

RESOLUTION NO. 2089

A RESOLUTION AUTHORIZING THE WILSONVILLE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CANBY SCHOOL DISTRICT No. 86 FOR THE COLLECTION AND REMITTANCE OF A CONSTRUCTION EXCISE TAX.

WHEREAS, Senate Bill 1036, which was adopted by the 2007 Legislature and which became effective on September 27, 2007, authorizes school districts, as defined in ORS 330.005, to impose construction excise taxes to fund capital improvements to school facilities; and

WHEREAS, Section 5 of Senate Bill 1036 provides that the Construction Excise Tax shall be collected by local jurisdictions and remitted pursuant to intergovernmental agreements; and

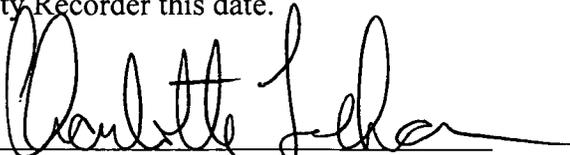
WHEREAS, Canby School District is contemplating imposing a construction excise tax within the School District and Section 5 of Senate Bill 1036 also requires school district to enter into intergovernmental agreements with any local government or special district that would collect the tax prior to the adoption of a construction excise tax; and

WHEREAS, the City of Wilsonville and the Canby School District agree to certain procedures needed to collect the Construction Excise Tax and remit the tax to School District as set out in the intergovernmental agreement, attached hereto as if fully incorporated herein as Exhibit A.

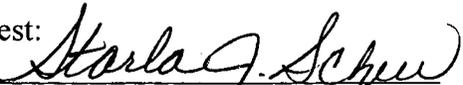
NOW THEREFORE, the City of Wilsonville resolves as follows:

1. The City Council hereby authorizes the City Manager or her designee to execute the Construction Excise Tax Intergovernmental Agreement to Collect and Remit Tax Between Canby School District and the City of Wilsonville (attached hereto as Exhibit A).
2. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 7th day of January 2008, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, MAYOR

Attest: 

Starla J Schur, Deputy City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Knapp	Yes
Councilor Ripple	Yes
Councilor Núñez	Yes

Attachment: Exhibit A - Construction Excise Tax Intergovernmental Agreement to Collect and Remit Tax Between Canby School District and the City of Wilsonville

**CONSTRUCTION EXCISE TAX
INTERGOVERNMENTAL AGREEMENT**

DATE: January 2, 2008

PARTIES: CANBY SCHOOL DISTRICT NO. 86, a school district as defined under ORS 330.005. ("School District"); and

CITY OF WILSONVILLE, 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 shall adopt a resolution establishing the Construction Excise Tax (the "CET") throughout its regional jurisdiction (the "Resolution"). The Resolution shall provide 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 agrees to assess and collect the CET on behalf of School District. City shall begin assessing and collecting the CET on January 8, 2008, and shall

continue assessment and collection until termination of this Agreement or repeal of the Act, whichever occurs first. 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 provide the City with all forms necessary for CET exemptions, rebates, and refunds, 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 presents a School District CET Exemption Form signed by School District at the time the CET would otherwise be due, City shall recognize the exemption. 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 or entity was not entitled to the exemption.

5. *Remittance.* City shall remit the collected CET net of bank service charges if any, to School District. Remittance shall be quarterly, unless the City prefers to remit the CET monthly, by the 30th of the month following the quarter (or month) ending. Quarters end on March 31, June 30, September 30, and December 31, of each year. CET remittance and the CET Report shall be sent to School District, addressed to Canby School District No. 86, Attention: Business Manager, 1130 S. Ivy Street, Canby, OR 97013

6. *CET Reports.* Along with the CET remittance, City shall prepare and submit to School District a report of (i) the building permits issued, and (ii) CETs processed, whether paid or exempted, for the reporting period's construction activities. To the extent City has this information, the report shall include: the number of building permits issued or denied that reporting period; the aggregate amount of square foot permitted for residential purposes; the aggregate amount of square footage permitted for nonresidential purposes; the number of building permits for which CET exemptions were given; the aggregate amount of square footage for the exempted construction; complete copies of all exemption claims; the aggregate amount of CET paid; and, the amount of CET administrative fee retained by City pursuant to this Agreement.

7. *Failure to Pay CET.* Upon a Person's refusal to or failure to pay the CET when due, the jurisdiction administering that Person's building permit shall notify School District in writing within five (5) business days of such failure, 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.

8. *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.

9. *Administrative Fee.* As full consideration for the above described services, City shall retain 1% of the CET collected by City. Prior to submitting 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. In the event a refund of CET is made to a taxpayer, such refund shall be made exclusively out of CET revenues and shall not operate to reduce the amount of administrative fees retained by City. City shall retain its records a minimum of six years.

10. *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.

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

12. *Headings.* 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.

13. *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.

14. *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.

15. *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.

16. *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.

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

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

19. *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.

20. *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.

21. *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 2ND day of JANUARY, 2008 .

Dated this 14th day of JAN. 2008

Canby School District No. 86

David Moore

By: DAVID MOORE

Its: BUSINESS MANAGER

City of Wilsonville

Arlene Loble

By: Arlene Loble, City Manager

**BOARD RESOLUTION
CONSTRUCTION EXCISE TAX**

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CANBY SCHOOL DISTRICT NO. 86 ENACTING A CONSTRUCTION EXCISE TAX; AND, AUTHORIZING INTERGOVERNMENTAL AGREEMENTS TO IMPOSE AND COLLECT SAID TAX.

WHEREAS, the Canby School District No. 86 (the "District") is authorized and responsible for the location, construction, operation and maintenance of public school capital improvements within its jurisdiction; and

WHEREAS, the District is a school district as defined in ORS 330.005 which has a long-term facilities plan for making capital improvements adopted by resolution of the district board of the school district; and

WHEREAS, the Board of Directors of the District having considered and deliberated at a public meeting the public interest and necessity of imposing a construction excise tax to finance protecting and preserving its existing capital improvements and for the construction of new capital improvements to serve a growing population within its jurisdiction, and to finance or refinance the same; and

WHEREAS, pursuant to Oregon Laws 2007, chapter 829 the Board of Directors of the District has determined that there is a compelling public need to finance or refinance said capital improvements; now, therefore:

BE IT RESOLVED BY THE CANBY SCHOOL DISTRICT NO. 86 THAT:

SECTION 1. The District may enter into intergovernmental agreements and amendments, if any, to those intergovernmental agreements with the County of Clackamas, the City of Canby and the City of Wilsonville to collect the tax and establish (i) collection duties and responsibilities; (ii) the method of payment of the collected taxes to the District, including but not limited to the specific District account into which tax revenues are to be deposited and the frequency of such deposits; (iii) the amount of the administrative fee that the collecting agencies may retain to recoup their expenses in collecting the tax; (iv) indemnity obligations; and (v) tax exemption review, approval, and appeal procedures.

SECTION 2.

(1) The District hereby enacts a construction excise tax to be imposed only on improvements to real property that result in a new structure or additional square footage in an existing structure at a rate of:

(a) One dollar (\$1.00) per square foot on structures or portions of structures intended for residential use, including but not limited to single-unit or multiple-unit housing; and

(b) Fifty cents (\$0.50) per square foot on structures or portions of structures intended for nonresidential use, not including multiple-unit housing of any kind.

(2) In addition to the limitations under subsection (1) of this section, a construction tax imposed on structures intended for nonresidential use may not exceed \$25,000 per building permit or \$25,000 per structure, whichever is less.

(3)(a) For years beginning on or after June 30, 2009, the limitations under subsections (1) and (2) of this section shall be adjusted for changes in construction costs by multiplying the limitations set forth in subsections (1) and (2) of this section by the ratio of the averaged monthly construction cost index for the 12-month period ending June 30 of the preceding calendar year over the averaged monthly construction cost index for the 12-month period ending June 30, 2008.

(b) The adjusted limitations under this section shall be pursuant to the report of the construction cost index published by the Oregon Department of Revenue. As used in this section, the "construction cost index" means the Engineering News-Record Construction Cost Index, or a similar nationally recognized index of construction costs as identified by the department by rule.

(4) Construction taxes shall be paid by the person undertaking the construction at the time that a permit authorizing the construction is issued.

SECTION 3. The construction taxes shall not be imposed on the following:

(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 percent 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) Improvements to real property that result in a new structure or additional square footage in an existing structure, either of which total 1,000 or fewer square feet.

SECTION 4.

(1) After deducting the costs of administering a construction tax and payment of refunds of such taxes, pursuant to intergovernmental agreement with collecting agencies, the District shall use net revenues only for capital improvements.

(2) As used in this section, "capital improvements" means:

- (A) The acquisition of land;
- (B) The construction, reconstruction or improvement of school facilities;
- (C) The acquisition or installation of equipment, furnishings or other tangible property;
- (D) The expenditure of funds for architectural, engineering, legal or similar costs related to capital improvements and any other expenditures for assets that have a useful life of more than one year; or
- (E) The payment of obligations and related costs of issuance that are issued to finance or refinance capital improvements.

It does not include operating costs or costs of routine maintenance.

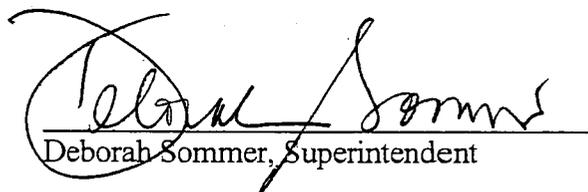
SECTION 5. The District may pledge construction taxes to the payment of obligations issued to finance or refinance capital improvements as defined herein.

SECTION 6. This Resolution becomes effective as to each collecting agency on the date that each intergovernmental agreement is signed.

Considered and enacted at the regular meeting of the Board of Directors of the Canby School District No. 86 on the 13th day of December, 2007.



Andy Rivinus, Board Chair



Deborah Sommer, Superintendent