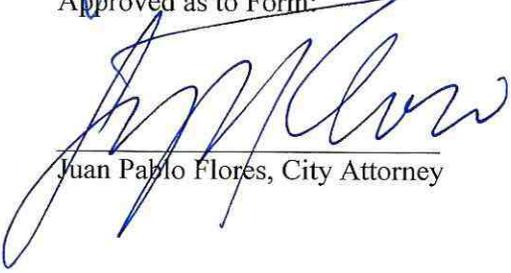
13 **Section 5. Severability:** If any chapter, section, subsection, sentence, clause or phrase of this Ordinance
is for any reason held to be invalid or unconstitutional by the decision of any court of competent
14 jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance and
this Ordinance shall continue in full force and effect after the deletion of the illegal or unconstitutional
15 provision.

16 **SECTION 5. Emergency Clause:** Whereas the immediate operation of this Ordinance is necessary to
the preservation of the public health, peace and welfare, an emergency is declared to exist and this
17 Ordinance shall come into full force and effect by its terms from and after its passage by six-sevenths
(6/7) of the Council and approval of the Mayor.

18 **PASSED AND ADOPTED** by the Mayor and Council of the City of Douglas, Arizona, this 14th day of
19 February, 2018.

20
21 
Robert Uribe, Mayor

Approved as to Form:

22
23 
24 Juan Pablo Flores, City Attorney
25

Attest:

23 
24 Brenda Aguilar, City Clerk
25

TAX INCENTIVE

MEMORANDUM OF UNDERSTANDING

This is a memorandum of understanding by and between the City of Douglas, a municipal corporation and political subdivision of the State of Arizona, and XYZ, LLC, a limited liability company authorized to do business, and doing business in the State of Arizona.

I. PURPOSE

The City of Douglas (“City”) and XYZ, LLC, (“Business”) are to have a common interest in establishing a relationship to develop and maintain increased employment at the participating facility as an economic development project within the City of DOUGLAS, Arizona (the “Project.”)

The purpose of this Memorandum of Understanding (“MOU”) is to outline an understanding with respect to the Project, the participation of the City, the necessary agreements and transactions that will need to take place and establish a projected timetable. This MOU is not a formal binding contract and it is understood and agreed that formal documentation of the contemplated transactions needed for this Project will be manifested in future written documents.

II. PROJECT LOCATION

A. Location. The proposed Project location will be at the intersection of Highway 80 and Some Street within the City’s Central Business District (the “Project Site”). It is understood the Project Site is owned by XYZ LLC., an Arizona limited liability company, (“XYZ”).

IV. TRANSACTION PRIVILEGE TAX CREDIT

Business intends to increase their full time employee base at their business facility, and may engage in other transaction privilege tax generating businesses on the Project Site. This business in addition to generating transaction privilege taxes directly to the City will indirectly benefit the City by providing employment in a City with a historically 15% percent unemployment rate, the enhancement of nearby property values, and generate other economic development in the City limits. Business to maximize its leverage and maximize use of its resources for increased full-time employment, desires to receive a partial reimbursement the transaction privilege tax revenue (i.e. transaction privilege tax revenue) being generated to the City from the Project Site.

A.R.S. §9-500.11 allows a municipality to enter into a “retail tax incentive agreement” as that term is defined in that statute. By having an agreement or set of agreements which comply with the provisions of this statute, Business may get credit for a portion of the sales, use, or transaction privilege taxes payable to the City in connection with the related business on the Project Site by Business or nominee(s). Such a credit or rebate will be hereinafter referred to as the “Retail Tax Incentive Agreement”.

It is understood and agreed that any structure or documentation of the transactions with the City, will provide Business with the Retail Tax Incentive Agreement as set forth in this Section. Final documentation may be with a nominee or assignee of Business. Approval of such nominee or assignee will be in accordance with the General Provisions as set forth in this MOU.

A.R.S. §9-500.11 provides in part that for a tax credit or rebate to be provided by the Retail Tax Incentive Agreement, at all times the sales, use, or transaction privilege taxes payable to the City in connection with the construction, development, or operation of retail development activities on the Project Site must equal or exceed the amount of the credit being given to Business or its nominee or assignee. This precondition requires verification by an independent third party (the “Economic Benefit Assessment”) that any tax incentive provided must raise more revenue than the amount of the incentive. The Economic Benefit Assessment will determine the amount of economic benefit available to the City on an annual basis (the “Estimated Annual Economic Benefit”). The Business may not pay for payment, nor have input into the selection of, the independent third party providing the Economic Benefit Assessment. Any Retail Tax Incentive Agreement between the parties hereto must be so conditioned.

Article 9 §7 of the Arizona Constitution prohibits any subdivision of the State giving or lending its credit or making any donation, grant, or subsidy to any person, association, or corporation. Arizona has recognized that if (i) the public treasury receives benefits that meet or exceed the cost to the public treasury and (ii) if the expenditure of public funds is for a public purpose, then there is consideration for the transaction and the matter is not in violation of this provision of law.

So that the City will, at all times, raise more revenue than the amount of the credit or rebate provided by the Retail Tax Incentive Agreement, it is agreed that such credit will be structured as follows.

A. The subject credit or rebate to Business shall be capped at 2% of the salary corresponding to the new employee(s). For a participating business the new employee must be an actual and true addition to the payroll. Employees that are introduced to the Business will not qualify for the credit or rebate.

B. Payment of the credit or rebated city transaction privilege tax will be conditioned upon a showing a public benefit to the City of Douglas as follows. The Retail Tax Incentive Agreement will provide as a required part of the bargain that there will be new employment of persons living within the effective market area of the businesses located within the municipal limits of Douglas in sufficient numbers and annual wages to offset the amount of sales tax rebate being generated annually pursuant to the Retail Tax Incentive Agreement. City shall engage an appropriate study to demonstrate the economic effect of this bargained for employment to the public treasury of the City so as to show that the benefit is roughly equivalent to the cost of the rebate of taxes. Business shall cause the businesses located on the Project Site to report quarterly the number of employees living within the effective market area as described above as well as the amount of gross wages paid to said persons to verify the public benefit received. City shall have a reasonable right to inspect or audit records of these businesses to verify the information being reported. In the event that there are two consecutive quarters in which the benefit received by the City in connection with this new employment is not equal to or greater than the Estimated Annual Economic Benefit, the amount of taxes being rebated will be reduced by an amount based on the relative difference between the actual economic benefit for the prior two consecutive quarters and the Estimated Annual Economic Benefit.

C. If a reduction in the percentage of transaction privilege taxes is required under Section IV.B, the participating Business may request that credit be given for the cost of public infrastructure fully paid by the Business and not subject to any lien or encumbrance, i.e. city water or wastewater mains, or public street, road and right way developed by the Business. The giving of this credit shall not increase the rate of rebate nor the amount of rebate as provided by subsection IV.A above. This credit shall be given upon evidence of these costs incurred by Business in the development of the Project being presented to City. These shall be for costs not reimbursed to Business pursuant to subsection III.b above. The value of such infrastructure and the amount available for credit to be approved/determined in the sole discretion of the Public Works Director of the City of Douglas taking into account, the availability of exceptions to public procurement permitted by Title 34 of the Arizona Revised Statutes.

D. The Retail Tax Incentive Agreement will be conditioned upon the time frames specified in the corresponding Ordinance.

VII. GENERAL PROVISIONS

A. Counterparts. This MOU may be executed in one or more counterparts and by facsimile or other means of electronic signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The

signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.

B. **Headings.** The descriptive headings of the paragraphs of this MOU are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

C. **Time of the Essence.** Time is of the essence of this MOU. It is understood the City, and Business will work together to facilitate the transactions contemplated by this understanding. The parties hereto will cooperate in the execution of any and all needed and necessary documents and agreements for the transaction(s) described herein within said timeframe.

D. **No Partnership and Third Parties.** It is not intended by this MOU to, and nothing contained in this MOU shall, create any partnership, joint venture or other similar arrangement between City and Business. No term or provision of this MOU is intended to, or shall, be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder unless an agreed to successor or nominee of Business. City shall have a right to approve any nominee and/or successor, and such approval shall not be unreasonably withheld.

E. **Mutual Cooperation.** The City and Business acknowledge the development of the Project is complex and that additional terms, conditions or agreements not specified or contemplated in this MOU may be necessary for the development of the Project. The City and Business shall endeavor to mutually cooperate with each other in a timely manner to facility the development of the Project and to amend or supplement this MOU as is necessary to proceed with the development of the Project.

F. **Entire Agreement.** This MOU constitutes the entire current understanding between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

G. **Amendment.** No change or additions are to be made to this MOU except by a written amendment executed by the parties hereto.

H. **Governing Law.** This MOU is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this MOU is subject to the provisions of A.R.S. § 38 511. Pursuant to the provisions of A.R.S. §41-4401, Business further agrees to warrant that it and any of its contractors or subcontractors will comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. §23-214, subsection A. Subsequently, a breach of this

warranty shall be deemed a material breach of any agreement with City and will be subject to the penalties of A.R.S. §41-4401.A.2. That the City shall have the right to random verification of employment records of Business, its contractors, or subcontractors to ensure compliance with this warranty. Business shall execute a certification regarding whether it is boycotting Israel as provided by A.R.S. §35-393.01.

I. Venue. Any legal action relating to this MOU or the agreements contemplated herein shall be brought in either the Yuma County Superior Court at the election of the plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

J. No Personal Liability. No member, official or employee of the City, IDA or Business shall be personally liable to any other party or any successor or assignee, (a) in the event of any default or breach by any party, (b) for any amount which may become due to any party or its successor or assign, or (c) pursuant to any obligation of any party under the terms of this MOU or agreement that may be entered into as a result hereof.

City of Douglas

By: _____
Its: _____

Dated

XYZ, LLC,

By: _____
Its: _____

Dated