



John
4/14

**CLARK COUNTY
STAFF REPORT**

DEPARTMENT/DIVISION: Department of Public Works/Transportation Program

DATE: February 5, 2013

SPECIFIC REQUEST: Approval of the Washington State Transportation Improvement Board Fuel Tax Grant Distribution Agreement for the NE 94th Avenue/Padden Parkway Intersection Project. CRP# 350822.

CHECK ONE: X Consent _____ Chief Administrative Officer

PUBLIC WORKS GOALS:

- Provide safe and efficient transportation systems within Clark County
- Continue responsible stewardship of public funds
- Promote family-wage job creation and economic development to support a thriving community
- Maintain a desirable quality of life
- Improve environmental stewardship and protection of natural resources
- Increase partnerships and foster an engaged, informed community
- Make Public Works a great place to work

BACKGROUND:

Clark County has received notification from the Transportation Improvement Board (TIB) that \$2,000,000 has been awarded to the NE 94th Avenue/Padden Parkway Intersection Project.

NE 94th Avenue/Padden Parkway Intersection Project will improve/construct a two-lane arterial with center turn lane/median, bike lanes, and sidewalks. In addition, the NE Padden Parkway/NE 94th Avenue intersection will be upgraded.

The attached TIB Fuel Tax Grant Distribution Agreement will initiate the process to receive funds for the construction phase of this project.

COMMUNITY OUTREACH:

This project is included in the adopted 2013-2018 Transportation Improvement Program (TIP). The TIP development undergoes a wide array of public input processes, including public hearings, open house meetings, and an internet web site.

BUDGET AND POLICY IMPLICATIONS:

There are no budget implications involved in this request. The 2013 Annual Construction Program includes this project (item no. 14).

FISCAL IMPACTS: Yes (see Fiscal Impacts Attachment) No

ACTION REQUESTED:

It is recommended that the Board of County Commissioners approve and sign two copies of the attached Fuel Tax Grant Distribution Agreement.

PW13-008

DISTRIBUTION:

Please return to Department of Public Works Transportation Programming, attention Susan Wilson, the following: a copy of the approved staff report, indicating the Board's action for the project, two (2) originally-signed copies of the Fuel Tax Grant Distribution Agreement. Public Works will then forward both originals of the Fuel Tax Grant Distribution Agreement to TIB for processing and execution. Upon receipt of a fully-executed, originally-signed copy of the Agreement from TIB, a copy will be provided to the Board for its records.

Steven C. Schulte
William Wright, P.E. *for William Wright*
Transportation Programming Manager

APPROVED: February 5, 2013
CLARK COUNTY, WASHINGTON
BOARD OF COMMISSIONERS

Peter Capell
Peter Capell, P.E.
Public Works Director/County Engineer

SR 03-13

Attachments: Fiscal Impact Sheet
Fuel Tax Grant Distribution Agreement (2)

c: PW Records

FISCAL IMPACT ATTACHMENT

Part I: Narrative Explanation

I.A - Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information.

NE 94th Avenue/Padden Parkway Intersection Project will improve/construct a two-lane arterial with center turn lane/median, bike lanes, and sidewalks. In addition, the NE Padden Parkway/NE 94th Avenue intersection will be upgraded.

The total cost for this project is estimated at \$5,397,000. Prior expenses equal \$220,000. The total project cost for 2013/2014 budget is \$5,177,000.

This project is programmed in the 2013-2018 Transportation Improvement Program (TIP) and 2013 Annual Construction Program (Item 14). The revenues and expenses for this project are currently included in the Road Fund 2013/2014 budget.

Part II: Estimated Revenues

Fund #/Title	Current Biennium (2013/2014)		Next Biennium		Second Biennium	
	Road Fund	Total	Road Fund	Total	Road Fund	Total
1012 Road Fund	\$5,177,000	\$5,177,000	\$ -	\$ -		
	\$ -	\$ -	\$ -	\$ -		
Total:	\$5,177,000	\$5,177,000	\$0	\$0		

II.A - Describe the type of revenue (grant, fees, etc.)

A portion of this will be funded by the Federal STP Grant Funds in the amount of \$2,000,000, State TIB funds in the amount of \$2,000,000, TIF Funds in the amount of \$989,000 and the remainder of \$188,000 will come from the Road Fund.

Part III: Estimated Expenditures

III.A - Expenditures summed up

Fund #/Title	FTE's	Current Biennium (2013/2014)		Next Biennium		Second Biennium	
		Road Fund	Total	Road Fund	Total	Road Fund	Total
1012 Road Fund		\$5,177,000	\$5,177,000	\$ -	\$ -		
		\$ -	\$ -	\$ -	\$ -		
Total:		\$5,177,000	\$5,177,000	\$0	\$0		

III.B = Expenditure by object category

Fund #/Title	Current Biennium (2013/2014)		Next Biennium		Second Biennium	
	Road Fund	Total	Road Fund	Total	Road Fund	Total
Salary/Benefits	\$517,700	\$517,700	\$ -	\$ -		
Consultant						
Supplies						
Travel						
Other controllables						
Capital Outlays	\$4,659,300	\$4,659,300				
Inter-fund Transfers						
Debt Service						
Total:	\$5,177,000	\$5,177,000	\$0	\$0		



Clark County
9-W-006(026)-1
NE 94th Avenue
Padden Parkway Intersection

STATE OF WASHINGTON
TRANSPORTATION IMPROVEMENT BOARD
AND
Clark County
AGREEMENT

PW 134

THIS GRANT AGREEMENT (hereinafter "Agreement") for the NE 94th Avenue, Padden Parkway Intersection (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and Clark County, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

TIB hereby grants funds in the amount of \$2,000,000 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



Signature of Chairman/Mayor 2-5-13
Date

Executive Director Date



Steve Stuart
Print Name

Print Name