

AGREEMENT FACE SHEET

Agreement Number: K2948

Washington State Department of Agriculture FAIRS PROGRAM CAPITAL PROJECT GRANTS

| | | | |
|---|-----------------------------|---|--|
| 1. Grantee Lewis County 351 NW North St. Chehalis, WA 98532-1900 | | 2. Fair Facility Southwest Washington Fair 2555 North National Avenue Chehalis, WA 98532 | |
| 3. Grantee Representative Tamara Hayes, Fair Manager Phone: 360-740-2656 Tamara.hayes@lewiscountywa.gov | | 4. WSDA Representative Teresa Norman, Fairs Program Administrator Phone: 360-902-2043 Fax: 360-902-2092 tnorman@agr.wa.gov | |
| 5. Grant Amount \$40,500.00 | | 6. Grant Start Date | 7. Grant End Date May 31, 2021 |
| 8. Biennium: 19-21 | | 9. Project Completion Date | |
| 10. Tax ID # 91-6001351 | 11. SWV # 1232-63 | 12. UBI # | |
| 13. Grant Purpose WSDA and Grantee have entered into this Agreement to undertake a capital improvement project to make health or safety improvements to agricultural fairgrounds or fair facilities in order to benefit participants and the fair-going public pursuant to RCW 15.76.165. | | | |
| WSDA and Grantee agree to the terms of this Agreement as set forth In this AGREEMENT FACE SHEET, the TERMS AND CONDITIONS, and the following documents incorporated by reference: ATTACHMENT I: GRANTEE'S APPLICATION FOR CAPITAL GRANT FUNDS; ATTACHMENT II: CERTIFICATION OF AVAILABILITY OF FUNDS TO COMPLETE PROJECT. This Agreement governs the rights and obligations of both parties to this Agreement, which is executed on the date below to start as of the date and year last written below. | | | |
| FOR THE GRANTEE By signing this agreement, I bind the Grantee to this Agreement and certify that I am authorized to do so. _____ Signature _____ Print Name _____ Title _____ Date <input type="checkbox"/> Additional signatures on next page <i>Check box if true</i> | | FOR THE WASHINGTON STATE DEPARTMENT OF AGRICULTURE _____ Hannah Flournoy Administrative Regulations Manager _____ Date APPROVED AS TO FORM ONLY _____ Janis Snoey Assistant Attorney General | |
| | | June 6, 2019 | |

TERMS AND CONDITIONS

Washington State Department of Agriculture
Fairs Program
CAPITAL PROJECT GRANT

TERMS AND CONDITIONS

1. DEFINITIONS

The following definitions apply throughout this Agreement.

“Agreement” means this Capital Project Grant Agreement

“Capital Project” means the capital improvement project described in Section 4.

“Fair Facility” means the agricultural fairgrounds or fair facility owned by the Grantee and located at the address shown for the Fair Facility on the Agreement Face Sheet.

“Grant Amount” means the total amount of funding under this Agreement, as set forth on the Agreement Face Sheet.

“Grantee” means the entity identified as the Grantee on the Agreement Face Sheet, who is a Party to the Agreement, and includes all employees and agents of the Grantee.

“WSDA” means the Washington State Department of Agriculture, who is a Party to the Agreement.

2. AUTHORITY AND PURPOSE

Acting under the authority of RCW 15.76.165, WSDA has awarded the Grantee funding under this Agreement to undertake a capital improvement project to make health or safety improvements to agricultural fairgrounds or fair facilities in order to benefit participants and the fair-going public. Grantee will undertake, by whatever means, to construct, install, or otherwise cause the building of the Capital Project at the Fair Facility. Grantee must perform in accordance with this Agreement’s terms and conditions and all applicable federal, state and local laws and ordinances, which by this reference are incorporated into this Agreement as though set forth fully herein.

3. FUNDING

WSDA shall pay an amount not to exceed the awarded Grant Amount for the eligible costs necessary for or incidental to the performance of work as set forth for the Capital Project.

4. CAPITAL PROJECT

Grantee must use the funding awarded by WSDA under this Agreement solely for the capital improvement project set forth in Attachment I, which includes overhauling the main restroom.

5. COMMUNITY BENEFITS

In consideration for the funding under this Agreement, Grantee agrees to provide the following community benefits for a period of three (3) years following termination of the agreement.

- a. Use of the Capital Project in the course of holding an agricultural fair as defined by RCW 15.76.110.
- b. If charging admission fees for the agricultural fair(s), a charge to the general public that is reasonable and consistent with the standard fees charged at other public agricultural fairs and, to the extent possible, discount or free admission to special populations such as military families, foster families, student groups, seniors, babies, and toddlers.
- c. Access to the Fair Facility and its exhibits and programs to persons of differing abilities.
- d. Where possible, availability of the Fair Facility for rental at reasonable or discounted cost for educational or public programs benefitting the public.
- e. Space for charity and other nonprofit community organizations to conduct fundraising or educational activities.

- f. Support other local groups and programs with similar interests in promoting the welfare of farm people and rural living including the exhibition of livestock and agricultural produce of all kinds, and exhibition of related arts and manufactures including products of the farm home, and exhibition of educational contests, displays and demonstrations designed to train youth.

6. CHANGE OF OWNERSHIP OR USE

- a. Grantee understands and agrees that Grantee must hold and use all real property and facilities acquired, constructed, improved or rehabilitated for a period of three (3) years following termination or expiration of this Agreement for the express purpose of or purposes of the Capital Project and provision of Community Benefits under Section 5.
- b. If the Grantee is found to be out of compliance with this section, the Grantee must repay to the state general fund the amount of the grant and interest as provided in the Recapture provision, Section 16.

7. CERTIFICATION OF NON-STATE MATCHING FUNDS OR IN-KIND SERVICES

- a. The release of state funds under this Agreement is contingent upon the Grantee certifying that it has expended or has access to non-state matching funds or in-kind services from other sources as set forth in ATTACHMENT II: CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT to complete all construction and activities identified for the Capital Project.
- b. Grantee shall maintain records sufficient to evidence that it has access to or has expended funds from such sources, and shall make such records available for WSDA's review upon reasonable request

8. PROJECT EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

WSDA will make payments to the Grantee on a reimbursement basis only. For the purposes of this Agreement, eligible costs are construed to mean costs incurred and paid, or costs incurred and payable within thirty (30) days. Only costs incurred between (1) the grant start date and (2) last date for payment request to WSDA, as shown in the Agreement Face Sheet, are eligible for reimbursement under this Agreement. Disallowed Costs: The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

9. BILLING PROCEDURES AND PAYMENT

- a. WSDA will reimburse Grantee for eligible project expenditures up to the maximum payable under this Agreement. Grantee must submit a signed and completed Invoice Voucher (Form A-19), referencing in the project activity performed, and any appropriate documentation. The Invoice Voucher must be certified by an official of the Grantee with authority to bind the Grantee.
- b. Grantee may submit a single Invoice Voucher for the full grant amount or no-more-than-monthly periodic Invoice Vouchers. WSDA will reimburse no more than seventy-five percent (75%) of the grant amount until all project activities are complete and the Grantee submits a complete Certified Project Completion Report as required by Section 10.
- c. Each Invoice Voucher must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the project since the last invoice was submitted, as well as a report of project status to date. WSDA will not release payment for any reimbursement request without receiving a Project Status Report.
- d. The Grantee shall submit all Invoice Vouchers and any required documentation to WSDA's Project Manager shown in Section 34.
- e. WSDA will process reimbursement after approving the Invoice Voucher and Project Status Report.
- f. Payment shall be considered timely if made by WSDA within thirty (30) calendar days after receipt of properly completed invoices.

10. CERTIFIED PROJECT COMPLETION REPORT

The Grantee shall complete a Certified Project Completion Report when the Capital Project is complete. The report must include:

- a. A certified statement that the Capital Project is complete and, if applicable, meets required standards.
- b. Before and after photographs, either hard copy or electronic, of the Fair Facility showing the Capital Project.

- c. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the Capital Project. This includes the value of in-kind services performed.
- d. Certification that all costs associated with the project have been incurred and accounted for. Costs are incurred when goods and services are received and/or Agreement work is performed.
- e. Certification that Grantee is and will continue to provide Community Benefits set forth in Section 5.
- f. A final invoice voucher for the remaining eligible funds.

11. REPORTS

- a. By October 31, 2020, Grantee must submit written affirmation of project completion by May 31, 2021, unless Grantee has prior submitted a Certified Project Completion Report.
- b. The Grantee shall furnish WSDA with all other reports specified in other sections of this Agreement and other reports as WSDA may require.
- c. Failure to file reports as requested may result in termination of this Agreement.

12. LACK OF ADEQUATE PROGRESS

Grantee's inability to affirm by October 31, 2020 that the project will be complete by May 31, 2021 is a basis for WSDA to terminate the Agreement in whole or in part for cause as provided in Section 27. At WSDA's discretion, the parties may modify this Agreement in lieu of termination.

13. EVALUATION AND MONITORING

- a. The Grantee shall cooperate with and freely participate in any monitoring or evaluation activities conducted by WSDA, including site inspections, if necessary.
- b. If requested by WSDA, Grantee must provide photographs, either hard copy or electronically, which visually depict the progress made on the project.
- c. WSDA or the State Auditor and any of their representatives shall have full access to and the right to examine all of the Grantee's records with respect to all matters covered in this Agreement. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this Agreement. Such rights last for six (6) years from the date final payment is made.

14. SIGNAGE, MARKERS, AND PUBLICATIONS

If, during the period covered by this Agreement, the Grantee displays or circulates any communication, publication, or donor recognition identifying the financial participants in the project, any such communication or publication must identify "The State of Washington" and "The Washington State Department of Agriculture – Fairs Program" as participants.

15. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990, 28 C.F.R. Part 35 will be required, as specified by the local building Department.

16. PREVAILING WAGE LAW

The project funded under this Agreement is subject to state prevailing wage law (chapter 39.12 RCW). The Grantee is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine the prevailing wages that must be paid. WSDA is not responsible for determining the prevailing wages applying to this project or for any prevailing wage payments that may be required by law.

17. RECAPTURE PROVISION

- a. If Grantee fails to expend state funds in accordance with state law or the provisions of this Agreement, WSDA reserves the right to recapture state funds in an amount equivalent to the principal amount of the grant plus interest. Interest is calculated at the rate of interest on State of Washington general obligation bonds issued most closely to the date of authorization of the grant. Such right of recapture ends three (3) years following expiration or termination of this agreement.
- b. Repayment by the Grantee of state funds under this recapture provision shall occur within thirty (30) days of demand. If WSDA is required to institute proceedings to enforce this recapture provision, WSDA is entitled to its cost thereof, including reasonable attorney's fees.

- c. If Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, WSDA reserves the right to recapture all funds disbursed under the Grant, in addition to any other remedies available at law or in equity.

18. AMENDMENTS

The parties may amend this Agreement by mutual agreement. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

19. SAVINGS

If funding from state or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, WSDA may terminate the Agreement for convenience under Section 27, without the ten (10) business days' notice requirement. In lieu of termination, the parties may amend the Agreement to reflect the new funding limitations and conditions.

20. NONDISCRIMINATION

- a. Grantee must comply with all applicable federal and state nondiscrimination laws and regulations, including, but not limited to chapter 49.60, RCW Washington's law against discrimination, and 42 USC 12101 et seq., the Americans with Disabilities Act.
- b. If Grantee does not comply or refuses to comply with any nondiscrimination law, regulation or policy, WSDA may terminate this Agreement in whole or in part for cause as provided in Section 27.

21. HISTORICAL AND CULTURAL ARTIFACTS

Pursuant to Executive Order 05-05, which is available at <https://dahp.wa.gov/project-review/governors-executive-order-05-05> and is incorporated into this Agreement by reference, if historical or cultural artifacts are discovered at the project site during construction, the Grantee shall immediately stop construction and notify the local historical preservation officer and the state historical preservation officer at the Department of Archaeology and Historic Preservation.

22. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, WSDA may terminate this Agreement for cause if WSDA finds, after notice and examination, that there is a violation of the Ethics in Public Service Act, chapter 42.52 RCW; or any similar statute involving the Grantee in the procurement of, or performance under this contract.

23. DISPUTES

Except as otherwise provided in this Agreement, when a dispute arises between the parties that cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The dispute resolution team shall consist of a representative appointed by the WSDA, a representative appointed by the Grantee, and a third party mutually agreed upon by both parties. The dispute resolution team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial setting.

24. HOLD HARMLESS

- a. This Agreement is solely for the benefit of the parties and gives no right to any other entity that is not a party to this Agreement. Each party is responsible and assumes liability for its own negligent acts or omissions, or those of its officers, agents, or employees to the fullest extent required by law. In the case of negligence of more than one party, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party, and each party shall have the right to seek contribution from the other party in proportion to the percentage of negligence attributable to the other party.
- b. This indemnification clause also applies to all causes of action arising out of the performance of work activities under this Agreement. Each contract for services or activities utilizing funds provided in whole or in part by this Agreement must include a provision that WSDA and the State of Washington are not liable for damages or claims from damages arising from any subcontractor's performance or activities under the terms of the contracts.

25. INDEPENDENT CAPACITY OF GRANTEE

The Grantee and its employees or agents performing under this Agreement are not employees or agents of the state of Washington or WSDA. The Grantee will not hold itself out as or claim to be an officer or employee of

WSDA or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

26. RECORDS MAINTENANCE

The Grantee shall maintain books, records, documents, data and other evidence relating to this Agreement for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by WSDA, personnel duly authorized by WSDA, 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.

27. TERMINATION OR SUSPENSION

- a. For Cause: If WSDA determines the Grantee has failed to comply with the conditions of this Agreement in a timely manner, WSDA has the right to suspend or terminate this Agreement. Before suspending or terminating the Agreement, WSDA shall notify the Grantee in writing of the need to take corrective action. If corrective action is not taken within twenty (20) calendar days, WSDA may terminate or suspend the Agreement and seek recapture of funds as provided in Section 16.
- b. For Failure to Complete: If the Grantee fails to complete the Capital Project by the Project Completion Date shown on the Agreement Face Page, WSDA may terminate this Agreement and seek recapture of funds as provided in Section 16.
- c. For Convenience: Except as otherwise provided in this Agreement, WSDA may terminate this Agreement, in whole or in part, after ten (10) days written notice, beginning on the second day after the mailing. If this Agreement is so terminated, WSDA shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.
- d. The rights and remedies of WSDA provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

28. ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable federal and state of Washington statutes and regulations
- b. Agreement Face Sheet
- c. Terms and Conditions
- d. Attachments

29. OWNERSHIP OF PROPERTY

WSDA makes no claim to any real property improved or constructed with funds awarded under this Agreement, does not assert, and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Agreement. This provision does not extend to claims that WSDA may bring against the Grantee in recapturing funds expended in violation of this Agreement.

30. 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.

31. GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

32. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

33. SURVIVAL

The terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

34. WAIVER

WSDA's failure to insist on strict performance of any provision in this Agreement or to exercise any right based upon a breach of any provision or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

35. GRANT MANAGEMENT

The Agreement manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

| The Agreement Manager for the Grantee is: | The Agreement Manager for the Department is: |
|---|---|
| Tamara Hayes, Manager Southwest Washington Fair 2555 North National Avenue Chehalis, WA 98532 Telephone: 360-740-1495 E-mail: tamara.hayes@lewiscountywa.gov | Teresa Norman, Fairs Program Administrator Washington State Dept. of Agriculture 1111 Washington Street SE PO Box 42560 Olympia, WA 98504-2560 Telephone: 360-902-2043 E-mail: tnorman@agr.wa.gov |

**ATTACHMENT I:
GRANTEES'S APPLICATION FOR CAPITAL GRANT FUNDS**

**ATTACHMENT II:
CERTIFICATION OF THE AVAILABILITY OF NON-STATE MATCHING OR IN-KIND
SERVICES TO COMPLETE THE PROJECT**

**Washington State Department of Agriculture: FAIR CAPITAL GRANTS
Grantee: Lewis County
Agreement Number: K2948**

| Type of Funding | Source Description | Amount |
|--|--|--------------------|
| Grant | Washington State Department of Agriculture | \$40,500.00 |
| Other Grants | | |
| Grant #1 | | \$ |
| Grant #2 | | \$ |
| Total Other Grants | | \$0.00 |
| Other Sources | | |
| Source #1 | County Funds | \$10,500.00 |
| Total Other Sources | | \$10,500.00 |
| Estimated Value of In-Kind Services | | |
| Source #1 | County Labor | \$30,000.00 |
| Source #2 | | \$ |
| Total Other Funds | | \$30,000.00 |
| Total Project Funding | | \$81,000.00 |

CERTIFICATION PERFORMANCE MEASURE

The Grantee, by its signature, certifies that non-state matching and in-kind services from sources other than those provided by this Agreement and identified above are fully expended or committed, or both, in an amount sufficient to complete the project, or a distinct phase of the project that is useable to the public, and that the funding will be used for the purpose as described elsewhere in this contract, as of the date and year written below.

The Grantee shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for WSDA'S review upon reasonable request.

SIGNATURE

NAME

TITLE

DATE