



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

October 12, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Funding Agreement with Clackamas County Arts Alliance to support businesses, organizations, entrepreneurs and public art exhibitions throughout the County. Agreement value is \$150,000. Funding through County Lottery Dollars. No County General Funds are involved.

Previous Board Action/Review	1. On June 28, 2023, staff presented a proposed slate of organizations to pay dues and memberships or provide awards for to the Board for consideration and approval for funding. 2. The Board of County Commissioners approved to fund Clackamas County Arts Alliance (CCAA) at the August 2, 2023 Policy Session 3. Request for Consent: October 10, 2023		
Performance Clackamas	1. Grow a Vibrant Economy		
Counsel Review	Andrew Naylor	Procurement Review	N/A
Contact Person	Laura Edmonds	Contact Phone	503-742-4366

EXECUTIVE SUMMARY: On June 28, 2023, staff presented to the Board a proposed slate of organizations to pay membership dues and Economic Development awards. At that time, the Board approved paying membership dues for the Chambers of Commerce but held off on approval of CCBA dues, other funding requests, and requested presentations from the staff of the Regional Arts & Coalition Council (RACC) and the Clackamas County Arts Alliance (CCAA).

On August 2, 2023, as requested by the Board, County staff and staff members from the RACC and CCAA returned to provide presentations for funding request to the Board. The Board approved funding for CCAA in the amount of \$150,000 so CCAA might use the funds to support

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capacity-building work for businesses, organizations, entrepreneurs and public art exhibitions throughout the County.

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 a convener (by discipline) for individual artist groups, and to the various arts and culture organizations throughout Clackamas County.

RECOMMENDATION: Staff respectfully recommends approval of the Funding Agreement between Clackamas County and Clackamas County Arts Alliance.

Respectfully submitted,

Dan Johnson

Dan Johnson, Director
Department of Transportation & Development

**FUNDING AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND ARTS ACTION ALLIANCE FOUNDATION DBA 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

On August 2, 2023, the Clackamas County Board of Commissioners appropriated funding to support the CCAA. The funding approved was \$150,000.

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 by both parties, and shall expire on June 30, 2024 unless otherwise extended by agreement of the Parties.
2. **Funding.** County agrees to grant CCAA a sum not to exceed one hundred and fifty thousand dollars (\$150,000.00) (the “Funds”). The Funds are proceeds from the Oregon State lottery and as such, are subject to the limitations of use set forth in the Oregon Constitution, Article XV, Section 4, and ORS 461.540. CCAA shall use the funds awarded under this grant solely for the purposes set forth in Exhibit A, attached hereto and incorporated herein.
3. **Monitoring.** CCAA agrees to allow access to conduct financial and performance audits for the purpose of monitoring use of the Funds in accordance with Generally Accepted Auditing Standards (“GAAS”). County, and its duly authorized representatives, shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of CCAA that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, copies and transcripts. CCAA also agrees to provide reasonable access to CCAA’ employees for the purpose of monitoring. Audits may be performed onsite or offsite, at the County’s discretion. If any audit or financial review finds that payments to CCAA were in excess of the amount to which CCAA was entitled, then CCAA shall repay that amount to County.
4. **Reporting.** CCAA shall provide one progress report and one annual report to the County regarding use of the Funds. The reports shall include full financials of the organization, a narrative summary that details how the Funds provided under this Agreement were used, program outcomes, and other information reasonably requested by the County including, but not limited to, information necessary to fulfill County’s obligations under ORS Chapter 461. Reports are due based on the schedule shown on Exhibit A.
5. **Financial Management.** CCAA shall comply with Generally Accepted Accounting Principles (GAAP) or another equally accepted basis of accounting, use adequate internal controls, and maintain necessary sources documentation for all uses of the Funds.
6. **Payment.** County will grant funds in a single payment following the execution of the agreement within thirty (30) days of the effective date of this Agreement.

7. 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.

8. 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 8 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.

9. **Indemnification.** 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, actions, losses, liabilities, including reasonable attorney and accounting fees, and all expenses incidental to the investigation and defense thereof, arising out of or based upon CCAA's acts or omissions in performing under this Agreement including, but not limited to, any claim that CCAA used the Funds for ineligible purposes under ORS 461.540.

CCAA shall not be required to indemnify County for any such liability arising solely out of negligent acts or omissions of the County in performing under this Agreement. 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.

10. **Insurance.** CCAA shall secure at its own expense and keep in effect during the term of the performance under this Agreement the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of CCAA under this Agreement. CCAA shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or emailed to the County Contract Analyst.

Required - Workers Compensation: CCAA shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.
<input type="checkbox"/> Required – Abuse & Molestation endorsement with limits not less than \$1,000,000 per occurrence if not included in the Commercial General Liability policy.

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. Clackamas County.

Laura Edmonds
Economic Development Manager, Office of Economic Development
Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045
ledmonds@clackamas.us | (503) 742-4366

B. Arts Action Alliance Foundation dba Clackamas County Arts Alliance.

Dianne Alves
Arts Action Alliance Foundation dba Clackamas County Arts Alliance + Culture Central to Life,
Executive Director
PO Box 2181
Oregon City, OR 97045
dianne@clackamasartsalliance.org (503) 481-1288

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 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 7, 9, and 12 (A), (C), (D), (F), (G), (H), (I), (J), (K), (N), (Q), 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. Reserved.**
- 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. Reserved.**

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

Dianne Alves _____
By: Dianne Alves
Its: Executive Director

Date

Date

Approved as to Form:



County Counsel

Date

EXHIBIT A

Use of Funds

The source of funds under this Agreement are \$150,000.00 of Lottery dollars budgeted in Clackamas County's Office of Economic Development FY 2023-24 adopted Budget. The Funds are proceeds from the Oregon State lottery and as such, are subject to the limitations of use set forth in the Oregon Constitution, Article XV, Section 4, and ORS 461.540. Use of funds is restricted to the following:

- (a) Creating jobs
- (b) Furthering economic development in Oregon
- (c) Financing public education

Clackamas County Arts Alliance (CCAA) may use the funds for the following eligible purposes:

- Partially support training and capacity-building work for businesses, organizations, and entrepreneurs;
- Provide public art exhibitions throughout the County that are listed for sale supporting the artists business endeavors;
- Support artists and creative businesses to prevent closures;
- Advancing career opportunities and grow workforce;

In addition, CCAA agrees to:

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, connect local businesses and government with the Clackamas County 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.

Request for funding. Upon full signature of this agreement, CCAA must remit an invoice for full payment of the grant award.

Reporting

CCAA shall provide one progress and one annual report to the Clackamas County Office of Economic Development. Reports shall be submitted to the following address:

Laura Edmonds
Economic Development Manager, Office of Economic Development
Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045
ledmonds@clackamas.us | (503) 742-4366

The progress reports will include the following information:

- Reporting period
- How funds were spent – provide specifics in a spreadsheet format
- If funding was used to support staff, provide name and position
- How did funding support the operations of CCAA for the quarter

Reports are due by:

December 29, 2023

June 30, 2024 – This report should be in the form of a formal annual report, summarizing programs supported, use of funds and accompanied by Year-to-date P&L and Balance Sheet. All reports are to be provided to the Office of Economic Development no later than July 15, 2024 in order to provide timely copies to Clackamas County Board of County Commissioners (BCC). The BCC may, at its discretion, request a presentation at a public BCC meeting.