



RESOLUTION 2010-009

A RESOLUTION AMENDING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE SHERWOOD SCHOOL DISTRICT AND THE CITY OF SHERWOOD FOR COLLECTION AND REMITTANCE OF CONSTRUCTION EXCISE TAXES

WHEREAS, the Sherwood School District ("School District") and the City of Sherwood ("City") entered into an Intergovernmental Agreement on January 15, 2008 in which the City agreed to collect and remit construction excise taxes as permitted by ORS 320.179; and

WHEREAS, in the 2009 session, the Legislature raised the amount of administrative fee that cities could collect to cover their costs involved in collecting and remitting such tax; and

WHEREAS, the parties recognize that the previously allowed fee of 1% that was intended to cover the City's costs in collecting and remitting the construction excise tax does not cover the City's costs; and

WHEREAS, the parties have agreed that the percentage of the administrative fee should be raised from 1% to the new statutory maximum of 4%.

NOW THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

1. Section (10) is amended by changing the amount of consideration retained by the City for collecting the Construction Excise Tax from 1% to 4%.
2. Section (14) is amended to change the City of Sherwood contact information from Christina Shearer to Julie Blums.
3. Exhibit A is amended to add new exemptions from the tax in sections 7, 8, and 9 to read as follows:
 - (7) Non-profit long term care facilities
 - (8) Non-profit residential care facilities
 - (9) Non-profit continuing care retirement communities

Duly passed by the City Council this 16th day of February 2010.


Keith S. Mays, Mayor

Attest:


Sylvia Murphy, CMC, City Recorder

**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 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 4% 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.

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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
 Name Wayne Lowry
 Title Director of Finance & Operation
 Address 23295 SW Main St, Sherwood
 Telephone 503-625-8104
 Email wlowry@sherwood.k12.or.us

City
 Name Julie Blums
 Title Accounting Supervisor
 Address 22560 SW Pine Street, Sherwood
 Telephone 503-625-4240
 Email blumsj@ci.sherwood.or.us

Deleted: Christina Shearer

Deleted: Finance Director

Deleted: 4236

Deleted: shearerc

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)
7. Non-profit long term care facilities
8. Non-profit residential care facilities
9. Non-profit continuing care retirement communities

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