

**EMERGENCY RESOLUTION NO. 11-2019**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MUNICIPAL INCOME TAX CONSULTANT AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND THE CITY OF HUBER HEIGHTS AND DECLARING AN EMERGENCY.

WHEREAS, the City is currently without an Income Tax Administrator; and

WHEREAS, the City of Huber Heights has offered to provide income tax consulting services.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is hereby authorized to enter into a Municipal Income Tax Consulting Agreement by and between the City of Monroe and the City of Huber Heights pursuant to the terms and conditions set forth in Exhibit "A" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that Council desires to obtain the consultant services at the earliest possible date to assist with the administration and collection of income tax during tax season. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: February 26, 2019

ATTEST:

  
\_\_\_\_\_  
Clerk of Council

APPROVED:

  
\_\_\_\_\_  
Mayor

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

  
\_\_\_\_\_  
Clerk of Council  
City of Monroe, Ohio

**AGREEMENT FOR MUNICIPAL INCOME TAX COLLECTION CONSULTANT**

**THIS AGREEMENT** for Municipal Income Tax Collection Consultant ("Agreement") made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2019 ("Effective Date") by and between the City of Monroe, Ohio ("Monroe") and the City of Huber Heights, Ohio ("Huber Heights").

**WHEREAS**, Huber Heights has personnel that are knowledgeable in matters of municipal income tax administration; and

**WHEREAS**, Monroe has requested that Huber Heights provide certain assistance regarding administration and collection of municipal income tax in Monroe; and

**WHEREAS**, Monroe has authorized its city manager to enter into an Agreement with Huber Heights in which Huber Heights will provide municipal income tax consulting to Monroe;

**NOW THEREFORE**, in consideration of the mutual covenants and promises of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, that Huber Heights and Monroe covenant and agree as follows:

1. **Scope of Service.** Huber Heights shall allow its Tax Administrator and a Tax Analyst (collectively and individually referred to herein as "Consultant") to be available to Monroe for consultation with respect to the administration of the Monroe tax ordinance and collection of the taxes due to Monroe by telephone and email on an as needed basis. In addition, the Consultant shall meet personally with Monroe personnel upon reasonable notice and at reasonable times, as the Huber Heights City Manager and Monroe City Manager may mutually and reasonably agree. The personal meetings may occur in either Huber Heights or in Monroe. It is understood and agreed that Consultant's first priority is the tax administration at the City of Huber Heights. The Consultant shall not consult on any matter that may be deemed a conflict of interest between the parties. Consultant shall not provide legal advice. Consultant shall provide advice and experience but shall not administer any tax or the collection thereof for Monroe. Consultant will have no oversight, decision-making or other responsibilities with respect to administration or collection of Monroe taxes. Consultant will not provide advice on the use of any software utilized by Monroe. In the event Huber Heights requires the immediate services of the Consultant, Monroe understands and agrees that the Consultant may be temporarily recalled from services to Monroe in order to address the matter as required by Huber Heights. Consultant shall not be required by virtue of this Agreement to appear in Court on behalf of Monroe.

2. **Term.** The term of this Agreement shall commence on the Effective Date and shall expire \_\_\_\_\_ ( ) days thereafter. Provided however, either party may terminate this agreement at any time with or without cause.

3. **Fee.** As compensation in full for the consulting services to be rendered under this Agreement...The Consultant shall not be reimbursed in any other fashion including but not limited to mileage, travel or other business expenses incurred. The services to be provided by staff at the City of Huber Heights should be offered at the following rates:

Tax Administrator	\$84.05/hr
Tax Analyst	\$42.65/hr

These rates reflect the salary and benefits for each of these employees as well as an administrative service charge. Monroe shall not pay Consultant cash for the service provided. Monroe shall cooperate in good faith and so far, as is practicable with Huber Heights in furnishing information which Consultant deems reasonably necessary. Monroe shall designate at least one employee as Income Tax Representative to serve as a liaison and shall timely pay all sums due to Huber Heights hereunder.

4. **Consultant Status.** The parties acknowledge and agree that neither Consultant or the City of Huber Heights shall be the "Tax Administrator" (as defined in Ohio Revised Code section 718.01) for the City of Monroe. Consultant shall not be charged with direct responsibility for administration of any income tax levied by Monroe, nor shall Consultant, the City of Huber Heights, or any employee of the City of Huber Heights be deemed an agent of Monroe. At all times the Consultant shall be an employee of the City of Huber Heights subject to the policy or procedures of the City of Huber Heights. Consultant shall not be entitled to any benefits made available to employees of Monroe. The Consultant shall not have the authority to bind Monroe to any contract or obligation of any kind or nature. Monroe shall not be required to utilize Huber Heights or Consultant exclusively, or at all, and may, in its sole discretion, have other consultants or employees perform the same or similar services. Monroe shall be solely responsible for the billing and collection of its taxes.

5. **Employees.** Each party agrees that it shall at all times and under all circumstances be solely responsible for its own personnel and for the payment of their wages and other compensation, including Ohio Public Employees Retirement System., and workers' compensation. Each party shall in all circumstances bear the risk of loss of its own vehicles, equipment, and supplies. There shall be no liability, responsibility or cause of action for breach of contract between the parties if consultation services are denied, delayed, inadequate, incorrect, or subsequently recalled.

6. **No Legal Advice.** The parties agree that Consultant is not an attorney and will not provide legal advice to Monroe. To the extent any consulting services might be considered legal advice, it will be reviewed and approved by Monroe's legal counsel.

7. **Limitation of Liability.** IN NO EVENT SHALL HUBER HEIGHTS, ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, (INCLUDING BUT NOT LIMITED TO CONSULTANT) BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR ANY LOSS OF PROFITS OR REVENUE, REGARDLESS OF WHETHER THE POSSIBILITY OF SUCH DAMAGES WAS KNOWN OR SHOULD HAVE BEEN KNOWN AND IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF HUBER HEIGHTS, ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, (INCLUDING BUT NOT LIMITED TO CONSULTANT) INCLUDING ATTORNEYS' FEES, UNDER THIS AGREEMENT EXCEED THE FEES PAID TO HUBER HEIGHTS.

8. **No Waiver.** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by either City or Monroe on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.

9. **Captions.** Any captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement.

10. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to

which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. **Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and by facsimile signature. It shall not be necessary that the signature on behalf of both parties hereto appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement.

12. **Complete Agreement.** The parties agree that the terms and provisions of this Agreement embody their mutual intent and that they are not to be construed more liberally in favor of, or more strictly against, any party hereto. This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action whatsoever hereunder for any cause whatsoever.

13. **Prior Agreements.** This Agreement comprises the entire Agreement between the parties and supersedes, cancels and annuls any and all prior agreements, arrangements, representatives or understandings between other parties whether in writing or oral.

14. **Applicable Law.** The parties agree that any questions or matters arising under this Agreement, as to validity, construction, performance, and enforcement or otherwise shall be determined, construed and governed in accordance with the laws of the State of Ohio.

15. **Assignment.** This agreement may not be assigned, transferred, pledged by operation of law or otherwise by either party, without the written consent of the other party.

16. **Sovereign Legislative Powers Remain Intact.** Nothing in this Agreement is intended, nor shall be construed, to inhibit or deny either party from amending, supplementing or repealing its municipal income tax legislation or any part thereof at any time by the exercise of its sovereign legislative powers. Nothing herein is intended to in any way diminish any rights or protection afforded to either party, including but not limited to exclusion of tort liability under Ohio Revised Code Section 2744. The parties acknowledge that this Agreement shall be construed to afford each party maximum protection under the sovereign immunity laws of the State of Ohio. There shall be no reimbursement between the parties for loss or damage to equipment, nor for any workers compensation award or premium contribution assessed against the employing political subdivision for injury or death of a party's personnel.

17. **Modifications or Amendments.** Change or modification of this Agreement shall only be either effective or enforceable when in writing and duly and lawfully executed by both parties hereto.

18. **Confidentiality.** All taxpayer information obtained by Huber Heights/Consultant pursuant to this Agreement shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed

THE CITY OF MONROE

THE CITY OF HUBER HEIGHTS

By: \_\_\_\_\_  
Its City Manager

By: \_\_\_\_\_  
Its City Manager

Approved:

By: \_\_\_\_\_  
City Attorney

Approved:

By: \_\_\_\_\_  
City Attorney