



RESOLUTION 2008-004

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN 1) A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF SHERWOOD AND THE SHERWOOD SCHOOL DISTRICT RELATING TO THE CALCULATION OF THE SCHOOL DISTRICT CONSTRUCTION EXCISE TAX AND 2) AN INTERGOVERNMENTAL GOVERNMENT AGREEMENT (IGA) TO COLLECT AND REMIT A CONSTRUCTION EXCISE TAX BETWEEN THE SHERWOOD SCHOOL DISTRICT AND THE CITY OF SHERWOOD

WHEREAS, by legislation in 2007, the State authorized school districts to impose a Construction Excise Tax (CET) to fund capital improvements to school facilities, and

WHEREAS, this tax will provide funds for school district improvements related to growth within the school district, and

WHEREAS, the City of Sherwood, through the City's Building Department, manages the building permit program and the associated collection of permit, system development charges and associated fees for the City and other agencies including both Washington County and Cleanwater Services, and

WHEREAS, the City of Sherwood has the capability, skills, and process in place to readily calculate and collect the Construction Excise Tax and remit those fees to the Sherwood School District on a quarterly basis, and

WHEREAS, a Memorandum of Understanding and an Intergovernmental Agreement have been developed to define individual responsibilities.

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

Section 1: The City Manager is authorized to sign both the MOU (Exhibit A) and the IGA (Exhibit B) between the City of Sherwood and the Sherwood School District to implement the City collecting the Construction Excise Tax from development within the City and remitting those funds to the Sherwood School District as agreed.

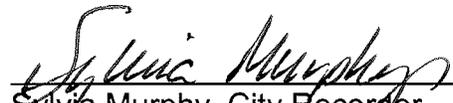
Section 2: This resolution is and shall be effective from and after its passage by the Council.

Duly passed by the City Council this 15th day of January, 2008.



Keith S. Mays, Mayor

ATTEST:



Sylvia Murphy, City Recorder

Exhibit A

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE
CITY OF SHERWOOD AND THE SHERWOOD SCHOOL
DISTRICT 88J, RELATING TO THE CALCULATION OF THE
SCHOOL DISTRICT CONSTRUCTION EXCISE TAX**

I. Purpose

This document has been prepared for the purpose of establishing an agreement between the City of Sherwood (City) and the Sherwood School District 88J (District) as to the methodology for calculation of the District's Construction Excise Tax (CET).

II. Background

The 2007 State Legislature passed Senate Bill 1036 allowing School Districts to impose a construction excise tax on improvements to certain real property that result in a new structure or additional square footage in an existing structure. The bill allows the CET to be collected based on the square footage of structures or portions of structures intended for residential use, including but not limited to, single unit and multiple-unit housing and commercial and industrial uses. Multiple-unit housing of any kind is considered residential use.

III. Agreement

It is understood the CET shall be paid by the person undertaking construction at the time that a permit authorizing the construction is issued. The District and the City agree to the following as the method to be used for determining if the CET is applicable and how it is to be calculated.

- Residential uses **shall** include single-unit and multiple-unit houses including non-transient boarding houses, adult foster homes, and congregate living facilities; and dormitories (as defined in the State Building Code), and manufactured dwellings (including the area of cabanas). Residential uses **shall not** include residential housing that is guaranteed to be affordable, under guidelines established by the United States Department of Housing and Urban Development, and as referenced in Senate Bill 1036.
- Square footage of a residential use **shall** include the gross floor area of the building or addition, or a moved residential building (unless it is moved to a different location on the same property) measured from the outside of the wall to the outside of the wall and **shall** include the square footage of unfinished basements or bonus rooms.

Square footage of a residential use **shall not** include the gross floor area of a garage, carport, covered walkway, exterior deck, covered exterior porch, patio cover (screened or open), sunroom (unless the sunroom has openings into the house that are without doors or windows that can be closed), and accessory structures such as garden sheds or shops. Also, square footage of a residential use **shall not** include a manufactured home that replaces an existing manufactured home located in a manufactured home park.

- Non-Residential structures or portions of structures are defined as buildings or addition to buildings intended for non-residential use including commercial and industrial buildings. Non-residential buildings **shall** include hotel, motel, transient boarding houses, convents, college dormitories, fraternity, and sorority uses.

Non-residential use **shall not** include multiple-unit housing of any kind.

- Square footage of non-residential uses **shall** include the gross floor area of the building or addition measured from the outside of the wall to the outside of the wall or where no wall exists shall include the useable area under the horizontal projection of the roof or floor above.
- Where an existing residential or non-residential use is removed from a property (in part to in total), a credit towards the CET for the new use shall be applied based on the square footage and use of the prior structure. No CET credit shall be applied if there is no record of the square footage and use of the previous structure. Unless authorized by the District, credits are non-transferable to other properties.
- The CET **shall not** apply to structures that do not relate to square footage calculations, or do not require a building permit, such as cell towers, water tanks, retaining walls, swimming pools, private bridges or covered play structures.
- The CET shall be applicable to building permit applications received on or after the effective date of the District's Board approval of the CET. Should an increase in the CET be authorized, the new rate shall be applicable to all building permit applications received on or after the effective date of the increase. Any building permit application received prior to the effective date of the IGA or increase shall be subject to the CET or increase if the fee has not been paid or the building permit issued within six (6) months of the effective date of the IGA or increase.
- If the CET fee was paid for a structure that will not be constructed, the applicant must request a refund, by submitting a request to the District. A form shall be made available by the District for the City to distribute to the

applicant. The City will provide documentation to the applicant to accompany the refund submittal. The documentation shall show proof of amount of payment, permit number, date, and site address of the cancelled project.

In addition, the applicability of the CET to any item not identified by this MOU shall be as determined by the District within five (5) days of a request by the City.

We, the below signed individuals, having read and understood the above Memorandum of Understanding, hereby agree to its terms.

City Manager

Date

Superintendent, Sherwood School District

Date

Exhibit B

**INTERGOVERNMENTAL AGREEMENT TO COLLECT AND REMIT
CONSTRUCTION EXCISE TAX BETWEEN THE SHERWOOD SCHOOL
DISTRICT AND THE CITY OF SHERWOOD**

This Intergovernmental Agreement (IGA) is effective on the last date of signature below, and is by and between The Sherwood School District, a school district organized under the laws of the state of Oregon ORS 330.005 (“School District”), and The City of Sherwood a political subdivision of the State of Oregon, (“City”), collectively referred to as “Parties.”

WHEREAS, ORS 190.003 to 190.030 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; and

WHEREAS, Chapter 829, Oregon Laws 2007 (Senate Bill 1036), authorizes school districts, as defined in ORS 330.005, to impose construction excise taxes (CET) to fund capital improvements to school facilities; and

WHEREAS, School District is contemplating imposing a construction excise tax within the School District and desires to enter into an intergovernmental agreement with City to collect the tax prior to the adoption of a construction excise tax; and

NOW THEREFORE, the Parties hereto agree as follows:

1. Information and Forms. School District shall create and provide to City: (i) information, forms, and assistance explaining the School District Construction Excise Tax; (ii) information and forms for CET exemptions; and (iii) any other forms or information necessary for implementation of the CET. District will pay up to \$1,000 towards one time City programming costs to implement the tax with non-excise tax funds.
2. Staffing. City shall provide sufficient staff to calculate and collect the School District CET as prescribed in this agreement along with its collection of other construction permit fees. School District shall provide sufficient staff to implement the CET program.
3. Facility Plan. School District has adopted, or is currently developing a long term facilities plan as required by SB 1036, Section 6(2). School District agrees not to adopt the CET until such plan has been completed and adopted by resolution of the School District Board of Directors.
4. Collection; Start date. City agrees to assess and collect the CET on behalf of School District for those properties within School District and within City. City shall begin collecting the District CET within thirty (30) business days of the date the District gives notice to the City of the adoption of the CET, including a copy of District’s resolution imposing the tax, or the effective date of the CET stated in the Resolution, or the

IGA To Collect And Remit Construction Excise Tax Between The Sherwood School District And The City Of Sherwood

intergovernmental agreement is signed by all parties, whichever is later. City shall collect the District CET until the CET expires or this agreement is terminated by either the School District or City upon 60 days written notice. In the event the School District increases or otherwise modifies the tax, it shall send written notice to the City of the increase or other modification, including a copy of School District's resolution adopting the change. The City shall collect the tax at the new rate within thirty (30) business days after notice is received by the City, or upon the effective date of the change stated in the School District Resolution, whichever is later.

5. Exemptions. School District shall provide City with all forms necessary for CET exemptions, and any other forms or information necessary for implementation of the CET. If a Person or entity asserts that it is exempt from the CET and files a School District CET Exemption Form at the time the CET would otherwise be due, City will grant the exemption if it appears to be a valid claim of exemption under the School District Resolution adopting the CET. It shall be School District's responsibility 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 Person was not entitled to the exemption. Statutory exemptions to the CET are included in exhibit A to this agreement.

6. Remittance. Following the effective date of this Agreement, City shall remit the collected CET to School District on a quarterly basis, by the 30th of the month following the quarter end. The CET remittance and the CET Report shall be sent to School District, at 23295 SW Main Street, Sherwood Oregon 97140.

7. CET Reports. City shall prepare and submit to the School District a report of the CETs collected and building permits issued by the City for the previous quarter's construction activities within the School District boundaries. The report shall include: the number of building permits issued that quarter; the aggregate square footage of residential construction; the aggregate square footage of non-residential construction; the number of building permits for which CET exemptions were given; the aggregate square footage of construction for the exempted construction; the aggregate amount of CET paid; and the amount of CET administrative fee retained by City pursuant to this Agreement.

8. Failure to Pay CET. Construction Excise Taxes shall be paid by the person undertaking construction at the time that a permit authorizing the construction is issued. Upon a Person's refusal to or failure to pay the CET when due, the City will not issue the building permit. In no event shall the City be liable for failure to collect CET when due. In the event a person fails to pay the CET when due, the City shall notify School District in writing within five (5) business days of discovery of such failure to pay, with information adequate for School District to begin collection procedures against that Person, including the Person's name, address, phone numbers, construction project, square footage of new construction, and building permit number. Upon a Person's refusal or failure to pay the CET, it shall be School District's responsibility to institute

collection procedures to obtain payment of the CET as well as any other remedy School District may have under law.

9. 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 Construction Excise Tax collections.

10. Administrative Fee. As consideration for the above described services, City shall retain 1% of the CET collected by City as authorized by Section 5 of Senate Bill 1036. Prior to remitting the CET to School District, City shall deduct this administrative fee directly from the CET collected, and the amounts deducted and retained shall be identified on the report submitted to School District. City shall establish a deposit liability account for School District CET funds, and shall deposit all fees collected, into such account.

11. Amendment. This Agreement may be amended by mutual written agreement of the Parties.

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

13. Defense and Indemnification. Subject to the limits of the Oregon Tort Claims Act, School District agrees to defend, indemnify and hold harmless the City, 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, except for those caused by the sole negligence of the City or its officers and employees. The obligations of this paragraph shall include, but not be limited to:

- a. challenge to the City's collection or calculation of the CET on behalf of the School District;
- b. for any and all 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 in the performance of this Agreement or adoption of the CET; or
- c. decisions of City staff concerning the amount of any CET, including calculation of such tax and/or any exemption(s)

14. School District and City Contact Persons. School District and City hereby designate the following persons as the individuals having primary responsibility for administration of this Agreement, and as the person designated to receive notice provided for herein. Either party may change its designated contact person by written notice to the other party.

School District	City
Name Wayne Lowry	Name Christina Shearer
Title Director of Finance & Operation	Title Finance Director
Address 23295 SW Main St, Sherwood	Address 22560 SW Pine Street, Sherwood

Telephone 503-625-8104
Email wlowry@sherwood.k12.or.us

Telephone 503-625-4236
Email shearerc@ci.sherwood.or.us

15. Notice. Whenever notice is required to be given under this Agreement, the notice shall be given in writing to the other party's contact person by US Mail, first class postage prepaid. In addition, notice may be given by email or personal delivery.

16. General Provisions. 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. The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this 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 understandings and agreements, whether written or oral, between the parties with respect to such subject matter. 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. 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. 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. Each party shall bear its own expenses in connection with this Agreement and the transactions contemplated by this Agreement. This Agreement shall become effective upon the approval of School District's Board of Directors and the City Council.

Sherwood School District

City of Sherwood

By: _____
Title: Superintendent
Date: _____

By: _____
Title: City Manager
Date: _____

EXHIBIT A
EXEMPTIONS

The following improvements are exempt from the 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 at least 60 years following the date of construction of the residential housing.
4. Public or Private hospital improvements
5. Improvements to religious facilities primarily used for worship or education associated with worship.
6. Agricultural buildings as defined in ORS 455.315 (2)(a)