

RESOLUTION NO. 15-1058

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 (TIB) FOR  
THE JONES LAKE ROAD OVERLAY PROJECT

**WHEREAS**, the City's grant application for the Transportation Improvement Board Small City Preservation Program was selected for the Jones Lake Road Overlay project in the amount of \$135,219; and

**WHEREAS**, the City has the staff and 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 Jones Lake Road Overlay project;

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

**Section 1.** The Mayor is hereby authorized to execute the fuel tax agreement with the Washington Transportation Improvement Board for the Jones Lake Road Overlay project TIB #2-P-800(004)-1, substantially in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17<sup>TH</sup> DAY OF DECEMBER, 2015.**

CITY OF BLACK DIAMOND:

  
\_\_\_\_\_  
Carol Benson, Mayor

Attest:

  
\_\_\_\_\_  
Brenda L. Martinez, City Clerk



City of Black Diamond  
2-P-800(004)-1  
FY 2017 Overlay Project  
Multiple Locations

STATE OF WASHINGTON  
TRANSPORTATION IMPROVEMENT BOARD  
AND  
City of Black Diamond  
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the FY 2017 Overlay Project, Multiple 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 \$135,219 for the project specified above, pursuant to terms contained in the RECIPIENT'S Grant Application, supporting documentation, 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 incorporated by reference into this Agreement. Scope and Budget will be further developed and refined, but not substantially altered during the Design, Bid Authorization and Construction Phases. Any material 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) Project Funding Status Form
- b) Bid Authorization Form with plans and engineers estimate
- c) Award Updated Cost Estimate
- d) Bid Tabulations
- e) Contract Completion Updated Cost Estimate with final summary of quantities
- f) Project Accounting History

4.0 BILLING AND PAYMENT

The local agency shall submit progress billings as project costs are incurred to enable TIB to maintain accurate budgeting and fund management. Payment requests may be submitted as often as the RECIPIENT deems necessary, but shall be submitted at least quarterly if billable



amounts are greater than \$50,000. If progress billings are not submitted, large payments may be delayed or scheduled in a payment plan.

#### 5.0 TERM OF AGREEMENT

This Agreement shall be effective upon execution by TIB and shall continue through closeout of the grant or until terminated as provided herein, but shall not exceed 10 years unless amended by the Parties.

#### 6.0 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 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, 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.
- 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 highway or roadway system improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9. If Right of Way is purchased using TIB funds, and some or all of the Right of Way is subsequently sold, proceeds from the sale must be deposited into the RECIPIENT's motor vehicle fund and used for a motor vehicle purpose.

### 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 increase requests 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

The PARTIES agree to the following:

Each of the PARTIES, shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, that PARTY's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of the Section, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Section shall survive termination of this Agreement.

## 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. 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) Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.
- e) 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.



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.

Approved as to Form  
Attorney General

By:

Signature on file

\_\_\_\_\_  
Guy Bowman  
Assistant Attorney General

Lead Agency

Transportation Improvement Board

Carol Benson      12/18/15  
Chief Executive Officer      Date

\_\_\_\_\_  
Executive Director      Date

Carol Benson, Mayor  
Print Name

\_\_\_\_\_  
Print Name



# Washington State Transportation Improvement Board

## TIB Members

Councilmember Bob Olson, Chair  
*City of Kennewick*

Commissioner Richard Stevens,  
Vice Chair  
*Grant County*

Jim Albert  
*Office of Financial Management*

Pasco Bakotich, P.E.  
*WSDOT*

Wendy Clark-Getzlin, P.E.  
*Clallam Transit*

Gary Ekstedt, P.E.  
*Yakima County*

Mayor James Irish  
*City of La Center*

John Klekotka, P.E.  
*Port of Everett*

Commissioner Robert Koch  
*Franklin County*

Colleen Kuhn  
*Human Services Council*

Mayor Patty Lent  
*City of Bremerton*

Mick Matheson, P.E.  
*City of Sultan*

E. Susan Meyer  
*Spokane Transit Authority*

Laura Philpot, P.E.  
*City of Sammamish*

David Ramsay  
*Feet First*

Amy Scarton  
*WSDOT*

Heidi Stamm  
*HS Public Affairs*

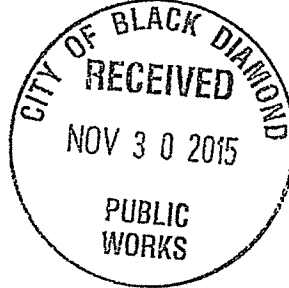
John Vodopich  
*City of Bonney Lake*

Jay Weber  
*County Road Administration Board*

Clay White  
*Snohomish County*

November 20, 2015

Mr. Seth Boettcher, P.E.  
Public Works Director  
City of Black Diamond  
Post Office Box 599  
Black Diamond, WA 98010-0599



Dear Mr. Boettcher:

Congratulations! We are pleased to announce the selection of your project, FY 2017 Overlay Project, Multiple Locations, TIB project number 2-P-800(004)-1.

Total TIB funds for this project are \$135,219.

**Before any work is allowed on this project, you must:**

- Verify the information on the Project Funding Status Form, revise if necessary, and sign;
- Sign both copies of the Fuel Tax Grant Distribution Agreement; and
- Return the above items to TIB.

You may only incur reimbursable expenses after you receive approval from TIB.

In accordance with RCW 47.26.084, you must certify full funding by November 20, 2016 or the grant may be terminated. Grants may also be rescinded due to unreasonable project delay as described in WAC 479-05-211.

If you have questions, please contact Greg Armstrong, TIB Project Engineer, at (360) 586-1142 or e-mail [GregA@tib.wa.gov](mailto:GregA@tib.wa.gov).

Sincerely,

Stevan Gorcester  
Executive Director

Enclosures

Stevan E. Gorcester  
Executive Director

P.O. Box 40901  
Olympia, WA 98504-0901  
Phone: 360-586-1140  
Fax: 360-586-1165  
[www.tib.wa.gov](http://www.tib.wa.gov)

Small City Preservation Program (SCPP)  
***Approved Segment Listing***  
FY 2017 Overlay Program

**BLACK DIAMOND**

Street	Termini	Pavement Length	Pavement Width
Jones Lake Road	SR 169 to Railroad Avenue	1,310 feet	24 feet



## Capital Plan 2015 - 2020

<b>Project for the</b>	<b>Street Department</b>	<b>#</b>	<b>T6</b>
<b>PROJECT TITLE</b>	<b>Jones Lake Road</b>		<b>14.01</b>

**DESCRIPTION** Patch and overlay Jones Lake Road from SR 169 to the end of the overlay improvement on RR Ave.

**BACKGROUND** The pavement condition is average to poor. The roadway width is a little too narrow with no shoulders. The engineering, bid process, inspections and project management will be provided by City staff.

	Total \$ Requested 2015-2020	Capital Plan 2015 - 2020					
		2015	2016	2017	2018	2019	2020
<b>CAPITAL PROJECT COSTS</b>							
Engineering & bid docs	16,000	16,000					
Management & Administration	10,000	10,000					
Construction	96,000	96,000					
<b>TOTAL COSTS</b>	<b>122,000</b>	<b>122,000</b>	-	-	-	-	-
<b>REQUESTED FUNDING</b>							
TIB pavement preservation	110,000	110,000					
Grant Matching	12,000	12,000					
<b>TOTAL SOURCES</b>	<b>122,000</b>	<b>122,000</b>	-	-	-	-	-

