

**INTERLOCAL AGREEMENT  
BETWEEN OKANOGAN PUD AND TOWN OF CONCONULLY  
FOR LED STREETLIGHT CONVERSION PROJECT**

THIS AGREEMENT is made and entered into by and between Okanogan PUD (hereinafter "PUD") and Town of Conconully, WA (hereinafter "Town") pursuant to the authority granted by Chapter 39.34 RCW, Interlocal Cooperation Act.

**ARTICLE I  
PURPOSE**

1.01 **PURPOSE.** The purpose of this Agreement is to set forth the terms and conditions under which PUD will administer the procurement and performance of the LED Streetlight Conversion Project, pursuant to the Washington State Transportation Improvement Board ("TIB") Grant Agreement with the Town, attached hereto (Exhibit A), and for the services identified in the attached Scope of Work (Exhibit B). No new or separate legal or administrative entity is created by this Agreement.

**ARTICLE II  
ADMINISTRATION**

2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of the Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

2.02 PUD's representative shall be Allen Allie, Construction Design Manager.

2.03 Town's representative shall be Zack Claussen, Public Works Director.

**ARTICLE III  
TERM**

3.01 **TERM.** This Agreement shall be effective when executed by both parties and shall continue through December 31, 2017.

**ARTICLE IV  
BILLING AND PAYMENT**

4.01 **BILLING AND PAYMENT.** PUD will submit a request for payment for the LED luminaires upon the District's receipt from vendor, and Town will remit payment within 45 days. PUD will submit a second request for payment upon completion of the LED streetlight conversion work performed by the PUD's contractor, and Town will remit payment within 45 days.

**ARTICLE V  
PERFORMANCE OF AGREEMENT**

5.01 **COMPLIANCE WITH ALL LAWS.** Each party shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including, without limitation, all those pertaining to wages and hours, confidentiality, disabilities and discrimination.

5.02 **MAINTENANCE AND AUDIT OF RECORDS.** Each party shall maintain books, records, documents and other materials relevant to its performance under this Agreement. These records shall be subjected to inspection, review and audit by either party, or its designee, and the Washington State Auditor's Office.

5.03 **ON-SITE INSPECTIONS.** Either party, or its designee, may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement and in compliance with federal, state and local laws, rules, regulations and ordinances.

5.04 **NOTICE.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to PUD shall be to the Construction Design Manager, PO Box 912, Okanogan, WA 98840-0912. Notice to Town for all purposes under this Agreement shall be to the Public Works Director, PO Box 127, Conconully, WA 98819-0127.

**ARTICLE VI  
INDEMNIFICATION**

6.01 **INDEMNIFICATION.** If Town's negligent acts under this Agreement give rise to a claim or demand against PUD, its appointed or elective offices, agents or employees, Town agrees to and shall defend, indemnify and hold harmless PUD, its appointed and elective officers, agents and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands, based on the negligent action(s) of the Town, upon PUD, its elected or appointed officials, agents or employees for damages because of personal or bodily injury including death at any time resulting therefrom,

sustained by any person or persons and on account of damage to property, including loss of use thereof.

## **ARTICLE VII DISPUTES**

7.01 **TIME.** Time is of the essence of this Agreement.

7.02 **GOVERNING LAW.** This Agreement shall be governed exclusively by the laws of the State of Washington.

## **ARTICLE VIII GENERAL PROVISIONS**

8.01 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.**

The Agreement may be changed, modified, amended or waived only by written agreement signed by the parties. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission, and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

8.02 **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement. Any such attempted assignment shall be void and shall constitute a material breach of this Agreement.

8.03 **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

8.04 **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

8.05 **FILING.** Pursuant to RCW 39.34.040, this Agreement shall be posted on the Town's public website.

IN WITNESS WHEREOF, the parties have executed this Agreement this 15  
day of August, 2017.

**P U D:**

Public Utility District No. 1 of Okanogan County:

By: 

Don Coppock, Acting General Manager

**TOWN:**

Town of Conconully, a municipal corporation:

By: 

Sam Martin, Mayor



Town of Conconully  
S-E-877(001)-1  
LED Streetlight Conversion

RECEIVED  
JUN 23 2017  
TIB

STATE OF WASHINGTON  
TRANSPORTATION IMPROVEMENT BOARD  
AND  
Town of Conconully  
GRANT AGREEMENT

THIS GRANT AGREEMENT ("Agreement") is made and entered into between the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD ("TIB") and the Town of Conconully, a Washington state municipal corporation ("RECIPIENT").

WHEREAS, the TIB has developed a grant program, Relight Washington, to provide for the conversion of standard streetlights to LED lighting ("Project") for eligible cities and towns to reduce municipal electrical costs, and

WHEREAS, the above-identified city/town is eligible to receive a Project grant and attests that it has the legal authority to receive such grant and to perform the Project pursuant to the terms of this grant,

NOW, THEREFORE, pursuant to chapter 47.26 RCW and chapter 479 WAC, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, and performances contained herein, and the attached Exhibits, if any, which are made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. GRANT

TIB agrees to grant funds in the amount of Twelve Thousand Five Hundred Fifty AND NO/100 dollars (\$12,550) for the Project pursuant to terms contained herein, and the RECIPIENT agrees to accept such grant funds and agrees to perform and be subject to the terms and conditions of this Agreement.

2. USE OF TIB GRANT FUNDS

TIB grant funds may come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than for highway or street Project improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9.

3. PROJECT AND BUDGET

The Project shall provide for the conversion of identified streetlights within RECIPIENT's city limits. The RECIPIENT agrees to enter into an agreement with or otherwise provide for a service provider to perform the actual conversion work. The RECIPIENT further agrees that it shall be solely responsible for and shall pay its service provider's invoices for costs of the work. The Project and Budget may be amended by the Parties, pursuant to Section 7.



#### 4. PROJECT DOCUMENTATION

The RECIPIENT agrees to and shall make reasonable progress and submit timely Project documentation, as applicable, throughout the term of this Agreement and Project.

Required documents include, but are not limited to the following:

- a) Documentation to support all costs expended for the Project.
- b) Project Closeout Form.

#### 5. BILLING AND PAYMENT

The RECIPIENT may submit progress payment requests to the TIB as necessary. If billable amounts are greater than \$50,000, RECIPIENT shall submit requests for payments on a quarterly basis. If progress payments are not regularly requested, reimbursements may be delayed or scheduled in a to be determined payment plan.

#### 6. RECORDS MAINTENANCE

6.1 The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the Project work 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 cost to TIB, these records shall be provided when requested, including materials generated under the Agreement, and shall be subject at all reasonable times to inspection, review or audit by TIB personnel, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

6.2 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.

#### 7. INCREASE OR DECREASE IN TIB GRANT FUNDS

RECIPIENT may request an increase in the TIB grant funds for the Project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. An increase in grant funds shall be by amendment pursuant to Section 14. If an increase is denied, the recipient shall be solely liable for costs incurred in excess of the Agreement grant amount.

#### 8. TERM OF AGREEMENT

This Agreement shall be effective upon execution by the Parties and shall continue through closeout of the grant amount, or modification thereof, or unless terminated as provided herein. In no event shall the Agreement term exceed two years, unless extended by Agreement amendment pursuant to Section 14.

#### 9. 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) RECIPIENT shall provide a written response within ten (10) business days of receipt of TIB's notice of non-compliance, which shall include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details. An agreement to amend the Project must be pursuant to Section 14.
- c) RECIPIENT shall have thirty (30) days in which to make reasonable progress toward compliance pursuant to its plan to correct or implement an amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold reimbursement 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 progress payments until the requested corrections have been made or if the Agreement is terminated.

### 9.3 TERMINATION

- a) In the event of default as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which may 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 actions necessary as may be directed by TIB.
- b) In the event of default and/or termination, 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 this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

### 9.4 TERMINATION OR SUSPENSION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate or suspend 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 Project work performed or costs incurred prior to the effective date of termination.



## 10. 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 participate 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 in accordance with Section 11 until and unless the Dispute Resolution process has been exhausted.

## 11. GOVERNANCE, VENUE, AND ATTORNEYS FEES

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. The Parties agree that each Party shall be responsible for its own attorneys' fees and costs.

## 12. INDEMNIFICATION, HOLD HARMLESS, AND WAIVER

12.1 Each Party, shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, a 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 (both to persons and/or property) 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.

12.2 Each Party agrees that its obligations under this section extends to any claim, demand and/or cause of action brought by, or on behalf of, any of its officers, officials, employees or authorized agents. For this purpose, each Party, 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.

12.3 The obligations of this indemnification and waiver Section shall survive termination of this Agreement.

## 13. 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.

14. 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.

15. 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.

16. ENTIRE AGREEMENT


This Agreement, together with the Exhibits, if any, the provisions of chapter 47.26 RCW, chapter 479 WAC, and TIB Policies, constitute the entire Agreement between the Parties and supersedes all previous written or oral agreements between the Parties.

RECIPIENT

Transportation Improvement Board

	
_____ Chief Executive Officer	_____ Executive Director
6/13/17	6-27-17
Date	Date

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

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

Approved as to Form

By: \_\_\_\_\_ SIGNATURE ON FILE \_\_\_\_\_

ANN E. SALAY  
Senior Assistant Attorney General

NOTE: Any changes to the terms of this Agreement shall require further approval of the Office of the Attorney General

## Exhibit B

### Scope of Work

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**Project Name:** LED Streetlight Conversion Project

**Purpose:** Okanogan County PUD will convert existing City Streetlights to new LED Streetlights per agreement with the Washington State Transportation Improvement Board.

**Action:** Okanogan County PUD (PUD) will procure and replace 35 existing streetlights for the Town of Conconully (City). The PUD will contract with a qualified electrical contractor to perform the removal, installation and disposal of the lights.

**Public Works Director:** Zack Claussen

**District Representative:** Allen Allie, Construction Design Manager

**Date Assigned:** 7/17/2017

**Estimated Project Completion Date:** 12/31/2017

**Estimated Project Cost:** 35 LED Conversions \$13,544.24