

Subject: Resolution #723 – Authorizing Execution of a Grant Agreement With the Washington State Transportation Improvement Board for Grant Funding of the 53rd Street Project

Proposed Council Action:

Approve Resolution #723.

Dept. Origin: Mayor's Office
Prepared by: Jennifer Robertson, City Attorney's Office
For Agenda of: January 5, 2021
Exhibits: **Resolution #723 & Grant Agreement**

	Initial & Date
Concurred by Mayor:	_____
Approved/form by City Atty:	<u>12-30-20/JSR</u>
Approved by _____ Director:	_____
Approved by Department Head:	_____

INFORMATION / BACKGROUND

Earlier this year, Ruston applied to the Washington State Transportation Improvement Board (TIB) for two grants. TIB awarded Ruston the grant for the 53rd Street Project (Pearl Street to Bennett Street) in the amount of \$644,504 which will cover 94.999 percent of the project cost. Ruston needs to provide the 5 percent matching funds.

This Project will preserve the existing street and help prevent roadway failure upon 53rd Street from Pearl Street to Bennett Street. The grant funds both Phase I and Phase II of this Project and includes the following work:

- Grind and overlay of asphalt,
- Replacement of traffic control signs,
- Utilities work, and
- Repainting and installation of thermoplastic for street markings such as stop bars, crosswalks, lane markers, and fire lanes.

This project is included in Ruston's 6-year TIP and the matching funds are budgeted in the 2021 budget.

FISCAL CONSIDERATION

By entering into this Agreement, the City will secure 94.999 percent of funding for both phases of this project. The City will be required to comply with all of the technical and procedural requirements in accordance with the Agreement and may incur some costs in doing so and will be required to provide the 5 percent matching funds.

RECOMMENDATION / MOTION

Adopt Resolution #723.

MOTION: I move to adopt Resolution #723 authorizing the Mayor to execute a Grant Agreement with the Washington State Transportation Improvement Board for funding the 53rd Street Project.

RESOLUTION NO. 723

**A RESOLUTION OF THE CITY OF RUSTON,
WASHINGTON, AUTHORIZING THE MAYOR TO
EXECUTE A GRANT AGREEMENT WITH THE
WASHINGTON STATE TRANSPORTATION
IMPROVEMENT BOARD FOR FUNDING OF THE 53RD
STREET IMPROVEMENT PROJECT (PEARL STREET TO
BENNETT STREET) PROJECT.**

WHEREAS, the Transportation Improvement Board (TIB) has offered Ruston grant funding of the 53rd Street Improvement Project (Pearl Street to Bennett Street) in the amount of \$644,504.00; and

WHEREAS, the total estimated project cost would be funded at seventy-five percent (94.99%) by TIB with a required 5 percent match by Ruston; and

WHEREAS, in order to accept and utilize this grant, the City needs to enter into a Grant Agreement with TIB; and

WHEREAS, the City Council finds it in the best interests of Ruston to enter into the Grant Agreement as attached hereto as Exhibit “A” and to authorize the Mayor to execute the same;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF RUSTON HEREBY RESOLVES AS FOLLOWS:

Section 1. Agreement Authorized. The City Council hereby authorizes the Mayor to execute the Grant Agreement with the Washington State Transportation Improvement Board in substantially the form attached hereto as Exhibit “A”

Section 2. Posting on Website Required. Pursuant to RCW 39.34.040, once this Agreement has been executed by both Ruston and TIB, the City Clerk is directed to post a copy of this Agreement on the City’s website.

RESOLVED this 5th day of January, 2021.

APPROVED:

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

RESOLUTION NO.: _____ 723 _____

EXHIBIT "A"

**GRANT AGREEMENT
BETWEEN
CITY OF RUSTON
AND
THE WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD**



City of Ruston
6-P-135(004)-1
53rd St Improvement Project
Pearl St to Bennett St

STATE OF WASHINGTON
TRANSPORTATION IMPROVEMENT BOARD
AND
City of Ruston
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the 53rd St Improvement Project, Pearl St to Bennett St (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and City of Ruston, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

For the project specified above, TIB shall pay 94.9999 percent of approved eligible project costs up to the amount of \$644,504, 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 maximum payable 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 all costs incurred in excess of the maximum amount payable by TIB. 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 intended ratio between TIB funds and total project costs, as described in Section 1.0 of this Agreement.



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

Chief Executive Officer Date

Print Name

Executive Director Date

Print Name