

RESOLUTION NO. 2013-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN THE SOLID STATE STREETLIGHT DEMONSTRATION PROJECT AGREEMENT BETWEEN THE CITY AND THE STATE OF WASHINGTON TRANSPORTATION IMPROVEMENT BOARD

WHEREAS, the City of Benton City was selected by the Transportation Improvement Board as a demonstration site for their Solid State Street Light Feasibility Study; and

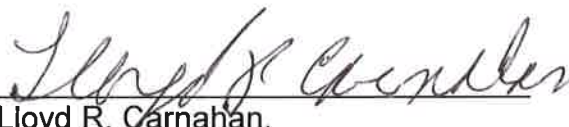
WHEREAS, the City of Benton City was awarded the Transportation Improvement Board grant for the sum of \$97,100.00 for project implementation; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, hereby resolves as follows:

That the Mayor of the City of Benton City, Washington, is hereby authorized and directed to sign the Solid State Streetlight Demonstration Project Agreement between the City and the State Of Washington Transportation Improvement Board, a copy of which is attached hereto and incorporated herein by this reference as Exhibit A; and to take all necessary steps required to complete this transaction.

ADOPTED this 3 day of September, 2013, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 3 day of September, 2013.

Resolution 2013-21 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 3 day of September, 2013.



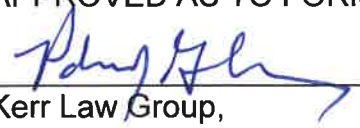
Lloyd R. Carnahan,
Mayor

ATTEST:



Stephanie Haug, CMC
City Clerk/Treasurer

APPROVED AS TO FORM:



Kerr Law Group,
City Attorney



City of Benton City
S-E-922(001)-1
FY 2014 Streetlight Project
Multiple Locations

STATE OF WASHINGTON
TRANSPORTATION IMPROVEMENT BOARD
AND
City of Benton City
AGREEMENT

THIS AGREEMENT (hereinafter "Agreement") for the Streetlight Feasibility Study Demonstration Project, (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and City of Benton City, a political subdivision of the State of Washington (hereinafter "RECIPIENT"), addressed collectively as the PARTIES and singularly as PARTY.

1.0 PURPOSE

TIB is conducting a feasibility study to determine the best approach to assist small cities in converting existing street lights to lower-energy technology. RECIPIENT is a demonstration site in this study. TIB hereby awards funds to RECIPIENT up to \$97,100 for implementation of the project, pursuant to the terms and conditions listed below. Receipt of funds is subject to full agreement of the utility provider, and is changeable based on the final, agreed upon scope.

2.0 SCOPE AND BUDGET

The preliminary Project scope and budget are described in the TIB Solid State Street Lighting Feasibility Study. RECIPIENT and TIB will mutually agree upon final Project Scope. The budget will be developed by TIB and refined based on plans, estimates and project specifications. RECIPIENT will be responsible for project implementation according to plans. TIB funds awarded under this Agreement may only be used for the conversion of street lights to low-energy technology and those improvements specifically necessary to such conversion. Costs associated with the betterment of infrastructure not directly necessary to such conversion are not eligible for reimbursement.

3.0 PROJECT DOCUMENTATION

RECIPIENT must 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. Documents that must be submitted 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

RECIPIENT shall submit progress billings as project costs are incurred to enable TIB to maintain accurate budgeting and fund management. Backup accounting documentation showing all project costs shall be included with each payment request. 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 \$10,000. 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 2 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 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.

11.0 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 this 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.

12.0 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.



13.0 ENTIRE AGREEMENT

This Agreement, together with the TIB Solid State Streetlight Demonstration Project Implementation Report, 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.

14.0 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

Kimberly Frinell
Assistant Attorney General

Lead Agency

Transportation Improvement Board

[Handwritten Signature]

Signature of Chairman/Mayor

Date
9/4/13

Executive Director

Date

[Handwritten Signature]

Lloyd Caimanan
Print Name

Print Name