

**INTERGOVERNMENTAL AGREEMENT
To Collect and Remit Construction Tax
Between
Newberg School District and Yamhill County**

This Intergovernmental Agreement is effective on July 1, 2019, and is by and between Newberg School District, a school district within the meaning of ORS 330.005 ("School District"), and Yamhill County a political subdivision of the State of Oregon, ("County").

RECITALS.

- A. 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.
- B. ORS 320.170 to 320.189, authorizes school districts, as defined in ORS 330.005, to impose construction taxes to fund capital improvements to school facilities.
- C. School District imposes a construction tax within the School District and desires to enter into an intergovernmental agreement with County to collect and remit the tax to School District; NOW THEREFORE,

AGREEMENT. County and School District hereby agree as follows:

- 1. Information and Forms. School District shall create and provide to County:
 - a. information, forms, and assistance explaining the School District Construction Excise Tax ("CET");
 - b. information and forms for CET exemptions within the School District; and
 - c. any other forms or information necessary for implementation of the CET.
- 2. Staffing. County 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. Facilities Plan. School District has adopted a long-term facilities plan as required by ORS 320.183. School District agrees that net revenues from the CET are to be used exclusively for capital improvements as specified in ORS 320.183 under the facilities plan adopted by the School District Board of Directors.
- 4. Collection of CET; Termination
 - a. County agrees to assess and collect the CET on behalf of School District for those properties within School District and within unincorporated territory of County.

County is currently collecting the CET following notice from the School District that it has imposed a CET. County is collecting the CET using ePermit System software under an agreement with the Department of Consumer and Business Services, Building Codes Division, which is, in turn, utilizing third party (Accela, Inc.) software and services.

b. County shall collect the School District's CET until School District provides notice to the County that the CET has or will expire on a specific date. Otherwise, the School District or County may terminate this agreement upon 60 days written notice.

c. In the event the School District increases or otherwise modifies the tax, it shall send written notice to the County of the increase or other modification, including a copy of School District's resolution adopting the change. Thereafter, the County shall collect the tax at the new rate within fifteen (15) business days after notice is received by the County, or upon the effective date of the change stated in the School District Resolution, whichever is later.

d. Collection of the CET by the County shall be through the ePermit System.

5. Exemptions. School District shall provide County 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, County 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. Administrative Fee. As consideration for the above described services, County shall bill the School District monthly an amount equivalent to 4% of the School District's CET collected by County as authorized by ORS 320.179(2)(c). The administrative fee will be deducted by County from any remittance from County to School District.

7. Remittance. County shall remit CET funds collected by the County to the School District by check or electronic fund transfer once each month.

8. CET Reports. County shall prepare and submit to the School District a monthly report of the CETs collected and building permits issued by the County for the previous month's construction activities within the School District boundaries. The report shall include: the number of building permits issued that month; 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 billed by County pursuant to this

Agreement. School District shall deposit the CET collected into the appropriate School District accounts.

9. Failure to Pay CET. Construction 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 County will not issue the building permit. In no event shall the County be liable for failure to collect CET when due. In the event a person who is not exempt from the CET fails to pay the CET when due, the County shall notify School District in writing within five 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 proceedings to obtain payment of the CET as well as any other remedy School District may have under law.

10. Records. County 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.

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

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

13. Defense and Indemnification. Subject to the limits of the Oregon Tort Claims Act, School District agrees to defend, indemnify and hold harmless the County, its officers, agents and employees, against all claims and actions, and all damages and expenses related thereto, arising from their actions made in good faith under this agreement. The obligations of this paragraph shall include, but not be limited to:

- a. Challenge to the County'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 County staff concerning the amount of any CET, including calculation of such tax and/or any exemption(s); or
- d. Refusal or denial of any permit for failure to pay the School District CET.

14. School District and County Contact Persons. The contact person for School District who has primary responsibility for administration of this Agreement and to receive any notice provided for herein is:

Hellen LeFebvre
Newberg School District
714 East 6th Street
Newberg, Oregon 97132

The person designated by County under this section is:

Director of Planning and Development
525 NE Fourth Street
McMinnville, Oregon 97128
(503) 434-7516

Either party may change its designated contact person by written notice to the other party.

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 Board of County Commissioners.

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APPROVED on the dates set forth below.

SCHOOL DISTRICT

By: Nikki L. Fowler
(signature)
Date: 6-18-19

Nikki L. Fowler
(printed name)

Dir of Finance
(title)

YAMHILL COUNTY

By: [Signature]
Chair
Board of Commissioners
Date: 6-27-19

By: [Signature]
Ken Friday
Dept. of Planning and Development

Form Approved By: [Signature]
Timothy S. Sadlo
Office of County Counsel

EXHIBIT A – EXEMPTIONS

The following improvements are exempt from the Construction excise tax by statute (ORS 320.173):

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. 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.