CA107244

SHELBY COUNTY BOARD OF COMMISSIONERS
AGENDA ROUTE SHEET

Referred to Commission Committee (name) Budget And Finance

For Commission Action on (date) September 14, 2009

DESCRIPTION OF ITEM:

A RESOLUTION APPROVING A CONTRACT WITH THE CITY OF MEMPHIS FOR THE COLLECTION OF BUSINESS TAX LICENSING FEES; AND THIS ITEM IS A FEE GENERATING AGREEMENT. SPONSORED BY COMMISSIONER DEIDRE MALONE.

CHECK ALL THAT APPLY BELOW:

X This Action does NOT require expenditure of funds.

_____ This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: $_____: County CIP Funds: $_____

State Grant Funds: $_____: State Gas Tax Funds: $_____

Federal Grant Funds: $_____

Other funds (Specify source and amount): $_____

Other pass-thru funds (Specify source and amount): $ _____

Originating Department: County Clerk

APPROVAL:

Dept. Head: Debbie Stamson \ DS \ 9-2-09
(Type your name & phone #.) (Initials) (Date)

Elected Official: Debbie Stamson \ DS \ 9-2-09
(Type your name & phone #.) (Initials) (Date)

Division Director: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

CIP – A&F Director: _____ \ _____ \ _____
(Type your name & phone #.) (Initials) (Date)

Finance Dept.: Mike Swift \ MAS \ 9/3/09
(Type your name & phone #.) (Initials) (Date)
URichards 9/3/09

County Attorney: Lisa Kelly \ LK \ 9-2-09
(Type your name & phone #.) (Initials) (Date)

CAO/Mayor: **James F. Huntzicker 545-4514** \ JFH \ 9-3-2009
(Type your name & phone #.) (Initials) (Date)

SUMMARY SHEET

I. Description of Item

This resolution approves a contract with the City of Memphis for the collection of the annual fees for the issuance of annual business license for the City of Memphis at the same time and place the Clerk issues the annual license and collects the annual privilege taxes due the State of Tennessee and the Clerk's fees for business tax licensing. The County clerk will retain five percent (5%) of the total collections as the fee for this service. The term of this Agreement is to be effective upon execution through June 30, 2010 with successive automatic one-year renewals unless terminated per the terms of the Agreement.

II. Source and Amount of Funding

This contract is a fee generating contract.

III. Contract Items

A. Type of Contract	Standard
B. Terms	to be effective upon execution through June 30, 2010 with successive automatic one-year renewals unless terminated per the terms of the Agreement

IV. Additional Information Relevant to Approval of This Item

The County Clerk recommends approval of this resolution.

Item #_____

Prepared by: Debbie Stamson
Engineering

Approved by: Lisa Kelly
County Attorney

A RESOLUTION APPROVING A CONTRACT WITH THE CITY OF MEMPHIS FOR THE COLLECTION OF BUSINESS TAX LICENSING FEES; AND THIS ITEM IS A FEE GENERATING AGREEMENT. SPONSORED BY COMMISSIONER DEIDRE MALONE.

WHEREAS, The County Clerk presently issues the annual license and collects the annual privilege tax due the State of Tennessee and her fees for business tax licensing in Shelby County as provided in the Business Tax Act of 1971, T.C.A. § 67-4-101 et seq.; and

WHEREAS, The City of Memphis has determined it to be more economical, more convenient for the public and therefore in the best interest of the City of Memphis for the County Clerk to collect the annual fees for the issuance of annual business license for the City of Memphis at the same time and place the Clerk issues the annual license and collects the annual privilege taxes due the State of Tennessee and the Clerk's fees for business tax licensing; and

WHEREAS, State law, as codified in T.C.A.§12-9-101 et seq., and more specifically T.C.A. § 12-9-108, provides that a public agency of this state may contract with another public agency to perform any governmental service which each public agency is authorized by law to perform; and

WHEREAS, The parties are public entities within the meaning of these laws and are desirous of entering into an Agreement setting forth the terms and conditions under which the Clerk will provide said services; and

WHEREAS, City of Memphis Charter § 781.1 authorizes the City to contract with the County for the collection of City license and privilege taxes and fees; and

WHEREAS, The term of this Agreement is to be effective upon execution through June 30, 2010 with successive automatic one-year renewals unless terminated per the terms of the Agreement; and

WHEREAS, The County will retain five percent (5%) of the total collections as its fee for these services.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the contract with City of Memphis to collect the annual fees for the issuance of annual business license for the City of Memphis is hereby approved.

BE IT FURTHER RESOLVED, That proceeds from this Agreement be placed in account number 040 800 601 4615, County Clerk Fees.

BE IT FURTHER RESOLVED, That the County Mayor is hereby authorized to execute the aforementioned contract on behalf of Shelby County Government, an executed copy of which is to be placed on file in the Contracts Administration Section of the Office of the County Attorney.

BE IT FURTHER RESOLVED, That this Resolution shall take effect from and after the date it shall have been enacted according to due process of law, the public welfare requiring it.

_____
A C Wharton, Jr., Mayor

Date:_____

ATTEST:

_____
Clerk of County Commission

ADOPTED_____

INTERGOVERNMENTAL AGREEMENT FOR BUSINESS TAX LICENSING
by and between
The City of Memphis
and
Shelby County Government
on behalf of
The County Clerk of Shelby County, Tennessee

This Intergovernmental Agreement is entered into on the _____ day of _____, 20____ by and between The City of Memphis, acting by and through its Division of Finance (hereinafter "City") and Shelby County Government (hereinafter "County") on behalf of The County Clerk of Shelby County, Tennessee (hereinafter "Clerk").

WITNESSETH

WHEREAS, the Clerk presently issues the annual license and collects the annual privilege tax due the State of Tennessee and her fees for business tax licensing in Shelby County as provided in the Business Tax Act of 1971, T.C.A. § 67-4-101 et seq.; and

WHEREAS, the CITY has determined it to be more economical, more convenient for the public and therefore in the best interest of the CITY for the CLERK to collect the annual fees for the issuance of annual business license for the CITY at the same time and place the Clerk issues the annual license and collects the annual privilege taxes due the State of Tennessee and the Clerk's fees for business tax licensing; and

WHEREAS, state law, as codified in T.C.A.§12-9-101 et seq., and more specifically T.C.A. § 12-9-108, provides that a public agency of this state may contract with another public agency to perform any governmental service which each public agency is authorized by law to perform; and

WHEREAS, the parties are public entities within the meaning of these laws and are desirous of entering into an Agreement setting forth the terms and conditions under which the Clerk will provide said services; and

WHEREAS, City Charter § 781.1 authorizes the City to contract with the County for the collection of City license and privilege taxes and fees; and

NOW THEREFORE, for mutual promises and consideration, the parties do hereby agree as follows:

1. The Clerk shall collect all fees established by the City for City business license as set forth in Memphis Code, Chapter 36, Article II, Section 36-26 et seq. (Business Tax).
2. The Clerk shall remit to the City by the 15th day of the month any funds collected under paragraph 1 of this agreement from the prior month less the Clerk's fee of 5% of the total collections on behalf of the City. Remittance to the City shall be accompanied by a report specifying the total amount of fees collected, on behalf of the City, during the applicable period. If the 15th falls on a weekend or holiday, then the County will remit payment on the following business day. The gross receipts taxes will be added to the City collection fee and the percentage will be based on that total number.
3. The Business Tax collected pursuant to Public Chapter 856, Acts 2002 that is remitted to the State of Tennessee will be paid to the City once per year on the 10th day of June. If the 10th falls on a weekend or holiday, then the County will remit payment on the following business day. The County will draw and retain interest on this money in lieu of a fee from the City.

4. Any problems or issues arising under the scope of this Agreement shall be resolved with the City Treasurer.
5. This Agreement may be terminated by either party upon a one hundred eighty (180) days written notice to the other party.
6. In the event legislation is passed such that the State of Tennessee assumes the entire responsibility and daily function(s) of the collection of the privilege and business taxes herein, the parties hereby acknowledge the purpose of this Agreement is frustrated and it shall automatically terminate upon written notice to the other party to this agreement. This notice shall be deemed effective upon receipt and mailed to the address provided in the "Notice" section herein. However, in the event the State of Tennessee does not assume total responsibility for the collection of the privilege and business taxes herein, the parties agree to renegotiate the terms herein within sixty (60) business days of written notice as provided by one party to the other as stated herein above. If the parties to this Agreement fail to reach an agreement, reduced in writing within the sixty (60) days as provided herein above, either party may terminate this Agreement upon providing the required notice as stated herein above at Paragraph 5.
7. This Agreement is effective upon execution through June 30, 2010 and shall be automatically renewed on July 1st of each year for successive one-year periods, unless terminated sooner as specified herein.
8. The Clerk shall comply with all applicable local and state laws, including but not limited to T.C.A. §12-9-101 et seq. and Memphis Code, Chapter 36, Article II, § 36-26 et seq., in the performance of its duties and obligations herein.
9. The Clerk shall make and keep as the same accrue, full and complete books, records, and other documents pursuant to this Agreement for a minimum period of three (3) full years after the contract end date or from the date of final payment under this Agreement, whichever is later. The Clerk shall allow the City, during normal business hours and at all reasonable times, to examine, inspect, and audit any and all of the Clerk's books records, and other documents, which are maintained or kept by the Clerk in its official functions in carrying out the Clerk's duties and responsibilities under this Agreement.
10. Upon cancellation or termination of this Agreement, a complete and final audit and accounting shall be made and the parties shall settle their accounts against each other within sixty (60) days after receipt of said complete and final accounting. The person or entity responsible for performing the complete and final audit and accounting shall be the accounting firm at that time retained by the City to perform audits on the revenue accounts of the City. If the City does not at the time have such an outside firm so named, the firm responsible for performing the same duties for the County shall be named. If the County does not at the time have such an outside firm so named, all parties to this Agreement shall select a mutually agreed upon independent outside audit and accounting firm to perform this function. In this instance, the City shall engage the firm, and the fees for such final audit and accounting shall be shared equally between the parties.
11. The Clerk's fee shall be subject to adjustments as mutually agreed to in writing by the parties at any time during the agreement.
12. Nothing in this Agreement shall be deemed to represent that the Clerk, or any of the Clerk's employees or agents, are the agents, representatives, or employees of the City. The Clerk will be an independent service provider over the details and means for performing the services under this Agreement. Anything in this Agreement which may appear to give the City the right to direct the Clerk as to the details of the performance of the services under this Agreement or to exercise a measure of control over the Clerk is solely for purposes of compliance with local, state and federal regulations and means that the Clerk will follow the desires of the City only as to the intended results of the scope of this Agreement.

    It is further expressly agreed and understood by Clerk that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the City; that Clerk has been

retained by the City to perform the services specified herein (not hired) and that the remuneration specified herein is considered fees for the services performed (not wages).

13. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Agreement is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the other party from performance of this Agreement. Neither party shall be responsible for the fulfillment of the other party's obligations to its transferors or subcontractors.
14. The Clerk covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the services. The Clerk warrants that no part of the total Agreement Fee shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, or subcontractor to the Clerk in connection with any work contemplated or performed relative to this Agreement.
15. The Clerk warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Clerk, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Clerk any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.
16. The parties recognize that each party is a governmental entity as defined by Tennessee Code Annotated Section 29-20-101 et. seq. and is responsible for negligent acts and/or omissions of its agents or employees. The parties agree that neither party shall be responsible for personal injury or property damage or other loss suffered by any person or entity except that resulting from its own negligence, and nothing in this Agreement shall be construed as creating an obligation to indemnify the other party against that party's own negligence. The foregoing notwithstanding, it is the intent of the parties hereto that neither party, by virtue of entering into this Agreement assume liabilities that are greater than those set forth in the Tennessee Governmental Tort Liability Act, T.C.A. Section 29-20-101, *et seq*., or an amount of liability greater than set forth in T.C.A. Section 29-20-101, et seq.
17. The CITY hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the CITY on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CITY shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.
18. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written. This Agreement may be modified or amended only by written instrument signed by both parties.
19. If any provision of this Agreement is held to be unlawful, invalid or unenforceable for any reason, such provision shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from.
20. No waiver of any term, condition, default, or breach of this Agreement, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Agreement or of such document. No delay or failure to enforce any provision in this Agreement

or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Agreement or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

21. Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the authorized agent or by First Class or U.S. Mail, return receipt requested, to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided. Notices shall be deemed received (i) if by hand delivery, on date of delivery with a signed receipt; (ii) if U.S. Mail, on date of receipt appearing on the return receipt card; (iii) if by overnight courier, on date receipt is confirmed by such courier service.

COUNTY: Shelby County Clerk
150 Washington Avenue
Memphis, Tennessee 38103
Attn.: County Clerk

and

Shelby County Government
Contract Administration
160 N. Main St., Suite 550
Memphis, Tennessee 38103

CITY: City of Memphis
Attn: City Treasurer
125 N. Main, Room 301
Memphis, TN 38103

and

City of Memphis
Attn: City Attorney
125 N. Main, Room 336
Memphis, TN 38103

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, The parties have executed this Agreement on the date first written above.

CITY OF MEMPHIS

Roland McElrath

Finance Division Director

Dr. Willie W. Herenton, Mayor

Approved as to form:

CITY ATTORNEY

Attest:

Deputy Comptroller

SHELBY COUNTY GOVERNMENT

A.C. Wharton
SHELBY COUNTY MAYOR

Debbie Stamson
SHELBY COUNTY CLERK

Approved as to form and legality:

COUNTY CONTRACT ATTORNEY