



**Catherine McMullen
County Clerk**

Elections, Recording & Records Management

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July 23, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement between County Clerk and Clackamas Community College for Placement of an Official Ballot Drop Box. Total value of work is not to exceed \$10,000. Funding through budgeted County General Funds and Clerk Fees.

Previous Board Action/Review	None		
Performance Clackamas	1. Build public trust through good government		
Counsel Review	Yes	Procurement Review	Yes
Contact Person	Michael Newgard	Contact Phone	503-655-8662

EXECUTIVE SUMMARY: This agreement between Clackamas County and Clackamas Community College allows for the permanent placement of an ADA-accessible official ballot drop box on the college's Oregon City campus. Clackamas County will reimburse the college up to \$10,000 for necessary improvements, including constructing an ADA-compliant concrete pad. The agreement outlines responsibilities for installation, maintenance, responsibilities for removal, ensuring the official ballot drop box is available for safe pedestrian and drive-up access.

RECOMMENDATION: Clerk and staff recommends approval of this contract.

Respectfully submitted,

Catherine McMullen, County Clerk

For Filing Use Only

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

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

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The County is authorized to use Agency property for permanent placement of an official County ballot drop box (the "Ballot Box") for voters to safely return voted ballots. The Ballot Box will be ADA accessible and available for pedestrians and drive-up drop off. The Parties desire to make improvements to the land to allow for the installation of the Ballot Box and County has agreed to reimburse Agency up to \$10,000 for the necessary improvements.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution and shall expire on December 31, 2032.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed ten thousand dollars (\$10,000.00) for accomplishing the Work required by this Agreement.
4. **License to Use Property.** Following completion of the Work, Agency hereby grants County an exclusive, non-revocable right to use a portion of certain real property owned Agency and commonly described as 19600 Molalla Ave, Oregon City, OR 97045 (the "Property") for purposes of installing and maintaining a Ballot Box. The exact location of the ballot box is further depicted in Exhibit A. County is further authorized to bring all personnel, equipment, and other personal property onto the Property as may be reasonably necessary for the installation, use, and maintenance of the Ballot Box. County shall operate and use the Property in a neat, orderly way in compliance with all applicable federal, state, and local laws.
5. **Removal of Ballot Box.** Upon termination of this Agreement, County will remove the Ballot Box. County will repair any actual and direct damage to the Property caused by the County in removing the Ballot Box. Provided, however, that County may delay removal of the Ballot Box if County determines, in its reasonable discretion, that such delay is necessary to avoid any interference with any pending or upcoming election.

6. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, shall itemize and explain all expenses for which reimbursement is claimed, and shall include a copy of any third-party contractor invoices for Work in which Agency is seeking reimbursement. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
7. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency 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 Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to Agency 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.
8. **Termination.**
 - A. Prior to installation of the Ballot Box, either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party. After installation of the Ballot Box, either the County or the Agency may terminate this Agreement upon 120 days' written notice provided, however, that County may require additional time as it determines is necessary to avoid interference with a pending or upcoming election, as determined by the County in its reasonable discretion.
 - B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
 - C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

- D. The County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the project under this Agreement is prohibited or the County is prohibited from paying for such work from the planned funding source.
 - E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
9. **Indemnification.** Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, Agency agrees to indemnify, hold harmless and defend Clackamas County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Agency or the Agency's employees, subcontractors, or agents.

However, neither Agency nor any attorney engaged by Agency shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Agency settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, County agrees to indemnify, hold harmless and defend Agency, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the County or the County's employees, subcontractors, or agents.

However, neither County nor any attorney engaged by County shall defend the claim in the name of Agency or any department of Agency, nor purport to act as legal representative of Agency or any of its departments, without first receiving from Agency authority to act as legal counsel for Agency, nor shall County settle any claim on behalf of Agency without the approval of Agency. Agency may, at its election and expense, assume its own defense and settlement.

10. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

11. **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. Clerk Catherine McMullen or their designee will act as liaison for the County.

Contact Information:

catherinemcmullen@clackamas.us

Bob Cochran or their designee will act as liaison for the Agency.

Contact Information:

bobc@clackamas.edu

12. 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 Agency 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. Agency, by execution of this Agreement, hereby consents to the in person 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.** 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.** Agency 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. Agency 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, Agency shall permit the County’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Reserved.**
- F. **Reserved.**
- G. **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.
- H. **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.
- I. **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.
- J. **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.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint

venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- L. **No Third-Party Beneficiary.** Agency 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.
- M. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- N. **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.
- O. **Survival.** All provisions in Sections 5, 7, 9, and 12 (A), (C), (D), (G), (H), (I), (J), (L), (O), (R), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **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.
- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. **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.
- S. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency 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.
- T. **Reserved.**
- U. **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

By: Jeff Shaffer
Its: VP of Finance and Operations/CFO

Date

7/11/2024

Date

Exhibit A

SCOPE OF WORK

Agency will perform the following:

- Agency will provide an ADA-compliant concrete pad for the installation of the Ballot Box (“Ballot Pad Construction Work”). The Ballot Pad Construction Work includes, but is not limited to, taking all reasonably necessary steps to procure and construct an ADA-compliant concrete sidewalk, concrete pad, landscaping, and installation of an official Ballot Box pad at the Oregon City Clackamas Community College campus. The County official ballot drop box will be located near the Orange Lot and transit hub, as depicted by the red “X” in the following map:



The concrete pad must be ADA accessible and available for safe pedestrian and drive-up ballot drop off.

- Agency will provide the County a finalized blueprint, proposal, or other documentation of the Ballot Pad Construction Work to be performed for County’s approval prior to commencement of construction.
- Agency will not modify the blueprint, proposal or other documentation once approved by the County without resubmitting blueprint or other documentation for approval.
- The Parties anticipate that the Ballot Pad Construction Work will not exceed \$10,000. If, following receipt of construction bid proposals as part of Agency’s procurement process, either party determines the Ballot Pad Construction Work cannot be completed with the \$10,000 provided by County under this Agreement, the County and Agency agree to negotiate, in good faith, a possible modification of the Ballot Pad Construction Work or this Agreement to accommodate funding limitations. If the parties are unable to reach an agreement to modify the Ballot Pad Construction Work or amendment to the Agreement, this Agreement shall terminate, the parties shall bear their own costs incurred as of the date of termination, and the parties shall have no further obligations regarding this Agreement.

- Agency will be solely responsible for any and all costs incurred under any construction contract between Agency and a third-party contractor for construction of the Ballot Pad Construction Work in excess of the \$10,000 that County has agreed to provide under this Agreement including, but not limited to, increased costs due to change orders or differing site conditions.

County will perform the following:

- County will be solely responsible for the transportation, installation, and maintenance of the Ballot Box. Agency shall not transport, install, access, tamper, damage, or otherwise take any action with respect to the Ballot Box following its installation.
- County will approve or modify all submitted blueprint, proposal, or other documentation within 72 hours of receiving.