

TRANSIENT LODGING TAX COLLECTION INTERGOVERNMENTAL AGREEMENT

This Transient Lodging Tax Agreement (“Agreement”) is entered into between the State of Oregon, acting by and through its Department of Revenue (the “Department”) and the (“City”), under the authority of ORS 305.620.

In consideration of the conditions and promises hereinafter contained, it is mutually agreed by the parties that the Department shall supervise and administer, according to the terms and conditions set forth in this Agreement, the Local Tax on transient lodging by transient lodging providers authorized under ORS 320.365 and approved by the voters of City.

(1) Definitions. As used in this Agreement the following terms have the meanings ascribed to them:

(a) “Confidential Information” means the information on Local Tax returns administered pursuant to ORS 305.620, any information in the reports required under Sections 8 and 9 of this Agreement from which information about a particular Local Taxpayer is discernable from the report due to a small number of Local Taxpayers in City or similar factors, and any other information exchanged between the Department and City related to this Agreement, which is confidential under ORS 314.835.

(b) “Fees” means collectively the Administrative Services Fee, Business Fee and any additional fees described in Section 5 of this Agreement.

(c) “Local Government” means a city or county that has entered into a form of this agreement with the Department under the authority of ORS 305.620 for the Department to collect Local Taxes authorized under ORS 320.365.

(d) “Local Tax” or “Local Taxes” means the Local Transient Lodging Tax imposed by City, together with any additional interest or penalties provided for by state statute or the Department’s rules; it does not include any additional penalties or fees that City may assess against its Local Taxpayers.

(e) “Local Taxpayer” means a Transient Lodging Provider, or a Transient Lodging Intermediary, with a lodging facility located in the taxing jurisdiction of City.

(f) “Ordinance” means the ordinance imposing a Local Tax adopted by the governing body of the City that is attached hereto as **Exhibit B** and by this reference incorporated herein.

(g) “Taxpayer” means a Transient Lodging Provider or Transient Lodging Intermediary with a lodging facility located in a taxing jurisdiction which has opted to have the Department of Revenue administer their local transient lodging tax program throughout Oregon.

(h) “Transient Lodging” has the meaning given in ORS 320.300(11)

(i) “Transient Lodging Intermediary” has the meaning given in ORS 320.300(12)

(j) “Transient Lodging Provider” has the meaning given in ORS 320.300(13).

(2) General Administration. The Department shall be responsible for all aspects of Local Tax administration, including, but not limited to, adopting administrative rules; auditing returns; assessing deficiencies and collecting the Local Tax and penalties and interest under applicable statutes, including but not limited to ORS 305.265, ORS 305.220, and ORS 314.400; making refunds; holding conferences with Local Taxpayers; handling appeals to the Oregon Tax Court; issuing warrants for the collection of unpaid taxes; determining the minimum amount of Local Tax economically collectible; and taking any other action necessary to administer and collect the Local Taxes. The Department has adopted rules related to the taxation of Transient Lodging under ORS chapter 320. City understands and agrees that such rules will be applied in administering the Local Tax.

(3) Level of Service. In performing its duties, the Department may in its sole discretion determine what action shall be taken to enforce provisions of the law and to collect the Local Tax. In exercising its discretion, the Department shall provide a level of services that are comparable to the level of services it provides in the administration of the State of Oregon transient lodging tax laws and the collection of such taxes owed to the State of Oregon. If the Department deems it necessary to vary substantially from this standard, the Department shall first notify City of the need and obtain City's consent. The Department shall provide all forms necessary for implementation of the Local Tax, including forms for transient lodging tax returns, exemptions and refunds.

(4) Transfer of Taxes to City. Beginning at the end of the first full quarter after execution of this Agreement, the Department shall remit to City the amount of Local Taxes collected in the preceding quarter less amounts withheld to pay the Department's Fees and other costs as described in this Agreement within 60 days of the return due date for the quarter. The Department shall notify City if, because of inability to move funds electronically or otherwise through the banking system, a force majeure event described in Section 26 of this Agreement or other exigent circumstance, the Department is unable to transfer the Local Tax collected to City as provided in this Section. In that event, the Department shall provide an estimate, if possible, of when it expects to be able to transfer the Local Taxes collected to City. The Department may enter into an agreement with another state government agency to fulfill the requirements of this Section 4, provided that said government agency can comply with the requirements of this section.

(5) Fees. In order to recover its costs to collect and transfer the Local Tax as provided in this Agreement the Department shall be paid the following three fees:

(a) "Administrative Services Fee": Pays for the establishment and maintenance of financial systems needed to administer and distribute Local Taxes. The fee shall be calculated annually as a percentage of the equivalent of 60 hours of work conducted for the Department of Revenue by the Department of Administrative Services, divided among the Local Governments in proportion to the number of Taxpayers in each Local Government. This fee shall be charged

only if the Department of Administrative Services provides transfer services as described in section (4).

(b) “Business Fee”: Pays for the Local Tax administration activities set forth in this Agreement. The fee shall be calculated as a percentage of the Department’s Business Division annual expenses for the administration of all lodging taxes, with the total fee increasing in direct proportion to the number of Local Taxpayers. The total amount per Local Taxpayer billed to City under the Business Fee shall not exceed 0.035 percent of the Department’s Business Division expenses for the administration of all lodging taxes;

FOR EXAMPLE, in a hypothetical with the following assumptions:

1,000 Taxpayers

50 Local Taxpayers in the City of Mainville

2 Local Taxpayers in the City of Middletown

Business Division’s Lodging Tax Expenses: \$500,000 per year

Hourly DAS rate: \$99/hour

The fees would be calculated as follows:

Administrative Services Fee = $(\$99/\text{hour} * 60 \text{ hours}) / 1,000 \text{ Taxpayers} = \5.94
per Local Taxpayer per year

Business Fee = $\$500,000 \text{ in lodging tax expenses per year} * 0.035\% = \175 per
Local Taxpayer per year

City of Mainville: $(\$5.94 \text{ Administrative Services Fee} + \$175 \text{ Business Fee}) * 50$
Local Taxpayers = \$9,047.00 in fees

City of Middletown: $(\$5.76 \text{ Administrative Services Fee} + \$175 \text{ Business Fee}) *$
2 Local Taxpayers = \$361.52 in fees

(c) In addition to the Fees described above, the Department may withhold or otherwise recover from City the Department’s costs for additional services not described in this Agreement related to the Local Tax; such additional costs may include, without limitation, requests for audits from City that exceed the scope of the Department’s normal audit procedures, requests for research or advice from the Department or the Oregon Department of Justice attorneys, or specially appointed counsel, regarding the Local Tax.

(d) If the Department determines that its costs cannot be covered by the maximum fees outlined in this Section 5, the Department will notify City of the amount by which the Department has determined the Fees must increase. If the Department and City do not agree upon a Fee increase and related amendment to this Agreement, then this Agreement may be terminated by either party in accordance with Section 16 of this Agreement.

(e) The Department may recover its costs to administer the Local Tax, per ORS 305.620(5). The above formula is intended to produce the Department's best estimate of its costs to administer the Local Tax.

(6) Withholding for Fees and Rebate. The Department may withhold from the Local Taxes collected and each transfer to City an amount equal to four percent (4%) of the Local Taxes collected. In the first quarter of each calendar year, the Department will reconcile the amounts withheld in the previous year with the total Fees assessed and provide a reconciliation in the Department's annual report described in Section 9 of this Agreement. If the amount withheld in a calendar year exceeds the amount of the Department's Fees, the Department will rebate the balance of the Local Taxes withheld to City by the end of the first quarter following the year of withholding. If the amount withheld does not cover the Department's Fees for the preceding year, the amount of the shortfall will be withheld from subsequent transfers of Local Taxes collected until the Department's Fees are fully paid, or in its discretion the Department may invoice City for the unpaid amount of the Department's Fees.

(7) Recovery of Overpayments. If the amount of Local Taxes paid to City under this Agreement exceeds the amount to which City is entitled, the Department may, after notifying City in writing, withhold from later payments due City under this Agreement such amounts, over such periods of time, as are necessary to recover the amount of the overpayment.

(8) Department Quarterly Reports. Beginning with the first full calendar quarter after the execution of this Agreement and continuing each calendar quarter thereafter, within sixty (60) days after the due date for quarterly Local Tax returns, the Department shall provide City with a report indicating the amount of Local Taxes collected, the Department's Fees incurred, the amount withheld under Section 6 of this Agreement and the cumulative amount of delinquent Local Taxes for each lodging provider in City's jurisdiction. The information in this report must be treated as potentially revealing Confidential Information and shall be protected as described in Section 15. City shall adopt procedures to prevent Confidential Information from being disclosed, except as consistent with this Agreement. The Department and City may disclose any non-confidential information from a report when required to do so by law, including the Oregon Public Records Law, ORS 192.311 to 192.478.

(9) Department Annual Reports. In the first calendar quarter of each year, the Department shall provide a written annual report of the preceding calendar year to City showing the total amount of Local Taxes collected, refunds paid, the expenses of administering and collecting the Local Tax, and other pertinent information. The report shall show the total amount withheld by the Department under Section 6 of this Agreement and shall show the Department's Fees, charged by category. In the report, the Department shall also make recommendations concerning changes in Local Tax Ordinances, procedures, policies, Local Tax administration and related matters, as the Department deems necessary and appropriate. The information in this report must be treated as potentially Confidential Information and shall be protected as described in Section 15. City shall adopt procedures to prevent Confidential Information from being disclosed, except as consistent with this Agreement. The Department and City may disclose any

non-confidential information in the report when required to do so by law, including the Oregon Public Records Law, ORS 192.311 to 192.478.

(10) City Reports. Within sixty (60) days of the effective date of this Agreement, City shall provide the Department with a list of zip code areas that are within its jurisdiction for purposes of imposing the Local Tax. City shall review all reports and reconciliations provided to it by the Department and shall promptly notify the Department of any perceived errors or omissions in such reports.

(11) Records Maintenance and Access. Each party shall maintain its records relevant to this Agreement, the Local Taxes and Local Taxpayers for the period of time specified and in the manner required under the document retention and archiving requirements applicable to it that are established under ORS 192.005 to 192.170. Upon written request, each party may examine the records of the other party at a time and location that is convenient and without extra cost to the holder to the records; provided, however, any requests for records made in connection with litigation or other efforts to collect the Local Tax shall be immediately provided in the time and manner requested.

(12) Ordinance and Notification of Changes. Contemporaneous with the execution of this Agreement, City shall provide a copy of the Ordinance to Department for incorporation into this Agreement as Exhibit B. In order to insure consistency in administration of the Local Tax, each party shall notify the other of any change in applicable law, including changes to the Ordinance and any state or local regulations or rulings interpreting the Local Tax or the Ordinance, any changes in rates or changes in the City's boundary at least ninety (90) days prior to the effective change, unless it is not legally possible to provide ninety (90) days' notice or both parties mutually agree to effect such changes in less than ninety (90) days. Each party shall notify the other of any change in administration of the Local Tax under this Agreement. The parties shall cooperate in amending the Ordinance or in seeking any amendments to ORS 320.365 or ORS 305.620 they deem necessary.

(13) Information. The parties will cooperate in the exchange of information and making public announcements to facilitate effective administration of the Local Tax and maintain consistency in public announcements and information. Policy announcements, announcement of changes to the Ordinance, and all public relations related to the Local Tax will be handled by City. The Department shall promptly notify City of any issue arising in the administration of the Local Tax that would require any legislative change or affect City's policy, including any policy that relates to the amount of Local Tax collected. Nothing in this section shall prohibit the Department from conducting its own outreach activities to increase awareness and knowledge of Local Tax obligations.

(14) Limits and Conditions. To the extent limited by applicable provisions of Article XI of the Oregon Constitution or other governing law, and within the limits of the Oregon Tort Claims Act applicable respectively to the Department and City, each party shall indemnify the other for damage to life or property arising from their respective duties and obligations under this

Agreement, provided neither party shall be required to indemnify the other for any such liability arising out of a party's own negligent or wrongful acts.

(15) Confidentiality.

(a) Confidential Information may be disclosed to City by the Department, at the discretion of the Department, only for purposes of carrying out the administration of the Local Tax . Requests for Confidential Information may be made by City by giving not less than ten (10) days' notice to the Department, stating the information desired, the purposes of the request, and the use to be made of such information. If the compilation of the requested information is not reasonably feasible, the Department shall so advise City and may decline to provide the requested information.

(b) ORS 314.840(3) requires that employees and representatives of City who receive Confidential Information must be advised in writing of the provisions of ORS 314.835 and 314.991(3), relating to the penalties for unlawful disclosure. Prior to being given access to Confidential Information, all City employees involved in the performance of this Agreement must review the DOR Secrecy Clause and sign the DOR Secrecy Laws Certificate (substantially in the form of Exhibit A, attached hereto and by this reference incorporated herein) certifying the employee understands the confidentiality laws and the penalties for violating them. Annually thereafter, (on or before a date specified by the Department), or upon request by the Department, such City employees must review and sign the latest versions of the Secrecy Clause and the Secrecy Laws Certificate. All signed Secrecy Laws Certificates must be immediately emailed to the designated Department Authorized Representative (indicated below). When the employee terminates employment with City, City will forward the certificate to the Department's Authorized Representative indicating the employee is no longer employed by City. A listing of every person employed by City that is authorized to request and receive Confidential Information identified in this Agreement must be sent by City to the following designated representative:

Aaron Bishop

Title: OSBP Policy and Systems Manager

Contact Email: Aaron.bishop@dor.oregon.gov

(c) Upon request and pursuant to the instructions of the Department, City shall return or destroy all copies of Confidential Information provided by the Department to City, and City shall certify in writing the return or destruction of all such Confidential Information.

(d) The administrative rules implementing ORS 314.835 and ORS 314.840 as amended from time to time during the term of this Agreement, shall apply to Confidential Information under this Agreement.

(e) City shall comply with the requirements of ORS 646A.600 to 646A.628 in the event of a breach of security or disclosure of confidential information.

(16) Term. The term of this Agreement shall be from the date it is executed by all parties and until it is terminated by operation of law or by either party, at its discretion upon at

least ninety (90) days prior written notice. Prior to the termination date specified in written notice provided under this section or Section 17 below, City and the Department will continue to perform their respective duties and obligations of under this Agreement. After the termination date, the Department will cease all collection and other activities under this Agreement, unless prior to the termination date the Department and City agree in writing that the Department may continue actions that are pending before the Oregon Tax Court or the Oregon Supreme Court, or are being collected after judgment or stipulation. In addition, after the termination date the Department will continue to remit to City any Local Taxes received by the Department, after deduction of the Department's actual costs, until all matters pending on the date of termination have been resolved or collected. The Department shall administer the Local Tax for City beginning with the calendar quarter commencing after this Agreement is executed, However, if this Agreement is fully executed on or before the 15th day of the calendar quarter, the Department shall begin administering the Local Tax for the quarter in which this Agreement is executed.

(17) Default and Remedies. A party shall be in default under this Agreement if it fails to perform any of its duties and obligations under this Agreement, and fails to cure such nonperformance within ninety (90) days after the other party provides written notice specifying the nature of the nonperformance. If the nonperforming party does not cure its nonperformance, or provide a satisfactory explanation to the other party of its performance under this Agreement, the other party may terminate this Agreement immediately or at a later date specified in written notice provided to the nonperforming party. In addition to termination of this Agreement, in the event of default by a nonperforming party, the other party may pursue any remedies available in law or equity, including an action for specific performance.

(18) Notices. All notices, documents, and information shall be sent as follows:

Oregon Department of Revenue
Transient Lodging Tax
Salem, OR 97309

(19) Amendments. The provisions of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.

(20) Successors and Assigns. This Agreement shall be binding and inure to the benefit of the parties, their assigns, and successors.

(21) Severability. If any provision 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 provision hereof.

(22) Representations. Each party represents to the other that the making and performance of this Agreement: (a) have been duly authorized by its governing body or official, (b) does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board or other administrative agency or any provision of any

applicable local charter or other organizational document, and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which the party is bound.

(23) Governing Law, Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively “Claim”) between the Department and City regarding the enforcement or interpretation of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. The parties understand and agree that any action brought to determine the amount of Local Tax owed by a Local Taxpayer, whether brought solely by the Department or in conjunction with City shall be brought solely in the Oregon Tax Court.

(24) Nonappropriation. The obligation of each party to perform its duties under this Agreement is conditioned upon the party receiving funding, appropriations, limitation, allotment, or other expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, sections 7 or 10 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of each party.

(25) Survival. All rights and obligations of the parties under this Agreement will cease upon termination of the Agreement, other than the rights and obligations arising under Sections 14, 16 and 17, and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accruing to a party prior to termination.

(26) Force Majeure. Neither party is responsible for any failure to perform or any delay in performance of an obligation under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that party’s reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligation under this Agreement.

(27) Counterparts. This Agreement may be executed in counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed constitutes an original.

(28) Merger. This Agreement and any exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or presentations, oral or written, not specified herein regarding this Agreement.

Each party represents that this Agreement, when fully executed and delivered will constitute a legal, valid and binding obligation of the party in accordance with its terms, and that the person signing below is the authorized representative of the party with full power and authority to bind his/her principal to this Agreement.

Oregon Department of Revenue

Name/Title:

Signature:

Date signed:

City:

Name/Title:

Signature:

Date signed: