

GRANT AGREEMENT BETWEEN LEWIS COUNTY AND THE PORT OF CHEHALIS

This Grant Agreement is made and entered into by Lewis County and the Port of Chehalis as to the conditions for acceptance of monies by the Port of Chehalis from the “Distressed Counties Fund” pursuant to RCW 82.14.370.

I. PURPOSE

RCW 82.14.370 authorizes the availability of a sales and use tax to be used to finance public facilities serving economic development purposes in rural counties. The name of this project shall be “Port of Chehalis Rail Infrastructure Improvements” and shall be funded or partially funded in the amount of a grant for \$340,000.

II. ELIGIBILITY

The public facility must be listed as an item in the officially adopted Lewis County Comprehensive Economic Development Strategy (CEDS) and must meet other requirements as set forth by County resolution, adopted policy, and growth management planning. Monies collected shall only be used to finance public facilities serving economic development purposes in rural counties.

III. APPLICANT’S RESPONSIBILITIES

Upon approval of application by the Lewis County Commissioners, applicant agrees that:

1. The project must be in progress within six (6) months of the date of this agreement or grant funds shall revert back to the Lewis County “Distressed Counties Fund.” For purposes of being “in progress,” the project must have proceeded beyond the initial planning stage and into the implementation stages of the project. In addition, the Port of Chehalis must use best efforts to complete the project per the timeframe set forth in the application and not permit or cause delays in the project or grant funds shall revert back to the Lewis County “Distressed Counties Fund.” The Port of Chehalis shall promptly notify Lewis County in writing of any actual or anticipated event that is delaying or could delay achievement of any milestone or performance of any critical path activity of the project. A copy of this report shall also be placed in the file of the Economic Development Public Facilities Advisory Committee. Time is of the essence for this Grant Agreement.
2. The Applicant must provide detailed quarterly progress reports to the Lewis County Board of County Commissioners that include, without limitation, the scope of work completed, funds expended, and a realistic estimate of project completion, in order to ensure satisfactory completion of the project and proper expenditure of grant monies. The scope of project work is contained in the .09 application dated March 9, 2023, and is hereby incorporated by reference into this agreement. Failure to

provide progress reports or sufficient information may result in reversion to the “Distressed Counties Fund” of all or part of the funding balance. At such times as the Lewis County Board of County Commissioners deems necessary for reasonable cause, the applicant shall permit the County to inspect and audit all pertinent books and records of the applicant or other persons or entities that have performed work in connection with or related to this funding. The audit may take place up to three (3) years after completion of the project. The books and records are to be made available at reasonable times at such reasonable location as County selects. At Lewis County’s request, the applicant shall supply County with, or shall permit County to make a copy of, any books and records and any portion thereof.

3. Applicant has requested these County funds in order to construct rail infrastructure improvements. Failure to comply with the intent of this section may result in reversion to the “Distressed Counties Fund” of all or part of the funding balance. Funding to complete the full project as presented in the application must be confirmed and available prior to release of these grant funds. Failure to comply with this section may result in reversion to the “Distressed Counties Fund” of all or part of the funding balance.
4. Applicant shall provide documented evidence of expenditures of all funds for this project at the quarterly updates denoted in item #2 (or within 60 [sixty] days of project completion) to both the Rural Economic Development Public Facilities Advisory Committee and the County. Funds spent under this program must be for the purpose of financing public facilities or supporting related economic development projects, as defined under RCW 82.14.370 and AGO 2002, No.1. Failure to comply with this section may result in reversion to the “Distressed Counties Fund” of all or part of the funding balance.
5. Billings and invoices together with audit-sufficient supporting documentation shall be remitted to the County for payment not more than one time each month. Should the County require additional supporting documentation, which is in County’s sole discretion to demand, the Port of Chehalis shall provide the same to County without delay. Within 30 (thirty) days of receiving a reimbursement claims voucher that meets the requirements of this Agreement and applicable law (provided should County request additional supporting documentation, the 30 day period shall not begin until County receives said documentation), the Clerk of the Board, on behalf of the County, shall remit to the organization a warrant for the approved reimbursement amount. The applicant will be responsible to the County for the timely sharing and/or exchange of any or all documentation related to the project as well as accounting and record retention responsibilities for the project.
6. The applicant shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations and lawful order of public authorities applicable to performance of the project. Lewis County reserves the right to terminate this Agreement and demand reversion of “Distressed Counties Fund”

monies at any time during the undertaking of said project if it is discovered that said project is in violation of any local, state or federal laws.

IV. ENTIRE AGREEMENT

This Agreement represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings.

V. FUTURE SUBSIDY

Lewis County makes no commitment to future support and assumes no obligation for future support of the activity contracted for herein, except as expressly set forth in this Contract. The maximum amount of funding available is as stated in the Lewis County Economic Development Public Facilities Project Proposal attached herein. This item is hereby incorporated into this Agreement by reference.

VI. GOVERNING LAW

This Agreement is governed by, and shall be construed in accordance with, the laws of the State of Washington. Except as otherwise required by applicable law, any legal action under this Agreement shall be brought in the Superior Court of the State of Washington in and for Lewis County.

VII. WAIVER OF BREACH

No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults that were in existence at the time such payment or payments or performance were accepted by it.

VIII. INDEMNIFICATION

To the fullest extent permitted by law, the Port of Chehalis shall protect, defend, indemnify and hold harmless Lewis County, the Lewis County Board of County Commissioners, its officers, agents and employees, or any of them from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, which are caused by or result from the performance of this Agreement by either party, except those resulting exclusively from the County's sole negligence. In the event of the concurrent negligence of the Port of Chehalis, its subcontractors, agents or employees, and the County, its officers, agents, or employees, this indemnification obligation shall be valid and enforceable only to the extent of the negligence of the Port of Chehalis, its subcontractors, agents, and employees. This indemnification obligation of the Contractor shall not be limited in any way

by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Port of Chehalis hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Port of Chehalis are a material inducement to County to enter into this Agreement, are reflected in the grant funding, and have been mutually negotiated. The Port of Chehalis shall require any subcontractors performing on the project herein to indemnify the County to an equal or greater extent than provided herein. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of any indemnity protections under this Agreement. The Port of Chehalis's obligations under this provision shall survive the completion, termination, or expiration of this contract.

IX. DISPUTE RESOLUTION

(a) If a dispute arises between the parties with regard to the performance of any provision of this agreement or the interpretation thereof, the parties agree to follow the procedure set forth below. It is the goal of the parties to resolve their differences as early and amicably as possible.

(b) The parties shall first meet to attempt to see if the matter can be informally resolved. This informal resolution attempt may involve more than one meeting but is not required to involve more than one meeting.

(c) If the parties are unable to resolve their differences, the parties will endeavor to settle the dispute by mediation under such mediation rules as shall be mutually agreeable to the parties. Such mediation shall be non-binding but shall be a condition precedent to having said dispute decided in court by a judge or jury. Mediation shall commence, unless otherwise agreed, within 30 (thirty) days of a party's written request for mediation of a dispute. Any resolution at this stage shall be reduced to writing and, if it involves an interpretation of the agreement, it shall be considered an addendum to this agreement without the need for formal adoption by the governing bodies of the jurisdictions that are parties to this agreement. Any costs related to mediation shall be shared equally by the parties.

Dated this 23rd day of May 2023.

APPROVED AS TO FORM
Prosecuting Attorney Jonathan Meyer

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON

By: Chief Civil DPA David Bailey

Sean D. Swope, Chair

ATTEST

Scott J. Brummer, Vice Chair

Rieva Lester, Clerk of the Board

Lindsey R. Pollock, DVM, Commissioner

Grantee: The Port of Chehalis

By: _____

Title: _____

For: _____

Date: _____