Item # 40

SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT: Economic Development Jobs Growth Incentive Agreement with Roses Southeast Papers, LLC.

DEPARTMENT: Economic Development **DIVISION:** Economic Development

AUTHORIZED BY: Don Fisher **CONTACT:** William McDermott wm **EXT.** 7132

Agenda Date 04/11/06 **Regular** ☒	**Consent** ☐	**Work Session** ☐	**Briefing** ☐
Public Hearing – 1:30 ☐	**Public Hearing – 7:00** ☐		

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute a Jobs Growth Incentive Agreement with Roses Southeast Papers, LLC.

BACKGROUND:

In late 2005, Roses Southeast Papers, LLC, acquired the assets of Unicell Paper Mill, located on St. John's Parkway in Sanford. Roses Southwest Papers, Inc., the parent company, is headquartered in Albuquerque, NM. The acquisition of the Sanford based Unicell operations will allow Roses to vertically integrate their operations. All of the paper roll production in Sanford will be shipped to the conversation operation in Albuquerque. The acquisition also saved 42 jobs in Sanford. Over the next three years, Roses will spend an additional $2 million on new equipment and add 8 new jobs with an average salary of $33,660.

Based on retained and new jobs, staff is recommending a JGI award of $100,000. On February 27, 2006, the City of Sanford approved a new ordinance which will provide relief from the City's Public Service Tax for a period of ten years. Based on current utility consumption at the Roses facility, it is estimated that this ordinance will result in an annual savings of $100,000 to Roses Southeast Papers, LLC.

Attachments: JGI Agreement, ROI

Reviewed by
Co Atty:
DFS:
Other:
DCM:
CM:
File No. RED01

SEMINOLE COUNTY
ECONOMIC DEVELOPMENT

SEMINOLE COUNTY
JOBS GROWTH INCENTIVE PROGRAM AGREEMENT

THIS AGREEMENT is effective as of the 11 day of April 2006, by and between **Seminole County**, a political subdivision of and in the state of Florida, whose address is 1101 East First Street, Sanford, Florida 32771 (hereinafter referred as the "COUNTY") and **Roses Southeast Papers, LLC**, authorized to do business and doing business in the State of Florida, whose address is 3401 St John's Parkway, Sanford, Florida 32771, (hereinafter referred to as the (COMPANY), whose Federal Employer I.D. Number is 20-3681217.

WITNESSETH:

WHEREAS, it is the policy of the COUNTY to aggressively stimulate economic growth in Seminole County by, among other things, either attracting new business or encouraging the expansion of existing business within Seminole County; and;

WHEREAS, the creation of new employment opportunities for residents of Seminole County and the increased tax revenues resulting from business expansion within Seminole County are beneficial to the sustained health of the local economy, and;

WHEREAS, the Board of County Commissioners has determined that offering a Jobs Growth Incentive Program encourages both existing business to expand and new business to locate resulting in diverse positive employment opportunities for the residents of Seminole County, and;

WHEREAS, Seminole County, through its Board of County Commissioners, has enacted a Jobs Growth Incentive Ordinance and has the fiscal capacity to conduct and accomplish the programs relating thereto, and;

WHEREAS, the COMPANY will locate and or expand its business to Seminole County and thereby create certain full-time employment opportunities at a certain average salary level and to make certain capital investments all in accordance with the COUNTY'S Economic Development Strategy, the COUNTY'S Economic Development Element and the COMPANY'S Jobs Growth Incentive Grant Application and the COUNTY'S Jobs Growth Incentive Ordinance, and;

WHEREAS, the COMPANY and COUNTY desire to enter into this agreement for the purpose of giving additional assurances to the COUNTY that certain expenditures by the COUNTY will produce the desired economic impact in Seminole County as a result of the COMPANY'S activities, and;

WHEREAS, the COMPANY is proposing to add new equipment, at their location in Seminole County at an approximate cost of TWO MILLION AND NO/100 ($2,000,000.00), which sum represents a significant capital investment, and;

WHEREAS, the retained and new jobs created and capital investment made by the COMPANY will make the project economically viable in terms of Seminole County's economic development, and;

WHEREAS, the COMPANY is eligible to receive a Jobs Growth Incentive Grant from the COUNTY, and,

WHEREAS, the COUNTY has determined that in order to enhance and preserve the health, education, and welfare of the citizens of the COUNTY it is necessary, proper, and desirable to enter into this agreement with the COMPANY in order to enhance and sustain the economic development of the Seminole County, and;

WHEREAS, the COUNTY finds and declares that it is in the public's best interest and serves a public purpose to award a grant and/or other assistance to the COMPANY pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contain and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

SECTION 1. - Recitals

The above recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

SECTION 2. - Definitions

(A) "New / Saved Permanent Jobs" - means new and retained permanent jobs made available to persons not having been previously employed by the COMPANY, such jobs being established for a minimum of two (2) years and having a minimum, excluding all employer paid benefits, average annual base wage of THIRTY THREE SIX HUNDRED SIXTY NO/100 DOLLARS ($33,660.00).

(B) "Project" - means the addition of new equipment, at 3401 St John's Parkway, Sanford, FL 32771.

SECTION 3. - Representations of the COMPANY

The COMPANY hereby represents and warrants to the COUNTY the following:

(A) The COMPANY is duly organized and validly existing under the laws of the State of Florida and is authorized to do and is doing business in the State of Florida.

(B) The COMPANY has the corporate power, authority, and legal right to execute, deliver, and perform this Agreement. The execution, delivery, and performance of this Agreement by the COMPANY have been duly authorized by all necessary corporate and shareholder action.

(C) The COMPANY'S Project Manager shall be **Enrique Todd** or his designee.

SECTION 4. - Covenants of the COMPANY

The COMPANY hereby covenants with the COUNTY to do the following:

(A) The COMPANY agrees to locate or expand its business operations in Seminole County and agrees to create and provide certain employment opportunities in the County as more specifically set forth below. The COMPANY agrees to fully secure its obligations relating to this Agreement by causing to be issued, in favor of the COUNTY, a performance bond, letter of credit, real property lien, or other surety acceptable to the COUNTY.

(B) In consideration of approval of its application for funds under the provisions of the Agreement by the COUNTY, the COMPANY guarantees that eight (8) new permanent jobs will be created, and forty two (42) permanent jobs will be retained on or before two (2) years from the date this agreement is approved by the Board of County Commissioners of Seminole County, Florida. The total number of new jobs represents a COUNTY expenditure of $100,000.00 or $2,000 per retained or new job created. Said jobs shall be maintained for a period of at least twenty-four (24) months from date of hire. All jobs must be created, occupied (personnel may change), and sustained for twenty-four months within a forty-eight (48) month period. Job announcements and vacancies must be advertised in a local newspaper and notice of need must be forwarded to **Workforce Central Florida**.

(C) New/Retained permanent employment means permanent jobs made available by the COMPANY to persons not previously employed by the COMPANY and shall be compensated to an average annual minimum salary of THIRTY THREE THOUSAND SIX HUNDRED SIXTY AND NO/100 DOLLARS ($33,660.00) per annum excluding all paid employee/employer paid fringes.

(D) The COMPANY agrees that the project will result in the expenditure of at least TWO MILLION AND NO/100 ($2,000,000.00) of capital investment relating to the Project.

(E) The COMPANY shall provide written verification, satisfactory to COUNTY, demonstrating compliance with this Agreement.

(F) When the jobs have been created or capital investments have been made, the COMPANY shall cause notice to be given to the COUNTY and will make the documentation available for review and inspection by the COUNTY.

SECTION 5. - Covenants of the COUNTY/Grant Funds

(A) The COUNTY agrees to provide the COMPANY with funds to assist in the relocation of equipment, building renovation / expansion costs, purchase of new equipment, and other legitimate business costs needed for the expansion of COMPANY in Seminole County. Payments shall be made, upon receipt by the COUNTY, of a request for funds listing eligible project costs incurred. Said request shall be reviewed and approved by the COUNTY'S Economic Development Director for payment. The total number of new jobs represents a COUNTY expenditure of $100,000.00 or $2,000 per retained or new job created. Said jobs shall be maintained for a period of at least twenty-four (24) months from date of hire. All jobs must be created, occupied (personnel may change), and sustained for twenty-four months within a forty-eight (48) month period.

(B) The COUNTY conditions its obligation herein, subject to the COMPANY promptly furnishing to the COUNTY, with evidence satisfactory to the COUNTY, that the COMPANY has accomplished its obligations relating to the Project. Reports shall be made to the COUNTY by the COMPANY every twelve (12) months, in a format provided by and satisfactory to the COUNTY. Additionally, this agreement is contingent upon the CITY OF SANFORD matching, or exceeding, the COUNTY JGI grant amount.

SECTION 6. - Term

This Agreement shall become effective upon execution by the COUNTY and the COMPANY and shall remain in effect through close out of the Agreement pursuant to and consistent with its terms.

SECTION 7. - Reports

(A) The COMPANY shall provide the COUNTY with reports at least every twelve (12) months starting April 2007, and every twelve months thereafter, or as frequently as specified by the COUNTY, on forms provided by the COUNTY for the duration of the Project. These reports shall give information regarding the number of new permanent jobs that have been provided by the Project, and of all activities affecting the implementation of this Agreement including, but not limited to, a narrative summary of progress on the Project in the report form approved by the COUNTY.

(B) The COMPANY shall provide the COUNTY a written annual verification, satisfactory to the COUNTY in its sole discretion, of compliance by the C0MPANY with all agreed upon performance standards as set forth herein which verification must be certified by an officer of the COMPANY and submitted to the COUNTY. Annual verifications shall cover the entire twelve (12) months period subsequent to the effective date of this Agreement and subsequent twelve (12) months period for total of five annual verifications. The COMPANY, at its sole cost and expense, shall provide such verification to the COUNTY.

SECTION 8. - Force Majeure

In the event any party hereunder fails to satisfy a requirement imposed in a timely manner, due to a hurricane, flood, tornado, or other Act of God or force majeure, then said party shall not be in default hereunder; provided, however, that performance shall recommence upon such event ceasing its effect.

SECTION 9. - Binding Effect

This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors in interest, transferees, and assigns of the parties.

SECTION 10. - Assignment

This Agreement shall not be assigned by either party without the prior written approval of the other.

SECTION 11. - Public Records

The COMPANY shall allow public access to all documents, papers, letters or other materials, which have been made or received by the COMPANY in conjunction with this Agreement.

SECTION 12. - Records and Audits

(A) The COMPANY shall maintain in its place of business all books, documents, papers, and other evidence pertaining to work performed under this Agreement. Such records shall be and remain available at the COMPANY place of business at all reasonable times during the term of this Agreement and for five (5) years after Agreement closure.

(B) The COMPANY agrees that the COUNTY or its duly authorized representatives shall, until the expiration of five (5) years after Agreement closure, have access to examine any of COMPANY'S books, documents, papers, and records involving transactions related to this Agreement. The COMPANY agrees that payments made under this Agreement shall be subject to reduction for amounts charged which are found, based on audit examination, not to constitute allowable costs.

(C) All required records shall be maintained until an audit has been completed and all questions arising from it are resolved or until five (5) years after closure of the Agreement, in writing, and submission of the F1NAL invoice, whichever is sooner. COMPANY will provide proper facilities for access to and inspection of all required records.

SECTION 13. - Notices

(A) Whenever either party desires to give notice unto the other, notice may be sent to:

Seminole County
County Manager
1101 East First Street
Sanford, Florida 32771

With copies to:
Economic Development Director
1301 East Second Street
Sanford, Florida 32771

Company
Enrique Todd
General Manager
Roses Southeast Papers, LLC
3401 St John's Parkway
Sanford, FL 32771

Either of the parties may change, by written notice as provided herein, the addresses or persons for receipt of notices or invoices. All notices shall be effective upon receipt.

SECTION 14. - Indemnity and Insurance

(A) Each party to the Agreement is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof.

(B) To the extent allowed by law, each party to this Agreement shall indemnify, save and hold harmless the other party and all of its respective officers, agents, and employees from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description whatsoever, including claims for property damage and claims for injury to or death of persons brought or recovered against other party to this Agreement, by reason of any act or omission of the responsible party, its respective officers, agents, subcontractors, or employees, in the execution of the work relating to this Agreement.

(C) The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such parties under the laws of the State Of Florida, nor as a waiver of sovereign immunity of the COUNTY beyond the waiver provided for in Section 768.28, Florida Statutes.

(D) The COMPANY shall provide necessary workers compensation coverage and unemployment compensation for its employees.

SECTION 15. - Conflict of Interest

(A) The COMPANY agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of Part 111, Chapter 112, Florida Statutes, relating to ethics in government.

(B) The COMPANY hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in Section 1 12.3 12, Florida Statutes) either directly or indirectly, in the business of the COMPANY to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(C) Pursuant to Section 216.347, Florida Statutes, the COMPANY hereby agrees that monies received from the COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the legislature or any other State or Federal Agency.

SECTION 16. - Equal Opportunity Employment

(A) The COMPANY agrees that it will not discriminate against any contractor, employee or applicant for employment or work under this Agreement, because or on account of race, color, religion, disability, sex, age, or national origin and will insure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin. This provision shall include, but not be limited to, the following: retention, award of contracts, employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(B) The COMPANY agrees that it will comport all of its activities with the provisions of Chapter 760, Florida Statutes.

SECTION 17. - Compliance with Laws and Regulations

(A) In performing under this Agreement, the parties shall abide by all laws, statutes, ordinances, rules, and regulations pertaining to, or regulating the performance set forth herein, including those now in effect and hereafter adopted. Any material violation of said laws, statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement, and shall entitle the non-violating party to terminate this Agreement immediately upon delivery of written notice of termination to the violating party.

SECTION 18. - Employee/COMPANY Status

(A) Persons employed or retained by the COMPANY in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the COUNTY officers and employees, either by operation of law or by the COUNTY.

(B) The COMPANY assumes total responsibility for salaries, employment benefits, contractual rights and benefits, contract payments, federal, state and local employment taxes if any attributable to the COMPANY personnel or contractors, and agrees to indemnify and hold the COUNTY harmless from any responsibility for same.

(C) In performing this Agreement, planning, developing, constructing, equipping, and operating the Project or carrying out any of the activities to be carried out by the COMPANY, the COMPANY will be acting independently, in the capacity of an independent entity, and not as a joint venturer, partner, associate, employee, agent or representative of the COUNTY.

SECTION 19. - No Third-Party Beneficiaries

(A) This Agreement is made for the sole benefit of the parties hereto and their respective successors and assigns, including any successor in interest to the COMPANY'S interest in the Project, and is not intended to and shall not benefit any third party. No third party shall have any rights hereunder or as a result of this Agreement or any right to enforce any provisions of this Agreement.

SECTION 20. - Contingent Fees/Conflicting Employment

(A) The COMPANY covenants that it has employed and retained only bona fide employees working for the COMPANY and attorneys and consultants, to solicit or secure this Agreement. The COUNTY warrants that it has not paid or agreed to pay any person, company, corporation, individual or from other than a bona fide employee working for the COMPANY, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of making of this Agreement.

(B) The COMPANY agrees that at the time of execution of this Agreement it has no retainer or employment agreement, oral or written, with any third party relating to any matter

which adversely affects any interest or position of the COUNTY. The COMPANY shall not accept during the terms of this Agreement any retainer or employment from a third party whose interest appear to be conflicting or inconsistent with those of the COUNTY.

SECTION 21. - Governing Law/Attorneys' Fees

This Agreement shall be construed and interpreted according to the laws of the State of Florida. In the event of litigation between the parties arising from or pertaining to this Agreement, the prevailing party shall be entitled to recover from the other, reasonable trial and appellate attorneys, fees and costs.

SECTION 22. - Construction of Agreement

(A) This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties. Its being recognized that both parties, COUNTY and COMPANY, have contributed substantially and materially to the preparation hereof.

SECTION 23. - Constitutional and Statutory Limitation on Authority of the COUNTY

(A) The terms and conditions of this Agreement placed upon the COUNTY are applicable only to the extent they are within and consistent with the constitutional and statutory limitations on the authority of the COUNTY. Specifically, the parties acknowledge that the COUNTY is without authority to grant or pledge a security interest in any of the County's revenue sources or property.

SECTION 24. - Events of Default/Remedies

(A) For purposes of this Agreement, "Event of Default" shall mean any of the following:

(1) The COMPANY shall misapply or cause the misapplication of COUNTY funds or credits received pursuant to this Agreement.

(2) Any representation or warranty made by the COMPANY herein or in any statement, invoice or certificate furnished to the COUNTY in connection with the performance of the Agreement proves to be untrue in a material respect as of the date of issuance or making thereof and shall not be corrected or brought into compliance within thirty (30) days after written notice thereof to the COMPANY by the COUNTY.

(3) The COMPANY shall materially breach any covenant contained in this Agreement and such breach shall not be corrected or cured within thirty (30) days after written notice thereof to the COMPANY by the COUNTY,

provided however; that the COUNTY may declare a lesser time period in the event that it finds, in its sole and absolute discretion, that such lesser period is necessary to protect the public health, safety or welfare.

(4) The COMPANY fails to provide to the COUNTY the written verification, satisfactory to the COUNTY, of its performance obligations herein.

(5) The COMPANY fails to expend Grant Funds in accordance with this Agreement.

(6) The COMPANY fails to create and fill the minimum number of permanent retained or new jobs within the limit prescribed in this Agreement.

(7) The COMPANY fails to maintain the permanent jobs created for the time period required by this Agreement.

(8) The COMPANY fails to maintain an average salary level for such new jobs created equal to or greater than the per annum salary set forth in this Agreement.

(9) If within forty-five (45) days after receiving written notice from the COUNTY that an Event of Default has occurred, the COMPANY shall either: (i) refund to the COUNTY that amount of funds equal to two thousand dollars ($2,000.00) per new job not created pursuant to terms of this Agreement; or (ii) refund such disbursed funds which the COUNTY determines have been misapplied under the terms of this Agreement, or, in the alternative, deposit such funds into the registry of the court, subject to determination of the COUNTY'S entitlement thereto. The COUNTY may proceed to assert any and all legal or equitable remedies provided by law.

SECTION 25. - Counterparts

(A) This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

SECTION 26. - Headings

(A) All sections and descriptive headings in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

SECTION 27. - Time

(A) Time is of the essence of this Agreement.

SECTION 28. - Severabilty

(A) If any provision, term or clause of this Agreement is determined to be invalid or unenforceable by a Court of competent jurisdiction, said determination shall not, in any way, effect the obligation of the parties as provided for or referred to herein and, to that end, the provisions of this Agreement shall be deemed severable. However, such invalidity or unenforceability shall preclude the continuing effect of this Agreement if a failure of consideration were to occur.

SECTION 29. - Entire Agreement

(A) This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the parties to be bound thereby.

(B) No waiver or consent to any departure from any term, condition or provision of this Agreement shall be effective or binding upon any party hereto unless such waiver or consent is in writing, signed by an authorized officer of the party giving the same and delivered to the other party.

(C) The COMPANY agrees that no representations have been made by the COUNTY in order to induce the COMPANY to enter into this Agreement other than as expressly stated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

ATTEST:

Roses Southeast Papers, LLC

_____
Corporate Secretary

By:_____
Enrique Todd
General Manager

Date:_____

ATTEST:

_____
MARYANNE MORSE

Clerk to the Board of County Commissioners of Seminole County, Florida.

For the use and reliance of Seminole County only. Approved as to form and legal sufficiency.

_____
County Attorney

BOARD OF COUNTY COMMISSIONERS SEMINOLE COUNTY, FLORIDA

By:_____
Carlton D. Henley, Chairman

Date:_____

As authorized for execution by the Board of County Commissioners at their October 12, 2004, regular meeting.

_____
Date

Name of Company	**Roses Southeast Paper, LLC**	
Taxable Value/Capital Investment		$2,000,000
Company Information:	Manufacturing	yes
Proposed Location:	City of Sanford	
Incentive Award		$ 100,000

Taxing Entities (Ad Valorem):	***Rate**	**Tax ($)**
Countywide/General Fund	0.0049989	$ 9,998
Countywide/Transportation	0.0001228	$ 246
Countywide/Debt Service	0.0002041	$ 408
St. Johns River Water Management District	0.0004620	$ 924
School Board	0.0079650	$ 15,930
Sanford	0.006325	$ 12,650
Total		$ 40,156

*Note: Based on 2005 millage rates.

County Only	**Return of Ad Valorem**	
Seminole County/General Fund Only	10.0	Years
Seminole County/All BCC Millages	9.4	Years

All countywide	**Return of Ad Valorem**	
Countywide	2.5	Years