

RESOLUTION NO. 06- 412

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A FUEL TAX GRANT DISTRIBUTION AGREEMENT BETWEEN THE WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD AND THE CITY OF BLACK DIAMOND

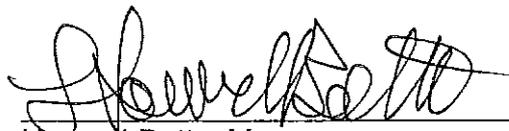
WHEREAS, the City of Black Diamond (hereinafter referred to as the "City") has been awarded a grant from the Washington State Transportation Improvement Board (hereinafter referred to as "TIB") for the project specified in the attached documents; and,

WHEREAS, it is the intent of the parties, both the City and TIB, that this Agreement shall govern the use and distribution of the grant funds through all phases of the project; and,

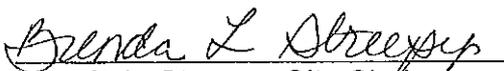
WHEREAS, this Agreement, together with the attachments hereto, the provisions of chapter 47.26 Revised Code of Washington, the provisions of title 479 Washington Administrative Code, and TIB Policies, constitutes the entire agreement between the parties and supersedes all previous written or oral agreements between the parties; now, therefore

BE IT RESOLVED that the Mayor is hereby authorized to execute the Fuel Tax Grant Distribution Agreement between the City of Black Diamond and the Washington State Transportation Improvement Board, and said agreement is attached hereto as Exhibit "A" and by reference incorporated herein.

ADOPTED by the City Council at an open public meeting held on the 7<sup>th</sup> day of December, 2006.

  
Howard Botts, Mayor

Attest:

  
Brenda L. Streepy, City Clerk



RECEIVED

JUL 16 2007

<b>LEAD AGENCY:</b>	<b>BLACK DIAMOND</b>
<b>PROJECT NUMBER:</b>	<b>6-P-800(001)-1</b>
<b>PROJECT TITLE:</b>	<b>Railroad Avenue</b>
<b>PROJECT TERMINI:</b>	<b>Merino St to Baker St</b>

1.0 PURPOSE

The Washington State Transportation Improvement Board (hereinafter referred to as "TIB") hereby grants funds for the project specified in the attached documents, and as may be subsequently amended, subject to the terms contained herein. It is the intent of the parties, TIB and the grant recipient, that this Agreement shall govern the use and distribution of the grant funds through all phases of the project. Accordingly, the project specific information shall be contained in the attachments hereto and incorporated herein, as the project progresses through each phase.

This Agreement, together with the attachments hereto, the provisions of chapter 47.26 Revised Code of Washington, the provisions of title 479 Washington Administrative Code, and TIB Policies, constitutes the entire agreement between the parties and supercedes all previous written or oral agreements between the parties.

2.0 PARTIES TO AGREEMENT

The parties to this Agreement are TIB, or its successor, and the grant recipient, or its successor, as specified in the attachments.

3.0 TERM OF AGREEMENT

This Agreement shall be effective upon execution by TIB and shall continue through completion of each phase of the project, unless terminated sooner as provided herein.

4.0 AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

5.0 ASSIGNMENT

The grant recipient shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The grant recipient is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the grant recipient's other rights under this Agreement.

6.0 GOVERNANCE & VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County.



## 7.0 TERMINATION

### 7.1 UNILATERAL TERMINATION

Either party may terminate this Agreement upon 30 days' prior written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

### 7.2 TERMINATION BY MUTUAL AGREEMENT

Either party may terminate this contract in whole or in part, at any time, by mutual agreement with a 30 calendar day written notice from one party to the other.

### 7.3 TERMINATION FOR CAUSE

In the event TIB determines the grant recipient has failed to comply with the conditions of this Agreement in a timely manner, TIB has the right to suspend or terminate this Agreement. TIB shall notify the grant recipient in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Agreement may be terminated. TIB reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the grant recipient from incurring additional obligations of funds during the investigation of the alleged compliance breach and pending corrective action by the grant recipient or a decision by TIB to terminate the Agreement. The grant recipient shall be liable for damages as authorized by law including, but not limited to, repayment of misused grant funds. The termination shall be deemed to be a Termination for Convenience if it is determined that the grant recipient: (1) was not at fault, or (2) failure to perform was outside of the grant recipient's control, fault or negligence. The rights and remedies of TIB provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

### 7.4 TERMINATION FOR CONVENIENCE

TIB may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part, because federal or state funds are no longer available for the purpose of meeting TIB's obligations, or for any reason. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for performance rendered or costs incurred prior to the effective date of termination.

### 7.5 TERMINATION PROCEDURE

Upon receipt of notice of termination, the grant recipient shall stop work and/or take such action as may be directed by TIB.



Washington State Transportation Improvement Board  
Fuel Tax Grant Distribution Agreement

8.0 AVAILABILITY OF TIB FUNDS

The availability of Transportation Improvement Board funds is a function of Motor Vehicle Fuel Tax collections and existing contractual obligations. The local agency shall submit timely progress billings as project costs are incurred to enable accurate budgeting and fund management. Failure to submit timely progress billings may result in delayed payments or the establishment of a payment schedule.

9.0 ATTACHMENTS

Attachments are incorporated into this agreement with subsequent amendments as needed.

Approved as to Form  
This 14th Day of February, 2003  
Rob McKenna  
Attorney General

By:

Signature on file

\_\_\_\_\_  
Elizabeth Lagerberg  
Assistant Attorney General

Lead Agency

Transportation Improvement Board

 7/12/07  
\_\_\_\_\_  
Signature of Chairman/Mayor                      Date

 7/17/07  
\_\_\_\_\_  
Executive Director                                      Date

HOWARD BOTTS  
\_\_\_\_\_  
Print Name

Stevan Gorcester  
\_\_\_\_\_  
Print Name