



AGENDA STAFF REPORT

AGENDA LOCATION: Action Item #13 A

MEETING DATE: January 14, 2019

TO: Honorable Mayor and City Council

FROM: Matthew Klebes, Assistant to the City Manager

THRU: Julie Krueger, City Manager

ISSUE: Treaty Oak Regional Skills Center Agreement

BACKGROUND: At the November 26, 2018 City Council meeting, staff presented a request from the Columbia Gorge Community College (CGCC) for 3.5 million in funding for the Treaty Oak Regional Skill Center and Campus Housing Proposal. Staff was directed to draft an Intergovernmental Agreement (IGA) with CGCC and Wasco County in support of this project and bring back to Council for approval.

Working with Wasco County and CGCC an IGA has been drafted to provide 3.5 million for construction of the Treaty Oak Regional Skill Center in the format of a zero interest, forgivable loan with three (3) annual disbursements of \$1 million each year and a fourth and final disbursement of \$500,000. The forgivable component of the loan is contingent upon substantial completion of the project.

At their January 8 Board meeting CGCC staff received direction for, “staff to conclude IGA with City of The Dalles and Wasco County for 3.5 million, toward skill center and housing project and proceed with \$7.6 million full faith and credit bond, contingent upon satisfactory IGA to the College, City, and County.” The Wasco County Board of Commissioners will review this agreement at their January 16 Commission meeting.

CGCC has stated that the deadline to obligate the bond sale is January 28, 2019. This is required to allow sufficient processing time to have the require match funds by the February 11, 2019 deadline. Additional information may be presented at the City Council meeting.

BUDGET IMPLICATIONS: The payment associated with the 2015 Agreement with Design LLC will be received in FY 19/20 and is anticipated to produce a \$1 million dollar *minimum* payment per year for 15 years. The final number has not been finalized. The structure of the IGA takes this dynamic into account, with a maximum annual disbursement of \$1 million dollars over three years, and a fourth and final disbursement of \$500,000; for a maximum of 3.5 million.

Each year Wasco County bills Design, LCC for each Enterprise Zone agreement. The funds received are then split with the City unless otherwise directed. To account for the funds specific to this agreement and for this particular use, a special reserve fund will need to be created by resolution detailing use of funds and timeline. This resolution would be brought to City Council at a later date, but before the completion of the FY 19/20 budget process, in order for the funds to be allocated accordingly.

COUNCIL ALTERNATIVES:

1. Authorize the City Manager to enter into the Intergovernmental Agreement with CGCC and Wasco County for the use of enterprise zone funds for the Treaty Oak Skill Center pending approval from Wasco County and CGCC.
2. Direct staff on specific changes to the Intergovernmental Agreement and bring back to the City Council for approval.
3. Decline to enter into the IGA with CGCC and Wasco County for the Treaty Oak Skill Center

COLUMBIA GORGE COMMUNITY COLLEGE TREATY OAK SKILLS CENTER INTERGOVERNMENTAL FINANCING CONTRACT

This financing contract ("**Contract**"), effective as of the date the Contract is executed by all Parties, is made by and through the City of the Dalles, a municipal corporation duly incorporated under the laws of the State of Oregon, (the "**City**"), Wasco County, a political subdivision of the State of Oregon (the "**County**") ("**Sponsors**"), and Columbia Gorge Community College ("**CGCC**"), a community college district of the State of Oregon (collectively, "**the Parties**"), for financing the construction of the Treaty Oak Skills Center project described in Exhibit A ("**Project**"). The Parties enter into this Contract under ORS 190.003 to ORS 190.110 (Intergovernmental Cooperation).

RECITALS

A. Oregon Legislature allocated to CGCC the amount of \$7.3 million pursuant to state bonding authority under Article XI-G of the Oregon Constitution, enabling CGCC to conduct capital construction as follows:

Columbia Gorge Community College: approved a scope change to the Advanced Technology Center project approved in Senate Bill 5507 (2013) and reauthorized in House Bill 5005 (2015), to allow the college to construct a "Middle College Prototype Facility". The facility will be used by the college and the North Wasco School District to focus on grades 11-14 and the transition between high school and post-secondary education.

The full legislative authorization is hereby incorporated by reference into this Contract.

B. The legislative allocation requires that CGCC demonstrate a cash match in the corresponding amount of \$7.3 million from sources exclusive of the State's General Fund and State general obligation bonds. This commitment to providing the cash match must be demonstrated by Feb. 11, 2019.

C. The Sponsors desire to assist CGCC in achieving the required match to ensure construction of the skills center portion of the Project in recognition of the economic value of a skill center in training students for high-demand skills to meet the region's workforce needs.

D. The Sponsors anticipate a sufficient income stream from their Enterprise Zone partnership to provide such financing assistance to CGCC, as described in the Enterprise Zone Tax Abatement Agreement between the Sponsors and Design LLC dated August 17, 2015 ("Enterprise Zone Income").

E. CGCC shall hold, use, and be responsible for the appropriate accounting of all funds dedicated for the purposes described in this Contract.

AGREEMENT

SECTION 1 – DEFINITIONS

The following capitalized terms have the meanings assigned below.

"Costs of the Project" means CGCC's actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Proceeds under applicable state or federal statute and rule.

"Estimated Project Cost" means \$7,300,000.

"Sponsor Financing" means \$3,500,000 paid by the Sponsors, subject to the limitations or reduction as provided in this Contract.

"Proceeds" means the proceeds of the Sponsor Financing.

"Project Closeout Deadline" means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

"Project Completion Deadline" means no later than 48 months after the date of this Contract, or as such deadline may be extended by agreement of the Parties.

"Project Completion Date" means the date of issuance of a Certificate of Occupancy to CGCC for the Project.

SECTION 2 – FINANCIAL ASSISTANCE

The Sponsors shall provide to CGCC, and CGCC shall accept from Sponsors, financing for the skills center portion in an aggregate amount not to exceed the sum of \$3,500,000.

SECTION 3 – DISBURSEMENTS

A. Reimbursement Basis. The Proceeds will be disbursed to CGCC in annual installments of \$1,000,000 each for the first three disbursements and \$500,000 for the fourth and final

disbursement ("Disbursements"). The initial installment will be paid on the date of issuance of a Certificate of Occupancy for the Project and each subsequent payment will be due each anniversary of this date until the Proceeds are fully paid. Under no circumstance shall Disbursements total in excess of \$3,500,000. The Sponsors in their sole discretion may decide to accelerate a Disbursement or Disbursements.

- B. Financing Availability. The Sponsors' obligation to make, and CGCC's right to request, disbursements under this Contract terminates on the Project Closeout Deadline.

SECTION 4 – FINANCING CONDITIONS

- A. Financing Converted to Grant Upon Successful Completion of the Project. If CGCC completes the Project by the Project Completion Deadline, the Sponsor Financing shall be considered a grant to CGCC as of the Completion Date. CGCC will have no obligation to repay any portion of the Sponsor Financing.
- B. Obligation to Repay Financing if Project is not successfully completed. If CGCC fails to substantially complete the Project as of the Project Completion Deadline, the Sponsor Financing shall be considered a loan to CGCC as of the Project Closeout Deadline. CGCC shall repay the loan in accordance with the terms of this Contract.
1. Principal of the Loan: The principal of the loan will include the sum of all of the payments made by the Sponsors to CGCC prior to the Project Closeout Deadline.
 2. Loan Payments. Beginning on the date ninety (90) days after the Project Closeout Deadline, CGCC shall make equal annual installment payments of so much of the principal as will fully amortize the loan by ten years from the date ninety (90) days after the Project Closeout Deadline, on which date the entire outstanding balance of the Loan is due and payable in full.
 3. Loan Prepayments. The CGCC may prepay all or part of the outstanding balance of the Loan at any time.
 4. No Interest. CGCC will not be required to pay any interest on the loan payments.

SECTION 5 – CONDITIONS PRECEDENT

- A. Conditions Precedent to Sponsors' Obligation to provide Sponsor Financing. The Sponsors' obligation to provide Sponsor Financing under this Contract is subject to the receipt of the following items, in form and substance satisfactory to Sponsors and their legal counsel:

- (1) This Contract duly signed by an authorized officer of CGCC.
 - (2) A copy of the order or resolution of the CGCC Board of Directors authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract.
 - (3) Sufficient evidence in the Sponsors' sole discretion of the State of Oregon's financial support, satisfaction by CGCC of all corresponding requirements by the State of Oregon, and that CGCC has available or has obtained binding commitments in addition to this Contract for all funds necessary to complete the Project.
- B. Conditions to Disbursements. As to any individual Disbursement, Sponsors have no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or Event of Default.
 - (2) The representations and warranties made in this Contract continue to be true and correct on the date of each Disbursement.
 - (3) The Sponsors have accumulated sufficient Enterprise Zone Income to make the Disbursement. The Sponsors agree to appropriate sufficient Enterprise Zone Income each budget year to make each Disbursement when due. If the Sponsors have not accumulated sufficient Enterprise Zone Income to make the Disbursement, Sponsors shall make a Disbursement in the amount of the available Enterprise Zone Income. Any reduction in a Disbursement due to insufficient Enterprise Zone Income shall be added to the amount of the next annual Disbursement.
 - (4) CGCC has provided the Sponsors sufficient evidence, in the Sponsors' sole discretion, to indicate that construction of the Project is proceeding on time and substantially as described in Exhibit A.

SECTION 6 – USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The CGCC shall use the Proceeds only for the activities related to construction of the Project as described in Exhibit A. The CGCC may not transfer Proceeds to another project without the prior written consent of Sponsors.
- B. Costs of the Project. The CGCC shall apply the Proceeds to the costs of the Project in accordance with Oregon law, as applicable. Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total costs of the Project and cannot be used for Costs of the Project incurred prior to the date of this Contract.

SECTION 7 – REPRESENTATIONS AND WARRANTIES OF CGCC

CGCC hereby represents and warrants to Sponsors:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in Section 1, and full funding for the Project will have been identified upon the execution of this agreement.
- B. Organization and Authority.
- (1) The CGCC is a community college district of the State of Oregon, duly organized and existing under ORS Chapter 341.
 - (2) The CGCC has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) borrow and receive financing for the Project.
 - (3) This Contract has been authorized by an order or resolution of CGCC's governing body and that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
 - (4) This Contract has been duly executed by CGCC and is legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The CGCC has disclosed in writing to Sponsors all facts that materially adversely affect the Project, or the ability of CGCC to make all payments and perform all obligations required by this Contract. The CGCC has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The CGCC has disclosed in writing to Sponsors all proceedings pending (or to the knowledge of CGCC, threatened) against or affecting CGCC, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of CGCC to complete the Project and to make all payments and perform all obligations required by this Contract.
- E. No Defaults.
- (1) No Defaults or Events of Default as defined in Section 9 of this Contract exist or occur upon authorization, execution or delivery of this Contract.

(2) The CGCC has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of CGCC to make all payments and perform all obligations required by this Contract, the Note and the other Financing Documents.

- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by this Contract will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to which CGCC is a party or by which the Project may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon the Project; (iii) violate any provision pursuant to which CGCC was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to CGCC, the Project or its properties or operations.
- G. Governmental Consent. The CGCC has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract for the financing or refinancing and undertaking and completion of the Project.

SECTION 8 – COVENANTS OF CGCC

The CGCC covenants as follows:

- A. Notice of Adverse Change. The CGCC shall promptly notify Sponsors of any adverse change in the activities, prospects or condition (financial or otherwise) of CGCC related to the ability of CGCC to perform all obligations required by this Contract.
- B. Notice of Change in Estimated Project Cost. The CGCC shall promptly notify Sponsors of any material change in Project plans, Project Completion Date, or Estimated Project Cost.
- C. Compliance with Laws. The CGCC shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract and the Project, as it may be modified or expanded from time to time.
- D. Project Completion Obligations. The CGCC shall:
- (1) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of Sponsor Financing provided pursuant to this Contract.
 - (2) Complete the Project no later than the Project Completion Deadline, unless otherwise

permitted by the Sponsors in writing. CGCC reserves the right to request an extension of the Project Completion Deadline or other deadline under this Contract should the Project incur delay arising from contractor or material availability, or as a result of Force Majeure acts or other acts, events or occurrences beyond the reasonable control of CGCC. CGCC will make such a request to the Sponsors in writing, and include such information or evidence that will support the request. The Sponsors shall not unreasonably withhold approval of such request.

- (3) No later than the Project Closeout Deadline, provide Sponsors with a final project completion report, including CGCC's certification that the Project is complete, all payments are made, and no further disbursements are needed.
- E. Financial Records. The CGCC shall keep accurate books and records for the revenues and funds that are the source of repayment if the Sponsor Financing is converted to a loan as provided in Section 4(B) of this Contract.
- F. Inspections; Information. The CGCC shall permit Sponsors and any party designated by Sponsors: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The CGCC shall supply any related reports and information as Sponsors may reasonably require. In addition, CGCC shall, upon request, provide Sponsors with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of CGCC associated with the Project that are issued after the date of this Contract.
- G. Records Maintenance. The CGCC shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, CGCC shall retain the books, documents, papers and records until the issues are resolved.
- H. Insurance, Damage. CGCC shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities.
- D. Procurement Standards. When procuring goods or services (including professional consulting services) for construction of the Project, CGCC shall comply with the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
- G. Economic Benefit Data. The Sponsors may require CGCC to submit specific data on the

economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. The CGCC shall, at its own expense, prepare and submit the data within a reasonable time specified by Sponsors.

- H. Professional Responsibility. All service providers on the Project retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.
- I. Notice of Default. The CGCC shall give Sponsors prompt written notice of any Default as soon as any senior administrative or financial officer of CGCC becomes aware of its existence or reasonably believes a Default is likely.
- J. Indemnity. To the extent authorized by law, CGCC shall defend, indemnify, save and hold harmless Sponsors and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged negligent act or omission by CGCC, its officers, employees and agents, related to this Contract or the Project, provided that the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or the Constitution or other laws of the State of Oregon.

SECTION 9 – DEFAULTS

Any of the following constitutes an "Event of Default":

- A. The CGCC fails to make any loan payment when due.
- B. Any false or misleading representation is made by or on behalf of CGCC, in this Contract, in any other Financing Document or in any document provided by CGCC related to Sponsor Financing or the Project.
- C. (1) A petition, proceeding or case is filed by or against CGCC under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against CGCC, CGCC acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;

(2) CGCC files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts; or

(3) CGCC becomes insolvent or bankrupt or admits its inability to pay its debts as they

become due, or makes an assignment for the benefit of its creditors;

- D. CGCC fails to perform any obligation required under this Contract, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to CGCC by Sponsors. The Sponsors may agree in writing to an extension of time if they determine CGCC instituted and has diligently pursued corrective action.

SECTION 10 – REMEDIES

- A. Remedies. Upon any Event of Default, Sponsors may pursue any or all remedies in this Contract, the Note or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of CGCC. Remedies may include, but are not limited to:
- (1) Terminating Sponsors' commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
 - (2) If Financing is converted to a loan under Section 4(B) of this Contract, declaring all loan payments immediately due and payable, and upon written notice to CGCC, the same become due and payable without further notice or demand.
- B. No Remedy Exclusive; Waiver; Notice. No remedy available to Sponsors is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The Sponsors are not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.
- D. Default by Sponsors. In the event Sponsors default on any obligation in this Contract, CGCC's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of Sponsors obligations.

SECTION 11 – MISCELLANEOUS

- A. Time is of the Essence. The Parties agree that time is of the essence under this Contract.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The Parties agree that their relationship is that of independent contracting parties and that

CGCC is not an officer, employee, or agent of the Sponsors.

- (2) This Contract will be binding upon and inure to the benefit of Sponsors, CGCC, and their respective successors and permitted assigns.
- (3) The CGCC may not assign or transfer any of its rights or obligations or any interest in this Contract without the prior written consent of Sponsors. The Sponsors may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, CGCC shall pay, or cause to be paid to Sponsors, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of Sponsors' Counsel. Any approved assignment is not to be construed as creating any obligation of Sponsors beyond those in this Contract or other Financing Documents, nor does assignment relieve CGCC of any of its duties or obligations under this Contract or any other Financing Documents.
- C. Disclaimer of Warranties: Limitation of Liability. In no event are Sponsors or their agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract.
- D. Notices. All notices to be given under this Contract or any other Financing Document must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

If to Sponsors:

City of The Dalles:

City Clerk,
City of the Dalles
313 Court Street
The Dalles, Oregon 97058

Wasco County:

Wasco County Clerk
511 Washington Street
The Dalles, Oregon 97058

If to CGCC:

Columbia Gorge Community College
President's Office
400 East Scenic Drive

The Dalles, Oregon 97058.

- E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Amendments. Waivers. This Contract may not be amended without the prior written consent of Sponsors and CGCC. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys ' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. The CGCC shall, on demand, pay to Sponsors' reasonable expenses incurred by Sponsors in the collection of loan payments.
- I. Choice of Law: Designation of Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Wasco County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Parties, by their signatures below, acknowledge that they have read this Contract, understand it, and agree to be bound by its terms and conditions.

WASCO COUNTY	COLUMBIA GORGE COMMUNITY COLLEGE

By: _____ _____, Chair County Commission	By: _____ _____,
Date: _____	Date: _____
THE CITY OF THE DALLES	
By: _____ City Manager	
Date: _____	

EXHIBIT A – DESCRIPTION OF THE PROJECT.

A. For the purposes of this Agreement, the Project consists of the following facilities to be constructed by CGCC on property that it currently owns that is part of The Dalles Campus:

1. **Skills Center:** Career-technical education facility with high-bay primary training space including overhead gantry crane. Secondary bays will be assigned to skills as informed by industry workforce demand. Skill center will also include classroom space(s), computer room, and “conference room” for student presentations. Overall facility will be sized as appropriate to support career-technical training in such fields as welding, construction trades, fire sciences, aviation mechanics, diesel mechanics, or such other family-wage trades as may pertain in the near or more distant future. The capital value of this facility upon completion of construction is estimated to be no less than \$7 million dollars, and shall not in any case be less than double the sponsors’ contribution to this project.

B. Estimated Completion Date. Subject to contractor availability, the Project will be completed no later than August 31, 2022.

C. Potential Additions to the Project. In addition, and subject to approval by the CGCC Board of Directors and budget note revision by Legislative Fiscal staff, the project may also include a weight room and soccer field, but these components are discretionary and contingent upon available budget resources.