

FUNDING AGREEMENT
BETWEEN THE CITY OF DES MOINES AND SOUND TRANSIT
FOR THE COLLEGE WAY CONNECTION PROJECT

THIS AGREEMENT ("Agreement") effective this 4 day of ~~November~~ ^{October} 2018, is entered into between the City of Des Moines (the "City"), a Washington municipal corporation, and Sound Transit, a regional transit authority of the State of Washington, for the purposes set forth below. The City and Sound Transit are collectively referred to hereafter as "the Parties" or individually as a "Party."

RECITALS

- A. The City is a non-charter optional municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into development and right-of-way agreements to promote the health, safety, and welfare of its citizens.
- B. Sound Transit is a regional transit authority created pursuant to chapters 81.104 and 81.112 RCW with all powers necessary to implement a high capacity transit system within its boundaries in King, Pierce, and Snohomish Counties.
- C. The Sound Transit System Expansion Plan includes the Federal Way Link Extension project ("FWLE Project") located within the City of Des Moines.
- D. The City and Highline Community College have executed an inter-local agreement ("ILA") for the City to lead a planned improvement in the vicinity of the College Way street-end ("College Way Connection Project") that would construct a roundabout, parking lot modifications and pedestrian facilities.
- E. The City has determined that environmental review on the College Way Connection Project has been completed with the Highline College Master Plan Determination on Non-significance issued by the City on November 21, 2016 and the FWLE Final Environmental Impact Statement issued by Sound Transit on November 2017.
- F. The City and Sound Transit will enter into a Development Agreement ("Development Agreement") to consolidate permit and environmental review processes for the benefit of both parties and the public pursuant to the development agreement authority provided in RCW 36.70B.170-.210 and DMMC 18.35.020.
- G. The Development Agreement identifies the College Way Connection Project as a partnership opportunity, whereby the City and Sound Transit could minimize construction impacts and realize economies of scale by incorporating construction of the College Way Connection Project into the FWLE Project.

- H. Sound Transit has considered the proposed College Way Connection Project and has determined it will provide an added benefit to the transit experience for its patrons by improving access to the Kent/Des Moines ("KDM") Station.
- I. Sound Transit's Scope Control Policy (Resolution No. R2009-04) requires a financial contribution to include the College Way Connection Project in the Federal Way Link Extension Project.
- J. The Parties have determined that the most efficient means of constructing the College Way Connection Project is for the City to pay Sound Transit for the cost to construct that project in conjunction with the construction of the FWLE Project.

NOW THEREFORE, in consideration of the terms, conditions, and covenants contained herein, it is mutually agreed that:

1. Purpose. This Agreement provides the terms and conditions for Sound Transit to design and construct the College Way Connection Project as part of its planned construction of the Federal Way Link Extension Project.
2. Project Administration. The Parties acknowledge that Sound Transit will serve as the project administrator for construction and construction management for the College Way Connection Project, and will be solely responsible for managing all construction activities.
3. Project Requirements. The City has identified a scope of work, depicted in **Exhibit A**, which has been included in the FWLE Project Requirements. The City and Sound Transit shall notify and consult with each other's Designated Representative prior to any substantive changes to the College Way Connection Project, including changes to the project requirements, change orders after Sound Transit's construction contract has been issued, changes required by Sound Transit's construction contractor, or other changes as appropriate. The City and Sound Transit will amend this agreement as described in Section 22 to reflect mutually agreed changes to the City's contribution.
4. Permitting and Environmental Review. The City has determined that environmental review for the College Way Connection Project has been completed, as documented in the April 19, 2018 letter attached as **Exhibit B**. The City is responsible to obtain all environmental permits and approvals necessary for construction to begin at no cost to Sound Transit. Sound Transit will obtain all other required permits for construction. The City will waive all permit and approval fees necessary for construction.
5. Property Access for Construction. The City will provide access rights to Sound Transit for all property needed for staging and construction of the College Way Connection Project with 90 days' notice at no cost to Sound Transit. These access rights have been incorporated into the City's ILA with the College. Construction staging for that portion of College Way that is located east of Highline College shall not occur on the College campus unless specifically allowed by the College.

6. Construction Window/Schedule. Sound Transit’s Design-Build Contractor (D-B) will have access to the College Campus annually from June 1 to September 15. All construction activities on the College Way Connection Project must be completed within this window, unless otherwise approved in advance by the City.
7. Project Inspection. Inspection will be done in accordance with permit conditions established in accordance with DMMC 12.05.080 in coordination with Sound Transit inspectors.
8. Ownership and Maintenance. The City will accept ownership and maintenance responsibility for those improvements upon substantial completion of the College Way Connection Project in accordance with Section 3.09B of the FWLE D-B General Conditions.
9. Construction Completion Date. Sound Transit shall complete construction of the College Way Connection Project prior to substantial completion of the Federal Way Link Extension Project unless otherwise mutually agreed by the Parties.
10. City Financial Contribution. The City will pay Sound Transit one million four hundred thousand dollars (\$1,400,000) for the construction of the College Way Connection Project. This amount represents the design and construction costs for the roundabout, pedestrian improvements, and parking lot modifications depicted in **Exhibit A**. This contribution will be made in three payments:

Payment 1: Five hundred thousand dollars (\$500,000) due January 15, 2021.

Payment 2: Four hundred fifty thousand dollars (\$450,000) due upon Sound Transit’s Notice of Substantial Completion of the College Way Connection Project construction and the project is open to public use as defined in Section 3.09 A of the FWLE D-B General Conditions.

Payment 3: Four hundred fifty thousand dollars (\$450,000) due when Notice of Final Acceptance is issued by Sound Transit for the College Way Connection Project as defined in Section 3.09 A of the FWLE D-B General Conditions.

The City is not responsible for costs in excess of \$1,400,000 unless the excess cost is due to one or more change orders requested by the City and agreed to by the City and Sound Transit following the consultation described in Section 3, in which case the excess cost will be paid by the City.

11. Invoicing. Sound Transit will submit invoices to the City consistent with the three-staged payment structure and amount established in the foregoing section. Invoices must be paid by the City within (30) days of receipt of the invoice.
12. Designated Representatives. The Parties shall each designate a single representative responsible for communications between the Parties (“Designated Representative”). Each Party’s Designated Representative is identified as follows.

SOUND TRANSIT
Dan Abernathy
Executive Project Director
401 S Jackson St
Seattle, WA 98104
206-903-7170
dan.abernathy@soundtransit.org

CITY OF DES MOINES
Daniel J. Brewer, PE, PTOE
Chief Operations Officer
21630 11th Ave S
Des Moines, WA 98198
(206) 870-6581
dbrewer@desmoineswa.gov

13. Dispute Resolution. Any disputes or questions of interpretation of this Agreement or the performance of either Party under this Agreement that may arise between Sound Transit and the City shall be governed under the dispute resolution provisions in Section 19 of the Development Agreement. The Parties agree that cooperation and communication are essential to resolving issues efficiently.
14. Indemnity. The City hereby agrees to indemnify, defend, and hold Sound Transit harmless from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses, including, without limitation, reasonable attorney fees, paid by Sound Transit and arising or growing out of or in connection with or resulting from, either directly or indirectly, the construction, maintenance, operation, repair, removal, occupancy, and use of the College Way Connection Project by the City, unless such claims arise from the sole or partial negligence, actions or inaction of Sound Transit, its employees, servants, agents, contractors, or subcontractors.
15. Default. The Parties may mutually agree to terminate this Agreement if it is determined that construction of the College Way Connection Project cannot be completed within the timeline established in Section 6 by providing notice as described in Section 20. If this Agreement is terminated under this Subsection, Sound Transit will reimburse the City the amount of any uncommitted payments associated with the incomplete improvements made to Sound Transit pursuant to this Agreement within ninety (90) days of the date of termination.
16. Duration. This Agreement shall take effect upon the last date of signature by the Parties as set forth below. This Agreement shall remain in effect until the College Way Connection Project contemplated by this Agreement is complete and open to the public, unless this Agreement is extended by mutual agreement of the Parties pursuant to Section 21, superseded by a future agreement, or suspended or terminated pursuant to Section 15.

17. Administration of Agreement. This Agreement will be jointly administered by Sound Transit's Designated Representative and the City's Designated Representative. Each party shall be responsible for its own public records and public records requests.
18. Assignment of Beneficiaries. Neither Party may assign all or any portion of this Agreement without the express written consent of the other Party. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
19. Notices. Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representative. All notices shall be either: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other party's Designated Representative as listed herein. However, notice under Section 15, Default, must be delivered in person or by certified mail, return receipt requested.

20. General Provisions

21.1. The Parties shall not unreasonably withhold requests for information, approvals, or consents provided for in this Agreement; provided, however, that approvals or consents required to be given by vote of the Sound Transit Board or Des Moines City Council are recognized to be legislative actions. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement provided, however, that such actions or documents must be first approved by vote of the Sound Transit Board or Des Moines City Council, such actions are recognized to be legislative actions. The Parties agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.

21.2. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Each party consents to the personal jurisdiction and venue of the state and federal courts in King County, Washington and waives any objection that such courts are an inconvenient forum.

21.3. Time is of the essence in every provision in this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" shall mean calendar days unless otherwise noted. Any reference to "working days" shall exclude any legal holidays and weekend days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.

21.4. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party.

21.5. Neither Party shall be relieved of its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other Party to enforce prompt compliance, and such failure to enforce shall not constitute a waiver of rights or acquiescence in the other Party's conduct.

21.6. This Agreement has been reviewed and revised by legal counsel for all Parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law.

21.7. Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties. If either Party brings any claim or lawsuit arising from this Agreement, each Party shall pay all its legal costs and attorney's fees and expenses incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; however, nothing in this paragraph shall be construed to limit the Parties' rights to indemnification.

21.8. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

22. Amendments. This Agreement may be amended only by a written instrument executed by both Parties. The Designated Representatives may, by mutual agreement, revise or replace the Exhibits as necessary.

23. Severability. In case any term of this Agreement shall be held invalid, illegal, or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.

Each of the Parties has executed this Agreement by having its authorized representative affix his/her name in the appropriate space below and the effective date shall be the last date written below:

IN WITNESS WHEREOF, each of the Parties has executed this Agreement by having its authorized representative affix her/his name in the appropriate space below:

SOUND TRANSIT

CITY OF DES MOINES

By: 
Peter M. Rogoff, Chief Executive Officer

By: 
Michael Matthias, City Manager

Date: 2-27-19

Date: 12-11-18

Approved by the Des Moines City Council, in an Open Public Meeting on October 4, 2018.

Approved as to form:

Approved as to form:

By: 
AMY JO PEARSHALL Senior Legal Counsel

By: 
Tim George
City Attorney

Exhibit List:

Exhibit A: College Way Connection Project Description

Exhibit B: Letter Confirming Completion of Environmental Review

EXHIBIT A:

**COLLEGE WAY CONNECTION
PROJECT DESCRIPTION**

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COLLEGE WAY CONNECTION PROJECT SCOPE

SCOPE:

North Parking lot improvements & Cul-de-sac:

- Demo existing parking lot paving, curbs, signs, gate, trees and clear & grub.
- New 3" asphalt paving over 6" gravel base, new concrete curbs and concrete sidewalk.
- Storm drainage water quality catch basins, manholes, detention pipe and storm drainage pipe.
- Landscaping and irrigation, light poles/fixtures and signs.

South Parking Lot Improvements & Curbed Medians:

- Demo existing parking lot paving, curbs, trees and clear & grub.
- Retain asphalt driving surface & curbs at existing entry/exit road.
- Install one catch basin & storm pipe. Install one light pole/fixture.
- New 3" asphalt paving over 6" gravel base.
- New concrete curbs at Medians only.
- Sales tax and permits included for the North & South parking.
- A 5% Design Allowance is included for the North & South parking.
- Design, CM and ST Admin. is included.

EXCLUSIONS:

- Road work, curbs, sidewalk from 30 foot back of cul-de-sac.
- Concrete curbs, sidewalk, storm detention pipe and landscaping at the South parking lot.
- City Soft Costs, ROW.

CITY FINANCIAL CONTRIBUTION:

- The City will pay Sound Transit one million four hundred thousand dollars. This is in addition to a credit from the City in the amount of \$104,000.

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EXHIBIT B:

**COLLEGE WAY CONNECTION PROJECT
SEPA REVIEW**

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City of Des Moines



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April 19, 2018

Dan Abernathy
Executive Project Director, Federal Way Link Extension
401 S. Jackson St
Seattle, WA 98104

Subject: SEPA Review of College Way Connectivity Connection Project

Dear Mr. Abernathy,

The purpose of this letter is to advise Sound Transit of the City of Des Moines' decision that no further State Environmental Policy Act (SEPA) review is required for the College Way Connectivity Connection Project (Project), FWLE drainage improvements and associated East Parking Lot improvements, and College-funded mitigation and parking lot modifications that are consistent with the City-approved College Master Plan.

Our decision is based on review of the existing FWLE and College SEPA documents and the anticipated Project scope that includes the City code-required standard for the end of a street, pedestrian and bicycle access and associated East Parking Lot modifications, and College-funded mitigation and parking lot modifications that are consistent with the City-approved College Master Plan. These project elements complete the College Way/ South 236th Street connection to the Kent Des Moines (KDM) Link Station and are within the scope of the existing environmental documents and consistent with public comments received during the public hearing on the Highline College Master Plan, the City's Mitigated Determination of Nonsignificance issued on November 21, 2016 for the City Council-approved Highline College Master Plan, and the FWLE DEIS and FEIS.

As part of the City's Interlocal Agreement with Highline College, the City will be the SEPA lead agency for the Project elements east of the College Campus boundary

Sincerely,

Susan Cezar, LEG
Chief Strategic Officer
SEPA Official
City of Des Moines

Cc: Dan Brewer, Chief Operations Officer

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