

Staff Report for Board of County Commissioners
 From: Tourism & Cultural Affairs
 RE: Funding Agreement for Clackamas County Arts Alliance
 Date: 03/03/2021

Members of the Board:

Execution of the funding agreement with the Clackamas County Arts Alliance (CCAA) as approved in the FY20/21 Budget.

Purpose/Outcome	The BCC accepting the agreement completes the necessary documentation to issue payment to CCAA for \$254,455 included in the County's Approved FY20/21 Budget.
Fiscal Impact	None.
Funding Source	General Fund
Duration	This agreement expires on June 30, 2021.
Previous Board Action	Prior board authorized this funding as part of the County's Approved FY20/21 Budget. The agreement includes the scope of work outlined in the Budget. This is the first time the BCC is seeing the agreement document.
Counsel Review	This agreement was reviewed by County Counsel.
Staff Recommendation	Staff recommend approval of the agreement.
Contact Person	Samara Phelps, Tourism & Cultural Affairs samara@mthoodterritory.com
Attached	Arts Alliance Funding Agreement Final Signed by CCAA

BACKGROUND:

Finance requires an agreement with CCAA to pay the \$254,455 from General Fund authorized in the County's Approved FY20/21 Budget. This agreement meets Finance's requirements for issuing payment.

Tourism acts as the staff contact with CCAA. General Fund dollars approved by the BCC are passed through Tourism as the mechanism for CCAA to receive the funds.

These General Funds support

- CCAA's training and capacity building work; public exhibitions throughout the County; arts education; arts diversion program with County's Juvenile Department; convening, leadership and advocacy for the artists and cultural organizations; arts and culture expertise available to businesses and institutions; support for the BCC in the area of arts and culture (\$165,405)



- Young Audiences of Oregon's Right Brain Initiative serving 6,300 students in 22 Clackamas County schools. (\$27,000)
- Regional Arts and Culture Council (RACC) grants that support County arts organizations. (\$62,050)

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

THIS AGREEMENT (this "Agreement") is entered into and between **Clackamas County** ("County"), a political subdivision of the State of Oregon, and 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

Clackamas County desires to provide CCAA funding to support arts and culture in Clackamas County, which was approved in the FY20/21 budget adopted by the Board of Commissioners on June 18, 2020.

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 June 30, 2021.
2. **Scope of Work and Consideration.** County agrees to grant CCAA a sum not to exceed \$254,455.00 to accomplish the work described in Exhibit A, attached hereto and incorporated herein ("Work").
3. **Payment.** County will grant funds in two payments for use by CCAA in accordance with this Agreement. The parties agree and acknowledge that, prior to execution of this Agreement, CCAA has previously performed Work, and County has granted one payment in the amount of \$127,227.50 to CCAA. By execution of this Agreement, the Parties hereby affirm and ratify the previously-performed Work, and the first payment of \$127,227.50, subject to the terms and conditions herein. County reserves any rights, claims, or causes of action it may have against CCAA with respect to Work performed and ratified hereunder.
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.
 - 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 prior to County distributing funds to CCAA. After County has distributed funds to CCAA, either Party may terminate this Agreement upon 120 days written notice to the

other Party. In the event a party terminates this agreement under this Section 5 A, CCAA shall immediately return all unspent funds to the County.

- 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 Agreement including, but not limited to, requiring CCAA to return all unspent funds and to repay County for any funds used by CCAA in violation of this Agreement.
- C. Termination for Non-appropriation/Change in Law.** Either Party may terminate this Agreement in the event either Party fails to receive expenditure authority sufficient to allow the Party, 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. In the event of termination under this Subsection C, CCAA shall immediately return all unspent funds to the County.
- 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.** Subject to the Oregon Tort Claims Act and the Oregon Constitution, 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.** 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.
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. Business and Community Services Director, Deputy Director, or their designee will act as liaison for the County.

Samara Phelps
Executive Director, Clackamas County Tourism & Cultural Affairs
2051 Kaen Road
Oregon City, OR 97045
samara@mthoodterritory.com | (971) 334-9479
Executive Director or their designee will act as liaison for CCAA.

Dianne Alves
Executive Director, Clackamas County Arts Alliance
PO Box 2181
Oregon City, Oregon 97045
dianne@clackamasartsalliance.org | 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 including, but not limited to, the requirement that use of the funds under this Agreement be used for purposes consistent with ORS Chapter 461 and other applicable law. 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.** 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. Reserved.**
- F. 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.
- G. 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.
- H. 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.

- I. 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.
- J. 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
- K. 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.
- L. 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.
- M. 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.
- N. Survival.** All provisions in Sections 4, 6, and 9 (A), (C), (D), (E), (F), (G), (H), (I), (J), (K), (N), (P), (Q), (S), and (T) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- O. 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.
- P. Time is of the Essence.** CCAA agrees that time is of the essence in the performance this Agreement.
- Q. 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.
- R. 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.

S. Confidentiality. CCAA 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 CCAA or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). CCAA agrees to hold Confidential Information in strict confidence, using at least the same degree of care that CCAA 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.

T. 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

**Arts Action Alliance Foundation, dba
Clackamas County Arts Alliance**

Chair, Board of County Commissioners



By:
Its: Executive Director

3/11/2021 E.1

February 22, 2021

Date

Date

Approved as to Form:



County Counsel

02/25/2021

Date

EXHIBIT A

SCOPE OF WORK

Background

The Clackamas County Arts Alliance's (CCAA) mission is to support and promote access to arts and culture across the entire County. For 25 years, the CCAA has been the County's vehicle for delivering arts and culture programs to meet the needs of communities, residents, and visitors. CCAA values drive its advocacy efforts to ensure County quality of life and economic stimulus is improved through everyday access to arts and culture.

Guiding Principles

This Agreement holds the following statements as guiding principles for Clackamas County Arts Alliance (CCAA) and Clackamas County (County):

- County's creative artists contribute to our collective strength, vitality, and community health.
- The arts are crucial to a complete education for all children, and integrating arts into our schools transforms learning, strengthens communities, and increases academic success.
- The unique cultural heritage and history of Clackamas County must be preserved and celebrated.
- The synergy that takes place when organizations and individuals share resources leads to a thriving arts and culture environment.
- Creativity is the number one skill 72% of business leaders seek when hiring.

Use of Funds

CCAA shall use the \$254,455 of General Fund budgeted in Clackamas County's FY 2020-21 Adopted Budget and granted under this Agreement for the following:

Clackamas County Arts Alliance

CCAA will use funds to partially support training and capacity-building work for businesses, organizations, and entrepreneurs; public art exhibitions throughout the County; robust arts education program in regional schools and social service organizations; and an award-winning arts diversion program operated with the County's Juvenile Department. General Fund dollars also support highly successful marketing efforts, giving CCAA the ability to reach more residents, serve more youth and grow private-sector contributions.

CCAA will serve as both liaison and advocate for the county arts and culture community, providing leadership, resources, and direction as well as functioning as convener for individual artist groups (by discipline,) in addition to the various arts and culture organizations throughout Clackamas County.

CCAA will be available to advise local businesses, Chamber of Commerce, and Clackamas County city governments seeking arts and culture expertise, always looking for ways to connect local businesses and government with the county's arts and culture community for collaboration in support of local economic development and cultural tourism.

CCAA will support the Board of County Commissioners in a proactive way enabling them to understand the various needs as well as the positive impact of the arts and culture community in the county.

Young Audiences

CCAA shall provide \$27,000 in funds to Young Audiences of Oregon for arts programming through Right Brain Initiative, an innovative arts education program serving 6,300 students in 22 schools in Clackamas County and valued at more than \$279,569. CCAA will coordinate communication with Young Audiences including financial and program reports.

Regional Arts & Culture Council (RACC)

CCAA shall provide \$62,050.00 of this funding to the Regional Arts & Culture Council to be used for specific support grants to County arts organizations. CCAA will coordinate communication with the Regional Arts & Culture Council including financial and program reports.

CCAA will administer the funds and will report annually to the Board of County Commissioners. The report shall include a narrative summary that details how the funds provided under this Agreement were used, program outcomes and other information reasonably requested by County.