

**CONSTRUCTION EXCISE TAX
INTERGOVERNMENTAL AGREEMENT**

**TO COLLECT AND REMIT TAX BETWEEN
[SCHOOL DISTRICT] AND THE CITY OF PORTLAND**

This Intergovernmental Agreement (IGA) to collect and remit Construction Excise Tax (CET) is effective on the last date of signature below, and is by and between [School District], a school district organized under the laws of the state of Oregon ORS 330.005, and the City of Portland by and through the Bureau of Development Services (collectively "BDS"), collectively referred to as "Parties."

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 a CET to fund capital improvements to school facilities; and

WHEREAS, Section 5 of Senate Bill 1036 provides that the CET may be collected by local jurisdictions and remitted pursuant to intergovernmental agreements; and

WHEREAS, Section 5 of Senate Bill 1036 requires a school district, prior to the adoption of a CET, to enter into intergovernmental agreements with any local government or special district that would collect the tax; and

WHEREAS, the Parties agree to certain procedures needed to collect and remit the CET.

NOW THEREFORE, the Parties hereto agree as follows:

1. [School District] agrees to adhere to and comply with all provisions of Senate Bill 1036. BDS agrees to collect and remit the CET to [School District].

2. Information and Forms. [School District] shall create and provide to BDS: (i) information, forms, and assistance explaining the [School District]'s CET; (ii) any other forms or information necessary for implementation of the CET.

3. Staffing. BDS shall provide sufficient staff to calculate and collect the CET. [School District] shall provide sufficient staff to implement the CET program.

4. Collection; Start date. BDS agrees to collect the CET on behalf of [School District] for those properties within the boundaries of [School District] and within BDS' Jurisdiction. If all requirements of

Exhibit A

Senate Bill 1036 are met, BDS will begin collecting the CET on [Month Day, Year], on permits applied for on or after [Month Day, Year]. BDS will continue collection until the CET expires or is terminated by [School District].

In the event [School District] increases or otherwise modifies the tax; it shall send BDS written notice of the increase or other modification, including a copy of [School District]'s resolution adopting the change. BDS shall collect the tax at the new rate within thirty (30) calendar days after notice is received by BDS, or upon the effective date of the change stated in [School District]'s resolution, whichever is later.

5. Exemptions. [School District] shall provide BDS 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 CET Exemption Form at the time the CET would otherwise be due, BDS shall grant 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 was not entitled to the exemption. Statutory exemptions to the CET are included in Exhibit I to this agreement.

6. Remittance. BDS shall remit the collected CET to [School District]. Remittance shall be quarterly by the 30th of the month following the quarter 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], at _____. [School District] shall deposit CET remittance to [School District]'s CET Account at XXXX Bank.

7. CET Reports. Along with the CET remittance, BDS shall prepare and submit to [School District] a report of the CETs and building permits issued for the previous quarter's construction activities. 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 aggregate amount of CET paid; and the amount of CET administrative fee retained by BDS pursuant to this IGA.

8. Failure to Pay CET. School 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, BDS will not issue the building permit. In no event shall BDS be liable for failure to collect CET when due.

9. Records. BDS shall make all records related to building permit activity and CET collections available to [School District], or its designated auditors, as necessary for [School District] to audit CET collections.

10. Administrative Fee. As consideration for the above described services, BDS shall retain four percent of the CET collected by BDS as authorized by Section 4 of House Bill 2014. Prior to submitting the CET to [School District], BDS 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].

Exhibit A

11. Amendment. The Director of BDS and the XXX of *[School District]* are hereby authorized to amend this agreement provided the amendments do not impose additional financial liability to the City of Portland.

12. Other Agreements. This IGA does not affect or alter any other agreements between *[School District]* and BDS.

13. Defense and Indemnification. Subject to the limits of the Oregon Tort Claims Act, *[School District]* agrees to defend, indemnify and hold harmless BDS specifically, and the City of Portland generally, 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 BDS' 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 BDS in the performance of this IGA or adoption of the CET; or
- c. Any and all challenges to BDS' 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 BDS for damages arising out of or by reason of any willful misconduct by the BDS specifically, and the City of Portland generally, its officers, agents, and employees.

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.

Exhibit A

IN WITNESS WHEREOF, the duly authorized representatives of BDS and [School District] have executed this IGA:

[School District]

Bureau of Development Services

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Paul L. Scarlett

Director

Date: _____

State of Oregon)

ss.

Jurisdiction of _____)

On this _____ day of _____, 2010, before me _____, the undersigned Notary Public, personally appeared _____, as Superintendent of [School District], personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that (he)(she) executed it.

My commission expires:

State of Oregon)

ss.

Jurisdiction of _____)

On this _____ day of _____, 2010, before me _____, the undersigned Notary Public, personally appeared _____ as _____ of _____ jurisdiction, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (she or they) executed it.

My commission expires:

Exhibit A

EXHIBIT I
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 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. 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.
8. Facilities that are operated by a not-for-profit corporation and that are:
 - (a) Long term care facilities, as defined in ORS 442.015;
 - (b) Residential care facilities, as defined in ORS 443.400; or
 - (c) Continuing care retirement communities, as defined in ORS 101.020.