On the 20th day of July 2020, the City Council of the City of Englewood, Colorado, approved on first reading the following Council Bill:

BY AUTHORITY
COUNCIL BILL NO. 28
INTRODUCED BY
COUNCIL MEMBER WINK

A BILL FOR AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE COLORADO DEPARTMENT OF REVENUE AND THE CITY OF ENGLEWOOD FOR THE COLLECTION OF MUNICIPAL TAXES UNDER THE SUTS (“SALES AND USE TAX SOFTWARE”) SYSTEM

Copies of the aforesaid council bill are available for public inspection in the office of the City Clerk, City of Englewood, Civic Center, 1000 Englewood Parkway, Englewood, Colorado 80110 or it can be found at http://www.englewoodco.gov, Government, Legal/Public Notices.

Published July 22, 2020
Official Website of the City of Englewood, Colorado
TO: Mayor and Council
FROM: Heather Driscoll, Maria Sobota
DEPARTMENT: Finance
DATE: July 20, 2020
SUBJECT: CB 28 - IGA with State Department of Revenue: Sales and Use Tax Software (SUTS System)

DESCRIPTION:
CB 28 - IGA with State Department of Revenue pertaining to the Sales and Use Tax Software (SUTS System)

RECOMMENDATION:
Staff recommends City Council approve Council Bill 28, authorizing an Intergovernmental Agreement (IGA) with the State of Colorado's Department of Revenue. The IGA will allow taxpayers the opportunity to file tax returns in a single application within the State's Sales and Use Tax Software (SUTS System).

PREVIOUS COUNCIL ACTION:
None

SUMMARY:
Entering into the IGA will allow City of Englewood taxpayers to use the State of Colorado's SUTS system. The intent of the IGA does not supersede Home Rule Authority. By gaining access, the following benefits will be shared by citizens and the City:

- Single point of entry - taxpayers can enter and file returns and make payments for all municipalities in which they have a presence
- Recognition of participation will reflected in the new free GIS tax rate lookup
- Ease of use encouraging voluntary compliance

ANALYSIS:
By joining the State's SUTS system, remittance of sales and use taxes for large/out of state vendors will be easier and harder to oppose legally. It is anticipated that more taxpayers will come into compliance and that there will be a corresponding increase in revenue.

FINANCIAL IMPLICATIONS:
The anticipated revenue gains are difficult to measure as it is unknown how many vendors will become compliant by using the SUTS system. The cost to the City is $1 per banking day for the ACH transfer of funds from the State to the City (roughly $260 a year). The City will also recognize a small savings generated as taxpayers migrate from the City's Muni-Revs site to the SUTS system.
ALTERNATIVES:
The City can choose to not join the SUTS system. However, doing so could lead to limiting revenue collections now and in the future from vendors.

CONCLUSION:
Staff recommends that Council approve the IGA with the State as the benefits are in the City's and taxpayer's favor.

ATTACHMENTS:
Council Bill #28
SUTS IGA agreement
A BILL FOR

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE COLORADO DEPARTMENT OF REVENUE AND THE CITY OF ENGLEWOOD FOR THE COLLECTION OF MUNICIPAL TAXES UNDER THE SUTS (“SALES AND USE TAX SOFTWARE”) SYSTEM

WHEREAS, Article XIV, Section 18(2)(a) of the Constitution of the State of Colorado, and Part 2, Article 1, Title 29, C.R.S. encourages and authorizes intergovernmental agreements;

WHEREAS, Sections 29-1-203 and 29-1-203.5, C.R.S. authorize governments to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each;

WHEREAS, under SB19-006, the Colorado Legislature authorized the state to create a Sales and Use Tax Software system (“SUTS”) to facilitate the central collection of municipal sales and use taxes on behalf of home rule municipalities and taxpayers;

WHEREAS, the City of Englewood as a local taxing jurisdiction is allowed to participate in the SUTS, and at this time wishes to participate in said system for the benefit of both taxpayers collecting businesses sales and use tax and the City of Englewood;

WHEREAS, all funds deposited by a taxpayer in the SUTS system remain the property of the municipality for which they are designated; and

WHEREAS, use of this system will provide simplicity to taxpayers and efficiency for the City of Englewood;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the Intergovernmental Agreement entitled Agreement Regarding Department of Revenue Sales and Use Tax Software (“SUTS”), between the Colorado Department of Revenue and the City of Englewood, a copy of which is marked as “Exhibit A” and attached hereto.

Section 2. The Mayor is hereby authorized to sign said Intergovernmental Agreement for and on behalf of the City of Englewood, Colorado, attached hereto as Exhibit A.
Introduced, read in full, and passed on first reading on the 20th day of July, 2020.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 23th day of July, 2020.

Published as a Bill for an Ordinance on the City’s official website beginning on the 22nd day of July, 2020 for thirty (30) days.

_______________________________
Linda Olson, Mayor

ATTEST:

_______________________________
Stephanie Carlile, City Clerk

I, Stephanie Carlile, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by Title as Ordinance No. ___, Series of 2020.

_______________________________
Stephanie Carlile
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 under 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 reach out to CDOR and request 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 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 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 so about twenty dollars ($20) per
month per 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 that will be 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: 
   Title: 
   Address: 
   Phone: 

   For Jurisdiction:
   Name: 
   Title: 
   Address: 
Phone: __________

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) **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.

11) **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

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### Colorado Department of Revenue Approval

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* 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.*