

# RESOLUTION NO. 1936

## A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TROUTDALE, OREGON AND THE REYNOLDS SCHOOL DISTRICT NO. 7 TO COLLECT AND REMIT CONSTRUCTION EXCISE TAX.

### THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Effective September 27, 2007, Senate Bill 1037 authorizes school districts to impose an excise tax on new construction to fund facility construction, maintenance, and refurbishing. The tax is \$1/square foot for residential buildings with no cap, and \$0.50/square foot for commercial/industrial buildings with a \$25,000 cap. The Bill provides for tax exemption on specific types of development.
2. The school construction excise tax may be collected by another local government pursuant to a written agreement with the school district. The local government collecting the tax may retain 1% of the tax as an administrative fee.

### NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The City agrees to collect and remit the School Construction Excise Tax, net of the 1% administrative fee, and the Mayor is authorized to sign the attached Intergovernmental Agreement with the School District (Attachment A).

Section 2. This resolution shall take effect immediately upon adoption.

YEAS: 7

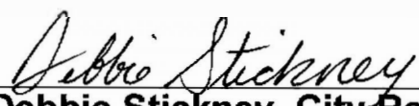
NAYS: 0

ABSTAINED: 0

  
\_\_\_\_\_  
Paul Thalhoffer, Mayor

May 29, 2008

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Debbie Stickney, City Recorder

Adopted: May 27, 2008

**Intergovernmental Agreement Between the City of Troutdale, Oregon and the Reynolds School District No. 7 to Collect and Remit Construction Excise Tax**

Construction Excise Tax Intergovernmental Agreement (“IGA”) between the City of Troutdale (“City”) and the Reynolds School District No. 7 (“School District”).

**RECITALS:**

- A. ORS Chapter 190 authorized City and School District to enter into written agreements for the performance of any or all functions and activities that either entity has the authority to perform on its own.
- B. School District is authorized by Chapter 829, Oregon Laws 2007 (Enrolled Senate Bill 1036) – further referred to in this IGA as the “CET law” – to impose a Construction Excise Tax (“CET”) to fund capital improvements to school facilities.
- C. Pursuant to the CET law, School District has adopted a resolution establishing a CET throughout its jurisdiction. The resolution provides that the CET be collected by the City and remitted to School District pursuant to an Intergovernmental Agreement.
- D. City and School District desire to establish certain procedures needed to collect the CET and remit the tax to School District.

City and School District agree:

- 1. Information and Forms. School District will provide all of the forms and information necessary to collect the CET including a certified copy of the resolution establishing the CET. City will develop electronic worksheet that will be utilized to calculate CET. School District will develop one letterhead format, incorporating all participating school districts, which will be included into final electronic worksheet. School District will be responsible for any public outreach and/or education efforts and any associated materials such as FAQ’s, brochures, etc.
- 2. Staffing. City shall provide sufficient staff to calculate and collect the CET in accordance with the terms of this IGA. School District shall provide sufficient staff to implement all other aspects of the CET program established by the School District. School District shall appoint a single point of contact for whom the City can refer customers. School District shall provide contact information for the single point of contact.
- 3. Collection Start Date. City will collect the CET on behalf of School District for those properties that are within the School District boundaries and within the overlapping geographic areas of City for which the City processes building permits.

- A. Collection shall be from building permit applicants in conjunction with the collection of the other building permit fees by the City.
  - B. City will begin collecting the CET upon:
    - i. Receipt of a certified copy of School District's resolution establishing the CET which is in compliance with the CET law.
    - ii. Receipt of a fully executed original copy of this IGA.
    - iii. But no earlier than June 1, 2008.
  - C. City will continue collection until the CET expires, the underlying statutory authority is repealed, the program is terminated by School District, or this IGA is terminated by either the School District or the City.
  - D. In the event School District increases or otherwise modifies the tax; it shall send the City of Troutdale written notice of the increase or other modification, including a copy of the School District's resolution adopting the change. The City of Troutdale shall collect the tax at the new rate within thirty (30) calendar days after notice is received by the City of Troutdale or upon the effective date of the change stated in School District resolution, whichever is later.
4. Refunds. School District agrees to process and issue any required refunds of CET.
5. Exemptions. If the building permit applicant asserts that the applicant is exempt from the CET and shows proof of filing a School District CET Exemption Form at the time the CET would otherwise be due, City will recognize the exemption. School District is responsible to determine the validity of the exemption and to institute collection procedures to obtain payment of the CET, as well as any other remedy School District may have under law, if the application was not entitled to the exemption. Statutory exemptions to the CET are included in Exhibit A to this agreement.
6. Remittance. City will remit the collected CET, net of the 1% administrative fee, to School District along with copies of completed CET collection forms or proof of filing of a School District's CET Exemption Form and a summary report of all CET related permit activity at least once per month. No other CET reports are required. School District shall deposit the CET collected into the appropriate School District accounts.
7. Failure to Pay CET. The City shall collect the CET from the building permit applicant at the time that the permit authorizing construction subject to CET is issued. Upon refusal or failure to pay the CET when due, or failure to provide proof of filing with the School District CET Exemption Form, the City will not issue the permit. In no event is the City liable for failure to collect CET when due.

Upon notice from the School District that a required CET payment has been returned for non sufficient funds, the City will not provide further inspections nor issue a certificate of occupancy until provided proof of CET payment.

8. Records. City shall make all records relating to the building permit authorizing construction subject to the CET and CET collections available to School District, or its designated auditors, as necessary for School District to audit CET collections.
9. Administrative Fee. As consideration for the above described services, City shall keep an administrative fee in an amount equal to 1% of the CET collected by the City as authorized by Section 5 of the CET law. For purposes of calculating the fee, the amount of gross CET collected shall not be reduced by refunds or checks returned for insufficient funds.
10. Amendment. This IGA may be amended only by mutual written agreement of the City and School District. City and School District further agree to negotiate in good faith to amend this IGA should the CET law be amended by subsequent legislation or judicial proceedings so that this IGA is consistent with the most current legislation. Refusal to negotiate an amendment to this IGA is grounds for immediate termination.
11. Other Agreements. This CET Collection IGA does not affect or alter any other agreements between School District and City.
12. Defense and Indemnification. Subject to the limits of the Oregon Tort Claims Act, School District agrees to defend, indemnify and hold harmless the City of Troutdale specifically, its officers, agents and employees, against all claims and actions, and all damages and expenses related thereto, arising from the performance of this agreement, or relating to the subject of this agreement. The obligations of this paragraph shall include, but not be limited to:
  - A. Any and all challenges to the City of Troutdale's collection or calculation of the CET on behalf of School District;
  - B. Any and all claims of injury to any and all persons or property caused directly or indirectly by reason of any and all acts or omissions of the School District or the City of Troutdale in the performance of this IGA or adoption of the CET; or
  - C. Any and all challenges to the City of Troutdale's decisions or determinations concerning the amount of any CET, including calculation of such tax and /or any exemption(s); or
  - D. Any and all claims of Senate Bill 1036 non-compliance.

Nothing in this section shall be construed as requiring the School District to indemnify the City of Troutdale for damages arising out of or by reason of any willful misconduct by the City of Troutdale generally, its officers, agents or employees.

13. Termination. Either party may terminate this IGA for any reason upon 90 days written notice to the other party.


14. 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.
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 liability and indemnity shall survive the termination of this IGA for any cause.
16. No Third Party Beneficiary. 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 agreement between the Parties. No waiver, consent, modification or change of terms of this IGA shall bind either Party unless in writing and as set forth in paragraph 10, above. Any waiver, consent, amendment, modification or change, if made, shall be effective only for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this IGA.

IN WITNESS WHEREOF, the duly authorized representatives of the **City of Troutdale** and **Reynolds School District No. 7** have executed this IGA:

**CITY OF TROUTDALE**

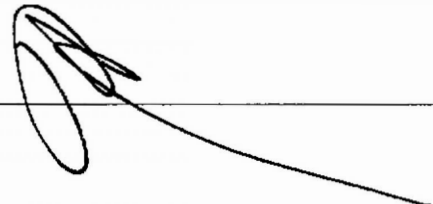
**REYNOLDS SCHOOL DISTRICT NO. 7**

by 

by 

APPROVED AS TO FORM:

APPROVED AS TO FORM:



N/A

## **EXHIBIT A**

### **EXEMPTIONS**

The following improvements are exempt from the School Construction Excise Tax by statute:

1. Private School Improvements
2. Public Improvements as defined in ORS 279A.010
3. Residential housing that is guaranteed to be affordable, under guidelines established by the United States Department of Housing and Urban Development, to households that earn no more than 80% of the median household income for the area in which the construction tax is imposed, for a period of a least 60 years following the date of construction of the residential housing.
4. Public or Private Hospital improvements
5. Improvements to religious facilities used for worship or education associated with worship.
6. Agricultural buildings as defined in ORS 455.315 (2) (a)
7. School Construction Excise Tax imposed on structures intended for nonresidential use may not exceed \$25,000 per building permit or \$25,000 per structure, whichever is less