

**INTERGOVERNMENTAL AGREEMENT**  
(Pursuant to Resolution & Order No. 2018-319)

**THIS AGREEMENT** is made and entered into by and between **LINN THE COUNTY**, a political subdivision of the State of Oregon, acting by and through its Linn County Board of Commissioners, of P.O. Box 100, Albany, Oregon, 97321 (hereinafter referred to as the “County”), and **CITY OF SWEET HOME**, of 1140 12<sup>th</sup> Ave., Sweet Home, Oregon 97386, a political subdivision of the State of Oregon (hereinafter referred to as the “City”.)

**WHEREAS**, pursuant to ORS 190.003 to 190.130, the County and the City desire to enter into an intergovernmental agreement; and

**WHEREAS**, the County requires the work and services described herein, and the City agrees to perform all the work and services described herein; now, therefore, IT IS AGREED:

1. **Term of Intergovernmental Agreement.** This Agreement shall be effective and services required hereunder shall commence on October 1, 2018 and shall terminate on September 30, 2020, unless otherwise terminated or extended as provided herein.
2. **Consideration.** The City shall retain five (5%) of the Transient Lodging Tax (TLT) revenues collected by the City on behalf of the County as required under this Agreement.
3. **Services to Be Provided by the City.** The City agrees to perform the following services as requested by the County:
  - a. The City shall be the County’s designated tax collector for all revenue received pursuant to Linn County Code 770, the Linn County Transient Lodging Tax Code, which was adopted on July 3, 2018 pursuant to Ordinance No. 2018-197 (hereinafter referred to as the “Tax”.) The City shall only be responsible for collecting the Tax from those applicable entities that are located within the City of Sweet Home.
  - b. The City shall forward the Tax revenue received, minus the 5% outlined in Section 2, to the County according to the following ongoing quarterly schedule: February 1; May 1; August 1; November 1. With the Tax payment, the City shall include an accounting of the Tax collected from each entity. The County reserves the right to request a copy of any remittance form, tax return form, or other document that is submitted to the City by the entity in relation to the Tax.
  - c. The City shall continuously forward to the County a copy of any registration form received from a Tax-paying entity located within the City.
  - d. The City is not in any way responsible for enforcement of the Tax in the event of nonpayment. However, the City shall notify the County if/when an entity that is mandated to pay the Tax fails to submit payment as required.
4. **Declaration of the nature of the contractual relationship.** The City and the County are independent contractors and not employees of or agents of each other. Neither party shall be responsible for any claims, demands or causes of action of any kind or character arising in favor of any person, on account of personal injuries, or death, or damage to property occurring, growing out of, incident to, or resulting directly or indirectly from the operations or activities of the other party.
5. **Representations and Warranties.**
  - a. **The County Representations and Warranties.** The County represents and warrants to the City that:
    - i. The County is a unit of local government duly organized and validly existing under the laws and jurisdiction of the State of Oregon. The County has the power and authority to enter into and perform this Agreement pursuant to ORS 190.003 to 190.130;

- ii. The making and performance by the County of this Agreement (a) has been duly authorized by all necessary action of the County, (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 the County ordinance or other organizational document and (c) does 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 County is party or by which the County may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by the County of this Agreement, other than those that have already been obtained;
      - iii. This Agreement has been duly executed and delivered by the County and constitutes a legal, valid and binding obligation of the County enforceable in accordance with its terms;
    - b. **The City Representations and Warranties.** The City represents and warrants to the County that:
      - i. The City is a unit of local government duly organized and validly existing under the laws and jurisdiction of the State of Oregon. The City has the power and authority to enter into and perform this Agreement pursuant to ORS 190.003 to 190.130;
      - ii. The making and performance by the City of this Agreement (a) has been duly authorized by all necessary action of the City, (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 and (c) does 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 City is party or by which the City may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by the City of this Agreement, other than those that have already been obtained; and
      - iii. This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms.
      - iv. The City has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and the City will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade, or profession; and
      - v. The City shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.
6. **Amendments.** This Agreement may be amended to the extent permitted by applicable statutes, administrative rules, ordinances, and Linn County Code. No amendment shall bind either party unless in writing and signed by both parties.
7. **Insurance.**
- a. **Workers Compensation.** To the extent applicable, each party represents and warrants that it maintains and will maintain in full force and effect coverage sufficient to meet the requirements of Oregon workers' compensation law.
  - b. **General Liability.** To the extent applicable, each party represents and warrants that it maintains and will maintain in full force and effect liability insurance covering activities and operations described in this Agreement for the duration of the Agreement.
  - c. **Professional Liability.** To the extent applicable, each party shall obtain and at all times keep in effect professional liability insurance as required by law.
8. **Indemnification.** To the fullest extent permitted by law, and in accordance with Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, each party shall indemnify, defend, save, and hold harmless the other party and its officers, employees and agents from and against all claims, suits, actions, liabilities, damages, losses, or expenses, arising out of the acts or omissions of the party, its officers, agents, or employees performing under this Contract.

9. **Compliance with Laws.** Each party agrees to comply with all federal, state, and local laws, codes, regulations, and ordinances applicable to the provision of services under this Agreement, including, without limitation, the provisions of ORS 279B.220 through 279B.235 and the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No 101- 336), ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

10. **Termination.**

- a. **For Convenience.** Either party may terminate this Agreement without specifying any reason for termination by giving written notice of intent to terminate, in writing, mailed at least thirty (30) days before the intended termination date to the party at the party's address given above. Such termination shall be without liability or penalty. No such termination shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.
- b. **For Cause.** It is further agreed that either party may immediately terminate this Agreement without liability or penalty for any of the following causes:
  - i. A party breaches any of the provisions of this Agreement and fails to remedy said breach within thirty (30) days of its receipt of written notice of the breach;
  - ii. A party lacks lawful funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow either party to perform in accordance with the provisions of this Agreement; or
  - iii. Federal, state, or local laws, regulations, or guidelines are modified or interpreted in such a way that the services under this Agreement are thereafter prohibited.
- c. **Force Majeure.** Neither party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war, which is beyond the party's reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Agreement. Either party may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of this Agreement.

11. **Waiver.** The failure of either party to enforce any provision of this agreement shall not constitute a waiver by that party of that or any other provision of this agreement, or the waiver by that party of the ability to enforce that or any other provision in the event of any subsequent breach.

12. **Records Maintenance; Access.** Both parties shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, both parties shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance hereunder. Parties acknowledge and agree that the County, the Oregon Secretary of State's Office, the Federal Government and their duly authorized representatives shall have access to such fiscal records and all other documents that are pertinent to this Agreement for the purpose of performing audits and examinations and making copies, transcripts and excerpts. All such fiscal records and documents shall be retained by parties for a minimum of ten (10) years (except as required longer by law) following final payment and termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

13. **Assignment; Delegation; Successors.** Neither party shall assign, delegate, nor transfer any of its rights or obligations under this Agreement without the other party's prior written consent. A party's written consent does not relieve the other party of any obligations under this Agreement, and any assignee, transferee, or delegate is considered the agent of that party. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to the Agreement and their respective successors and assigns.

14. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court or tribunal of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision, and the obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

- 15. Entire Agreement.** This Agreement constitutes the entire agreement between the parties on the subject matter hereof. No waiver, consent, modification or change of terms or provisions of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.
- 16. Governing Law, Jurisdiction, Venue, & Attorney Fees.** This Agreement shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the County (and/or any other agency or department of Linn County) and the City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Linn County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Each party hereby consents to the in personam jurisdiction of said courts. Each party shall at all times be responsible for the party's attorney fees, costs, and disbursements in regards to the claim, including any appeals.
- 17. Notices.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties at the addresses first set forth below. Any notice or other communication shall be deemed to be given at the expiration of forty-eight (48) hours after the deposit in the United States mail. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party as provided in this section.

**a. The County Contact Information**

Ralph Wyatt  
Linn County Administrator  
PO Box 100  
Albany, OR 97321-0031  
(541) 967-2100  
rwyatt@co.linn.or.us

**b. The City Contact Information**


Brandon Neish, MPA  
Finance Director  
City of Sweet Home  
1140 12th Avenue  
Sweet Home, OR 97386  
(541) 367-5128  
[bneish@sweethomeor.gov](mailto:bneish@sweethomeor.gov)

- 18. Survival.** All rights and obligations shall cease upon termination of this agreement, except for those rights and obligations that by their nature or express terms survive termination of this agreement. Termination shall not prejudice any rights or obligations accrued to the parties prior to termination.


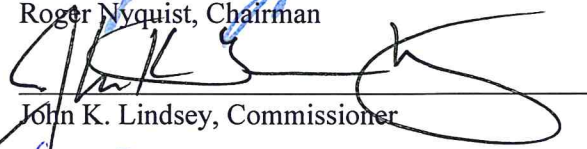
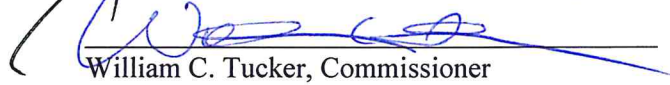
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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by the duly authorized persons whose signatures appear below. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original. Each party, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Each person signing this agreement represents and warrants to have the authority to execute this Agreement.


**CITY OF SWEET HOME**

  
\_\_\_\_\_  
Name *Greg Mahler, Mayor*  
\_\_\_\_\_  
Title *Ray Touny, City Manager*  
\_\_\_\_\_  
Date *09/25/2018*

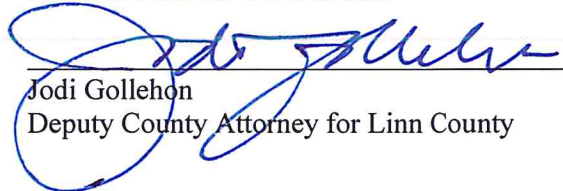
**LINN COUNTY BOARD OF COMMISSIONERS**

  
\_\_\_\_\_  
Roger Nyquist, Chairman  
  
\_\_\_\_\_  
John K. Lindsey, Commissioner  
  
\_\_\_\_\_  
William C. Tucker, Commissioner  
*9-18-2018*

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Ralph Wyatt  
County Administrator for Linn County

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Jodi Gollehon  
Deputy County Attorney for Linn County