

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2019-065

Resolution Approving the Intergovernmental Agreement between Multnomah County and the City of Portland for the Administration of the County Business Income Tax.

The Multnomah County Board of Commissioners Finds:

- a. Administration of the County Business Income Tax (BIT) and the City Business License Tax (BLT) were consolidated in 1993 to provide operational efficiencies.
- b. The consolidation program has allowed businesses to follow a single set of procedures and definitions and to file a single reporting form for both the City and the County. This has simplified reporting requirements for businesses and has minimized administrative costs for the County for the past 25 years.
- c. The attached Intergovernmental Agreement provides for a one year extension of the existing agreement with the City of Portland (through FY 2020). The estimated cost to the County in FY 2020 is \$1,354,196.
- d. The County and City will continue discussions on how Business Income Tax administration and collection costs will be shared between the parties. The agreed upon cost sharing approach is to be confirmed during fiscal year 2020.

The Multnomah County Board of Commissioners Resolves:

The Board of County Commissioners approves the attached Intergovernmental Agreement for the administration of the County Business Income Tax.

ADOPTED this 20th day of June, 2019.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury

Deborah Kafoury, Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By *[Signature]*
William Glasson, Assistant County Attorney

SUBMITTED BY: Eric Arellano, CFO.

**MULTNOMAH COUNTY, OREGON
CITY OF PORTLAND, OREGON**

Intergovernmental Agreement

THIS AGREEMENT (the "Agreement") entered into by and between Multnomah County, Oregon, hereinafter "County", and the City of Portland, hereinafter "City", is pursuant to authority of ORS Chapter 190.

- A. The consolidated administration of the City of Portland's Business License Tax Law and the Multnomah County Business Income Tax Law has simplified reporting requirements for businesses and has reduced administrative costs for both the City and the County for the past 25 years.
- B. A consolidated program has allowed businesses to follow a single set of procedures and definitions and to file a single reporting form for both the City and the County for the past 25 years.
- C. The City and the County jointly developed and have retained code conformity and consolidated administration for the past 25 years with positive results for both jurisdictions.
- D. The City, acting through the Bureau of Revenue and Financial Services, Revenue Division (the "Division"), is willing and able to continue administering the Multnomah County Business Income Tax Law for the County.
- E. The City and County are in ongoing discussions concerning the overall cost of collecting the City's Business License Tax and Multnomah County Business Income Tax, and how costs should be shared. To allow for more time to discuss cost sharing, and with a goal of incorporating decisions into FY 2020-21 budget process, this Agreement shall be extended for one year.

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

1. General Administration.

- a. The Division agrees to supervise and administer the Multnomah County Business Income Tax Law, imposed by the Multnomah County Code as adopted by the Multnomah County Board of Commissioners ("the County Business Income Tax").
- b. The Division agrees to administer the County Business Income Tax, including, but not limited to, adopting administrative rules and written policies, collecting estimated tax payments, auditing returns, assessing and collecting tax and tax deficiencies, including penalties and interest, making refunds, hearing appeals, and taking any other action necessary to administer and collect taxes under the County Business Income Tax.
- c. The County will defend any legal claims against the County Business Income Tax regarding the legal validity or constitutionality of the County Business Income Tax.

- d. In performing its duties under this Agreement, the Division may in its discretion determine what action shall be taken to enforce the provisions of the County Business Income Tax and collect the tax imposed thereunder. In exercising its discretion, the Division agrees to provide a level of service comparable to the level of service it provides in the administration of the Business License Tax Law. If the Division deems it necessary to vary substantially from this standard, the Division shall notify the County of the need and obtain its written consent.
- e. As the tax administrator, the Division is authorized to collect any and all taxes, penalties, interest, and fees for any tax year open under statute.

2. Appeals Board.

- a. The County designates the Business License Appeals Board, as created by the Business License Tax Law, as the body for reviewing taxfiler appeals from final determinations made by the Division under the County Business Income Tax.
- b. The County Chair shall provide recommendations for appointments to be made by the Mayor to the Business License Appeals Board. The Mayor shall appoint one (1) of the three (3) public members of the Business License Appeals Board from the list of recommendations submitted by the County Chair. The County Chair will submit one or more names that meet the expertise requirement in the City Code (7.02.295 D). If the County Chair does not provide any recommendations for the board by the deadline established in the written notice (issued at least 30 days before any deadline), the Mayor may make an appointment from the Mayor's own list of recommendations.

3. Payments to the County.

- a. The Division agrees to deposit all taxes collected under this Agreement to a trustee account within the City established on behalf of and for the benefit of the County. The account shall earn interest based on the City's internal interest allocation used for its own funds.
- b. The City agrees, after deducting pending refunds and other credits, to remit the balance of the tax collected under this Agreement to the County, less an amount required to restore the Reserve Balance, defined below, if needed, by the tenth (10th) business day following the close of each month.
- c. The County agrees to maintain a reserve balance in the trustee account described in Section 3.a, of approximately two hundred thousand dollars (\$200,000) (the "Reserve Balance").
- d. The Division agrees to make payments of taxes collected under this Agreement to the County's Local Government Investment Pool Account No. 4017. Should extraordinary refunds, adjustments, or credits require funds in excess of the Reserve Balance, the Division may retain a reasonable amount in excess of the \$200,000 in the trustee account, or the County agrees to transfer necessary funds to the City from its Local Government Investment Pool Account No. 4017 to the City's Local Government Investment Pool Account No. 4002 to bring the Reserve Balance back to \$200,000.

- e. The Division agrees to provide monthly reconciliations of deposits made and net revenues collected. The Division agrees to provide a minimum of 10 days prior notice if it requires retention or transfer by the County of an amount equal to or greater than \$500,000.

4. Payments to the City.

The annual compensation to be paid to the City during the Term, defined below, for all services provided under this Agreement shall be \$1,354,196. The compensation will be billed in twelve equal installments on the 15th of each month, or the first business day that follows. The County agrees to make payment of the billed installment by the end of the month.

If administrative costs increase as a result of a material change to one jurisdiction's business income tax law that is not reflected in the other, the City may increase the annual compensation to reflect that cost of administration only if it has provided the County with written notice, at least 90 days in advance of the cost increase. If the City or County subsequently changes the tax law to bring the two codes back into conformity, the City will remove the increased charge if it has been less than one year since it was added.

5. Notification of Changes.

- a. Law Changes. The parties agree to cooperate in amending the County Business Income Tax or the City Business License Tax Law to ensure uniformity and consistency in these respective codes and in administration. Both parties to this Agreement agree to notify the other of any intent to make changes, whether in the law or in the tax or fee rates, at least thirty (30) days prior to adopting the change. If both parties mutually agree to make changes, such changes may take effect in less than the thirty (30) days required. Both parties acknowledge that if changes are made to one code and not the other, administrative costs may increase as a result.

- b. Administrative Rules. The County's Chief Financial Officer, or designee, may request to be involved in the development of Administrative Rules. If the County's Chief Financial Officer so requests, the Division agrees that it will not initiate the public process for review and comment on proposed Administrative Rules until the County's Chief Financial Officer and the Division mutually agree on the content and substance of the Administrative Rules.

6. Reports.

- a. The Division agrees to provide receipts and expenditure reports to the County at the close of each of the City's accounting periods. The Division will deliver a preliminary report, estimating receipts and expenditures by tax year, to the County by the 10th day of each month. If the 10th day falls on a legal holiday or on a weekend, the preliminary report will be delivered on the following business day.
- b. The Division agrees to provide the County, upon request, a report of large potential refunds due to amended returns, appeals or overpaid estimates. For purposes of the preceding sentence, "large" shall mean a single refund total of more than \$200,000.

- c. The Division will provide other reports or perform other work or may discontinue or combine any of the above reports, as the Division and the County may mutually agree. If the reports or other work requested by the County require extensive programming time or have significant costs associated with the project, the City and the County may agree upon additional charges to be paid for such additional work under this Agreement.
- d. The County agrees that all County employees given access to the Division's business tax database or any tax records derived from the database will safeguard the tax information and maintain the confidentiality of individual taxpayer information. To obtain access, an authorized County employee must attend the City's Security and Disclosure Awareness training, updated by the Division, annually. Upon completion of the annual training, a Confidentiality Oath must be signed that documents the employee's understanding of the confidential nature of the data, the need to safeguard it and the consequences of violating the City's confidentiality policies and procedures.

7. Information.

- a. The parties agree to cooperate in exchanging information and making joint public announcements to promote the effective administration of the County Business Income Tax and the City Business License Tax Law. In regard to the County Business Income Tax, all public announcements and all correspondence relating to policy matters and public relations will be the County's responsibility. The Division agrees to notify the County of any matter arising from the administration of the County Business Income Tax that may require any legislative amendments or affect County policy, including any policy relating to the amount of taxes collected.
- b. Additionally, the parties agree that all City and County tax returns from any year, are available for review and may be used by Division staff to assess fees or taxes not previously collected under one and/or both laws.

8. Public Records.

- a. All work performed by the City under this Agreement shall be considered to be the property of the County. The County shall own any and all data the City produces in connection with this Agreement. Upon termination of this Agreement, the City and County will mutually agree upon how delivery of this data is to be effectuated. Since the tax returns are combined with the City's business license tax return as of tax year 1993, the City and County jointly own these documents. The City and County will equally share any copying expenses (paper or electronic) related to these returns upon termination of this Agreement.
- b. The Division may receive public records requests for County Business Income Tax records obtained by or provided to the Division under this Agreement. If there is a question whether a document with County information is exempt from the public records law, any such request(s) shall be forwarded to the County's Chief Financial Officer, or routed as (s)he directs, by the following business day. The County's Chief Financial Officer, or designee, may determine if the requested records exist, and if such records are subject to the public records law. Any determination made by the County under the public records law shall be the

County's sole responsibility, including but not limited to any legal defenses of such determinations.

9. Limitations and Conditions.

- a. To the extent permitted by Oregon law, the City agrees to indemnify, within the limits of the Oregon Tort Claims Act, the County from any and all claims, demands, settlements or judgments, including all costs and attorney fees, arising from any of the Division's activities under this Agreement, provided, that the City shall not be required to indemnify the County for any such claims, demands, settlements or judgments arising from the wrongful acts of the County's officers, agents or employees.
- b. To the extent permitted by Oregon law, the County agrees to indemnify, within the limits of the Oregon Tort Claims Act, the City from any and all claims, demands, settlements or judgments, including all costs and attorney fees, arising from any of the County's activities under this Agreement, provided, that the County shall not be required to indemnify the City for any such claims, demands, settlements or judgments arising from the wrongful acts of the City's officers, agents or employees.

10. Confidentiality.

- a. The information provided by individual taxpayers on tax returns shall be treated as confidential information to the extent permitted under Oregon law. Such information may be disclosed to the County, for purposes of monitoring or overseeing the Division's administration of the County Business Income Tax or for County revenue forecasting and budgeting. If authorized by the County's Chief Financial Officer, County officers, agents or employees may have access to such information after the execution of a certificate of confidentiality and background check. The confidentiality certificate shall advise the officer, agent or employee of the penalties for disclosure of confidential information. The County shall obtain and keep on file such certificates for its employees, agents and officers, and will provide a copy of the certificate to the Division. Before access is granted, required training as detailed in Section 6.d. must be completed.
- b. When making requests for such information, other than routinely agreed upon reports, the County shall give not less than ten (10) calendar days prior notice to the Division, stating the information desired, the purpose of the request and the use to be made of such information.
- c. The County may audit the Division's administration of the County Business Income Tax, applying generally accepted audit standards. The County agrees to provide reasonable prior notice of its intent to audit the Division. Prior to beginning the audit, all County officers, agents, employees or contractors participating in the audit agree to execute confidentiality certificates and background checks as provided herein.
- d. The County has installed one "inquiry only" access line to the Division's database. This access is provided at a County location, outside the City's firewall. All costs associated with this line, including upgrades necessary to maintain this line, shall be the responsibility of the County. Access to this inquiry only line shall be restricted to the County's Chief Financial Officer and any one

designee. Access to the database shall be protected by restrictions, including but not limited to, password access codes and physical lockouts. Anyone with access to this line shall complete training as detailed in Section 6.d. and execute a confidentiality certificate and background check prior to being granted access. Any County employee permanently located at the Division will be provided appropriate access to the Division's database without additional cost to the County.

11. Term.

- a. The term of this Agreement shall be one year, beginning July 1, 2019, (the "Term"), unless terminated by operation of law or by either party upon twelve months prior written notice. Prior to the termination date of this Agreement, the County and the City will determine the disposition of pending matters which will not otherwise be completed within the Term, and the Division will provide the County with such records as are necessary for the County to commence collecting the tax under the County Business Income Tax.

12. Payment on Early Termination.

Upon early termination as provided by this Agreement, the County shall pay the City for all work performed prior to the termination date.

13. Integration.

This Agreement embodies the whole of the agreement between the parties for the administration of the County Business Income Tax. Any prior written or oral agreements shall be superseded hereby. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties.

14. Severability.

If any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

15. Notice.

- a. Program Managers. The City Program Manager shall be the Director of the City's Revenue Division, or such other person as shall be designated in writing by the Director. The County's Program Manager shall be the County's Chief Financial Officer, or such other person as shall be designated in writing by the Chief Financial Officer.
- b. Any notice provided for under this Agreement shall be sufficient if in writing and delivered to the following addressee or deposited in the United States mail, postage prepaid, addressed as follows, or to such other address as the receiving party specifies in writing. Additionally, the parties may agree that written notification by email may serve as appropriate notice.

If to the City: Revenue Division Director
 111 SW Columbia St., Suite 600
 Portland, Oregon 97201

If to the County: Multnomah County - Chief Financial Officer
 501 SE Hawthorne Blvd. 5th Floor
 Portland, Oregon 97214

16. Oregon Law and Forum.

- a. This Agreement shall be construed according to the laws of the State of Oregon.
- b. Any litigation between the City and the County arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

17. Independent Contractor Status.

- a. The City is engaged as an independent contractor and shall be responsible for any federal, state and local taxes and fees applicable to payments hereunder.
- b. The City, its subcontractors and their employees are not employees of the County and are not eligible for any benefits through the County including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

18. Amendments.

The City and the County may amend this Agreement at any time only by written amendment executed by the City and the County. Any amendment must be approved by ordinance of the City Council.

19. Non-Waiver.

The City and the County shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

IN WITNESS WHEREOF, the authorized representatives of the City and County, as parties hereto, acting pursuant to the authority granted to them, have

HEREBY AGREED:

CITY OF PORTLAND

By: _____
Mayor
City of Portland, Oregon

Date signed: _____

Approved as to Form:

Tracy Reeve
City Attorney

MULTNOMAH COUNTY

By: _____
Chair
Multnomah County Board of
Commissioners

Date signed: _____

Reviewed by:

Jenny M. Madkour
County Attorney for
Multnomah County