



Elizabeth Comfort  
Finance Director

**Department of Finance**

Public Services Building  
2051 Kaen Road, Suite 490 | Oregon City, OR 97045

November 22, 2023

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Clackamas County

**Cooperation Agreement with the Clackamas County Arts Alliance for artwork to be placed in the replacement courthouse. No fiscal impact. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	None		
<b>Performance Clackamas</b>	Builds Public Trust through Good Government		
<b>Counsel Review</b>	Yes	<b>Procurement Review</b>	N/A
<b>Contact Person</b>	Nancy Bush	<b>Contact Phone</b>	503-655-8581

**EXECUTIVE SUMMARY:** The Cooperation Agreement between Clackamas County and the Clackamas Arts Alliance (CCAA) provides the County with a fiscal agent for artwork that is to be commissioned and placed in the replacement courthouse. The pieces of artwork may include but not be limited to paintings, sculptures and murals.

As part of the agreement CCAA has agreed to apply for grants for art that are not available to the county, engage in fundraising and take other actions necessary to install the art in the courthouse.

All artwork that is commissioned through the agreement will become the property of Clackamas County.

**RECOMMENDATION:** Staff recommends the Board approve the Cooperative Agreement between Clackamas County and the Clackamas County Arts Alliance.

Respectfully submitted,

Nancy Bush  
Clackamas County Operating Officer

For Filing Use Only

**COOPERATION AGREEMENT  
BETWEEN CLACKAMAS COUNTY  
AND CLACKAMAS COUNTY ARTS ALLIANCE**

THIS COOPERATION AGREEMENT (“Agreement”) is entered into and between **Clackamas County** (“County”), a political subdivision of the State of Oregon, and the Arts Action Alliance Foundation, dba Clackamas County Arts Alliance (“CCAA”), an Oregon non-profit, collectively referred to as the “Parties” and each a “Party.”

**RECITALS**

On or about August 30, 2022, County entered into a project agreement for the design, construction, financing, operation, and maintenance of the new Clackamas County courthouse (the “Courthouse”).

The Courthouse is expected to be completed on or about May of 2025.

County desires to place various pieces of art into the Courthouse upon its completion. Such art may include, but is not limited to, paintings and sculptures. Any art installed in the Courthouse must be in compliance with the County’s current public art policy, ARA-ART-1.01 (“Art Policy”).

CCAA has further offered to apply for certain grants, engage in fundraising, and take other actions it deems reasonably necessary to support the installation and display of art within the Courthouse.

The Parties desire to cooperate to allow CCAA to apply for grants and raise money for art to be installed in the Courthouse, and to cooperate on allowing CCAA permission to display such art in the Courthouse.

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 continue until June 30, 2025 unless otherwise extended or terminated in accordance with the terms and conditions of this Agreement.
2. **Financial Support.** CCAA will provide financial support for the acquisition of art to be installed and displayed in the Courthouse. Such financial support includes, but is not limited to, applying for grants and engaging in fundraising activities for the purpose of acquiring art to be installed and displayed in the Courthouse.

CCAA will withhold a fee of 15% for administrative costs associated with the financial support described herein.

County will cooperate, in good faith, with CCAA’s financial support efforts described herein. However, all obligations incurred by CCAA are solely CCAA’s responsibility. County shall have no obligation with respect to any obligation incurred by CCAA in performing under this Agreement, nor shall County have any obligation to join in, execute, guarantee, or otherwise incur any liability whatsoever with respect to obligations incurred by CCAA.

**3. Acquisition of Art.** Prior to acquisition, proposed art must be approved by the Clackamas County Arts Committee, in accordance with Art Policy, for acquisition for the Courthouse. Any art acquired by CCAA under this Agreement shall become property of the County. CCAA shall take all necessary steps to convey full title to the art, free and clear of any and all encumbrances, security interests, liens, or other claims of any nature whatsoever.

**4. Representations and Warranties.**

- A. CCAA Representations and Warranties:** CCAA represents and warrants to County that CCAA 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 CCAA enforceable in accordance with its terms. CCAA further represents and warrants that with respect to any art that it purchases, CCAA shall have full right, title, interest, authorization, or approval to convey such art to the County.
- B. County Representations and Warranties:** County represents and warrants to CCAA 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. Termination.**

- A. Termination for Convenience.** Either the County or CCAA may terminate this Agreement at any time upon sixty (60) days' written notice to the other Party.
- B. Termination for Breach.** Either the County or CCAA may terminate this Agreement in the event of a breach of the Agreement by the other Party. 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. Upon termination for CCAA's breach, County shall have all remedies available to it at law, in equity, or under this.
- C. Termination for Non-appropriation/Change in Law.** County may terminate this Agreement in the event County fails to receive expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to perform under this Agreement. Additionally, either Party may terminate this Agreement if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited.

- D. Waiver. The County or CCAA 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.
- E. Reservation of Remedies. The termination of this Agreement, regardless of cause, shall not prejudice any rights or obligations accrued to the Parties prior to termination. Each party shall have all rights and remedies available to it at law, in equity, or under this Agreement.

**6. Indemnification.**

- A. CCAA agrees to indemnify, hold harmless and defend 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 CCAA or CCAA's employees, subcontractors, or agents. CCAA shall not be required to indemnify County for any such liability arising out of negligent acts or omissions of the County. However, neither CCAA nor any attorney engaged by CCAA 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 CCAA 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.

- 7. Insurance.** CCAA agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, CCAA shall provide documentation to the County of CCAA's self-insured status by completing the Self-Insurance Certification form provided by the County.

- 8. 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. For the County:**

Nancy Bush  
County Operating Officer  
[nbush@clackamas.us](mailto:nbush@clackamas.us)  
Phone: 503-655-8581

**B. For CCAA:**

Dianne Alves  
Executive Director  
[dianne@clackamasartsalliance.org](mailto:dianne@clackamasartsalliance.org)  
Phone: 503-481-1288

**9. 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 County and Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and CCAA 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 County Court for the County 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. CCAA, by execution of this Agreement, hereby consents to the in 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 including, but not limited to, applicable provisions of Oregon public contracting law, ORS 279B.020 through 279B.235. 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.** CCAA 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. CCAA 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, CCAA 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. 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
- J. No Third-Party Beneficiary.** CCAA 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.

- K. Subcontract and Assignment.** CCAA 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 CCAA of any of its duties or obligations under this Agreement.
- L. 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.
- M. Survival.** All provisions in Sections 3, 4, 6, and 9 (A), (C), (D), (E), (F), (G), (H), (J), (M), (N), (O), 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.
- N. 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.
- O. 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.
- P. Force Majeure.** Neither CCAA nor County shall be held responsible for delay or default caused by events outside of the CCAA or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, CCAA 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.
- 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**

\_\_\_\_\_  
Chair, Board of County Commissioners

\_\_\_\_\_  
Date

Approved as to Form:

  
\_\_\_\_\_  
County Counsel

11/01/2023  
\_\_\_\_\_  
Date

**Arts Action Alliance Foundation**

Dianne Alves, Executive Director  
\_\_\_\_\_  
Director

October 24, 2023  
\_\_\_\_\_  
Date