

**STATE OF WASHINGTON
DEPARTMENT OF AGRICULTURE
FAIRS PROGRAM**

AGREEMENT

This Agreement is entered into by and between the **Kittitas County**, a county within the State of Washington, (hereinafter referred to as the Contractor) and the **Washington State Department of Agriculture** (hereinafter referred to as the Department).

RECITALS:

1. The Department has the statutory authority to administer the Fairs Program under chapter 15.76 RCW, the Agricultural Fairs, Youth Shows, Exhibitions Act; and
2. The Department is also given the responsibility to administer funds for capital projects for those entities qualifying under RCW 15.76.165; and
3. The Washington State Legislature established a one-time appropriation for the 2015-2017 biennium to make grants for capital projects that make health or safety improvements to agricultural fair grounds or fair facilities in order to benefits participants and the fair-going public; and
4. The enabling statute also provides that local governments and nonprofit organizations may apply to the director for grants of capital funding available on a competitive basis (RCW 15.76.165).

NOW, THEREFORE, the parties hereto agree as follows:

1. FUNDING

The funds to be paid to the CONTRACTOR hereunder shall be a sum up to, but not to exceed fifty-four thousand two hundred fifty dollars (\$54,250.00).

2. STATEMENT OF WORK

- a) Funds awarded under this performance-based Agreement shall be used solely for a capital improvement project to replace the footings specifically in the Rodeo Arena at the Contractor's fair facility located at 901 East 7th Avenue, Ellensburg, WA 98926.
- b) The portion of the Contractor's Application for Capital Improvement Grant Funds pertaining to replacing the footings in the Bloom Pavilion is not funded and is not part of the deliverables.
- c) The Contractor shall perform in accordance with the terms and conditions of this Agreement and the following exhibit; which, by this reference, is made a part of this Agreement:

EXHIBIT A – Application for Capital Improvement Grant Funds on

behalf of the Contractor

- d) All applicants who receive grant funds must follow applicable procurement procedures.

3. SPECIAL CONDITION(S)

During the period of this contract and for a period of three (3) years following termination of the Agreement, the Contractor agrees in consideration for the funding received under this Agreement to provide one or more of the following Community Benefits:

- a) To use the project/capital facility in public interest in the course of holding an agricultural fair as defined by RCW 15.76.110.
- b) To charge reasonable standard admission fees for general public admission to the agricultural fair, if applicable, and to the extent possible, provide discount or free admission to special populations such as military families, foster families, student groups, seniors, babies, and toddlers.
- c) Provide for access to the fair and its exhibits and programs to persons of differing abilities.
- d) Where possible, making the fairground or fair facility available for rental at reasonable or discounted cost for educational or public programs benefitting the public interest.
- e) Provide space for charity and other nonprofit community organizations to conduct fundraising and/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.

4. CONTRACT PERIOD

- a) The effective date of this Agreement shall be the date of the last signature of the contracting parties.
- b) Unless terminated earlier pursuant to provisions of this contract, the termination date shall be June 30, 2017.

5. PAYMENT AND DOCUMENTATION OF MATCHING FUNDS OR IN-KIND

Upon completion of the capital improvement project, the Contractor shall provide documentation up to and including receipts to the Department which detail up to the amount to be paid for the project outlined in Exhibit A in the amount stated in this Agreement, including documentation of the non-state matching requirements, if non-state matching was a part of the budget for the improvement outlined in Exhibit A.

The Contractor shall provide a letter or evidence of completion of any work performed with all invoices submitted which document satisfactory performance of the Agreement. Before and after photos of the project are encouraged. The Department will not pay invoices not accompanied by such documentation. **All documentation for final payment must be received no later than July 31, 2017 or the Contractor will not be paid for the project discussed herein. Payment will not be provided for any work conducted or purchases made after June 30, 2017.**

Instead of one invoice, the Contractor may submit invoices, documentation of satisfactory performance and proper receipts of expenses on a more frequent basis provided it is not more than once a month.

6. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

7. EVALUATION, REPORTING, AND MONITORING

- a) The Contractor shall submit written documentation to the Department by October 31, 2016, confirming that the project will be completed by June 30, 2017, if the project has not yet been completed.
- b) The Contractor shall submit documentation to the Department when the project is completed and confirming that the terms and conditions of this Agreement have been met including a report of compliance with the Community Benefit provisions of Section 3.
- c) The Contractor shall cooperate with and freely participate in any monitoring or evaluation activities conducted by the Department that are pertinent to the intent of this Agreement, including an on-site inspection of the capital improvement project after its completion and prior to June 30, 2017.
- d) The Department or the State Auditor and any of their representatives shall have full access to and the right to examine during normal business hours and as often as the Department or the State Auditor may deem necessary, all the Contractor's records with respect to the 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. The contractors shall retain records for a period of six (6) years following completion of the project.

8. NONDISCRIMINATION PROVISION

- a) During the performance of this Agreement, the Contractor shall abide by 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 U.S.C. 12101 et. seq., the Americans with Disabilities Act (ADA).

- b) In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Agreement may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible under this Agreement. If that be deemed the situation, the Contractor will not receive reimbursement for the capital project outlined in Exhibit A in the amount identified in this Agreement. The Contractor shall, however, be given a reasonable time in which to remedy any such noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth in Section 21 of this Agreement.

9. CONTRACT MODIFICATIONS

The Department and the Contractor may, from time to time, desire to make changes to this Agreement. Any such changes that are mutually agreed upon by the Department and the Contractor shall be incorporated herein by written amendment. It is mutually agreed and understood that no alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto prior to implementation of the changes, and that any oral understanding or agreements not incorporated herein shall not be binding.

10. TERMINATION OF AGREEMENT

- a) If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of its covenants, agreements or stipulations of this Agreement, the Department shall thereupon have the right to terminate this Agreement and deny reimbursement of special assistance funds to the Contractor if such default or violation is not corrected within twenty (20) days after the Department's submitting written notice to the Contractor describing such default or violation; Provided, that if more than twenty (20) days are required to correct any such default or violation and the Contractor has initiated appropriate corrective measures as reasonable determined by the Department, the Department will not terminate this Agreement for such default or violation.
- b) In the event the Contractor is unable to complete the capital project prior to June 30, 2017, in accordance with the terms and conditions as outlined in this Agreement, the Contractor will not receive reimbursement for the capital project outlined in Exhibit A in the amount stated in this Agreement.
- c) The Department has the right to terminate the Agreement by giving written notice to the Contractor at least ten (10) days before the effective date of termination. If this Agreement is so terminated, the Department is liable only for payments required under the terms of this Agreement for work completed prior to termination.

11. WAIVER

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

12. HOLD HARMLESS

- a) It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. Each party hereto agrees to be responsible and assume 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 shall also apply to any and 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 shall include a provision that the Department 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.

13. RECAPTURE PROVISION

In the event that the Contractor fails to expend state funds in accordance with state law and/or the provisions of this Agreement, the Department reserves the right to recapture state funds in an amount equivalent to the principal amount of the grant plus interest 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 shall exist for a period not to exceed three (3) years following termination of the Agreement. Repayment by the Contractor of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that the Department is required to institute proceedings to enforce this recapture provision, the Department shall be entitled to its costs thereof, including reasonable attorney's fees.

14. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Department makes no claim to any real property improved or constructed with funds awarded under this Agreement and does not assert and will not require 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 the Department may bring against the Contractor in recapturing funds expended in violation of this Agreement.

15. RELATIONSHIP BETWEEN THE PARTIES

The Contractor and its employees or agents performing under this Agreement are not deemed to be employees of the Department nor agents of the Department in any manner whatsoever, nor will they hold themselves out as nor claim to be officers or employees of the Department or of the State of Washington hereof and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department or of the State of Washington.

16. GOVERNING LAW AND VENUE

This Agreement shall be construed and enforced in accordance with and the validity and performance hereof shall be governed by the laws of the State of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a) Applicable state and federal statutes and rules;
- b) The terms and conditions of this agreement and the Statement of work;
- c) Any other provisions of the agreement, including materials incorporated by reference.

17. 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.

18. ENTIRE AGREEMENT

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

19. SIGNAGE AND MARKERS

If, during the period covered by this Agreement, the Contractor displays signs or markers or circulates any communication identifying the financial participants in the project, any such sign, marker, or communication must identify the State of Washington and the Washington State Department of Agriculture - Fairs Program as participants. The provisions of this section shall also apply to any permanent signs or markers displayed at the project site.

20. PREVAILING WAGE

The project funded under this Agreement may be subject to state prevailing wage law (chapter 39.12 RCW). The Contractor is advised to consult with the Washington State Department of Labor and Industries to determine whether prevailing wages must be paid. If the project funded by this Agreement is subject to state prevailing wage laws, the Contractor shall comply with chapter 39.12 RCW, including requiring any contractor or subcontractor it employs to submit to the Contractor a "Statement of Intent to Pay Prevailing Wages" and an "Affidavit of Wages Paid" as required by RCW 39.12.040. The Department is not responsible for determining whether prevailing

wage applies to this project or for any prevailing wage payments that may be required by law.

21. DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it 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 Department, a representative appointed by the Contractor, 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.

22. CHANGE OF OWNERSHIP OR USE

- a) The Contractor understands and agrees that any and all real property or facilities acquired, constructed, improved, or rehabilitated using state funds under this Agreement shall be held and used by the Contractor for a period of three (3) years following termination of the Agreement for the express purpose or purposes stated in Exhibit A or elsewhere in this Agreement.
- b) In the event the Contractor is found to be out of compliance with this section, the Contractor shall repay to the state general fund the amount of the grant and interest as provided in Section 13.

23. HISTORICAL AND CULTURAL ARTIFACTS

Pursuant to Executive Order 05-05, in the event that historical or cultural artifacts are discovered at the project site during construction, the Contractor 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. The Executive Order is included as Exhibit B and is by this reference incorporated into this Agreement.

24. ADMINISTRATION

The contract 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 Contract Manager for the Contractor is:	The Contract Manager for the Department is:
Mickey W. Webb, Director Kittitas Valley Event Center 901 East 7 th Avenue Ellensburg, WA 98926 Telephone: 509-962-7639 E-mail: mickey.webb@co.kittitas.wa.us	Teresa Norman, Fairs Program Coordinator 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
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IN WITNESS WHEREOF, the parties have executed this Agreement.

STATE OF WASHINGTON
DEPT. OF AGRICULTURE

KITTITAS COUNTY
BOARD OF COUNTY COMMISSIONERS

By: _____

By: _____

Title: Elizabeth McNagny, Administrative
Regulations Program Manager

Title: Obie O'Brien, Chairman

Date: _____

Date: _____

By: _____

Title: Paul Jewell, Vice-Chairman

Date: _____

By: _____

Title: Gary Berndt, Commissioner

Date: _____