

INTERLOCAL AGREEMENT BETWEEN THE CITY OF NORTH BEND, WASHINGTON AND NORTH BEND TRANSPORTATION BENEFIT DISTRICT NO. 1

This agreement between the City of North Bend, Washington (“City” or “North Bend”), and North Bend Transportation Benefit District No. 1 (“TBD”), is effective as of April 18, 2012, and is for the purposes described herein.

RECITALS

A. 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;

B. North Bend is empowered to operate, maintain, construct, and reconstruct, public street infrastructure within its city limits in accordance with its constitutional and statutory authority, including but not limited to RCW 35A.11.020 and Chapter 35A.47 RCW;

C. Pursuant to Ordinance No. 1436, the TBD was created to help provide adequate funding for ongoing transportation improvements that preserve, maintain and, as appropriate, construct or reconstruct the existing transportation infrastructure of the City of North Bend consistent with Chapter 36.73 RCW;

D. At a special election held on November 8, 2011, the voters of the TBD approved the imposition and collection of a two-tenths of one percent sales and use tax pursuant to RCW 82.14.0455 (the “Sales Tax”) for the purpose of paying the costs of TBD Projects, as that term is defined in TBD Resolution 01-2011, including the repayment of indebtedness and costs incurred to finance those improvements.

E. North Bend 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 North Bend;

The parties accordingly enter into the following agreement in order to coordinate their efforts as authorized by the Interlocal Cooperation Act:

AGREEMENT

1. Purpose and Interpretation. The City of North Bend is empowered by Title 35A RCW and other authority to construct, reconstruct, maintain and preserve City streets and other related public infrastructure. The TBD is empowered by Chapter 36.73 RCW to acquire, construct, improve, provide, and fund transportation improvements consistent with the City’s transportation plans and necessitated by existing or reasonably foreseeable congestion levels. 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. TBD Projects. The City and the TBD agree that the TBD Projects are currently required and are included in the City’s six-year (2011-2016) Transportation Improvement Program, adopted June 7, 2011, and also constitute “transportation improvements” that may be funded by the TBD.

The Board of the TBD may alter, make substitutions to and amend the TBD Projects descriptions as it determines is in the best interests of the TBD consistent with the descriptions in the City's Transportation Improvement Program and in accordance with the material change policy adopted by the Board and the notice, hearing and other procedures described in chapter 36.73 RCW, including without limitation RCW 36.73.050(2)(b), in each case as the same may be amended from time to time.

3. Financing of TBD Projects. The TBD has not collected sufficient funds to complete the TBD Projects. Accordingly:

A. The City shall provide financing for the design and construction of the TBD Projects, pursuant to state law and city code regarding construction of public works projects, which may include, without limitation, the issuance of bonds, loans or other forms of indebtedness, and shall be fully reimbursed by the TBD from proceeds of the Sales Tax and other money of the TBD legally available therefor (the "TBD Revenues") and such reimbursement obligation shall constitute non-voter approved indebtedness within the meaning of RCW 36.73.070. The City Council shall determine the timing of such financing, and the exact order and the terms for the financing of the TBD Projects. The City shall in a timely manner provide to the TBD a debt service schedule for any indebtedness incurred for the TBD Projects, and may if it deems appropriate require a bond to be issued by the TBD as evidence of such indebtedness to the City. The Sales Tax is dedicated for the repayment of indebtedness incurred by this agreement in accordance with the requirements of chapter 36.73 RCW.

B. The TBD shall make payments to the City from TBD Revenues in amounts sufficient (i) to repay the indebtedness described in paragraph A, above, (including all debt service or other financial obligations incurred for the design and construction of the TBD Projects); and (ii) to reimburse the City for all costs of the TBD Projects, including all maintenance or other expenses incurred on a pay-as-you-go basis. The amount to be reimbursed to the City shall also include all direct and incidental costs incurred in connection with carrying out and accomplishing the TBD Projects, including, but not limited to: design costs; construction costs; necessary and related engineering, architectural, planning, consulting, inspection, permit and testing costs; administrative and relocation expenses; site acquisition and improvement; demolition; on and off-site utilities and road improvements; costs related to the issuance, sale and delivery of bonds or other indebtedness; payments for financial and legal services; obtaining ratings and bond insurance; printing, advertising, establishing and funding accounts; payment of interest due on any bonds, loans or other indebtedness (including capitalized interest for up to six months after completion of construction); and other similar activities or purposes, all as determined by the City Council.

C. The TBD shall make a payment to the City on the [first business day] of [each month] in an amount equal to:

(a) 1/6th of the next upcoming semiannual debt service payment coming due on any bonds or other evidences of indebtedness incurred by the City for the TBD Projects; plus

(b) the amount expended by the City for the TBD Projects in the preceding month from funds other than the proceeds of indebtedness.

If at any time the amount of TBD Revenues is insufficient to make the monthly payment described above in full, the amount remaining unpaid shall become a loan from the City to the TBD,

and shall accrue interest at an annual simple interest rate determined by the rate of the Washington State Local Government Investment Pool (LGIP) at the month of insufficiency, until paid in full. Subsequent payments received from the TBD shall be applied in the following order: (1) to interest on amounts that were unpaid from a prior month (i.e., interest on loans made under this paragraph), (2) to those amounts due in a prior month, which have remained unpaid the longest (i.e., principal of loans made under this paragraph), and (3) the amounts due for the then-current month.

D. The TBD's obligation to make the payments to the City from the TBD Revenues shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise. The full faith, credit and resources of the TBD are hereby pledged for the payment of all amounts owed to the City under this agreement. The TBD's obligations under this agreement shall continue in effect and shall survive until such time as all amounts due to the City pursuant to this agreement have been repaid. To further its ability to make such payments to the City, the TBD irrevocably covenants and agrees to continue imposing the Sales Tax for so long as any City indebtedness for the TBD Projects remains outstanding, and for so long as any District obligation to pay any amount to the City under this agreement remains outstanding.

4. Ownership. Streets and related transportation infrastructure preserved and maintained with TBD funds are and shall remain the property of the City of North Bend. 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 functions in accordance with state law and City ordinance.

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 may be terminated by either party upon the provision of thirty calendar days' notice. Additionally, this agreement expires upon the future dissolution of the TBD.

[Remainder of page intentionally blank.]

8. Effective Date. This agreement shall be effective after listing on the City of North Bend official website or other electronically retrievable public source, or filing with King County as provided by law.

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

CITY OF NORTH BEND

**TRANSPORTATION BENEFIT
DISTRICT NO. 1**

Kenneth G. Hearing, Mayor

Jeanne Pettersen, Chair of the Board

ATTEST:

ATTEST:

Susie Oppedal, City Clerk

Stan Lewis, Secretary of the Board

APPROVED AS TO FORM:

Michael R. Kenyon, City Attorney