

RESOLUTION NO. 2010-120

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA APPROVING AND ADOPTING THE TRANSACTION PRIVILEGE TAX (“TPT”) ADMINISTRATION AGREEMENT WITH THE PRA GOVERNMENT SERVICES D/B/A REVENUE DISCOVERY SYSTEMS (“RDS”) TO PERFORM COMPREHENSIVE REMITTANCE PROCESSING AND COMPLIANCE FOR TPT TAXES, USE TAXES, BED TAXES AND ANY OTHER TAXES AS DESIGNATED BY THE CITY AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION AND DECLARING AN EMERGENCY TO EXIST.

WHEREAS, A.R.S. Section 42-6001 et seq. provides that the ADOR may collect and administer any transaction privilege license tax or use tax imposed by any city or town and provides for uniform audit functions including joint audits of a taxpayer by the ADOR and the CITY where the taxpayer conducts business. The statute further provides that the ADOR and the CITY may enter into an IGA to carry out the services in accordance with A.R.S. Section 42-6001; and

WHEREAS, the CITY and the ADOR have entered into an existing Intergovernmental Agreement (“IGA”) for services pursuant to A.R.S. § 11-952, as authorized by their legislative or governing bodies; and

WHEREAS, the IGA between ADOR and the CITY includes Section 15 on pages 8 and 9 titled “Term of Agreement and Termination” enumerating the procedure for “Notice to Terminate” to be provided by the CITY to ADOR; and

WHEREAS, the CITY must provide notice, in writing, to ADOR not later than ninety (90) days prior to the expiration of the term then in effect pursuant to Section 15 of the ADOR Agreement; and

WHEREAS, the CITY and ADOR must enter into a new IGA concerning status change from a “Program City” to a “Non-Program City”; and

WHEREAS, pursuant to A.R.S. § 42-6053, the CITY is empowered to modify or amend the Model City Tax Code and is required to submit the proposed modification or amendment to the Municipal Tax Code Commission for review and recommendation at least sixty (60) days before adopting any modification or amendment; and

WHEREAS, pursuant to A.R.S. § 42-6054, the CITY shall not adopt any modification or amendment to the model city tax code unless the city holds a public hearing on the proposed action before modification or amendment becomes effective; and

WHEREAS, the CITY shall also pass and adopt an Ordinance related to an Amendment to the Model City Tax Code for Self Collection thus changing status from a “Program City” to a “Non-Program City”; and

WHEREAS, it is the mutual desire of the CITY and RDS to enter into a TPT Administration Agreement to provide a uniform self collection method of administration, collection, audit and licensing of transaction privilege tax, use tax, severance tax, jet fuel excise tax and rental occupancy taxes imposed by the State or Cities or Towns in accordance with the Model City Tax Code; and

WHEREAS, the General Provisions of the Agreement provides for compliance with the Disclosure of Information by the CITY and the RDS in accordance with Model City Tax Code, section 510 and A.R.S. Sections 42-2001, 42-2003 and 42-2004 et seq.; and

WHEREAS, the General Provisions of the Agreement provides for compliance with the Storage and Destruction of Confidential Information by the CITY and the RDS in accordance with A.R.S. Sections 42-2001, 42-2003 and 42-2004 et seq. and 26 USC Section 6103(p)(4)(F) (Internal Revenue Code Section 6103(p)(4)(F)); and

WHEREAS, the TPT Agreement provides for Delegation of Authority to RDS for the collection of the taxes and audits except for those audits that are conducted by the CITY auditor or by an independent contract auditor hired by the RDS; and

WHEREAS, the TPT Agreement provides for each party to accept responsibility for its compliance with federal, state, or local laws and regulations; and

WHEREAS, Section C (5) and (6) of the RDS TPT Agreement provides for consideration for Remittance Processing Services, Revenue Analysis Services, Compliance Services and Optional Service Offerings; and

WHEREAS, the RDS TPT Agreement provides for a term of five (5) years effective following the date of execution or the maximum period allowed by law, whichever is shorter. Either party shall have the right of terminate this Agreement. Any such termination may be made only by providing ninety (90) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial ninety (90) days notice; and

WHEREAS, the Mayor and Council of the City of Willcox desire to have this Resolution presented at its December 6th, 2010 Council Meeting for the purpose of approving and adopting the RDS TPT Agreement; and

WHEREAS, the Mayor and Council have determined that formal action on this Resolution is in the best interest of the CITY, its citizens and its affected taxpayers; and,

WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Willcox, Cochise County, Arizona, that an emergency be declared to exist to assure timely implementation of the required steps to formalize the self collection process, and that this Resolution shall be effective immediately upon its passage and adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

Section 1: That the CITY formally approves Resolution 2010-120 for the purpose of approving and adopting the Agreement with RDS for services as outlined in the Agreement.

Section 2: That the Mayor is authorized and empowered to execute this Resolution, the RDS TPT Agreement and the written notice of termination to ADOR as presented.

Section 3: City Staff are authorized and directed to prepare and to submit written notice of termination to ADOR as outlined in this Resolution and as required by the ADOR IGA.

Section 4: That the immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Resolution shall be in full force and effect from and after its passage by the City of Willcox, Cochise County, Arizona.

PASSED AND ADOPTED BY MAYOR AND COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA this 20th day of December, 2010.

APPROVED/EXECUTED:

/S/ GERALD W. LINDSEY
MAYOR GERALD W. LINDSEY
Signed: 12-21-2010

APPROVED AS TO FORM:

ATTEST:

/s/ Cristina G. Whelan, CMC
Cristina G. Whelan, CMC, City Clerk

/s/ Hector M. Figueroa
Hector M. Figueroa, Esq., City Attorney

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