



VICTOR STAFF REPORT

PREPARATION DATE: November 2, 2018

MEETING DATE: November 14, 2018

SUBMITTING DEPARTMENT: Legal

DEPARTMENT DIRECTOR: Herb Heimerl

PRESENTER: Herb Heimerl

SUBJECT: Local Option Sales Tax Collection Agreement with AIRBNB

Re: Applicable Victor Values:

- | | | |
|--|---|---|
| <input type="checkbox"/> Culturally Historic | <input checked="" type="checkbox"/> Sustainable | <input type="checkbox"/> Connected to Nature |
| <input type="checkbox"/> Small Town Feel | <input type="checkbox"/> Family Friendly | <input checked="" type="checkbox"/> Administrative Need |
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STATEMENT/PURPOSE/BACKGROUND

We passed a local option tax earlier this year and while other websites promulgating short term rentals have cooperated in the collection of taxes required to be paid under the ordinance AIRBNB has yet to participate. I reached out to them to ask that they comply and they have agreed to sign an agreement whereby they would begin collecting and remitting taxes on behalf of the guests and hosts they service. The agreement is terminable at will by either party as they want to keep the door open to back out in the event the courts determine they are not subject to the tax.

ALTERNATIVES

Sue them on the basis that they are subject to the tax and try and force them to remit without an agreement.

ATTACHMENTS

Draft settlement agreement.

FISCAL IMPACT

positive.

STAFF IMPACT

Minimal.

RECOMMENDATION

staff recommends that city council approve the settlement agreement subject to the city Attorney's negotiating certain provisions and approving the same.

MOTION

I move to approve the Tax Collection Agreement with AIRBNB Inc, subject to minor changes approved by the City Attorney.

(Roll Call Vote)

**TAX COLLECTION AGREEMENT
FOR
CITY OF VICTOR, IDAHO, LOCAL OPTION TAX**

THIS TAX COLLECTION AGREEMENT (the “**Agreement**”) is dated _____, 2018 and is between **AIRBNB, INC.**, a Delaware corporation (“**Airbnb**”) and the **CITY OF VICTOR, IDAHO** (the “**Taxing Jurisdiction**”). Each party may be referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS:

WHEREAS, Airbnb represents that it provides an Internet-based platform (the “**Platform**”) through which third parties offering accommodations (“**Hosts**”) and third parties booking such accommodations (“**Guests**”) may communicate, negotiate and consummate a direct booking transaction for accommodations to which Airbnb is not a party (“**Booking Transaction**”); and

WHEREAS, the Taxing Jurisdiction and Airbnb enter into this Agreement in order to facilitate the reporting, collection and remittance of applicable local option taxes (“**LOT**”) imposed under applicable City of Victor law (the applicable “**Code**”), for Booking Transactions completed by Hosts and Guests on the Platform for accommodations located in the City of Victor, Idaho (the “**Taxable Booking Transactions**”).

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

(A) Solely pursuant to the terms and conditions of this Agreement, including only for periods in which this Agreement is effective (defined below), and solely for Taxable Booking Transactions completed on the Platform, Airbnb contractually agrees to assume the duties of a LOT collector as described in the Code solely for the collection and remittance of LOT (hereinafter referred to as a “**Collector**”). The assumption of such duties shall not trigger any other registration requirements to which Airbnb is not otherwise subject.

(B) Starting on December 1, 2018 (the “**Effective Date**”), Airbnb agrees to commence collecting and remitting LOT on behalf of Hosts, pursuant to the terms of this Agreement, at the applicable rate, on Taxable Booking Transactions. Except as set forth in Paragraph (L) below, Airbnb shall not assume any obligation or liability to collect LOT for any period or for any transaction prior to the Effective Date or after termination of this Agreement unless otherwise required by law.

REMITTANCE OF LOT

(C) Airbnb agrees reasonably to report aggregate information on the tax return form prescribed by the Taxing Jurisdiction, including an aggregate of gross receipts, exemptions, adjustments, and taxable receipts of all LOT that is subject to the provisions of this Agreement. Airbnb shall remit all LOT collected from Guests in accordance with this Agreement in the time and manner described in the Code or as otherwise agreed to in writing.

AIRBNB LIABILITY

(D) Pursuant to the terms of this Agreement, Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of LOT, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with the Code. Nothing contained herein nor any action taken pursuant to this Agreement shall impair, restrict or prevent Airbnb from asserting that any LOT and/or penalties, interest, fines or other amounts assessed against it were not due, are the subject of a claim for refund under applicable law or otherwise bar it from enforcing any rights accorded by law.

(E) Airbnb understands that it may be subject to audit by the Taxing Jurisdiction. During any period for which Airbnb is not in breach of its obligations under this Agreement, the Taxing Jurisdiction agrees to audit Airbnb on the basis of LOT returns and supporting documentation.

(F) The Taxing Jurisdiction agrees to audit Airbnb on an anonymized transaction basis for Taxable Booking Transactions. Except as otherwise agreed herein, Airbnb shall not be required to produce any personally identifiable information relating to any Host or Guest or relating to any Booking Transaction. To the extent reasonable, prior to pursuing binding legal process such as an administrative subpoena, the Taxing Jurisdiction will attempt to resolve any audit of Airbnb with respect to such users.

(G) For the sole purpose of reporting, collection and remittance of LOT under this Agreement, Airbnb, Inc. agrees to register as a Collector in the Taxing Jurisdiction. Airbnb will be the registered Collector on behalf of any affiliate or subsidiary collecting LOT.

GUEST AND HOST LIABILITY

(H) During any period in which this Agreement is effective relating to Taxable Booking Transactions, provided Airbnb is in compliance with its obligations herein, Hosts shall be relieved of any obligation to collect and remit LOT on Taxable Booking Transactions once Airbnb has remitted LOT on such Taxable Booking Transactions to the Taxing Jurisdiction. Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to LOT for transactions completed other than on the Platform, or to restrict the Taxing Jurisdiction from investigating or enforcing any provision of applicable law against such users for such transactions.

WAIVER OF LOOK-BACK

(I) The Taxing Jurisdiction expressly releases, acquits, waives and forever discharges Airbnb, its current or past affiliated parent or subsidiary companies, directors, shareholders investors, employees and other agents, and/or Hosts or Guests from any and all actions, causes of action, indebtedness, suits, damages or claims arising out of or relating to payment of and/or collection of LOT or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to LOT on any Taxable Booking Transactions prior to the Effective Date, provided Airbnb is not in material breach of any term of this Agreement for twelve (12) months after the Effective Date of this Agreement. Nothing contained in this Paragraph of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the Jurisdiction may have or claim to have against any Host or Guest unrelated to Taxable Booking Transactions under this Agreement.

NOTIFICATION TO GUESTS AND HOSTS

(J) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that it will notify (i) Hosts that LOT will be collected and remitted to the Taxing Jurisdiction as of the Effective Date pursuant to the terms of this Agreement; (ii) Guests and Hosts of the amount of LOT collected and remitted on each Taxable Booking Transaction and (iii) Hosts that neither the existence of this Agreement nor the payment of LOT under this Agreement shall be construed as relieving any Host of their obligation to comply with business registration obligations imposed under the Code.

LIMITATION OF APPLICATION

(K) This Agreement is solely for the purpose of facilitating the administration and collection of the LOT with respect to Taxable Booking Transactions and, except with respect to the rights and liabilities set forth herein, the execution of or actions taken under this Agreement shall not be considered an admission of law or fact or constitute evidence thereof under the Code or any other provisions of the laws of the United States of America, of any State or subdivision or municipality thereof. Neither Party waives, and expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions relating to the validity or interpretation or applicability of the Code, regulations or application of law.

DURATION/TERMINATION

(L) This Agreement may be terminated by Airbnb or the Taxing Jurisdiction for convenience on 90 day written notification to the other Party. Such termination will be effective on the first day of the calendar month following the 90 day written notification to the other Party. Any termination under this Paragraph shall not affect the duty of Airbnb to remit to the Taxing Jurisdiction any LOT collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by Airbnb to the Taxing Jurisdiction as of the date of termination.

MISCELLANEOUS

(M) CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of Idaho without regard to its conflict of law principles.

(N) MODIFICATION. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.

(O) MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

(P) COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties hereby consent to the use of

electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.

(Q) RELATIONSHIP OF THE PARTIES. The Parties are entering into an arm's-length transaction and do not have any relationship, employment or otherwise. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

(R) WAIVER AND CUMULATIVE REMEDIES. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

(S) FORCE MAJEURE. Neither Party shall be liable for any failure or delay in performance under this Agreement for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Airbnb employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(T) ASSIGNMENT. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Airbnb may assign this Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

(U) MISCELLANEOUS. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

NOTICES

(V) All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing postage prepaid; or (iii) the second business day after sending by overnight mail or by facsimile with telephonic confirmation of receipt. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other Party:

To Airbnb:

Airbnb, Inc.
Attn: General Counsel
888 Brannan Street, 4th Fl.
SF, CA 94103
legal@airbnb.com

Airbnb, Inc.
Attn: Global Head of Tax
888 Brannan Street, 4th Fl.
SF, CA 94103
tax@airbnb.com

To the Taxing Jurisdiction:

Michelle Smith
City Clerk
32 Elm Street
P.O. Box 122
Victor, ID 83455
(208) 787-2940
michelles@victorcityidaho.com

(Signatures follow on next page)

IN WITNESS WHEREOF, Airbnb and the Taxing Jurisdiction have executed this Agreement effective on the date set forth in the introductory clause.

AIRBNB, INC., a Delaware corporation

By: _____
Signature of Authorized Representative

Mirei Yasumatsu, Global Tax Director

Name and Title of Authorized Representative

CITY OF VICTOR, IDAHO

By: _____
Signature

Jeff Potter, Mayor
City of Victor, Idaho
32 Elm Street
P.O. Box 122
Victor, ID 83455