

Schwalbach, Richard

From: Quality Jobs [quality.jobs@oktax.state.ok.us]
To: Schwalbach, Richard
Sent: Thursday, May 27, 2010 11:44 AM
Subject: Read: FW: Addendum to Holly Refining contract

Your message

To: quality.jobs@oktax.state.ok.us
Subject:

was read on 5/27/2010 11:44 AM.

MAY 27 2010

**ADDENDUM TO HOLLY REFINING & MARKETING-TULSA, LLC
OKLAHOMA QUALITY JOBS PROGRAM
OKLAHOMA DEPARTMENT OF COMMERCE
OKLAHOMA QUALITY JOBS AGREEMENT
DATED EFFECTIVE MARCH 11, 2010**

WHEREAS, Holly Refining & Marketing-Tulsa, LLC (FEI#26-4397673) was approved by the State of Oklahoma (the "State") acting by and through the Oklahoma Department of Commerce (the "Department") for participation in a combination of the Oklahoma Quality Jobs Program ("Quality Jobs") and the Investment Tax Credit ("ITC") as evidenced by that certain Quality Jobs Agreement dated effective March 11, 2010 (the "Combination Quality Jobs/ITC Agreement");

WHEREAS, on December 1, 2009 the Company purchased the Sinclair refinery which also qualifies for a combination of QJP and ITC;

WHEREAS, the Company has merged this entity into the Company; and

WHEREAS, the parties desire to amend the Combination Quality Jobs/ITC Agreement effective January 2, 2010.

NOW THEREFORE, in consideration of the mutual promises, covenants, and terms herein, and other good, valuable and legal consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

Section 1. Section 1.6 of Combination Quality Jobs/ITC Agreement is hereby amended and replaced as follows:

Section 1.6 Maximum State Benefit. The Maximum Benefit that may be paid under the terms of this Combination Quality Jobs/ITC Agreement is \$25,163,840 (the "Maximum Benefit"). This amount is the Maximum Benefit the Company can receive from the State pursuant to this Combination Quality Jobs/ITC Agreement during the Ten Year Period and is based on the Company creating the New Direct Jobs as projected.

Section 2. Section 2.9 of Combination Quality Jobs/ITC Agreement is hereby amended and replaced as follows:

Section 2.9 Retention. Pursuant to Section 3603(A) (2) (b) of the Quality Jobs Act, the Company shall be required to maintain the contracted maintenance level of 460 jobs as certified by the Oklahoma Tax Commission. If the required average annualized wage or the required new jobs numbers do not equal or exceed such contracted level during any quarter, the quarterly incentive payments shall not be made and shall not be resumed until such time as such requirements are met. The Company shall be required to repay all incentive payments received

under the Quality Jobs Act if the Company is determined by the Oklahoma Tax Commission to no longer have business operations in the state within three (3) years from the beginning of the calendar quarter for which the first incentive payment claim is filed.

Section 3. Section 2.10 of Combination Quality Jobs/ITC Agreement is hereby amended and replaced as follows:

Section 2.10 Investment Tax Credit. Pursuant to Section 3607 (D) of the Quality Jobs Act, any establishment which has qualified to receive quarterly benefits with a project start date after January 1, 2010 shall be eligible to receive the credit provided for in Title 68 O.S. § 2357.4 if such establishment obtains a determination letter from the Department that the business activity of the entity will result in a positive net benefit rate. The Department has reviewed the information submitted by the Company and determined that the additional business activity will result in a positive net benefit rate to the State.

The positive net benefit rate was determined by direct and indirect impacts based on the following information supplied by the Company:

1. 603 retained manufacturing jobs at a third year average wage of \$84,160; and
2. qualifying investment of approximately \$200,000,000.

The positive net benefit rate to the State is based on projected future state revenues being greater than projected state expenditures related to this project. State revenues include state sales and income taxes. State expenditures include, but are not limited to, state expenditures for education, highways, health, public welfare and public protection.

Section 4. Section 3.4 of Combination Quality Jobs/ITC Agreement is hereby amended and replaced as follows:

Section 3.4 Projected Number of New Direct Jobs. The Company projects 603 New Direct Jobs over the Ten Year Period.

Section 2. Savings Clause. Except as otherwise stated herein the Combination Quality Jobs/ITC Agreement remains in full force and effect and unabated.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum effective as of January 2, 2010.

STATE OF OKLAHOMA, acting by and through the
OKLAHOMA DEPARTMENT OF COMMERCE



By: Natalie Shirley
Natalie Shirley, Executive Director

HOLLY REFINING & MARKETING-TULSA, LLC

By: George Damiris
Signature
GEORGE DAMIRIS
Printed Name

Title: SR VP - SUPPLY & MARKETING

Date: 26 MAY 10

OKLAHOMA QUALITY JOBS PROGRAM
DEPARTMENT OF COMMERCE

MAR 11 2010

HOLLY REFINING & MARKETING – TULSA, LLC
1700 UNION AVENUE
TULSA, OK 74107
FEI# 26-4397673

This **QUALITY JOBS AGREEMENT** (the "Agreement"), is made and entered into by and among the State of Oklahoma (the "State"), acting by and through the Oklahoma Department of Commerce (the "Department"), and Holly Refining & Marketing – Tulsa, LLC, a Delaware limited liability corporation (the "Company") (FEI# 26-4397673).

WITNESSETH:

WHEREAS, the Company has applied to the Department to receive incentive payments pursuant to the Oklahoma Quality Jobs Program Act, Title 68, § 3601, et seq. of the Oklahoma Statutes (the "Quality Jobs Act"); and

WHEREAS, the State has approved the Company for participation in the Quality Jobs Act.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree, as follows:

ARTICLE I. OKLAHOMA QUALITY JOBS PROGRAM

Section 1.1 Payments. In accordance with the Quality Jobs Act, the State, acting by and through the Department hereby agrees to direct the Oklahoma Tax Commission (the "Commission") to make quarterly incentive payments to the Company, on the terms and conditions set forth in this Agreement. (All capitalized terms not defined in this Agreement shall have the same meanings given such terms in the Quality Jobs Act.)

Section 1.2 First Claim. The first claim for payments must be filed no later than three (3) years from the Project Start Date, which is defined in Section 3.2.

Section 1.3 Ten Year Period. The ten-year period for receipt of the total incentive payments pursuant to this Agreement shall commence at the beginning of the calendar quarter for which the first incentive claim is filed with the Commission and shall end upon the earlier to occur of ten years from such date or receipt by the Company of the Maximum Benefit pursuant to Section 1.6 (the "Ten Year Period").

Section 1.4 Payroll Threshold. The three-year period during which the Company must generate a minimum annual new qualified payroll of \$2.5 million in gross taxable wages shall commence at the beginning of the calendar quarter for which the first incentive claim is filed with the Commission.

Section 1.5 Net Benefit Rate. Payments made under this Agreement shall be in an amount equal to the Net Benefit Rate of 5.00% pursuant to Section 3603(A)(6) of the Quality Jobs Act multiplied by the verified gross payroll of New Direct Jobs for a calendar quarter at the location(s) of the Company in Oklahoma as set out in the Company's application (the "Establishment").

Section 1.6 Maximum State Benefit. The Maximum Benefit that may be paid under the terms of this Agreement is \$16,186,029 (the "Maximum Benefit"). This amount is the Maximum Benefit the Company can receive from the State pursuant to this Agreement during the Ten Year Period and is based on the Company creating the New Direct Jobs as projected.

Section 1.7 Corporate Structure. The Department may require that subsidiaries, affiliates and parent entities of the Company ("Related Entities") be made parties to this Agreement depending upon the Company's lines of business, ownership changes, status as a Basic Industry, change of locations and other business occurrences.

ARTICLE II. COMPANY'S OBLIGATIONS

COMPANY'S OBLIGATIONS

The Company acknowledges the terms of this Agreement and certifies its compliance with all the requirements of the Quality Jobs Act, including but not limited to:

Section 2.1 Payroll Threshold. The Company projects that the annual qualified new payroll of the Establishment will meet or exceed \$2.5 million within 3 years of the calendar quarter for which the first incentive payment will be claimed.

Section 2.2 Full Time Equivalent Employment. The Company agrees that at least eighty percent (80%) of New Direct Jobs will be filled by employees working thirty (30) or more hours per week.

Section 2.3 Basic Health Benefits Plan. The Company will offer a Basic Health Benefits Plan in accordance with Section 3603(A) (1) (b) of the Quality Jobs Act, within 180 days of employment, to all employees in New Direct Jobs.

Section 2.4 Eligible Employees. The Company will not claim any employees whose wages are not subject to Oklahoma income tax for purposes of determining New Direct Jobs.

Section 2.5 Average Annual Wage. The Company will pay the individuals it employs in New Direct Jobs an average annual wage that equals or exceeds 125% of the average county wage which during this Agreement equals \$50,111.

Section 2.6 Eligible Jobs. The Company will report as New Direct Jobs only those types of jobs described and anticipated in the Company's application. Further, the Company agrees that any jobs which are new to the State, but not within a Basic Industry, shall be reported separately to the Commission as non-qualifying jobs and shall not be added to the Baseline Employment for purposes of determining the number of New Direct Jobs.

Section 2.7 Origination Fee. The Company hereby authorizes the Commission to deduct from its first incentive payment and pay the Department a \$1,000 origination fee.

Section 2.8 Relocation. If the Company moves from or expands into any location other than the Establishment, the Company will provide notice of the new address to the Department and the Commission within 90 days.

Section 2.9 Retention. Pursuant to Section 3603(A) (2) (b) of the Quality Jobs Act, the Company shall be required to maintain the contracted maintenance level of 300 jobs as certified by the Oklahoma Tax Commission. If the required average annualized wage or the required new jobs numbers do not equal or exceed such contracted level during any quarter, the quarterly incentive payments shall not be made and shall not be resumed until such time as such requirements are met. The Company shall be required to repay all incentive payments received under the Quality Jobs Act if the Company is determined by the Oklahoma Tax Commission to no longer have business operations in the state within three (3) years from the beginning of the calendar quarter for which the first incentive payment claim is filed.

Section 2.10 Investment Tax Credit. Pursuant to Section 3607 (D) of the Quality Jobs Act, any establishment which has qualified to receive quarterly benefits with a project start date after January 1, 2010 shall be eligible to receive the credit provided for in Title 68 O.S. § 2357.4 if such establishment obtains a determination letter from the Department that the business activity of the entity will result in a positive net benefit rate. The Department has reviewed the information submitted by the Company and determined that the business activity will result in a positive net benefit rate to the State.

The positive net benefit rate was determined by direct and indirect impacts based on the following information supplied by the Company:

1. 367-390 retained manufacturing jobs at a third year average wage of \$83,996; and
2. qualifying investment of approximately \$120,000,000.

The positive net benefit rate to the State is based on projected future state revenues being greater than projected state expenditures related to this project. State revenues include state sales and income taxes. State expenditures include, but are not limited to, state expenditures for education, highways, health, public welfare and public protection.

ARTICLE III. ADDITIONAL TERMS

Section 3.1 Effective Date. This Agreement will not be effective until signed by both parties and returned to the Department.

Section 3.2 Project Start Date. The Project Start Date is January 2, 2010. BENEFITS ARE BASED ON PAYROLL FOR JOBS CREATED ABOVE BASELINE EMPLOYMENT ON OR AFTER THIS DATE FOR THE DURATION OF THIS AGREEMENT.

Section 3.3 Baseline Employment. The Baseline Employment is 0.

Section 3.4 Projected Number of New Direct Jobs. The Company projects 390 New Direct Jobs over the Ten Year Period.

Section 3.5 Return Receipt. PLEASE RETURN THIS AGREEMENT WITHIN 60 DAYS, FULLY EXECUTED, TO THE OKLAHOMA DEPARTMENT OF COMMERCE BY CERTIFIED MAIL, OR OTHER MEANS SPECIFIED BY THE DEPARTMENT, TO THE FOLLOWING ADDRESS:

OKLAHOMA DEPARTMENT OF COMMERCE
GENERAL COUNSEL
900 NORTH STILES
OKLAHOMA CITY, OKLAHOMA 73104-3234

ARTICLE IV MISCELLANEOUS

Section 4.1 Open Records. Upon receipt by the Department, this Agreement will be subject to public disclosure, in accordance with the provisions of the Oklahoma Open Records Act, Title 51, § 24A.1, et seq. of the Oklahoma Statutes.

Section 4.2 Applicable Law. This Agreement and the payment of claims pursuant hereto shall be subject to all the requirements and restrictions of Oklahoma law whether or not set out specifically herein.

Section 4.3 Assignments. This Agreement may be assigned upon the Department's approval of the qualifications of the assignee and the Department's written agreement with the assignee. The Department shall, in no event, lower the Baseline Employment as set out in Section 3.3.

Section 4.4 Quality Jobs Program Incentive Fund. The obligation of the State to make the incentive payments described in this Agreement shall be limited to the balance of any funds contained in the Quality Jobs Program Incentive Payment Fund established pursuant to the Quality Jobs Act. This Agreement does not create, and shall never be construed as creating, a debt, legal or moral, of the State of Oklahoma, or of any agency, authority or political subdivision thereof, or a personal obligation of any officer, agent or employee of the State.

Section 4.5 False Claims. Section 3609 of the Quality Jobs Act makes it unlawful to willfully make a false application or claim under the Quality Jobs Act, and the Company represents that all information provided by the Company to the Department and used in the development of this Agreement are true and correct.

Section 4.7 Binding Effect. The terms of this Agreement shall be binding upon the parties hereto, their successors and assigns.

Section 4.8 Section Headings. The section headings contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated below.

STATE OF OKLAHOMA, acting by and through the
OKLAHOMA DEPARTMENT OF COMMERCE
(the "Department")



Natalie Shirley
Natalie Shirley, Executive Director

HOLLY REFINING & MARKETING - TULSA, LLC
(the "Company")

By: James Resinger
Signature

JAMES RESINGER
Printed Name

Title: VP HOLLY REFINING & MARKETING - TULSA LLC

Date: 2 3/4/10

MAR 11 2010

OKLAHOMA QUALITY JOBS PROGRAM
DEPARTMENT OF COMMERCE
MANAGER'S CERTIFICATE

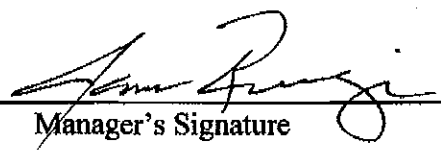
HOLLY REFINING & MARKETING – TULSA, LLC
1700 UNION AVENUE
TULSA, OK 74107
FEI# 26-4397673

I, JAMES RESIDGER, do hereby certify that I am the duly appointed Manager of Holly Refining & Marketing – Tulsa, LLC (the "Company"), a limited liability company organized and existing under the laws of Delaware.

I further certify that I am duly appointed by the Members and legally hold the office of Manager of the Company.

I further certify that as Manager I am authorized to act on behalf of the Company in signing legally binding contracts as set forth in the Operating Agreement of the Company. Such authority continues in full force and effect until revoked or modified by notice in writing by the Company.

IN WITNESS WHEREOF, I have hereunto set my hand as Manager of the Company this 4th day of MARCH, 20 10.

By: 
Manager's Signature
JAMES RESIDGER
Printed Name