

RESOLUTION NO. 969

A RESOLUTION ADOPTING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF CANBY (CITY) AND CANBY SCHOOL DISTRICT NO. 86 (DISTRICT) FOR THE PURPOSE OF COLLECTING A CONSTRUCTION EXCISE TAX (CET) ON BEHALF OF THE DISTRICT ON NEW CONSTRUCTION IN THE CITY OF CANBY PURSUANT TO OREGON LAWS 2007 CHAPTER 829.

WHEREAS, the 2007 Oregon legislature drafted and approved Oregon Laws 2007, Chapter 829 (the "Act") which creates a construction excise tax on new construction throughout the State of Oregon to be paid to school districts to be used to help offset the cost of new education facilities necessitated by new growth in its district; and

WHEREAS, the Act authorizes school districts to enter into an intergovernmental agreements (IGA) with each local government to collect the tax for the district; and

WHEREAS, the Canby School District No. 86 wishes to enter into such an IGA with the City for such purpose and the City is willing to collect the CET on behalf of the District; and

WHEREAS, the District has proposed a form of IGA that is acceptable to the City; now therefore


IT IS HEREBY RESOLVED by the City of Canby Council as follows:

1. That the attached IGA, marked as Exhibit "A" and by this reference incorporated here, by and between the District and the City is hereby adopted. The Mayor is authorized to sign the IGA on behalf of the City.
2. This resolution shall take effect on January 2, 2008.

ADOPTED this 2nd day of January, 2008, by the Canby City Council.


Melody Thompson - Mayor

ATTEST:


Kimberly Scheaffer, CMC
City Recorder - Pro-Tem

CONSTRUCTION EXCISE TAX INTERGOVERNMENTAL AGREEMENT

Date: December 20, 2007

Parties:

Canby School District No. 86, a school district as defined under ORS 330.005. ("School District").

City of Canby, a political subdivision of the State of Oregon. ("City").

Recitals:

A. ORS 190.003-.030 allows units of local government to enter into agreements for performance of any or all functions and activities which such units have authority to perform.

B. In accordance with Oregon Laws 2007, chapter 829 (the "Act"), on December 13, 2007, School District adopted a resolution establishing the Construction Excise Tax (the "CET") throughout its regional jurisdiction (the "Resolution"). The Resolution provides that City shall collect CET and remit payment of the collected CET, minus City's administrative fee, to School District in accordance with this Intergovernmental Agreement ("Agreement").

C. This Agreement establishes, among other things, (i) collection duties and responsibilities, (ii) the specific School District account into which tax revenues are to be deposited and the frequency of such deposits, and (iii) the amount of the administrative fee that City may retain to recoup its expenses in collecting the tax.

Agreement:

1. *Information and Forms.* School District shall create and provide: (i) information, forms, and assistance explaining the CET; (ii) information and forms for CET exemptions and appeals from CET exemption denials; and, (iii) any other forms or information necessary for implementation of the CET.

2. *Staffing.* City shall provide sufficient staff to calculate and collect the CET along with the collection of other permit fees. School District shall provide sufficient staff to review exemption applications and conduct exemption decision appeals.

3. *Collection; Start date.* City shall collect the CET on behalf of the School District for those properties that are within the City limits of the City. City shall begin

assessing and collecting the CET upon (a) receipt of a certified copy of the School District's resolution establishing the CET which is in compliance with the CET law, and (b) receipt of a fully-executed original copy of this IGA. City will continue collection until the CET expires, the underlying statutory authority is repealed, the program is terminated by the School District, or this IGA is terminated by either party hereto. If City determines that the Resolution adopted by School District does not meet the requirements of the Act, City may not collect the CET until such time as the Resolution meets the requirements of the Act.

4. *Exemptions.* School District shall determine the validity of any proposed exemption. If a building permit applicant asserts that the applicant is exempt from the CET and presents a CET exemption form signed by the School District, the City will recognize the exemption.

5. *Remittance.* Following the effective date of this Agreement, City shall pay School District 99% of the CET collected by the City. City shall make CET payments quarterly and no later than thirty (30) days after the end of each quarter.

6. *Failure to Pay CET.* Construction taxes shall be paid by the person undertaking construction at the time that the permit authorizing the construction is issued. If a person refuses or fails to pay the CET when due, City shall not issue a permit authorizing construction. In no event shall City be liable for failure to collect CET when due.

7. *Records.* City shall make all records related to building permit activity, CET collections, and CET exemptions available to School District or its designated auditors, as necessary for School District to audit CET collections.

8. *Administrative Fee.* As full consideration for the above described services, City shall be entitled to 1% of the CET collected by the City.

9. *Successors and Assigns.* This Agreement is binding on and inures to the benefit of the parties and their successors, and assigns. Except with the other party's prior written consent, a party may not assign any rights or delegate any duties under this Agreement.

10. *Amendment.* This Agreement may be amended only by an instrument in writing executed by all the parties.

11. *Entire Agreement.* This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior or contemporaneous understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

12. *Waiver.* A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor

shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

13. *Time is of the Essence.* From time to time, each of the parties shall execute, acknowledge, and deliver any instruments or documents necessary to carry out the purposes of this Agreement. Time is of the essence for each and every provision of this Agreement.

14. *No Third-Party Beneficiaries.* Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.

15. *Effective Date.* This Agreement shall become effective upon the approval of School District's Board of Directors and the City Council.

16. *Other Agreements.* This Agreement does not affect or alter any other agreements between School District and City.

17. *School District's Defense and Indemnification.* School District agrees to indemnify, hold harmless, reimburse and defend City, and its officers, agents and employees, from, for and against all claims, suits, actions, damages, and expenses, including but not limited to attorneys' fees, related to or arising out of School District's performance of this Agreement, but only to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of School District, its employees, subconsultants, or anyone for whose acts School District is responsible.

18. *City's Defense and Indemnification.* City agrees to indemnify, hold harmless, reimburse and defend School District, and its officers, agents and employees, from, for and against all claims, suits, actions, damages, and expenses, including but not limited to attorneys' fees, related to or arising out of City's performance of this Agreement, but only to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of City, its employees, subconsultants, or anyone for whose acts City is responsible.

19. *Termination.* Either party may terminate this Agreement with or without cause five business days after delivering notice of termination to the other party.

Dated this 20TH day of DECEMBER 2008 gr Dated this 2nd day of Jan 2008

Canby School District No. 86

David C Moore

By: DAVID MOORE

Its: BUSINESS MANAGER

Canby City Council

Melody Thompson

By ~~Chair~~ MAYOR Melody Thompson