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Via Email
October 15, 2020

Council President Lynn Peterson
Deputy Council President Juan Carlos González
Councilor Shirley Craddick
Councilor Christine Lewis
Councilor Craig Dirksen
Councilor Sam Chase
Councilor Bob Stacey
Metro
600 NE Grand Ave
Portland, OR 97232

Re: Reject Ordinance 20-1449 and delay implementation of Supportive Housing Services income taxes

Dear Council President Peterson, Deputy Council President González, and Councilors:

Today, Metro Council is expected to approve Ordinance No. 20-1449, authorizing the issue of \$28 million in revenue bonds. The money raised by the bonds will be handed over to the City of Portland, whom Metro is paying to implement and collect two income taxes created by Metro to fund “supportive housing services.”

On October 1, I testified before Metro Council urging Metro to reject the ordinance and delay implementation of the new income taxes. Aside from the obvious argument that this is a terrible time to impose taxes on struggling families and businesses, there are several troubling aspects of the bonds and Metro’s intergovernmental agreement (IGA) with the City of Portland (attached).

- Metro has convened an Advisory Table to make recommendations regarding who pays the \$250 million a year in taxes and how much they will pay. The purpose of Oregon’s Public Meetings Law to ensure important discussions such as these are conducted in full view of the public. **Meetings of this Advisory Table appear to violate the spirit, if not the letter, of the state’s Public Meetings Law.**

- The \$28 million for the City of Portland is just a down payment. Over the 10-year life of the income taxes, **Metro has committed to paying Portland as much as \$158 million to collect and enforce the taxes.**
- **Who's actually writing the rules?** There appears to be a great deal of confusion regarding rulemaking for the two new taxes. Metro has convened an "Advisory Table" to assist with rulemaking. At the same time the IGA specifies the City of Portland's unelected Revenue Division is charged with adopting the "administrative rules and written policies."

I. Potential violation of Oregon Public Meetings Law

A Metro [FAQ](#) regarding the two new taxes reports Metro has formed a Supportive Housing Services Tax Implementation Advisory Table. This group is supposed to advise on technical aspects of tax implementation and to provide recommendations.

The Advisory Table has made numerous recommendations regarding the implementation, collection, and enforcement of what Metro estimates will be \$250 million a year in income taxes. The topics discussed include:

- Whether sole-proprietorships, estates, and trusts should be subject to the business income tax,
- Double-taxation of pass-through entities, and
- Apportionment.

These are not trivial matters. The Advisory Table's recommendations will determine who pays the tax and how much they will pay. The purpose of Oregon's Public Meetings Law is to ensure important discussions such as these are conducted in full view of the public.

On October 8, 2020, Metro's CFO, Brian Kennedy, informed me via email that Metro asserts meetings of the Advisory Table are not subject to Oregon Public Meetings Law. As a result, Mr. Kennedy indicated that Metro has not published public notice of its meetings and that there are no minutes from the Advisory Table's meetings. The Washington Post tells us "Democracy dies in the darkness." It seems Metro is going out of its way to keep us in the dark.

Oregon Public Meetings Law requires that public notice be given of the time and place of meetings. The Law requires the public notice must also "include a list of the principal subjects anticipated to be considered at the meeting." The list of subjects should be specific enough to permit members of the public to recognize the matters in which they are interested.

The Public Meetings Law requires written, sound, video or digital recording of minutes for all meetings and that minutes must be made available within a "reasonable time" after each meeting, but does not specify the time. It is generally recognized that this time frame should not exceed three weeks.

The Public Meetings Law specifies members of a governing body may be liable for attorney and court costs both as individuals or as members of a group if found in willful violation of the Law.

II. \$158 million to the City of Portland

The last page of Appendix A to the IGA provides Metro's anticipated payments to Portland through the 2024-25 fiscal year. After FY 2024-25, "annual compensation" payments increase with the rate of inflation; debt service payments remain constant throughout the 10-year period. Throughout the life of the agreement, Metro has committed to pay as much as \$158 million to Portland:

- \$27 million for "one time implementation services,"
- \$123 million in "annual compensation," and
- \$7.5 million to cover Portland's debt service associated with the city's implementation of a new tax collection system, Integrated Tax System (ITS).

III. Troubling details in Metro's IGA with the City of Portland

Despite Metro's claims that it "shopped around" for someone to implement, collect, and enforce its two new income taxes, the City of Portland was the only provider who expressed interest. It appears Portland used its lopsided bargaining power to squeeze as much out of Metro as it could. The result is a one-sided IGA allowing Portland to charge exorbitant staffing costs, pass its own debt service costs to Metro, and obtain extraordinary rulemaking authority in an agreement that forbids early termination.

A. Oregon Department of Revenue refused to consider implementing Metro's two new taxes

From the October 1, 2020, Metro Council [meeting](#) (approximately 2:31 PM):

Councilor Bob Stacey: Thank you, Madam President. Tim, tell me if I'm off the rails here. As I recall, we shopped around, we comparison priced both the City of Portland's tax collection system and the State of Oregon's and went with the most competent and cost effective alternative?

Metro Staff: Councilor Stacey, the only clarification I would add to that is we approached the State of Oregon and inquired as to their interest and ability to provide that service for us. They indicated that they are not able to do that for a couple of different reasons. They are still in the process of implementing the Corporate Activity Tax, as well as another significant change. So they did not anticipate having the capacity to do that until at least 2022 or 2023.

B. Metro's outsourcing development of its administrative rules to the City of Portland

Section 1.b of the IGA indicates the City of Portland's Revenue Division is charged with adopting the "administrative rules and written policies" governing the implementation, collection, and enforcement of Metro's two new taxes:

The Division agrees to administer the Metro Supportive Housing Services 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 Supportive Housing Services Tax.

Section 5.b of the IGA indicates Metro staff "may **request** to be involved" in the development of administrative rules.

Administrative Rules. **Metro's Chief Financial Officer and/or the Metro Attorney, or their designees, may request to be involved in the development of Administrative Rules.** If Metro's Chief Financial Officer or Metro Attorney so requests, the Division agrees that it will not initiate the public process for review and comment on proposed Administrative Rules until Metro's Chief Financial Officer or the Metro Attorney and the Division mutually agree on the content and substance of the Administrative Rules.

The IGA appears to be at odds with Metro's own rulemaking process.

C. Portland's exorbitant staffing and personnel costs

The last page of Appendix A to the IGA provides Portland's anticipated personnel costs.

- **Implementation:** 15-22 FTEs at more than \$156,000 per FTE.
- **Ongoing operations:** 37 FTEs at more than \$129,000 per FTE in FY 2021-22.

These compensation estimates are more than double the average wage for the Portland metropolitan area.

The FTEs required just for ongoing operations amounts to a 5% increase in FTEs at Portland's Office of Management and Finance.

Personnel comprise the largest portion of the anticipated ongoing operations under the IGA. It is well known that employee compensation in the public sector grows faster than inflation. Even more so in Oregon, where the employer contributions to PERS are tied to portfolio performance rather than general price levels. Thus, one should be skeptical of the IGA's commitment to limit the cost of ongoing operations to the rate of inflation after the 2024-25 fiscal year.

D. Debt service payments for Portland's new tax collection system

The IGA indicates that Metro must pay more than \$750,000 a year for Portland's debt service associated with implementing the city's new Integrated Tax System. In August, the city indicated that ITS was scheduled to "go-live" in September. I have seen no indication that ITS is currently "live."

If ITS is "live," it is not clear why Metro should be funding debt service for a system that is already up-and-running.

E. No early termination of agreement, except "for cause," which is undefined

Section 12 of the IGA specifies no early termination of the agreement, except "for cause." But, the IGA does not specify what constitutes "cause."

No Early Termination. Neither party may terminate this Agreement before the 10-year term ends, except for cause. Early termination without cause is a breach of the contract and the non-breaching party may pursue any and all legal remedies, including an action for damages.

Thus, it is possible that even if Metro—or its voters—repeal the income taxes, Metro would be liable for payments to the City of Portland. While the ongoing costs could be reduced with repeal of the taxes, Metro would still be liable for the implementation costs and debt service payments.

It is clear that the City of Portland took advantage of its bargaining power as the only game in town. The result is a one-sided IGA that outsources key functions of Metro government to an unelected bureau in the City of Portland.

You owe it to yourselves and your constituents to vote no Ordinance 20-1449, revisit the IGA with Portland, and delay implementation of the two new income taxes.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "Eric Fruits", with a stylized flourish at the end.

Eric Fruits, Ph.D.

ORDINANCE NO.

*Authorize an Intergovernmental Agreement with Metro Regional Government for the Revenue Division of the Bureau of Revenue and Financial Services to administer the Metro Supportive Housing Services Tax (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. On May 19, 2020, the voters of the Metro region approved Metro's Supportive Housing Services Ballot Measure 26-210, which authorizes Metro to impose a business income tax and personal income tax to fund Supportive Housing Services.
2. Metro does not currently have the capability to efficiently and effectively collect the business income and personal income taxes authorized by the voters to fund Supportive Housing Services.
3. The City of Portland has administered its Business License Law since the 1970s and has the expertise to administer a local government income-based tax.
4. The Supportive Housing Services Measure states that, with respect to Metro's business income tax, it is Metro's policy to use, as guidance, the Multnomah County Business Income Tax rules and procedures.
5. In addition to administering its own Business License Law, the City of Portland has also administered the Multnomah County Business Income Tax since the 1990s through an intergovernmental agreement with Multnomah County.
6. The City is therefore extremely familiar with the rules and procedures related to Multnomah County's Business Income Tax administration, upon which Metro will use as guidance for Metro's business income tax.
7. The City also administered Multnomah County's personal income tax (the "ITAX") when that tax was imposed in 2003, thus demonstrating the expertise to administer a personal income tax as well as a business income tax.
8. Having the City administer Metro's Supportive Housing Services personal and business income taxes will simplify reporting requirements for businesses in the Metro region and reduce administrative costs for both the City and Metro.

9. A consolidated program with unified code and administrative rules allow businesses to follow a single set of procedures and definitions and reduce the overall burden to file and pay business taxes.
10. The Revenue Division is implementing new tax collection software system (Integrated Tax System or ITS) with greatly enhanced functionality. The new system is scheduled to go-live in September 2020.
11. The City, acting through the Bureau of Revenue and Financial Services, Revenue Division (the "Division"), is willing and able to administer Metro's Supportive Housing Services Tax for Metro.
12. The IGA is a ten-year agreement, in which Metro will reimburse the City for the City's actual costs. A "not-to-exceed" amount on the administrative costs, which includes a contingency amount for unforeseen costs, is included in the agreement.

NOW, THEREFORE, the Council directs:

- a. The Revenue Division Director is authorized and directed to execute an IGA for administrative services for the Metro Supportive Housing Services Tax, in substantially the form attached to this Ordinance as Exhibit A.
- b. The Revenue Division is authorized to make budget adjustments in accordance with this IGA.
- c. The Revenue Division is authorized to hire positions in accordance with this IGA.

Section 2. The Council declares that an emergency exists because of the short timeline to implement the program, including contracting with the ITS vendor. Therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council,

Mayor Ted Wheeler
Prepared by: Scott Karter
Date prepared: August 5, 2020

Mary Hull Caballero
Auditor of the City of Portland
By
Deputy

Agenda No. 684
Item Type: Ordinance No. _____
Council Meeting Date: September 9, 2020

Title: *Authorize an Intergovernmental Agreement with Metro Regional Government for the Revenue Division of the Bureau of Revenue and Financial Services to administer the Metro Supportive Housing Services Tax (Ordinance)

AGENDA TYPE

☒ **Consent**

☐ **Regular**

☐ **Time Certain** Start Time

Item 1 of 1

Total amount of time needed for presentation, testimony and discussion (Regular and Time Certain Only): N/A (Consent)

INTRODUCED BY: Mayor Wheeler

COMMISSIONER / AUDITOR APPROVAL

Mayor - Finance & Admin. - Wheeler Mustafa Washington Digitally signed by Mustafa Washington
Date: 2020.08.11 12:06:51 -07'00'

Position 1/ Utilities - Fritz

Position 2/ Works - Vacant

Position 3/ Affairs - Hardesty

Position 4/ Safety - Eudaly

City Auditor - Hull Caballero

1) Is a completed Impact Statement attached? ☒ Yes

3) Is the item a Code ordinance? ☐ Yes ☒ No

If yes, **Auditor Office** Approval

5a) Is item a Portland Policy Document or Administrative Rule?
☐ Yes ☒ No

BUREAU APPROVALS

Bureau: OMF/BRFS

OMF/CAO: Tom Rinehart Digitally signed by Tom Rinehart
Date: 2020.08.06 09:04:15 -07'00'

Bureau Approval: Michelle Kirby Digitally signed by Michelle Kirby
Date: 2020.08.05 17:10:43 -07'00'

Prepared By: Scott Karter

Date Prepared: August 5, 2020

2) Does the item amend the budget? ☐ Yes ☒ No
If yes, **Budget Office** Approval

4) Is this item a contract (current or future), code, easement, franchise, comp plan or Charter? ☒ Yes ☐ No
If yes, **Attorney Office** Approval

Ken McGair Digitally signed by Ken McGair
Date: 2020.08.05 14:38:43 -07'00'

5b) If yes, is the City Policy/Admin Rule directive in the ordinance or resolution? ☐ Yes ☐ No

ACTION TAKEN:

CLERK USE: DATE FILED 9/1/20

Mary Hull Caballero
Auditor of the City of Portland

By: Karla Moore-Love Digitally signed by Karla Moore-Love
Date: 2020.08.21 15:13:57 -07'00'
Deputy

FOUR-FIFTHS AGENDA

1. Fritz
2. Vacant
3. Hardesty
4. Eudaly
Wheeler

COMMISSIONERS VOTED AS FOLLOWS:

	YEAS	NAYS
1. Fritz		
2. Vacant		
3. Hardesty		
4. Eudaly		
Wheeler		

EXHIBIT A

**METRO REGIONAL GOVERNMENT, OREGON
CITY OF PORTLAND, OREGON**

**Intergovernmental Agreement for
the Collection of Business and
Personal Income Taxes**

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

- A. On May 19, 2020, the voters of the Metro region approved Metro's Supportive Housing Services Ballot Measure 26-210, which authorizes Metro to impose a business income tax and personal income tax to fund Supportive Housing Services.
- B. Metro does not currently have the capability to efficiently and effectively collect the business income and personal income taxes authorized by the voters to fund Supportive Housing Services.
- C. The City of Portland has administered its Business License Law since the 1970s and has the expertise to administer a local government income-based tax.
- D. The Supportive Housing Services Measure states that, with respect to Metro's business income tax, it is Metro's policy to use, as guidance, the Multnomah County Business Income Tax rules and procedures.
- E. In addition to administering its own Business License Law, the City of Portland has also administered the Multnomah County Business Income Tax since the 1990s through an intergovernmental agreement with Multnomah County.
- F. The City is therefore extremely familiar with the rules and procedures related to Multnomah County's Business Income Tax administration, upon which Metro will use as guidance for Metro's business income tax.
- G. The City also administered Multnomah County's personal income tax (the "ITAX") when that tax was imposed in 2003, thus demonstrating the expertise to administer a personal income tax as well as a business income tax.
- H. Having the City administer Metro's Supportive Housing Services personal and business income taxes will simplify reporting requirements for businesses in the Metro region and reduce administrative costs for both the City and Metro.
- I. A consolidated program with unified code and administrative rules allow businesses to follow a single set of procedures and definitions and reduce the overall burden to file and pay business taxes.
- J. The City, acting through the Bureau of Revenue and Financial Services, Revenue Division (the "Division"), is willing and able to administer Metro's Supportive Housing Services Tax for Metro.

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

EXHIBIT A

1. General Administration.

- a. The Division agrees to supervise and administer Metro's personal and business income taxes that will fund Metro's Supportive Housing Services program (the "Supportive Housing Services Tax"). The Supportive Housing Services Tax is imposed by Metro Code as adopted by Metro Council and approved by the voters.
- b. The Division agrees to administer the Metro Supportive Housing Services 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 Supportive Housing Services Tax.
- c. Metro will defend any legal claims against the Supportive Housing Services Tax regarding its legal validity or constitutionality.
- d. In performing its duties under this Agreement, the Division may in its discretion determine what action to take to enforce the provisions of the Supportive Housing Services 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 will notify Metro of the need and obtain Metro's 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. Metro designates the Business License Appeals Board, as created by the Business License Tax Law, as the body for reviewing business income tax filer appeals from final determinations made by the Division under the Supportive Housing Services Tax. The Revenue Division will administer an internal appeals process for any personal income tax appeal.
- b. The Metro Council President will recommend an appointment to be made by the Mayor to the Business License Appeals Board. The Appeals Board consists of five members. The Mayor may appoint one of the three public members of the Business License Appeals Board from the list of recommendations submitted by the Metro Council President. The Metro Council President will submit one or more names that meet the expertise requirement in the City Code (7.02.295 D). If the Metro Council President does not recommend a member to the board by the deadline established in the written notice (issued at least 30 days before any deadline), the Mayor may appoint from the Mayor's own list of recommendations.

3. Payments to Metro.

- 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 Metro. The account will earn interest based on the City's internal interest allocation used for its own funds.

EXHIBIT A

- b. After deducting pending refunds and other credits, the City agrees to remit the balance of the tax collected under this Agreement to Metro, less an amount required to restore the Reserve Balance, defined below, if needed, by the 10th business day following the close of each month.
 - c. Metro agrees to maintain a reserve balance in the trustee account described in Section 3.a of approximately \$200,000. (the "Reserve Balance").
 - d. The Division agrees to make payments of taxes collected under this Agreement to Metro's Local Government Investment Pool Account No. 4323. 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 Metro agrees to transfer necessary funds to the City from its Local Government Investment Pool Account No. 4323 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 Metro of an amount equal to or greater than \$500,000.
4. Payments to the City.
- a. Metro will pay One-time Implementation Services not-to-exceed \$27,377,956.00, as shown in Exhibit A, to initiate the program.
 - b. Metro will also pay Annual Compensation to the City for all services provided under this Agreement during the Term (as defined below). The Annual Compensation is equal to the actual costs incurred by the City, not-to-exceed the annual amounts shown in Exhibit A for fiscal years 2020-2021 through 2024-2025. Maximum Annual Compensation for fiscal years starting 2025-2026 will be escalated by the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for West Region– Size Class A, not seasonally adjusted, as published by the United States Bureau of Labor Statistics, as described below.
 - c. The City is implementing new tax collection software ("Integrated Tax System" or "ITS") that will be operational in FY 2020-2021. The new tax system functionality will enhance tax collection efforts for both the City and Metro. Each of the tax programs on the ITS platform will contribute to ITS project costs for bonded and un-bonded debt service based on their relative proportion of the total revenue collected using a three-fiscal year look back of actual revenues. In the event a new program is collected on ITS after this IGA is implemented, it will be allocated a portion of ITS project costs for bonded and un-bonded debt service commencing in the fiscal year in which the program begins to generate revenue. This will result in a reduction of debt service costs for existing revenue programs on the platform assuming no other factors change, such as the amount collected by those programs, or programs terminating. Debt service costs will cease after the 10th year. Annual ITS debt service to be recovered is currently estimated at \$2,263,736, and will be finalized on June 30, 2021. Metro's estimated ITS Debt Service payment to the City is \$753,727, as shown in Exhibit A.
 - d. One-time Implementation Services and Annual Compensation will include a contingency budget line item to cover unforeseen expenses. If contingency is unneeded, it will be deducted from One-time Implementation Services and/or Annual Compensation. The City will bill the One-Time Implementation Services and Annual Compensation in twelve equal installments on the 15th of each month, or the first business day that follows the 15th.

EXHIBIT A

Metro agrees to make payment of the billed installment by the end of the month. A reconciliation of actual costs to budgeted amounts will be provided for One-time Implementation Services and Annual Compensation as requested by Metro or at least twice a year for the periods July-December and July-June. If the actual costs differ from the billed amount the City will generate an adjustment invoice.

- e. The Annual Compensation noted in Exhibit A includes an amount for “ITS Upgrade Set Aside”, a reserve amount to cover future upgrade costs of the ITS. Upon termination of this Agreement, the City will refund any unused ITS Upgrade Set Aside funds paid by Metro, plus any interest earned by those funds based on the City's internal interest allocation used for its own funds.
- f. Escalation of the Annual Compensation by CPI-W means an annual increase based on the change in the CPI-W between December of the prior calendar year compared to December of the year immediately preceding the prior calendar year. For example, for fiscal year 2025-2026 (July 1, 2025 – June 30, 2026), the annual compensation of fiscal year 2024-2025 will be multiplied by a fraction, the numerator of which is the CPI-W for December 2024 and the denominator of which is the CPI-W for December 2023. For reference, the CPI-W for December 2019 is 268.885.
- g. If administrative costs increase as a result of a material change to one jurisdiction's 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 Metro with at least 90 days advance written notice of the cost increase. If the City or Metro 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. Metro intends to model its business income tax on the Multnomah County Business Income Tax, which is in conformity with the City's Business License Tax. The parties agree to cooperate in amending the Supportive Housing Services Tax or the City Business License Tax Law to ensure uniformity and consistency in these respective codes and in administration. Both parties agree to notify the other of any intent to make changes, whether in the law or in the tax or fee rates, at least 30 days before adopting the change. The City agrees to notify Metro as soon as possible if Multnomah County proposes to materially amend the Multnomah County Business Income Tax, which is also administered by the City. If both parties mutually agree to make changes, those changes may take effect in less than the 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. Metro's Chief Financial Officer and/or the Metro Attorney, or their designees, may request to be involved in the development of Administrative Rules. If Metro's Chief Financial Officer or Metro Attorney so requests, the Division agrees that it will not initiate the public process for review and comment on proposed Administrative Rules until Metro's Chief Financial Officer or the Metro Attorney 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 Metro 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 Metro by the 10th day of each month.

EXHIBIT A

If the 10th day falls on a legal holiday or on a weekend, the City will deliver the preliminary report on the following business day.

- b. The Division agrees to provide Metro, upon request, a report of potential refunds of more than \$200,000 due to amended returns, appeals or overpaid estimates.
 - 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 Metro may mutually agree. If the reports or other work requested by Metro require extensive programming time or have significant costs associated with the project, the City and Metro may agree upon additional charges to be paid for such additional work under this Agreement.
 - d. Metro agrees that all Metro 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, a Metro employee, authorized by Metro's Chief Financial Officer and subject to a background check, must attend the City's Security and Disclosure Awareness training, updated by the Division, annually. Upon completion of the annual training, the Metro employee must sign a Confidentiality Oath 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 Supportive Housing Services Tax and the City Business License Tax Law. In regard to the Supportive Housing Services Tax, all public announcements and all correspondence relating to policy matters and public relations are Metro's responsibility. The Division agrees to notify Metro of any matter arising from the administration of the Supportive Housing Services Tax that may require any legislative amendments or affect Metro policy, including any policy relating to the amount of taxes collected.
 - b. Additionally, the parties agree that all City and Metro 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 is the property of Metro. Metro owns any and all data the City produces in connection with this Agreement. Upon termination of this Agreement, the City and Metro will mutually agree upon how delivery of this data is to be effectuated. The City and Metro 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 the Supportive Housing Services Tax records obtained by or provided to the Division under this Agreement. If there is a question whether a document with Metro information is exempt from the public records law, the City will forward any such request(s) to Metro's Chief Financial Officer or Metro Attorney, or routed as they direct, by the following business day. Metro's Chief Financial Officer or the Metro Attorney, or their designee, may determine if the requested records

EXHIBIT A

exist, and if the records are subject to the public records law. Any Metro determination under the public records law is Metro's sole responsibility, including but not limited to any legal defenses of those determinations.

9. Limitations and Conditions.

- a. To the extent permitted by Oregon law, the City agrees to indemnify Metro, within the limits of the Oregon Tort Claims Act, 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 is not required to indemnify Metro for any such claims, demands, settlements or judgments arising from the wrongful acts of Metro's officers, agents or employees.
- b. To the extent permitted by Oregon law, Metro agrees to indemnify the City, within the limits of the Oregon Tort Claims Act, from any and all claims, demands, settlements or judgments, including all costs and attorney fees, arising from any of Metro's activities under this Agreement, provided, that Metro is 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 City will treat as confidential the information provided by individual taxpayers on tax returns to the extent permitted under Oregon law. The City may disclose this information to Metro, for purposes of monitoring or overseeing the Division's administration of the Supportive Housing Services Tax or for Metro revenue forecasting and budgeting. If authorized by Metro's Chief Financial Officer, Metro officers, agents or employees may have access to such information after the execution of a certificate of confidentiality and background check. The confidentiality certificate must advise the officer, agent or employee of the penalties for disclosure of confidential information. Metro will obtain and keep on file these 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 this information, other than routinely agreed upon reports, Metro must give at least 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. Metro may audit the Division's administration of the Supportive Housing Services Tax, applying generally accepted audit standards. Metro agrees to provide reasonable notice of its intent to audit the Division. Prior to beginning the audit, all Metro officers, agents, employees or contractors participating in the audit agree to execute confidentiality certificates and background checks as provided in this Agreement.

11. Term.

- a. The term of this Agreement is 10 years, beginning on the date of the last signature below, (the "Term"), unless terminated by operation of law. Prior to the termination date of this Agreement, Metro and the City will determine the disposition of pending matters which will not otherwise be completed within the Term, and the Division will provide Metro with such records as are necessary for Metro to commence collecting the Supportive Housing

EXHIBIT A

Services Tax.

- b. The parties expect that uncollected and delinquent taxes will remain due even after the expiration of the initial 10-year term. Consequently, both parties expect to extend this Agreement for delinquent and uncollected payments beyond the initial 10-year term even if one or both of the taxes are not renewed by voters.

12. No Early Termination.

Neither party may terminate this Agreement before the 10-year term ends, except for cause. Early termination without cause is a breach of the contract and the non-breaching party may pursue any and all legal remedies, including an action for damages.

13. Integration.

This Agreement embodies the whole of the agreement between the parties for the administration of the Supportive Housing Services Tax. Any prior written or oral agreements are superseded by this Agreement. The terms of this Agreement cannot be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties.

14. Severability.

If any court of competent jurisdiction holds the provisions of this Agreement invalid or unenforceable, that holding does not invalidate or render unenforceable any other provisions of this Agreement.

15. Notice.

- a. Program Managers. The City Program Manager is the Director of the City's Revenue Division, or such other person as the Director designates in writing. Metro's Program Manager is Metro's Chief Financial Officer, or such other person the Chief Financial Officer designates in writing.
- b. Any notice provided for under this Agreement is 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 Metro: Metro Finance Director
 600 NE Grand Avenue
 Portland, Oregon 97232

16. Oregon Law and Forum.

- a. This Agreement is to be construed according to the laws of the State of Oregon.

EXHIBIT A

- b. Any litigation between the City and Metro arising under this Agreement or out of work performed under this Agreement must occur, if in the state courts, in the Multnomah County Circuit 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 is 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 Metro and are not eligible for any benefits through Metro including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

18. Amendments.

The City and Metro may amend this Agreement at any time only by written amendment executed by the City and Metro. The City Council must approve any amendment by ordinance.

19. Non-Waiver.

The City and Metro do not waive any breach of this Agreement by the other party except by express waiver in writing. An express written waiver as to one breach is not a waiver of any other breach not expressly identified, even though the other breach may be of the same nature as that waived.

IN WITNESS HEREOF, as parties to this Agreement and acting pursuant to the authority granted to them, the authorized representatives of the City and Metro have

HEREBY AGREED:

By: Thomas Lannom digitally signed 9/9/2020
Thomas W. Lannom, CPFO
Deputy Chief Financial Officer
Revenue Division Director

Date: 9/9/2020

By: 
60448B6B7AF9448
Marissa Madrigal
Chief Operating Officer, Metro

Date: September 10, 2020

EXHIBIT A

Exhibit A: Supportive Housing Services Tax Collection Budget					
City of Portland Revenue Division Budget for Tax Collection Services					
One-time Implementation Services	FY20-21	FY21-22	TOTAL		
Personnel (15 FTE FY20-21; 22 FTE FY21-22)	\$ 2,373,000	\$ 3,407,000	\$ 5,780,000		
Fast Enterprises Contract	\$ 8,600,000	\$ 5,654,000	\$ 14,254,000		
External Materials and Services	\$ 389,000	\$ 446,800	\$ 835,800		
Internal Materials and Services	\$ 486,175	\$ 546,390	\$ 1,032,565		
Subtotal One-Time Implementation Services	\$ 11,848,175	\$ 10,054,190	\$ 21,902,365		
Contingency	\$ 2,962,044	\$ 2,513,548	\$ 5,475,591		
Total One-Time Implementation Services	\$ 14,810,219	\$ 12,567,738	\$ 27,377,956		
Annual Compensation	FY20-21	FY21-22	FY22-23	FY23-24	FY24-25
Part I: Ongoing Operations Expenses					
Personnel (37 FTE pro-rated in FY20-21)	\$ 1,989,604	\$ 4,784,683	\$ 5,459,138	\$ 5,622,912	\$ 5,791,600
External Materials and Service	\$ 525,900	\$ 373,872	\$ 385,088	\$ 396,641	\$ 408,540
Internal Materials and Services	\$ 913,574	\$ 1,074,541	\$ 1,106,777	\$ 1,139,981	\$ 1,174,180
Total Ongoing Operations	\$ 3,429,078	\$ 6,233,096	\$ 6,951,003	\$ 7,159,534	\$ 7,374,320
Part II: Ongoing ITS Expenses					
ITS Maintenance and Support (note 1)	\$ -	\$ -	\$ 3,302,270	\$ 2,445,657	\$ 2,516,042
ITS Upgrade Set Aside	\$ -	\$ 666,667	\$ 686,667	\$ 707,267	\$ 728,485
Total Ongoing ITS Expenses	\$ -	\$ 666,667	\$ 3,988,937	\$ 3,152,924	\$ 3,244,526
Subtotal Annual Compensation	\$ 3,429,078	\$ 6,899,763	\$ 10,939,940	\$ 10,312,458	\$ 10,618,846
Contingency	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000
Total Annual Compensation	\$ 4,429,078	\$ 7,899,763	\$ 11,939,940	\$ 11,312,458	\$ 11,618,846
ITS Debt Service	FY20-21	FY21-22	FY22-23	FY23-24	FY24-25
ITS Debt Service	\$ -	\$ 753,727	\$ 753,727	\$ 753,727	\$ 753,727
Total ITS Debt Service	\$ -	\$ 753,727	\$ 753,727	\$ 753,727	\$ 753,727
Note 1: includes FAST licensing, hosting services, support services, BSD support personnel					

IMPACT STATEMENT

Legislation title: *Authorize an Intergovernmental Agreement with Metro Regional Government for the Revenue Division of the Bureau of Revenue and Financial Services to administer the Metro Supportive Housing Services Tax (Ordinance)

Contact name: Thomas Lannom

Contact phone: 503-823-5154

Presenter name: Thomas Lannom

Purpose of proposed legislation and background information:

Authorizes a ten-year agreement between the City and Metro for the Bureau of Revenue and Financial Services, Revenue Division to administer Metro's new business and personal income tax programs. Ballot Measure 26-210, which funds supportive housing services, was approved by Metro voters on May 19, 2020 and revenues from these new taxes are a source of those funds.

Financial and budgetary impacts:

There is no financial impact to the City of Portland. Metro will pay actual one-time implementation and ongoing operational costs of the program in accordance with the budget, attached.

Community impacts and community involvement:

The joint administration of the City Business License Tax and the Metro Supportive Housing Services Tax provides financial efficiencies for both the City and Metro. This efficient administration enables both Governments to allocate more funds to things that directly benefit its citizens.

100% Renewable Goal:

N/A

Budgetary Impact Worksheet**Does this action change appropriations?**

☐ **YES:** Please complete the information below.

☒ **NO:** Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount