

**EXHIBIT A**

## AN ACT

A Measure, amending the City of Portland Code, Titles 3, Legislation and Election and Title 5, Revenue and Finance, by ordinance to provide for a limited income tax to support arts education and access to the arts.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF PORTLAND, OREGON

The City of Portland ordains:

Section 1: Title 3, Legislation and Elections, and Title 5, Revenue and Finance are hereby amended by the changes attached as Exhibit A.1.

Section 2: If any part of this Ordinance or any tax against any individual is found unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity will affect only that part of this Section or tax and will not affect or impair any other provision of the tax or Section.

Section 3: This ordinance and the Code changes attached as Exhibit A.1 shall be in full force and effect upon enactment by City of Portland voters at the election called for November 6, 2012.

## EXHIBIT A.1

### Changes to City Code

#### 1. City Code Section 3.15.060 is amended as follows:

A. [1-5 no changes. ]

- 6. Manage, enforce and collect the Arts Education and Access Income Tax.
- 67. Manage and enforce all regulatory programs formerly the responsibility of the Bureau of Licenses, including the authority to enact administrative rules and regulations.
- 78. Manage and collect assessments and liens formerly the responsibility of the Auditor's Office.
- 89. Perform business management functions including mail processing, receipting and distribution; and perform overall financial accounting of bureau revenues.
- 910. Audit functions including the Portland area business license tax returns, transient lodging taxes and internal systems and processes, as well as other special audits as deemed necessary.
- 1011. In consultation with the requesting bureau, recommend systems for new revenue or fee collection services.
- 112. Manage funds as assigned.

B. [no changes.]

#### 2. City Code Chapter 5.04 is amended by adding a new section as follows:

##### **5.04.510 Arts Education and Access Fund**

The Arts Education and Access Fund is hereby created. The purpose of the Fund is to receive Gross Revenues received from the Arts Education and Access Income Tax and provide the Net Revenues to the School Districts and to the Regional Arts and Culture Council solely for the purposes established in Chapter 5.73 of this Code. In no case shall Net Revenues be transferred from the Arts Education and Access Fund to the City's General Fund, or any other fund, for any other purpose.

**3. City Code Title 5 is amended by adding a new chapter as follows:**

**Chapter 5.73 Arts Education and Access Income Tax**

- 5.73.010 Definitions.
- 5.73.020 Tax Imposed.
- 5.73.030 Net Revenues Distribution.
- 5.73.040 Intergovernmental Agreements.
- 5.73.050 Citizen Oversight Committee.
- 5.73.060 Audits.
- 5.73.070 Effective Dates.
- 5.73.080 Revenue Bureau Responsibilities.
- 5.73.090 Limitation on Costs.

5.73.010 Definitions.

For the purposes of this paragraph, the following definitions apply unless the context requires a different meaning.

- A. "Catchment" means the geographical area from which an elementary school within a District draws its students.
- B. "Director" means the Director of the Revenue Bureau, or authorized designee.
- C. "Gross Revenues" means the total of all revenue received by the City of Portland from the Arts Education and Access Income Tax without regard to collection, administrative or other costs.
- D. "Net Revenues" means the revenue remaining after interest, collection, administrative and other costs and refunds are deducted from Gross Revenues.
- E. "Portland K-5 Students" means students that reside within the geographical boundary of the City of Portland, Oregon that attend Kindergarten through 5<sup>th</sup> grade in public schools.
- F. "Resident" or "resident of the City" means:
  - 1. An individual who is domiciled in this City unless the individual:
    - a. Maintains no permanent place of abode in the City;
    - b. Does maintain a permanent place of abode elsewhere; and
    - c. Spends in the aggregate not more than 30 days in the taxable year in the City; or

2. An individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than 200 days of the taxable year in the City unless the individual proves that the individual is in the City only for a temporary or transitory purpose. For purposes of this subsection, a fraction of a calendar day shall be counted as a whole day.
- G. "Resident" or "resident of the City" does not include:
1. An individual who is a qualified individual under section 911(d)(1) of the Internal Revenue Code for the tax year;
  2. A spouse of a qualified individual under section 911(d)(1) of the Internal Revenue Code, if the spouse has a principal place of abode for the tax year that is not located in the City; or
  3. A resident alien under section 7701(b) of the Internal Revenue Code who would be considered a qualified individual under section 911(d)(1) of the Internal Revenue Code if the resident alien were a citizen of the United States.
- H. "Schools" means those educational institutions defined as schools by the Oregon Department of Education, but do not include on-line schools.
- I. "School Districts" means the Portland Public, David Douglas, Centennial, Parkrose, Reynolds and Riverdale school districts.

#### **5.73.020 Tax Imposed.**

A tax of \$35 is imposed on the income of each income-earning resident of the City of Portland, Oregon who is at least eighteen years old. No tax will be imposed on filer(s) within any household that is at or below the federal poverty guidelines established by the federal Department of Health and Human Services for that tax year.

#### **5.73.030 Net Revenues Distribution.**

Net Revenues will be paid by the Revenue Bureau to the Arts Education and Access Fund for distribution by the City as follows:

- A. First, funds shall be distributed to the School Districts for the purpose of hiring certified arts or music education teachers for elementary school students for Kindergarten through 5th grade (K-5). Distribution shall be based on a ratio of one teacher for every 500 K-5 students at schools that serve Portland K-5 students, except that Charter schools shall be funded based on a ratio of one teacher for every 500 Portland K-5 students served by the Charter school. Students attending schools that receive no

distribution of funds shall not be counted. In the event that a school has less than 500 K-5 students, or in the case of Charter schools, less than 500 Portland K-5 students, funds shall be distributed on a pro rata basis based on the number of students attending that school. Funds shall not be distributed to:

1. Elementary schools within the School Districts that have no Portland K-5 students; and
  2. Elementary schools within the School Districts that have Portland K-5 students enrolled, but whose catchment does not overlap with the City of Portland's geographical boundaries.
- B. Any funds remaining after distribution to the School Districts shall be distributed to the Regional Arts & Culture Council (RACC). The City shall execute a contract amendment with RACC to ensure the funds are spent as follows:
1. Up to 95 percent of the remaining funds shall be distributed to RACC for grants to support non-profit Portland arts organizations that demonstrate artistic excellence, provide service to the community, show administrative and fiscal competence and provide a wide range of high-quality arts programs to the public. RACC will make the determination as to which arts organizations shall be supported, in accordance with their contract with the City. In the event that RACC distributes less than 95 percent of the funds to non-profit Portland arts organizations, the remaining funds shall be distributed for the purpose of providing grants and programs as described in subsection 2 below.
  2. A minimum of 5 percent of the remaining funds shall be distributed to RACC for the purpose of providing grants and programs to non-profit arts organizations, other nonprofits and schools that will give access to high-quality arts experiences to Kindergarten through 12<sup>th</sup> grade students (K-12) and for grants and programs that will make arts and culture experiences available to Portland residents, with particular emphasis on programs directed to communities who are underserved by local arts providers.
  3. These funds are in addition to existing and ongoing financial support from the City to RACC.

**5.73.040 Intergovernmental Agreements.**

The City will execute Intergovernmental Agreements (IGAs) with the School Districts and will amend its contract with RACC and require them to provide independently audited financial statements each year that show how the funds received pursuant to this program are spent.

**5.73.050 Citizen Oversight Committee.**

The City will appoint a citizen oversight committee that is representative of the City's diverse communities to ensure the Arts Education and Access Fund is being implemented as required, to review expenditures made and to report their findings in a public record to the City Council on an annual basis. The committee shall be comprised of a minimum of five and a maximum of ten members, including, if possible, a member of the Tax Supervising and Conservation Commission.

**5.73.060 Audits.**

The City will receive copies of annual independent audits or other documentation regarding expenditures by RACC and the School Districts each year. The Arts Education and Access Fund also will be part of the City's independent annual audit report, the results of which will be made available to the public.

**5.73.070 Effective Dates.**

This tax will be effective beginning with the tax year 2012 and shall continue each year thereafter. Payment of the tax each year is due on the date on which state taxes are due, not including any extensions of time that might be requested or received.

**5.73.080 Revenue Bureau Responsibilities.**

The Revenue Bureau shall:

- A. Receive the Gross Revenues derived from the Arts Education and Access Income Tax and distribute the Net Revenues in accordance with the IGAs and RACC contract;
- B. Keep accurate records of the funds;
- C. Report to the City Council by way of a public record on all funds received and directed to the School Districts and RACC;
- D. Adopt administrative rules necessary to implement tax collection and administration.
- E. If necessary, contract with public or private agencies to fulfill any of its duties in regard to this Arts Education and Access Income Tax and the Arts Education and Access Fund; and

- F. Accept any and all gifts and donations to the Arts Education and Access Fund.

**5.73.090 Limitation on Costs.**

- A. The Revenue Bureau's first year start-up costs are capped at \$500,000. Ongoing administrative costs are capped at an average 5 percent or less of Gross Revenues over a five year period.
- B. The City's contract amendment with RACC will require RACC to:
  - 1. Limit any additional RACC arts education coordination costs incurred as a result of receiving funds to a maximum of 3 percent of Net Revenues;
  - 2. Ensure that highly qualified persons will coordinate and work with the School Districts in the provision of high quality arts and/or music education;
  - 3. Seek additional funds from other sources for arts education and access to supplement the goals of the Arts Education and Access Fund;
  - 4. Provide quality oversight to the programs of the School Districts as well as the expenditures made by RACC; and
  - 5. Coordinate between School Districts and arts organizations to ensure high quality arts education for Portland students.

**EXHIBIT B**

## Ballot Title for Arts Education and Access Income Tax

CAPTION

Restore School Arts, Music Education; Fund Arts through Limited Tax (10 words)

QUESTION

Shall Portland restore arts, music for schools and fund arts through income tax capped at 35 dollars per year? (19 words)

SUMMARY

This measure creates a limited income tax capped at \$35 for each adult income-earning Portland resident. Individuals in households below federal poverty level pay no tax.

Tax can only be used for:

- Arts and Music Teachers: Funds to hire arts and music teachers for kindergarten through 5<sup>th</sup> grade students at local public schools attended by Portland students. Distribution of funds based on school enrollment.
- Arts Access: Remaining funds for grants to nonprofit arts organizations, other nonprofits and schools. Will fund grants to provide high-quality arts access for kindergarten through 12<sup>th</sup> grade students and to make arts, culture experiences available to underserved communities. Funds administered by Regional Arts and Culture Council (RACC).

Accountability measures include:

- Administrative costs are capped.
- Expenditures subject to oversight by citizen committee.
- Independent financial audits of RACC and School District expenditures.

Estimated funds raised will be \$12 million annually. The tax is effective beginning with 2012 tax year, with payment due when state taxes are due. (164 words)



**Exhibit C**

First year start-up costs are capped at \$500,000 in the aggregate and are excluded from the computation of the 5% cap on administrative cost.

Examples of anticipated start-up costs:

Multiple informational mailings to all Portland households	\$395,000
Information technology (e.g. database, website, telephones)	<u>\$105,000</u>

Total	\$500,000
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**EXHIBIT D****INTERGOVERNMENTAL AGREEMENT  
BETWEEN \_\_\_\_\_ SCHOOL DISTRICT AND THE CITY OF PORTLAND FOR  
ONE-TIME FUNDS AND ONGOING PARTNERSHIPS**

This Intergovernmental Agreement (“IGA”), authorized pursuant to ORS 190.110, is entered into between \_\_\_\_\_ School District, (“District”) and the City of Portland (“City”). District and City may be referred to individually as a “party” and collectively as “the parties.”

**RECITALS**

- A. Education is one of the top four overarching goals of the City’s Portland Plan;
- B. Arts and music are important parts of a high quality, well-rounded education.
- C. Non-profit arts and culture organizations play a key role in the education of our children, the economic vitality of our region, and the livability of our city.
- D. Budget cuts have resulted in a steep decline of arts and music education in Portland schools leaving nearly 12,000 students in 26 schools with no access to certified instruction in art, music, dance or drama as of 2012.
- E. Portland schools have fallen well behind the national average with only 18% of our elementary schools offering art instruction (compared to 83% nationally) and 58% of our elementary schools offering music (compared to 94% nationally).
- F. National research links access to arts and music education to improved test scores, graduation rates and college admittance, particularly for lower-income students and students of color. And, as of 2011, 41% of Portland’s high school students do not graduate with their class.
- G. Cities with thriving arts and culture communities attract businesses, develop a creative workforce and create economic development opportunities across multiple sectors.
- H. This IGA will assist in restoring arts and music education to our schools by providing stable, long-term funding for certified arts and music teachers – ensuring access to the arts for every Portland elementary school student.
- I. This IGA is intended to improve the quality, accessibility, diversity and stability of arts and culture in Portland by providing general operating support to non-profit Portland arts organizations that demonstrate artistic excellence, proven service to the community, administrative and fiscal competence and provide a wide range of high quality arts programming to the public.

J. This IGA will provide grant funding to schools and to non-profit organizations make arts and culture experiences widely available to school children and every Portland resident, regardless of income or neighborhood.

K. The City's Revenue Bureau is authorized to receive gross revenues collected as a result of the Arts Education and Access Income Tax and distribute a portion of the net revenues to District

L. District has agreed to spend the money to ensure that funds are used to pay for the costs of providing certified arts teachers and music teachers to elementary schools within the District.

### AGREEMENT

**1. Recitals.** The recitals above are hereby incorporated by reference.

**2. Effective Date/Term.** This IGA is effective from the date that all parties have executed this IGA. The term of this IGA is until June 30, 2014. It shall automatically renew each year for a period of three years thereafter so long as the Arts Education and Income Tax is in effect.

**3. Definitions:**

a. "Average teacher salary" means the average of all certified teachers salaries within the District who are actually teaching school and not in full time administrative positions, calculated on the teachers' base pay, including associated employer paid payroll costs, such as taxes, insurance and PERS, but excluding premium or differential pay, or any other sums that may be paid for the performance of duties outside of teaching classes during regular school hours.

b. "Bureau" means the Revenue Bureau of the City of Portland.

c. "Gross Revenues" means the total of all revenue received by the City of Portland from the Arts Education and Access Income Tax without regard to collection, administrative or other costs.

d. "K-5 students" means children in the School Districts in grades Kindergarten through 5th grade. "Portland K-5" students shall mean students that reside within the geographical boundary of the City of Portland.

e. "Net Revenues" means the revenue remaining after collection, administrative and other costs and refunds are deducted from Gross Revenues.

**4. Payment Calculation:** If the Arts Education and Access Income Tax is approved by City voters the City's Revenue Bureau will receive the money collected and distribute a portion of Net Revenues to District in the following manner:

a. District will provide its average teacher salary within the district and the estimated average daily membership ("ADM") of K-5 students for the 2013/2014 school year to the Bureau by May 1, 2013. Any ADM figure shall be adjusted in order to count each kindergarten students as one student.

b. The Bureau initially will distribute Net Revenues to District based on the following formula:

Average teacher salary X (the estimated ADM of K-5 students ÷ 500).

**5. Distribution of Funds:**

a. The Bureau will distribute 50% of the Net Revenues due to District as determined by the calculation stated in Paragraph 4.b. by October 1, 2013;

b. By November 1, 2013, District will provide the Bureau with an updated and revised ADM of K-5 students for the 2013/2014 school year. The Bureau will then revise the amount of Net Revenues owed to District based on the revised and updated figures ("the revised amount.")

c. By January 15, 2014, the Bureau will subtract the funds already paid to District on October 1, 2013 from the revised amount and pay District the remainder.

**6. Provision of services:** District shall provide arts and music education to all K-5 students in each of its elementary schools.

**7. Supplemental Funding:** It is the intention of this IGA is to add to the number of existing certified arts and music teachers without creating financial problems for District. To that end, District will ensure there will be a least one full time employee (FTE) of certified arts and/or music instruction at each school within the district that educates K-5 students.

**8. Audit:** District will provide its Comprehensive Audit and Final Report (CAFR) each year to the Bureau for the purpose of tracking compliance with this IGA. The CAFR shall specifically identify the funds received and expended pursuant to this program.

**9. Sequential Curriculum:** District must provide arts or music education to its elementary school students in each grade from Kindergarten through 12<sup>th</sup> grade.

**10. Coordination with RACC:** District will coordinate with the Regional Arts and Culture Council (RACC) to ensure that District is providing high quality arts and music education based on the resources available including those provided by the Arts Education and Access Fund. In the event that RACC notifies the City that District is not meeting the expectations of this provision, the parties will consider this to be a "dispute" under this IGA and the City and District shall engage in dispute resolution as required by Paragraph 22.

**11. Use of Funds/Indemnification:** District will use the Net Revenues it receives from the City in accordance with this IGA and shall not use the funds for any other purpose

whatsoever. District shall hold harmless, indemnify and pay back the City for any expenditure of funds that is not in accordance with the requirements of this IGA.

**12. Amendments.** The terms of this IGA shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. The Mayor of the City of Portland, or designee, is authorized to amend this IGA provided it does not increase the cost to the City.

**13. Captions.** The captions or headings in this IGA are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this IGA.

**14. Law/Choice of Venue.** Oregon law, without reference to its conflict of laws provisions, shall govern this IGA and all rights, obligations and disputes arising out of the IGA. Venue for all disputes and Litigation shall be in Multnomah County, Oregon.

**15. Severability/Survival.** If any of the provisions contained in this IGA are held unconstitutional or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this IGA for any cause.

**16. No Third Party Beneficiary.** City and District are the only parties to this IGA and as such, are the only parties entitled to enforce its terms. Nothing contained in this IGA gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

**17. Merger Clause.** This IGA constitutes the entire IGA between the parties. No waiver, consent, modification or change of terms of this IGA shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, IGAs, or representations, oral or written, not specified herein regarding this IGA.

**18. Counterparts/Electronic Signatures.** This IGA may be executed in any number of counterparts, all of which when taken together shall constitute one IGA binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. The Parties agree that they may conduct this transaction, including any amendments or extension, by electronic means including the use of electronic signatures.

**19. Assignment.** No Party shall assign or transfer any interest in this IGA, nor assign any claims for money due or to become due under this IGA, without the prior written approval of the other Parties. This IGA shall bind and inure to the benefit of, and be enforceable by, the Parties hereto and their respective successors and permitted assigns.

**20. Subsequent Years:** After the school year 2013/2014, the parties shall take the actions required above by the same dates in subsequent school years so long as the Arts Education and Access Income Tax remains in effect.

**21. Termination:** This IGA may be mutually terminated at any time by written consent of the parties. The City may unilaterally terminate this IGA if District fails to use the Net Revenues in accordance with his IGA.

**22. Dispute Resolution:** In the event a dispute arises regarding the use of the Net Revenues by District or any other matter covered by this IGA, the parties agree to have high level representatives of City and District to engage in discussions before taking any legal action. If discussions fail to resolve the issue the parties shall engage in mandatory mediation in an attempt to resolve the dispute. In the even of mediation the parties shall each pay one-half of he mediator's bill. If mediation fails to resolve the matter either party may take any legal action permitted to it under the law of the State of Oregon.

**IN WITNESS WHEREOF**, the duly authorized representatives of District and District have executed this Contract as of the date and year first above written.

**CITY OF PORTLAND**

**SCHOOL DISTRICT**