

RESOLUTION NO.17- 1174

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A FUEL TAX AGREEMENT WITH THE WASHINGTON TRANSPORTATION IMPROVEMENT BOARD FOR THE 2017 EMERGENCY POTHOLE REPAIR AND ROAD MAINTENANCE PROJECT

WHEREAS, the City's grant application for the Transportation Improvement Board 2017 Emergency Repair Program was selected for \$50,000; and

WHEREAS, the City has the funds to complete the project; and

WHEREAS, a fuel tax agreement with the Washington Transportation Improvement Board is required to establish the terms of funding the 2017 Emergency Pothole Repair and Road Maintenance project; and

WHEREAS, state law requires municipal expenditures to be in an approved budget;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Council hereby accepts grant funding from the Washington Transportation Improvement Board in the amount of \$50,000 to fund the 2017 Emergency Pothole Repair and Road Maintenance project;

Section 2. The Mayor is hereby authorized to execute the fuel tax agreement with the Washington Transportation Improvement Board for the 2017 Emergency Pothole Repair and Road Maintenance project, TIB #xxx, substantially in the form attached hereto.

Section 3. The staff is requested to draft and provide to the City Council a supplemental budget ordinance authorizing the expenditure. No expenditure over the current budget amount related to this grant shall be made without a change to the city's budget to authorize the expenditure.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15 DAY OF JUNE, 2017.

CITY OF BLACK DIAMOND:

Carol Benson
Carol Benson, Mayor

Attest:

Brenda L. Martinez
Brenda L. Martinez, City Clerk



CITY OF BLACK DIAMOND
2-P-800(006)-1
2017 Emergency Pavement Repair Project
Various Locations

STATE OF WASHINGTON
TRANSPORTATION IMPROVEMENT BOARD
AND
CITY OF BLACK DIAMOND
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the 2017 Emergency Pavement Repair Project, Various Locations (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and CITY OF BLACK DIAMOND, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

TIB hereby grants funds in the amount of \$50,000 for the project specified above, pursuant to terms contained in the RECIPIENT'S TIB-approved Grant Application on file, which is incorporated into this Agreement by this reference; supporting Project Documentation in 3.0; chapter 47.26 RCW; title 479 WAC; and the terms and conditions listed below.

2.0 SCOPE AND BUDGET

The Project Scope and Budget are initially described in RECIPIENT'S Grant Application and previously incorporated by reference into this Agreement. Scope and Budget may be further developed and refined. Any alterations to the original Project Scope or Budget as initially described in the Grant Application must be authorized by TIB in advance by written amendment.

3.0 PROJECT DOCUMENTATION

TIB requires RECIPIENT to make reasonable progress and submit timely Project documentation as applicable throughout the Project. Upon RECIPIENT'S submission of each Project document to TIB, the terms contained in the document will be incorporated by reference into the Agreement. Required documents include, but are not limited to, the following:

- a) Contract Completion Updated Cost Estimate with final summary of quantities; and
- b) Project Accounting History

4.0 BILLING AND PAYMENT

At the closeout of the Project, but no later than August 31st, 2017, the Recipient must submit an invoice for all costs and expenditures actually incurred in the course of performing eligible work directly related to the Project, during the Project period. Any invoice received after August 31, 2017, will not be eligible for reimbursement, unless the local agency has received prior approval from TIB. TIB agrees to reimburse the Recipient for those Project-related costs and expenditures properly documented on the Recipient's invoice.



5.0 TERM OF AGREEMENT

The term of this Agreement shall commence on the latest date of signature of the Parties and terminate upon closeout of the grant or when terminated as provided herein, but in no event shall the term of this Agreement exceed six months unless amended by the Parties.

6.0 AMENDMENTS

This Agreement may be amended by mutual agreement and written amendment executed by both of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

7.0 ASSIGNMENT

The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The 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 RECIPIENT's other rights under this Agreement.

8.0 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.

9.0 DEFAULT AND TERMINATION

9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, that the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) In response to the notice, RECIPIENT shall provide a written response within 10 business days of receipt of TIB's notice of non-compliance, which should include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details.
- c) TIB will provide 30 days for RECIPIENT to make reasonable progress toward compliance pursuant to its plan to correct or implement its amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold further payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:

- a) RECIPIENT is not making reasonable progress toward correction and compliance;
- b) TIB denies the RECIPIENT's request to amend the Project, if any; and
- c) After investigation, TIB confirms RECIPIENT'S non-compliance.



TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project payments until the requested corrections have been made or the Agreement has been terminated.

9.3 TERMINATION

a) In the event of default by the RECIPIENT as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which shall be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such action as may be directed by TIB.

b) In the event of default and/or termination by either PARTY, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.

c) The rights and remedies of TIB provided in the AGREEMENT are not exclusive and are in addition to any other rights and remedies provided by law.

9.4 TERMINATION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. 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.

10.0 USE OF TIB GRANT FUNDS

TIB grant funds come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than roadway system pavement repair is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9.

11.0 INCREASE OR DECREASE IN TIB GRANT FUNDS

At Bid Award and Contract Completion, RECIPIENT may request an increase in the TIB funds for the specific Project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. All requests for such increases must be made pursuant to WAC 479-05-202 and/or WAC 479-01-060. If an increase is denied, the recipient shall be liable for costs incurred in excess of the grant amount. In the event that final costs related to the specific Project are less than the initial grant award, TIB funds will be decreased and/or refunded to TIB in a manner that maintains the original ratio between TIB funds and total project costs.

12.0 INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.



13.0 INDEMNIFICATION AND HOLD HARMLESS

- a) The RECIPIENT shall indemnify and hold TIB, its agents, employees, and officers harmless from, and process and defend at its own expense, any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against TIB and arising out of, in connection with or incident to this AGREEMENT and/or the RECIPIENT's performance or failure to perform any aspect of this AGREEMENT. This indemnity provision applies to all claims against TIB, its agents, employees and officers arising out of, in connection with or incident to the negligent acts or omissions of the RECIPIENT, its agents, employees, officers and subcontractors. Provided, however, that nothing herein shall require the RECIPIENT to indemnify and hold harmless or defend the TIB, its agents, employees or officers to the extent that claims are caused by the negligent acts or omissions of the TIB, its agents, employees or officers; and provided further that if such claims result from the concurrent negligence of (a) the RECIPIENT or its employees, agents, officers or contractors and (b) the STATE, its employees or authorized agents, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the PARTY, its employees, officers, authorized agents, and/or contractors. This indemnification and hold harmless provision shall survive termination of this AGREEMENT.
- b) The RECIPIENT specifically assumes potential liability for actions brought by RECIPIENT's employees and/or subcontractors; and, solely for the purposes of this indemnification and defense, the RECIPIENT specifically waives any immunity under the State Industrial Insurance Law, Title 51 Revised Code of Washington.
- c) In the event either the RECIPIENT or TIB incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section of this AGREEMENT against the other PARTY, all such fees, costs and expenses shall be recoverable by the prevailing PARTY.

14.0 DISPUTE RESOLUTION

- a) The PARTIES shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT to avoid additional incurred costs and delays to the project. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT.
- b) Informal Resolution. The PARTIES shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the PARTIES are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed-upon mediator. The PARTIES shall share equally in the cost of the mediator.
- d) The PARTIES agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.
- e) In the event of litigation or other action brought to resolve a dispute or enforce this Agreement, each Party shall be responsible for its own attorneys' fees and costs.



15.0 ENTIRE AGREEMENT

This Agreement, together with the RECIPIENT'S Grant Application, 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.

16.0 RECORDS MAINTENANCE

The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. RECIPIENT shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement shall be subject at all reasonable times to inspection, review or audit by TIB personnel duly authorized by TIB, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

17.0 AUTHORIZED SIGNATURES

The undersigned acknowledge that they are authorized to execute this Agreement and bind their respective agencies to the obligations set forth herein.

Lead Agency

Transportation Improvement Board

Carol Benson 6/19/17
Chief Executive Officer Date

Executive Director Date

Carol Benson
Print Name

Print Name