

RESOLUTION NO. 28

SERIES 2020

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF REVENUE CONCERNING THE SALES AND USE TAX SOFTWARE KNOWN AS THE "SUTS SYSTEM"

WHEREAS, governmental entities are authorized by Article XIV of the Colorado Constitution and Part 2 of Article 1 of Title 29, C.R.S., to co-operate and contract with one another to provide any function, service, or facility lawfully authorized to each of the co-operating or contracting governmental entities; and

WHEREAS, the Colorado Department of Revenue controls a sales and use tax simplification software program known as the "SUTS System" and

WHEREAS, the SUTS System permits the online acceptance of returns and the processing of payments for the Town's sales tax in accord with the objective of SB19-1006 concerning an electronic sales and use tax simplification system; and

WHEREAS, the Colorado Department of Revenue has agreed to authorize the Town to use the SUTS System; and

WHEREAS, a proposed Intergovernmental Agreement between the Town and the Colorado Department of Revenue concerning the Town's use of SUTS System has been prepared, a copy of which is marked **Exhibit "A"**, attached hereto, and incorporated herein by reference; and

WHEREAS, the Town Council has reviewed the proposed Intergovernmental Agreement and finds and determines that it would be in the best interest of the Town to enter into such Agreement.

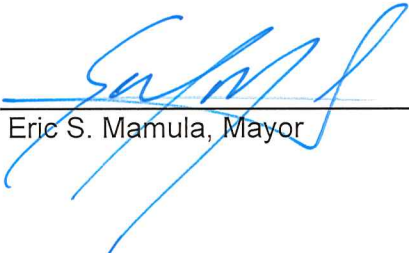
NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The proposed Intergovernmental Agreement between the Town and the Colorado Department of Revenue concerning the Town's use of the SUTS System (**Exhibit "A"** hereto) is approved, and the Town Manager is authorized, empowered and directed to execute such Agreement for and on behalf of the Town of Breckenridge.

Section 2. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED this 10th day of November, 2020.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: 
Eric S. Mamula, Mayor

ATTEST:


Helen Cospolich, CMC,
Town Clerk

APPROVED IN FORM


Town Attorney Date

EXHIBIT "A"

AGREEMENT REGARDING DEPARTMENT OF REVENUE SALES AND USE TAX SOFTWARE ("SUTS SYSTEM")

This agreement regarding the SUTS System ("**Agreement**") is entered between the Colorado Department of Revenue ("**CDOR**") and the undersigned home rule local taxing jurisdiction ("**Jurisdiction,**" collectively, "**the Parties**") for the purposes of permitting access to the SUTS System and its related tax information look up tool as described in this Agreement. The SUTS System permits the acceptance of returns and processing of payments for the sales and use tax levied by the state and any local taxing jurisdictions in accord with the objectives of SB19-006. To further those objectives here, the Parties agree to the following:

AGREEMENT

CDOR grants Jurisdiction access to the SUTS System for Jurisdiction's use in the collection and payment of Sales and Use tax under the terms set forth in this Agreement.

A. Purpose of Agreement

Pursuant to Senate Bill 19-006, CDOR has contracted with vendors, including at this time, MUNIRevs, Inc. and Transaction Tax Resources, Inc., Fast Enterprises, LLC, and others, which may change from time to time (collectively, "Vendors") to provide a sales and use tax simplification system that allows taxpayers to look up and remit sales and use taxes through a single portal managed by Vendors and held in trust for the benefit of the Jurisdiction.

B. Definitions

- 1) "Confidential Information" means any information derived from the SUTS System, including but not limited to taxpayer information, return information, and "personally identifiable information," as defined in section 24-73-101(4) (b), C.R.S.
- 2) A "Security Incident," has the meaning set forth in section 24-37.5-402(10), C.R.S., which is "an accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources." Security incidents include but are not limited to: a) detection of a virus, worm, malware, etc; b) unauthorized use of an information resource; c) unauthorized modification of an information resource; d) theft or diversion of an information resource; e) theft or diversion of property using an information resource, and f) vandalism or other damage to an information resource."

3) "Taxpayer" means any individual or business required to remit sales or use taxes to a taxing jurisdiction.

4) "Sales and Use Tax" means sales and use tax collected by Taxpayers and remitted to a jurisdiction by Taxpayers. Sales and Use Tax does not include excise taxes or other taxes or fees that a jurisdiction requires taxpayers to pay.

C. Confidentiality.

1) CDOR agrees to continually maintain a secure place in which Confidential Information will be stored, regardless of whether Confidential Information is in physical or electronic form and will restrict access to Confidential Information to persons whose duties and responsibilities require such access. All third-party contractors who need such access for purposes consistent with this Agreement shall sign confidentiality agreements with CDOR or Jurisdiction no less restrictive than the confidentiality terms of this Agreement.

2) Except as may be ordered by a court of competent jurisdiction, no Confidential Information obtained pursuant to this Agreement shall be disclosed by CDOR or Jurisdiction to any person or entity not authorized to receive such information by the laws of the Jurisdiction or the State of Colorado.

3) If CDOR or Jurisdiction is served with a request for Confidential Information, CDOR or Jurisdiction shall use reasonable efforts to provide notice to the other Party within such time that CDOR or Jurisdiction may intervene and seek a protective order or other relief if it so chooses.

4) The information obtained pursuant to this Agreement shall be used only for the purpose of administration and enforcement of the sales and/or use tax laws of the Jurisdiction or the State of Colorado.

5) Nothing in this agreement shall prevent a Jurisdiction from contacting their Taxpayers for auditing or other purposes.

6) If either party becomes aware of any Security Incident, they shall notify the other immediately and cooperate with one another regarding recovery, remediation, and the necessity to involve law enforcement.

D. Payments of Taxes to Jurisdiction.

1) All funds deposited by a Taxpayer shall be and shall remain the property of Jurisdiction held in trust until transferred to Jurisdiction. Deposited remittances

shall be transferred to Jurisdiction as soon as the funds have settled with the SUTS bank following NACHA guidelines.

2) If any Taxpayer payment is returned via an ACH or credit card charge-back against the account past the settlement process above, that Jurisdiction will pay applicable amounts back to the SUTS System within five banking days of notification of return.

E. Data and Reports.

1) Jurisdiction will have access to all information from tax forms processed in the SUTS System that involve transactions within the Jurisdiction via CSV file downloads, PDF files or some other manner that is mutually acceptable.

2) The following reports will be available to Jurisdiction with the SUTS System:

- a) Assessment Report: This report shows all assessments, by business and includes several filters.
- b) Form Data Report: The form data report provides the ability to see all data for a taxpayer's form (e.g., gross sales through all deductions).
- c) Business Comparison Reports by Month: Allows review of trends over time for particular businesses, or an audience of businesses.
- d) Business Contact Report.
- e) Missing Account Number Report for validating Jurisdiction's Local Account Number for each registered account in the SUTS System.

F. Support.

CDOR will provide Taxpayer user support during regular, published State business hours. Support to Jurisdiction's administrative users for system questions is provided by Vendor specialists who will be available by email and phone Monday through Friday from 8:00 am to 5:00 pm Mountain Time, excluding Federal and State Holidays.

G. Retention of Data.

The SUTS System will retain, for a minimum of three years, all data, records, returns, and information: a) submitted by Taxpayers to the SUTS System, b) derived from Taxpayer submissions, and c) transferred to Jurisdiction.

H. System Failure.

If the SUTS System becomes disabled, CDOR will use good faith and reasonable

efforts to recover the system and all Jurisdiction data not already in the possession of Jurisdiction. This recovery of the SUTS System and data will be conducted at no additional cost to Jurisdiction.

I. Reservation of Rights.

The software, workflow processes, user interface, designs, know-how and other services and technologies which are the sole property provided by Vendors as part of the SUTS System and CDOR's agreements with Vendors will remain with Vendors and Jurisdiction will not have any right, title or interest in or to such items, including all associated intellectual property rights.

J. Restrictions on Use of The SUTS System.

1) Jurisdiction *may not* a) sell, resell, rent or lease the SUTS System, b) use the SUTS System to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights, c) interfere with or disrupt the integrity or performance of the SUTS System, or d) attempt to gain unauthorized access to the SUTS System or its related systems or networks.

2) Jurisdiction may allow its third-party contractors to use the SUTS System solely on behalf of and for the benefit of Jurisdiction and only in compliance with the terms and conditions of this Agreement. Jurisdiction is responsible for compliance with the terms of this Agreement by its contractors.

K. Initial Setup.

Jurisdiction shall furnish the following items in order to use the SUTS System:

1) Jurisdiction Depository Information: Jurisdiction will provide bank deposit information (routing & account number) to CDOR's appropriate Vendors within 5 days of signing this Agreement. This information will be utilized for the deposits of taxes, penalties, and interest from the SUTS System. It is the responsibility of Jurisdiction to provide updated depository information should this account need to be changed at any point in time.

2) Initial Account Number Validation: Jurisdiction will upload their local account numbers for their Taxpayers to the SUTS System using the SUTS standard upload format (e.g. Excel, CSV) as soon as is reasonable after signing this Agreement. CDOR will use this information to validate account numbers for businesses registering on the SUTS System with actual account numbers for each jurisdiction for accurate account information on SUTS System tax returns.

3) The local account numbers will include the Taxpayer's account number, business name, dba, FEIN#, address and any other contact information or the SUTS System to validate and match the registered account to Jurisdiction's account number.

4) The SUTS System will not activate for Jurisdiction for tax receipts until the Existing Account Number Data File has been provided to CDOR, imported to the SUTS System and validated by Vendor.

5) It is the responsibility of Jurisdiction to update the account numbers that need to be added or edited in the SUTS System in order to display the local account number on future tax returns generated from the SUTS System.

L. Use Tax Purchase Details.

Taxpayers filing tax returns through the SUTS System are not required to include use tax purchase details. Purchase details are typically required on Schedule B to tax returns required by local jurisdictions. However, nothing in this Agreement prevents Jurisdiction from requesting these use tax details directly from the Taxpayer.

M. Business Licenses.

The SUTS System will not require any Taxpayer to obtain separate Jurisdiction business licenses or any other license. Jurisdiction may, at Jurisdiction's discretion, use the information provided by the Taxpayer in the SUTS System to reach out separately and independently to their Jurisdiction's Taxpayers for licenses or any other requirements from the Jurisdiction that is not included in the SUTS System.

N. Frequency of Tax Filings.

Taxpayers may file tax returns via the SUTS System at the frequency which is required of Taxpayer for State taxes under CDOR regulations; however, Jurisdiction may request from CDOR that the Taxpayer may be moved to a more frequent filing, which will not be unreasonably denied.

O. Jurisdiction New Account Review.

When a Taxpayer submits a new registration with the SUTS System and does not have a Colorado Account Number, the SUTS System will require that the Taxpayer submit an online Sales Tax License Application and pay the State of Colorado license fee. The application and fee shall be sent to the CDOR for license issuance and account number creation for the Colorado Account Number. It is the

responsibility of the Jurisdiction to use the SUTS reports to include any new businesses in their external system of record and to update their local account number in the SUTS System using the procedures set forth above.

P. Jurisdiction Rate Validation.

- 1) Jurisdiction will provide written confirmation to Vendors of its sales and use tax rates, rules, and boundaries. Jurisdiction will use due care and make best efforts to provide accurate rates, rules, and boundaries.
- 2) Jurisdiction agrees to specify to Vendors authorized Jurisdiction users who are allowed to propose changes within the SUTS System administrative tools.
- 3) Jurisdiction will use best efforts to email Vendors or use the SUTS System administrative tools to notify Vendors of any tax rates, rules, boundaries, or other needed data changes 30 days before they are effective for them to be updated in the system. All notifications must include details on the changes and the period for which changes are effective.

Q. Tax Data Integration.

This Agreement does not provide a direct interface or integration to Jurisdiction’s system of record for sales and use tax. If a direct interface or custom format is desired by Jurisdiction to better integrate to Jurisdiction’s system of record, Jurisdiction may contact Vendor to discuss custom options, which may entail programming fees to be paid directly to the Vendor by the Jurisdiction.

R. Licensed Documentation.

All SUTS System user guides, sample data, marketing, training and other items provided through the SUTS System or by Vendors (“Licensed Documentation”) may be used and copied by Jurisdiction via a non-exclusive license for the duration of the Agreement for Jurisdiction’s use solely with the SUTS System according to the terms of this Agreement.

S. Payment and Merchant Fees.

Taxpayer pays credit, debit or any other merchant processor or bank fee associated with Taxpayer’s remittance payment, and the Jurisdiction agrees to pay the ACH Credit or Debit *transfer* fees from the SUTS System to Jurisdiction’s bank account, which is currently one dollar (\$1) per banking day, or approximately twenty dollars (\$20) per month for a Jurisdiction that gets a payment every banking day. The Jurisdiction will Pre-pay an amount of two hundred and sixty dollars (\$260) during

the SUTS onboarding process as a credit towards the transfer fees. Jurisdiction will replenish any funds used, paying in advance of each CDOR fiscal year on or before July 1 after receiving a notice of account and balance due by June 1.

T. Additional Terms.

- 1) **Governing Law.** This Agreement is governed by Colorado law without regard to conflicts of law principles.
- 2) **Survival of Terms.** Any terms that by their nature survive termination or expiration of this Agreement, will survive.
- 3) **Entire Agreement and Changes.** This Agreement constitutes the entire agreement between the Parties, and supersedes all prior or contemporaneous negotiations, agreements and representations, whether oral or written, related to this subject matter. No modification or waiver of any term of this Agreement is effective unless in a written instrument signed by both Parties.
- 4) **No Assignment.** Neither Party may assign or transfer this Agreement to a third party.
- 5) **Enforceability:** If any term of this Agreement is determined to be invalid or unenforceable, the other terms remain in effect.
- 6) **Notices:** All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (a) by hand with receipt required, (b) by certified or registered mail to such Party's principal representative at the address set forth below or (c), as an email with read receipt requested addressed as given herein. This contact information may be changed by notice submitted in accordance with this section.

For CDOR:

Name: Scott McKimmy

Title: Director, Business Information Group

Email: Scott.McKimmy@state.co.us

Address: 1707 Cole Blvd., Lakewood, CO 80401

Phone: 720-793-8117

For Jurisdiction:

Name: Rick Holman

Title: Town Manager

Email: rickh@townofbreckenridge.com

Address: PO Box 168 Breckenridge, CO 80424

Phone: 970-453-3166

7) **Counterparts, Facsimiles and E-Mail.** This Agreement may be signed in any number of counterparts, which together shall constitute one and the same instrument. Original signatures of the Parties on copies of this Agreement transmitted by facsimile or electronically/scanned and e-mailed copies shall be deemed originals for purposes of this Agreement, and such copies shall be binding on all Parties.

8) **Authority to Execute Agreement.** Each person executing this Agreement on behalf of each Party represents, warrants, assures, and guarantees that s/he has full legal authority to execute this Agreement on behalf of the Jurisdiction and CDOR, respectively, and to bind Jurisdiction and CDOR, to all the terms, conditions, provisions, and obligations of this Agreement.

9) **Termination of Agreement:** CDOR or Jurisdiction may terminate this Agreement for any reason on 90 days written notice to the other Party. In the event of a breach of contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach of contract, at its sole expense, within 30 days after the delivery of written notice, the Party may terminate the contract. Notwithstanding any provision of this Agreement to the contrary, both Parties retain any statutory rights they may have to immediately terminate this Agreement in whole or in part in order to protect the public interest of their citizens.

10) **Limited Financial Obligation.** Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of either party not performed during the current fiscal year is subject to annual appropriation, so the obligation shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

11) **Limitation of Liability for CDOR.** CDOR, its employees, agents, including Vendors and assignees shall not be liable for any costs, expenses, claims, damages, liabilities, court fees and other amounts (including attorneys' fees and related costs) including but not limited to cost of delay, loss of data or information, failure of the SUTS system, loss of moneys remitted to SUTS, direct losses, consequential, special, indirect, incidental, punitive or exemplary loss incurred by Jurisdiction in relation to any services, including database access in connection with this Agreement.

12) **Governmental Immunity.** Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions, committees, bureaus, offices, employees and officials, or of the Jurisdiction, its departments, boards, commissions, committees, bureaus, offices, employees and officials, shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this

Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

Jurisdiction Approval	
By <i>Rick G. Holman</i>	Title <i>TOWN MANAGER</i>
*Signature <i>Rick G. Holman</i>	Date <i>12/2/2020</i>
Municipality or County of Breckenridge	Date 12/02/2020
Jurisdiction Mailing Address PO Box 8629, Breckenridge, CO 80424	Appointee Phone Number 970-547-3193
Appointee Name Heather Pezzella	Title Revenue Services Administrator
Appointee Signature <i>Heather Pezzella</i>	Appointee Email hpezzella@townofbreckenridge.com
Name of Chief Administrative Officer or Designee	Title
Chief Administrative Officer or Designee Signature	Chief Administrative Officer or Designee Email
<p>* <input checked="" type="checkbox"/> By checking this box and signing above, I hereby represent, warrant, assure, and guarantee that I have full legal authority to execute this Agreement on behalf of the Jurisdiction and to bind Jurisdiction to all the terms, conditions, provisions, and obligations of this Agreement.</p>	
Colorado Department of Revenue Approval	
By Heidi Humphreys	Title Interim Executive Director
Signature <i>Heidi Humphreys</i>	Date