



Daniel Nibouar

Director

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May 23, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with Clackamas Community College for repair of sidewalk damaged during operation of the warming shelter in January. Total value is \$200,000. Funding is through Metro Supportive Housing Services Measure funds. No County General Funds are involved.

Table with 4 columns: Previous Board Action/Review, Performance Clackamas, Counsel Review, Procurement Review, Contact Person, Contact Phone. Includes details like 'Briefed at Issues - 05/21/2024' and '05/13/2024 HH'.

EXECUTIVE SUMMARY:

In response to the January 2024 winter storm, Clackamas County operated a warming shelter for community members at Clackamas Community College (CCC) in the Gregory Forum. During the operation of the warming shelter, a significant length of CCC sidewalk was damaged. In compliance with the Facility Use Agreement, the county is responsible to repair any damage. The IGA establishes a reimbursement agreement with CCC, who will complete the work over the summer, while there is less traffic on campus. Funding is currently through Supportive Housing Services (SHS) Measure funds, however the county will also be applying for FEMA Public Assistance reimbursement. If this is awarded, there will be less impact to the SHS funds.

RECOMMENDATION: Staff recommends approval of the Intergovernmental Agreement with Clackamas Community College.

Respectfully submitted,

[Handwritten signature of Daniel Nibouar]

Daniel Nibouar
Director

For Filing Use Only

**REIMBURSEMENT AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CLACKAMAS COMMUNITY COLLEGE**

This REIMBURSEMENT AGREEMENT (this “Agreement”) is entered into and between Clackamas County (“County”), a political subdivision of the State of Oregon, and Clackamas Community College the “College”), an Oregon municipal corporation, collectively referred to as the “Parties” and each a “Party.”

RECITALS

A. The County and the College entered into a Facility Use Agreement, dated August 29 2023 (the “FUA”), through which the College’s campuses in Oregon City, Harmony, and Wilsonville, Oregon, (the “Property”) may be used by the County as public facilities during certain local emergencies, such as wildfires and freezing temperatures.

B. Section F of the FUA obligates the County, among other things to be responsible for “any cleaning, repair, or remediation costs arising from or related to County’s use of the Property.”

C. During a storm event in January 2024, the County activated a warming shelter for houseless individuals at the College’s campus located on 19600 Molalla Avenue in Oregon City, OR.

D. During the County’s provisioning of a warming shelter, the existing concrete pavement on the south and west side of the Wacheno Welcome Center of the Oregon City campus (the “Site”) was damaged.

E. The College desires to remove the damaged concrete and replace it with new materials at the Site, which requires certain engineering and support services.

F. The Parties desire an agreement to facilitate the County’s reimbursement to the College of certain remediation costs at the Site as required under the FUA.

The Parties hereby agree as follows:

TERMS

1. **The Project.** As used in this Agreement, the term “Project” means the removal of the damaged concrete, the replacement of the damaged concrete with new materials, and any required engineering and support services arising from the County’s use of the Site during the January 2024 storm event.

Term. This Agreement is made effective as of the date of the last signature by a Party indicated below. The Agreement expires upon the earlier of (a) the delivery of the Project under Section 3.A. and payment of costs under Section 4 of this Agreement; or (b) December 31, 2025

2. **College’s Obligation.**

- A. The College will deliver the Project. This includes bidding and contracting for work to deliver the Project, including an engineering firm to provide plans and specification, and construction work. The College will apply its procurement standards and regulations.
- B. Unless otherwise specified, the College shall submit detailed invoices of Project costs of which the County is obligated to reimburse as remediation costs under Section F of the FUA ("Reimbursable Project Costs"). Reimbursable Project Costs must be reasonable and true costs of the Project.
- C. The College's invoice submission must include the work and tasks performed with particularity, including an itemization and explanation of all expenses supporting the claim for said Reimbursable Project Costs, and the total amount billed to date to the County.
- D. The College must timely inform the County if the total Project costs may or will exceed \$200,000, and must obtain prior written approval of the County before said exceedance can be invoiced as Reimbursable Project Costs.

3. County Reimbursement Obligation.

- A. The County agrees to pay Reimbursable Project Costs to the College, for up to \$ 200,000. Upon receiving the invoices for Reimbursable Project Costs from the College, as provided in Section 3 of this Agreement, the County will review said invoices. Upon its approval of said invoices, approval of which will not be unreasonably denied, County will timely pay the College.
- B. Only with prior written approval of the County, approval of which will not be unreasonably denied, will the County be obligated to pay Project costs that are in excess of \$200,000, as Reimbursable Project Costs.

4. Representations and Warranties.

- A. *The College Representations and Warranties:* The College represents and warrants to County that the College has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of the College enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to the College that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the College, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
 - B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the College agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the College or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the College has a right to control.
6. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.
- A. The Clackamas County or their designee will act as the liaison for the County.
Contact Information:
Daniel Nibouar, Director – Clackamas County Disaster Management
Phone: 971-219-6932
Email: dnibouar@clackamas.us
 - Finance Contact:**
Anh Le, Administrative Services Supervisor – Clackamas County Health, Housing and Human Services
Phone: 971-325-4388
Email: ale@clackamas.us
 - B. The Clackamas Community College or their designee will act as the liaison for the County.
Contact Information:
Bob Cochran, Dean of Campus Services
Desk 503-594-6790
Email Bobc@clackamas.edu

Finance Contact

Christy Owen, Chief Financial Officer
Desk: 503-594-3009
Email: christina.owen@clackamas.edu

7. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and the College that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The College, by execution of this Agreement, hereby consents to the in personal jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Upon default, the non-defaulting party shall have all rights and remedies available to it at all, in equity, or under this Agreement. Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The College shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. The College shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, the College shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.

- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **No Third-Party Beneficiary.** The College and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- J. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- K. **Survival.** All provisions in Sections 5, 6, and 8 (A), (C), (D), (E), (F), (G), (H), (I), (K), (L), (P), and (Q) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- L. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- M. **Time is of the Essence.** The College agrees that time is of the essence in the performance this Agreement.

N. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

O. **Force Majeure.** Neither the College nor County shall be held responsible for delay or default caused by events outside of the College or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, the College shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

P. **Confidentiality.** The College acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by the College or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). The College agrees to hold Confidential Information in strict confidence, using at least the same degree of care that the College uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

Q. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Clackamas Community College

Chair, Board of County Commissioners

Jeff Shaffer, VP of Finance and
Operations/CFO

Date

Date