



DAN JOHNSON
DIRECTOR

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

December 7, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Funding Agreement with Clackamas County Arts Alliance to support small business owners through project facilitation and facilitate the purchase of art that will be installed in the new courthouse. Agreement value is \$200,000. Funding is through County Lottery Dollars. No County General Funds are involved.

Previous Board Action/Review	12/5/2023: Request for Consent 9/20/2023: The Board of County Commissioners approved to fund CCAA FY 23/24.		
Performance Clackamas	1. Grow a Vibrant Economy		
Counsel Review	Andrew Naylor, 11/28/2023	Procurement Review	N/A
Contact Person	Laura Edmonds	Contact Phone	503-742-4366

EXECUTIVE SUMMARY: On September 20, 2023 the Board approved an additional funding request from CCAA for \$200,000 that will serve as seed money to allow CCAA to leverage grants, business, and individual donations for the purchase of art that will be installed in the new courthouse.

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 to the extent such coordination is in support of the Clackamas County courthouse.

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

For Filing Use Only

**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 September 20, 2023, the Clackamas County Board of Commissioners appropriated funding to support the CCAA. The funding approved was \$200,000.

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, 2025 unless otherwise extended by agreement of the Parties.
2. **Funding.** County agrees to grant CCAA a sum not to exceed two hundred thousand dollars (\$200,000.00) (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 (“Work”).
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 quarterly and annual reports to 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 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.** 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. 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.** 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. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract 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 Contractor under this Contract. Contractor 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: Contractor 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:
Its: Executive Director

Date

11/22/2023

Date

Approved as to Form:



County Counsel

11/28/2023

Date

EXHIBIT A

Use of Funds

The source of funds under this Agreement are \$200,000.00 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

Provided funds are used in accordance with the limitations set forth above, Clackamas County Arts Alliance (CCAA) may use the funds to support CCAA's art activities related to the new Clackamas County courthouse, expected to be completed in May of 2025.

These activities may include one or more of the following:

- Supporting public art education with respect to pieces displayed in the new Clackamas County courthouse including, but not limited to, outreach, tours, presentations or other activities that support public education of art pieces on display at the Clackamas County courthouse;
- Supporting local artists and businesses who may or will be providing art pieces in the new Clackamas County courthouse;
- Support either administrative or matching requirements necessary to apply for grants or other fund raising opportunities to support the display of art within the Courthouse, provided such support is intended to either create jobs, further economic development of local artists and businesses, or support public arts education of art pieces displayed at the Clackamas County courthouse;
- Acquiring, placing, displaying and installing various pieces of art into the new Clackamas County courthouse, provided such acquisition is made from local artists and business such that local economic development is furthered in accordance with the limitations of the Oregon Constitution and ORS 461.540. Provided, however, that prior to acquisition of any art, CCAA agrees to have approved any proposed art 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. If requested by the County, CCAA will provide a Bill of Sale for any and all artwork that has been acquired and vetted through this agreed process. CCAA will submit the Bill of Sale to the Office of Economic Development along w/ the quarterly & annual reports on dates identified in this document.
- 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 to the extent such coordination is in support of the Clackamas County courthouse.

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

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 quarterly progress and annual reports to the Clackamas County Office of Economic Development. Once these allocated funds are extinguished, no further reporting will be required.

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 primary funding (not including the 15% administrative fee) was used for any other purposes other than what is specified in the agreement, please note how and for what the funds were used for.
- Bill of Sale provided for each piece of artwork acquired.

Reports are due by:

May 30, 2024
June 30, 2024
December 30, 2024
March 30, 2025
June 30, 2025

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.