

City of Sherwood, Oregon

Resolution No. 99-813

**A RESOLUTION AUTHORIZING THE CITY MANAGER PRO TEM TO
ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH
WASHINGTON COUNTY AND THE CITY OF TIGARD TO DEFEND THE TIF
(TRAFFIC IMPACT FEE) PROGRAM**

WHEREAS, the voters of Washington County overwhelmingly adopted the Traffic Impact Fee to tax new development throughout the County to pay for a portion of the extra-capacity road improvements necessary to accommodate new development; and

WHEREAS, the City of Sherwood benefits from the revenues generated by this tax and benefits from working cooperatively to administer the tax and coordinate the use of TIF revenues; and

WHEREAS, if successful, the case of Rogers Machinery v. Washington County and the City of Tigard, CA A104615, could preclude or significantly complicate the ability of the parties to impose this tax and address the need for road improvements; and

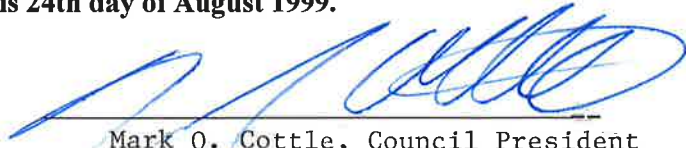
WHEREAS, the County and City of Tigard have successfully defended the TIF program at the trial court level and it is fair and equitable to all jurisdictions to contribute to defense costs on appeal;

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

Section 1: The City Council accepts the terms of the agreement shown as Attachment A to this document.

Section 2: The City Manager Pro Tem is hereby authorized to sign the agreement on behalf of the City.

Duly passed by the City Council this 24th day of August 1999.


Mark O. Cottle, Council President

ATTEST:


C.L. Wiley, City Recorder

INTERGOVERNMENTAL AGREEMENT

This Agreement is entered into by and among the signatories.

WHEREAS:

- The voters of Washington County overwhelmingly adopted the Traffic Impact Fee to tax new development throughout the County to pay for a portion of the extra-capacity road improvements necessary to accommodate new development;
- The jurisdictions signing this Agreement benefit from the revenues generated by this tax and benefit from working cooperatively to administer the tax and coordinate use of TIF revenues;
- If successful, the case of Rogers Machinery v. Washington County and the City of Tigard, CA A104615, could preclude or significantly complicate the ability of the parties to impose this tax and address the need for road improvements;
- The County and City of Tigard have successfully defended the TIF program at the trial court level and it is fair and equitable for all jurisdictions to contribute to defense costs on appeal;

Now, therefor, it is

AGREED:

1. Washington County and the City of Tigard shall continue to be responsible for defense of this matter and retain authority to take such actions and make such decisions as they each determine to be reasonable and prudent;

2. Each signatory shall contribute to defense costs on appeal based on their respective percentage of the total population of the County as illustrated in Exhibit 'A,' This shall include costs previously incurred as a result of the appeal to the Oregon Court of Appeals, but shall not include defense costs at trial or any court-ordered judgment or award;

3. For purposes of this Agreement, defense costs shall include all attorney fees, both in-house and outside counsel at the following hourly rates:

Washington County Counsel -	
Attorney	\$ 93.00
Legal Assistant	\$ 52.00
City of Tigard -	
Partner	\$145.00
Associate/of Counsel	\$135.00
Support	\$ 45.00

Defense costs also shall include any extraordinary non-legal staff time devoted to defense and the applicable jurisdictions' actual labor cost, including benefits and overhead and shall include all incidental expenses such as copying, travel and postage. County and Tigard may continue to consult with the firm of Kane, Ballmer and Berkman (special expert counsel) as needed at the rate of \$145.00/hour. These rates may be adjusted annually to pass through any rate increases incurred without amendment of this Agreement.

4. Tigard and County shall make efforts to keep fees and costs reasonable, necessary and appropriate. Each month, Tigard shall forward a statement to the County for payment. County shall advance sufficient funds to pay all amounts due. County shall promptly forward to each party a statement representing the party's proportionate share of all costs. In the event that revenues from jurisdictions are not sufficient to cover costs through withdrawal or non-payment by a jurisdiction, the proportionate share shall be equitably adjusted based on population.

5. Each party shall, within 10 days of receipt of the statement, remit to County the amount due.

6. Each party shall have 30 days from the date of receipt of the statement to challenge the amount paid to County. A refund or credit against future billings shall be provided if an overcharge is found.

7. Any party may request a briefing or update on the status of the case. Tigard and County shall consult with the signatories regarding any settlement proposal or other resolution that may impact the operation of the TIF program. Neither Tigard nor County shall be obligated to divulge any information that might constitute a waiver of the attorney-client or work product privileges if to do so, in their opinion, would prejudice the defense of this matter. The parties to this Agreement acknowledge, , that they are not parties to the litigation and are in no way represented by counsel for County or Tigard.

8. This Agreement shall extend until a final decision by the Oregon Supreme Court or the case is otherwise resolved, whichever first occurs. However, any party may withdraw from this Agreement by providing 90 days written notice to Tigard and County. The party shall be responsible for its proportionate share of costs incurred prior to the effective date of withdrawal.

9. This Agreement may be amended by the written consent of all the parties. The parties shall consider an extension of this Agreement if the matter is appealed to the United States Supreme Court

10. This Agreement may be executed separately by each jurisdiction and an executed copy shall serve as an original. Washington County shall maintain a central file containing a signed copy for each jurisdiction. This Agreement is binding on each signatory without regard to whether other jurisdictions sign. Each signatory represents and warrants that he or she is authorized to bind his or her respective jurisdiction

Charles Cameron
Washington County Administrator

Date: _____

William A. Monahan
City Manager, Tigard

Date: _____

For City of Sherwood

Date: _____

WASHINGTON COUNTY

Inter-Office Memorandum

February 26, 1999

To: Loretta Skurdahl, Senior Assistant County Counsel

From: Scott King, Senior Planner Re: **ROGERS MACHINERY TIF APPEAL COST SHARE**

Per your request, I have developed a distribution formula for the Rogers Machinery TIF Appeal based on the recently released official 1998 population estimates from PSU. The costs in the table are for a defense through the Oregon Court of Appeals, and for a defense through the Oregon Supreme Court.

ROGERS TIF DEFENSE DISTRIBUTION FORMULAS						
Jurisdiction	Oregon Court of Appeals			+ Oregon Supreme Court		
	PSU 1998 Pop.	% of total	Share of Legal Cost	PSU 1998 Pop.	% of total	Share of Legal Cost
Banks	845	0.21%	\$64	845	0.21%	\$148
Beaverton	68050	17.07%	\$5,122	68050	17.07%	\$11,950
Cornelius	8170	2.05%	\$615	8170	2.05%	\$1,495
Durham	1555	0.39%	\$117	1555	0.39%	\$273
Forest Grove	16170	4.06%	\$1,217	16170	4.06%	\$2,840
Gaston	615	0.15%	\$46	615	0.15%	\$108
Hillsboro	65110	16.33%	\$4,900	65110	16.33%	\$11,434
King City	2125	0.53%	\$160	2125	0.53%	\$373
North Plains	1760	0.44%	\$132	1760	0.44%	\$309
Sherwood	9600	2.41%	\$723	9600	2.41%	\$1,686
Tigard	37200	9.33%	\$2,800	37200	9.33%	\$6,533
Tualatin	21405	5.37%	\$1,611	21405	5.37%	\$3,759
Wash. Co.	166000	41.65%	\$12,494	166000	41.65%	\$29,152
Totals	398605	100.00%	\$30,000	398605	100.00%	\$70,000

Note: The official population total for the entire County is 397,600. The table above does not include city populations in Washington County for Portland, Rivergrove, Wilsonville, and Lake Oswego. The table also includes population in the city of Tualatin in Clackamas County.

c: John Rosenberger