

**AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF BURIEN,
WASHINGTON, AND THE BURIEN TRANSPORTATION BENEFIT DISTRICT
NO.1**

This agreement between the City of Burien, Washington (“Burien”), and the Burien Transportation Benefit District No.1 (“TBD No. 1”), each of which is organized as a municipal corporation under the laws of the state of Washington, is dated this ____th day of ____, 2010

WHEREAS, Chapter 39.34 RCW (the “Interlocal Cooperation Act”) permits local governmental units to make the most efficient use of their powers by enabling them to enter into interlocal agreements in order to cooperate on the basis of mutual advantage; and

WHEREAS, Burien 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; and

WHEREAS, pursuant to chapter 36.73 RCW and Burien Ordinance No. 516 adopted on July 20, 2009, as amended by Burien Ordinance No. 542 adopted on June 21, 2010 (together, the “Enabling Ordinance”), Burien established TBD No. 1 for the purpose of financing and facilitating asphalt overlays and other street related improvements throughout Burien (the “Project”); and

WHEREAS, Burien intends to issue limited tax general obligation bonds (the “Bonds”) for the purpose of providing long-term financing for the Project; and

WHEREAS, pursuant to RCW 36.73.065 and RCW 82.80.140, TBD No. 1 has agreed to impose and collect annual vehicle fees in the amount of ten dollars (\$10.00) on qualifying vehicles registered in TBD No. 1 (the “Vehicle Fee”), and to remit such fees to Burien for the purpose of paying all or a portion of the debt service on the Bonds; and

WHEREAS, Burien and TBD No. 1 desire to better coordinate their efforts in order to pursue their individual, joint and mutual rights and obligations to construct and finance such transportation improvements;

NOW THEREFORE, the parties hereby agree to the following terms and agreements, 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. Burien is empowered by Title 35A RCW to construct, reconstruct, maintain and preserve City streets and other related public

infrastructure either by contract or through the use of City forces. TBD No. 1 has been constituted in accordance with state law to provide a source of funding for the implementation of transportation improvements described in the Enabling Ordinance. TBD No. 1 has no employees and its officers are either Burien Council Members serving in an ex officio capacity or are Burien 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 the Enabling Ordinance, Chapter 36.73 RCW, RCW 82.80.140, the provisions of the Governmental Accounting Act, and RCW 43.09.210, as the same exist or shall hereafter be amended. In the event that any provision of this agreement is held to be in conflict with existing state statutes 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 TBD No. 1. In accordance with the requirements of Chapter 36.73 RCW and the Enabling Ordinance, TBD No. 1 agrees to:

2.1 Impose funding charges for the transportation improvement projects described in the Enabling Ordinance, in the manner set forth in RCW 82.80.140 and Chapters 36.73 and 46.16 RCW. Such fees and charges shall include, but are not limited to, annual vehicle fees imposed by TBD No. 1 pursuant to TBD No. 1 Resolution No. 2 (the "Vehicle Fees"). Such Vehicle Fees shall be imposed and collected by TBD No. 1 so long as the limited tax general obligation bonds (the "Bonds") issued by Burien for the purpose of financing the Project remain outstanding.

2.2 Provide to Burien all funding received from any and all lawful sources, net administrative expenses, which TBD No. 1 may impose for the purposes described in the Enabling Ordinance.

2.3 Develop an annual work plan.

2.4 Pursuant to a material change policy adopted pursuant to the requirements of RCW 36.73.160(1), TBD No. 1 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%. TBD No. 1 shall consider the input from public hearings and other sources as 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 Burien. Burien shall:

3.1 Provide all staff and necessary related support to TBD No. 1. The costs of such support shall be accounted for as a part of Burien's annual report to TBD No. 1. Funding imposed by TBD No. 1 and remitted to Burien pursuant to Section 2.2 hereof shall first be applied to the reasonable charges incurred in establishing and staffing TBD

No. 1. Annual services provided may include the services provided by the City Attorney, or designee, the City Clerk, or designee, when serving as the Clerk of TBD No. 1, the City's Finance Director, or designee, when serving as its Treasurer, the Public Works Director, or designee, when managing and/or administering a transportation improvement, and any associated costs, including but not limited to the preparation of an annual work plan, reporting, advertising, design, contracting, construction management and administration, accounting, and any and all other actual charges associated with the proper application of TBD No. 1 funding to the transportation improvements set forth in the Enabling Ordinance. In consideration of the benefits derived by Burien, overhead charges such as utilities, information technology, office supplies and equipment shall be a contribution of Burien to the parties' joint goals and objectives and need not be directly charged to TBD No. 1.

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 TBD No. 1 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 the transportation improvements described in the Enabling Ordinance and deposit Vehicle Fees, after the payment of administrative costs described in Section 3.1, if any, into the debt service fund established for the Bonds for the purpose of paying principal of or interest on the Bonds.

4. Provisions Relating to Bonds. TBD No. 1 hereby pledges the Vehicle Fees to the payment of debt service on the Bonds. The obligation of TBD No. 1 to collect such Vehicle Fees, remit such fees to Burien, and to perform and observe the other obligations on its part contained herein shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise. TBD No. 1's obligations under this agreement to collect and remit such revenue to Burien for such purpose shall continue until the Bonds are no longer outstanding.

The parties hereto acknowledge and agree that Burien will pledge the Vehicle Fee revenue to the payment of the Bonds. Such pledge will be material to the offer and sale of the Bonds, and will be disclosed to potential purchasers and purchasers of the Bonds. Bondholders will rely on this pledge in purchasing the Bonds. So long as the Bonds are outstanding, without the prior written consent of Burien, TBD No. 1 shall not issue bonds, or incur any other obligation(s), secured by the Vehicle Fees.

5. Ownership. Streets and related transportation infrastructure constructed and installed with TBD No. 1 funds are and shall remain the property of Burien. No joint property ownership is contemplated under the terms of this agreement.

6. No Joint Board. No provision is made for a joint board. TBD No. 1 shall exercise its function in accordance with the applicable statutes, using staff as provided by Burien, pursuant to this agreement.

7. 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.

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

8.1 This agreement may be terminated by either party upon the provision of one-hundred and eighty (180) calendar days notice. A final reconciliation of costs, payment and a current report of completed activities shall be completed by Burien within such period following the notice by either party.

8.2 Unless sooner terminated by either party, this agreement shall expire on the date when the District is automatically dissolved in accordance with provisions of the Enabling Ordinance, as the same exists or is hereafter amended; provided that, a final reconciliation of costs, payment and a current report of completed activities shall be completed by Burien and TBD No. 1 prior to dissolution.

8.3 Notwithstanding anything to the contrary in this agreement, this agreement may not be terminated by the parties hereto so long as the Bonds remain outstanding.

9. Filing of Agreement. Upon execution, this agreement shall be filed or posted as required in RCW [39.34.040](#).

10. Effective Date. This agreement shall take effect and be in full force after approval and execution by both parties.

IN WITNESS WHEREOF, the City of Burien and Burien Transportation Benefit District No.1 have executed this agreement effective as of the date set forth above.

CITY OF BURIEN

BURIEN TRANSPORTATION BENEFIT
DISTRICT No.1

Joan McGilton, Mayor

Joan McGilton, Chair

ATTEST/AUTHENTICATED:

ATTEST/AUTHENTICATED:

Monica Lusk, City Clerk

Monica, Clerk

Approved as to form:

Craig D. Knutson
City Attorney

Approved as to form:

Craig D. Knutson
Attorney