

**AN INTERLOCAL AGREEMENT BETWEEN
THE CITY OF DES MOINES, WASHINGTON, AND
THE DES MOINES TRANSPORTATION BENEFIT DISTRICT**

This agreement between the City of Des Moines, Washington ("Des Moines"), and the Des Moines Transportation Benefit District ("TBD"), each of whom is organized as a Municipal Corporation under the laws of the state of Washington, is dated this 26th day of March, 2009.

WHEREAS, Chapter 39.34 RCW (Interlocal Cooperation Act) permits local governmental units to make the most efficient use of their powers by enabling them to cooperate on the basis of mutual advantage;

WHEREAS, Des Moines is empowered to operate, maintain, construct, and reconstruct, public street infrastructure within its city limits in accordance with the powers granted pursuant to RCW 35A.11.020 and Chapter 35A.47 RCW;

WHEREAS, pursuant to Ordinance No. 1447, the TBD was created to provide adequate funding for ongoing transportation improvements that preserve, maintain and, as appropriate, construct or reconstruct the existing transportation infrastructure of the City of Des Moines consistent with Chapter 36.73 RCW;

WHEREAS, Des Moines and the TBD desire to better coordinate their efforts in order to pursue their individual, joint and mutual rights and obligations to maintain and preserve streets and related transportation infrastructure within the City of Des Moines; NOW, THEREFORE,

The parties have entered into this agreement in consideration of the mutual benefits to be derived and to coordinate their efforts through the structure provided by the Interlocal Cooperation Act.

1. Purpose and Interpretation. The City of Des Moines is empowered by Title 35A to construct, reconstruct, maintain and preserve City streets and other related public infrastructure either by contract or through the use of City forces. The TBD has been constituted in accordance with state law to provide a source of funding for the maintenance and preservation of streets and related infrastructure within the City limits of the City of Des Moines. The TBD has no employees and its officers are either City Council Members serving in an ex officio capacity or are City employees designated to serve under the provisions of state law. In order to make the most efficient use of public monies, to avoid duplication of effort and to coordinate their efforts, the parties have entered into this agreement. In the event of ambiguity or the need for guidance arises, this agreement shall be interpreted in accordance with the provisions of Des Moines City Ordinance No. 1447, Chapter 36.73 RCW, and the provisions of the Governmental Accounting Act and RCW 43.09.210 as the same exists or shall hereafter be amended. In the event that any provision of this agreement is held to be in conflict with existing state statute or any future amendment thereof, such provisions shall be severable, and the remaining provisions of this agreement shall remain in full force and effect.

2. Obligations of the TBD. In accordance with the requirements of Chapter 36.73 RCW, Ordinance No. 1447, the Transportation Benefit District agrees to:

2.1 Provide to the City of Des Moines all funding received from any and all lawful sources, net administrative expenses, which the TBD in its sole discretion may levy for the purpose of preserving and maintaining Des Moines streets and related infrastructure.

2.2 Continue the annual provision of funding for street preservation and maintenance so long as the TBD remains in existence. Such funding shall be in accordance with and limited by the provisions of Ordinance No. 1447 and Chapter 36.73 RCW. By way of illustration and not limitation:

2.2.1 The TBD shall hold public hearings prior to levying any charge, tax or fee and shall levy any charge, tax or fee only in accordance with law and ordinance.

2.2.2 Develop an annual work plan and designate projected street maintenance and preservation projects within Des Moines for funding.

2.2.3 Pursuant to a material change policy adopted pursuant to the requirements of RCW 36.73.160(1), the TBD shall consider at a minimum the impacts and appropriate remedies if transportation improvements contained in its annual plan exceed its original cost by more than 20%. The TBD shall consider the input from public hearings and other sources at it determines how such cost changes should be resolved. The obligations of this agreement shall be interpreted and applied in a manner consistent with this adopted policy.

3. Undertakings of Des Moines. Des Moines shall:

3.1 Provide all staff and necessary related support to the TBD. The costs of such support shall be accounted for as a part of the City's annual report to the District. TBD funding shall first be applied to the reasonable charges incurred in establishing and staffing the TBD. Annual services provided may include the services provided by the City Attorney, the City Clerk when serving as the Clerk of the TBD, the City's Finance Director when serving as its Treasurer, and any associated costs, including but not limited to the preparation of an annual work plan, reporting, advertising, design, contracting, construction management, accounting, and any and all other actual charges associated with the proper application of TBD funding to the preservation and maintenance of City streets and infrastructure in accordance with law and ordinance. In consideration of the benefits derived by Des Moines, overhead charges such as utilities, information technology, office supplies, and equipment shall be a contribution of Des Moines to the parties joint goals and objectives and need not be directly charged to the TBD.

3.2 Maintain for the period established by the State Archivist retention schedule, financial records, kept in accordance with generally accepted accounting practice and governmental accounting requirements, as necessary to document that any and all funding received through the TBD is used only for the maintenance and preservation of City streets and infrastructure in accordance with law and ordinance.

3.3 Utilize all funding provided for street maintenance and preservation projects shown and prioritized on the TBD's annual work plan in accordance with the TBD's material charge policy law and ordinance.

4. Ownership. Streets and related transportation infrastructure preserved and maintained with TBD funds are and shall remain the property of the City of Des Moines. No joint property ownership is contemplated under the terms of this agreement.

5. No Joint Board. No provision is made for a joint board. The TBD shall exercise its function in accordance with the applicable statute, using staff as provided by the City of Des Moines, pursuant to this agreement.

6. No Indemnity. No indemnification is provided by this agreement. The parties agree to bear their respective liability for any acts or omissions resulting under this agreement as the same shall be determined under the laws of the state of Washington or any mutually approved settlement agreement.

7. Termination. This agreement shall terminate or expire as follows:

7.1 This agreement may be terminated by either party upon the provision of three hundred and sixty-five (365) calendar days notice. A final reconciliation of costs, payment, and a current report of completed activities shall be completed by Des Moines within such period following the notice by either party.

7.2 Unless sooner terminated by either party, this agreement shall expire on the date when the District is automatically dissolved with accordance with provisions of Ordinance No. 1447, as the same exists or is hereafter amended.

8. Effective Date. This agreement shall be effective when listed by subject on the City of Des Moines' website or other electronically retrievable public source.

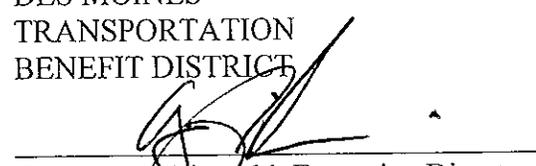
IN WITNESS WHEREOF, the parties have executed this agreement on the date first written above.

CITY OF DES MOINES



Lorri Ericson, Asst. City Manager
As Directed by the Des Moines City
Council in Open Public Meeting this
26th day of March, 2009

DES MOINES
TRANSPORTATION
BENEFIT DISTRICT

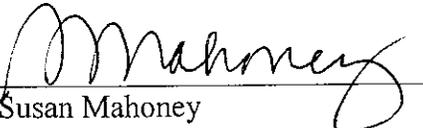


Anthony A. Piasecki, Executive Director
As Directed by the TBD Board in Open
in Open Public Meeting this 12th Day of
March, 2009

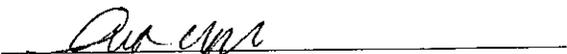
ATTEST:


Vicki Sheckler, Acting City Clerk

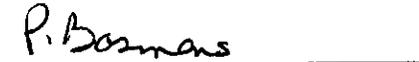
APPROVED AS TO FORM


Susan Mahoney
Assistant City Attorney

ATTEST:


Autumn Lingle, TBD Board Clerk

APPROVED AS TO FORM


Pat Bosmans
TBD Counsel