

**Subject:** Resolution #785 – Authorizing Execution of a Grant Agreement With the Washington State Transportation Improvement Board for Grant Funding of the 2024 Overlay Project – 52<sup>nd</sup> to Park Ave

**Proposed Council Action:**

Approve Resolution #785.

**Dept. Origin:** Community Development

**Prepared by:** Jennifer Robertson, City Attorney's Office

**For Agenda of:** December 19, 2023

**Exhibits:** Resolution #785, Grant Agreement

	Initial & Date
<b>Concurred by Mayor:</b>	_____
<b>Approved/form by City Atty:</b>	<u>12-13-23/JSR</u>
<b>Approved by _____ Director:</b>	_____
<b>Approved by Department Head:</b>	_____

**INFORMATION / BACKGROUND**

Earlier this year, Ruston applied to the Washington State Transportation Improvement Board (TIB) for grant funding for the 2024 Overlay, 52nd to Park Ave Project. TIB awarded Ruston the grant funding in the amount of \$352,222.00 which covers ninety-five percent (95.00%) of the Project cost. Ruston's match would be \$18,538.00.

This Project will provide a overlay for street preservation for the following streets:

- **N. Highland Street – 52<sup>nd</sup> to Park Ave** (1,278 feet of pavement length with a width of 40 feet)
- **N. Shirley Street – 52<sup>nd</sup> to Park Ave** (1,267 of pavement lengthy with a width of 30 feet)

This project is included in Ruston's 6-year TIP and the matching funds are included in the proposed 2024 budget.

**FISCAL CONSIDERATION**

By entering into this Agreement, the City will secure 95 percent of funding for 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 \$18,538 in matching funds.

**RECOMMENDATION / MOTION**

Adopt Resolution #785.

MOTION: I move to adopt Resolution #785 authorizing the Mayor to execute a Grant Agreement with the Washington State Transportation Improvement Board for funding the 2024 Overlay, 52nd to Park Ave Project.

**RESOLUTION NO. 785**

**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 52<sup>nd</sup> TO PARK AVENUE OVERLAY PROJECT.**

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**WHEREAS**, the Transportation Improvement Board (TIB) has offered Ruston grant funding of the 2024 Overlay, 52nd to Park Ave (TIB project number 2-P-135(005)-1) in the amount of \$352,222.00; and

**WHEREAS**, the total estimated project cost would be funded at ninety-five percent (95.00%) by TIB with a required \$18,538.00 match by Ruston; and

**WHEREAS**, in order to accept and utilize this grant, the City needs to enter into a Grant Agreement with TIB which is called the “Fuel Tax Grant Agreement”; and

**WHEREAS**, the City Council finds it in the best interests of Ruston to enter into the Grant Agreement in substantially the form 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. Acceptance of Grant.** The City Council hereby accepts this grant from the Washington State Transportation Improvement Board for 2024 Overlay, 52nd to Park Ave (TIB project number 2-P-135(005)-1) in the amount of \$352,222.00.

**Section 2. Agreement Authorized.** The City Council hereby authorizes the Mayor to execute the Fuel Tax Grant Agreement with the Washington State Transportation Improvement Board in substantially the form attached hereto as Exhibit “A”

**Section 3. 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 19<sup>th</sup> day of December, 2023.

**APPROVED:**

\_\_\_\_\_  
Bruce Hopkins, Mayor

**ATTEST/AUTHENTICATED:**

\_\_\_\_\_  
Judy Grams, City Clerk

FILED WITH THE CITY CLERK: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
RESOLUTION NO.: \_\_\_\_\_ 785 \_\_\_\_\_

**EXHIBIT "A"**

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



City of Ruston  
2-P-135(005)-1  
2024 Overlay  
52nd to Park Ave

STATE OF WASHINGTON  
TRANSPORTATION IMPROVEMENT BOARD  
AND  
City of Ruston  
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the 2024 Overlay, 52nd to Park Ave (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 95.0000 percent of approved eligible project costs up to the amount of \$352,222, 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.

