



**DAN JOHNSON**  
DIRECTOR

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

October 26, 2023

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

Board of County Commissioners  
Clackamas County

**Approval of a Funding Agreement with the Clackamas County Historical Society to provide educational programs, preservation of cultural artifacts, heritage, and historical archives, and to maintain and manage the facility and venue. Agreement value is \$100,000 for 9 months. Funding through County Lottery Dollars. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	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 Museum of the Oregon Territory (MOOT) at the August 2, 2023 Policy Session 3. Request for Consent: October 24, 2023		
<b>Performance Clackamas</b>	1. Grow a Vibrant Economy		
<b>Counsel Review</b>	Yes – Andrew Naylor	<b>Procurement Review</b>	No
<b>Contact Person</b>	Laura Edmonds	<b>Contact Phone</b>	503-742-4366

**EXECUTIVE SUMMARY:** 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. At that time, the Board approved paying our membership dues for the Clackamas County Chambers of Commerce presented to them but the Board held off on approval of other funding requests and requested presentations by staff from 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 RACC and CCAA returned to provide presentations for funding request and answer Board questions. At that meeting, the Board approved funding for CCAA of \$150,000, \$100,000 to Museum of Oregon Territory (MOOT), adding Estacada Chamber to our membership list paying them \$120.00 and \$10,000 membership dues for Clackamas County Business Alliance. The funding request for RACC was moved to a future date until additional financial reporting could be provided. The Board requested that staff verify the expected hours of operation for

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MOOT. In response, MOOT confirmed their hours of operation are Wednesday through Saturday from 10:30 am to 4:00 pm.

In addition to the update stated above MOOT is in the process of hiring three new employees to add to their team. Making it six in total when the hiring is complete. They are hiring a new Administrative Assistant who will also be their marketing specialist and an educator, one additional educator, and one grants/fundraising specialist.

These enhancements to staffing will allow them to seek additional funding to support ongoing operations.

**RECOMMENDATION:** Staff respectfully recommends approval of the Funding Agreement between Clackamas County Historical Society dba Museum of the Oregon Territory and Clackamas County.

Respectfully submitted,

*Dan Johnson*

Dan Johnson, Director  
Department of Transportation & Development

**FUNDING AGREEMENT  
BETWEEN CLACKAMAS COUNTY  
AND CLACKAMAS COUNTY HISTORICAL SOCIETY MUSEUM OF THE OREGON  
TERRITORY**

THIS AGREEMENT (this "Agreement") is entered into and between **Clackamas County** ("County"), a political subdivision of the State of Oregon, and the **Clackamas County Historical Society dba Museum of the Oregon Territory** ("MOOT") 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 MOOT. The funding approved was \$100,000.

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.
2. **Funding.** County agrees to grant MOOT a sum not to exceed one hundred thousand dollars (\$100,000.00) (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. MOOT 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.** MOOT 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 MOOT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, copies and transcripts. MOOT also agrees to provide reasonable access to MOOT' 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 MOOT were in excess of the amount to which MOOT was entitled, then MOOT shall repay that amount to County
4. **Reporting.** MOOT 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 the County, including, but not limited to, information necessary to fulfill the County's obligations under ORS Chapter 461. Reports are due based on the schedule shown on Exhibit A.
5. **Financial Management.** MOOT 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 to be made within thirty (30) days of the effective date of this Agreement.
7. **Representations and Warranties.**
  - A. *MOOT Representations and Warranties:* MOOT represents and warrants to County that MOOT 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 MOOT enforceable in accordance with its terms.
  - B. *County Representations and Warranties:* County represents and warrants to MOOT 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 MOOT may terminate this Agreement at any time prior to County distributing funds to MOOT. After County has distributed funds to MOOT, either Party may terminate this Agreement upon 30 days written notice to the other Party. In the event a party terminates this agreement under this Section 8 A, MOOT shall immediately return all unspent funds to the County.
  - B. **Termination for Breach.** Either the County or MOOT 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 MOOT's breach, County shall have all remedies available to it at law, in equity, or under this Agreement including, but not limited to, requiring MOOT to return all unspent funds and to repay County for any funds used by MOOT 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, MOOT shall immediately return all unspent funds to the County.
  - D. **Waiver.** The County or MOOT 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.** MOOT 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 MOOT's acts or omissions in performing under this Agreement including, but not limited to, any claim that MOOT used the Funds for ineligible purposes under ORS 461.540.

MOOT 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 MOOT nor any attorney engaged by MOOT 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 MOOT 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.** 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.

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](mailto:ledmonds@clackamas.us) | (503) 742-4366

## B. MOOT.

Stephen Greenwood  
Clackamas County Historical Society, Museum of the Oregon Territory, Executive Director  
211 Tumwater Drive  
Oregon City, OR 97045  
[director@clackamashistory.org](mailto:director@clackamashistory.org) (503) 655-5574

## 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 MOOT 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. MOOT, 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.** MOOT 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. MOOT 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, MOOT 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.** MOOT 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.** MOOT 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 MOOT 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, 8, 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 MOOT nor County shall be held responsible for delay or default caused by events outside of the MOOT or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, MOOT 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.

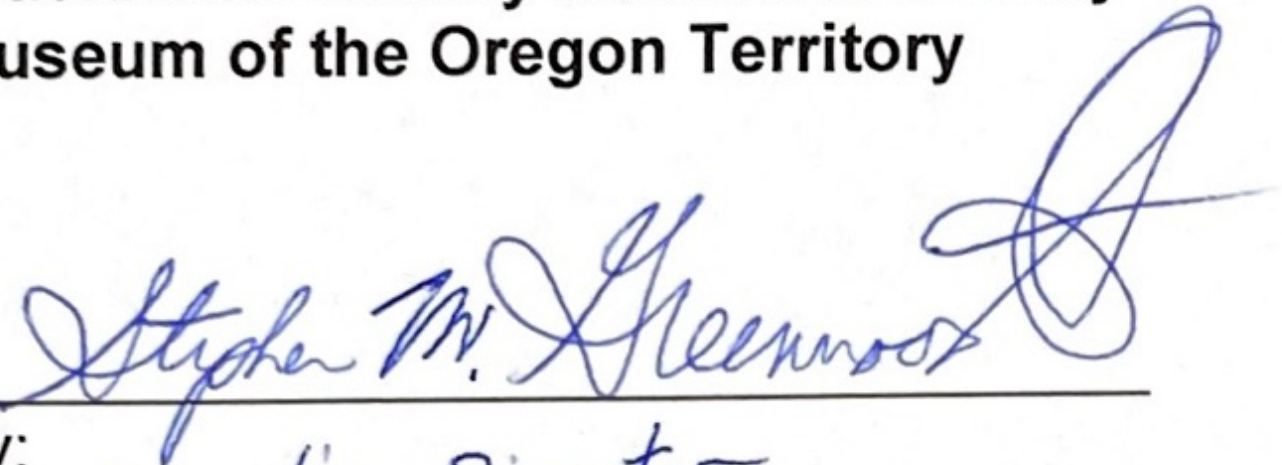


IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Clackamas County Historical Society dba  
Museum of the Oregon Territory

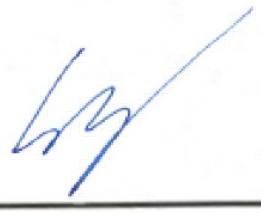
\_\_\_\_\_  
Chair, Board of County Commissioners

  
\_\_\_\_\_  
By: Executive Director

\_\_\_\_\_  
Date

10/18/2023  
\_\_\_\_\_  
Date

Approved as to Form:

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

10/18/2023

\_\_\_\_\_  
Date

# EXHIBIT A

## Use of Funds

The source of funds under this Agreement are \$100,000.00 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

## Museum of Oregon Territories (MOOT) may use the funds for the following eligible purposes:

- Provide educational programs for all children and the general public
- Preservation of unique cultural artifacts, heritage and historical archives
- Maintain and manage the facility and museum, keeping it open for business operations
- Manage venue for community and business meetings and events

## In addition, MOOT agrees to:

Continuously operate the Museum of the Oregon Territory during its current business hours, Wednesday through Saturday from 10:30am to 4:00pm for the purposes described above.

Support the Board of County Commissioners in a proactive way enabling them to understand the positive impact of historic preservation and how it supports cultural diversity and tourism in the county.

**Financial Management.** MOOT 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 costs incurred.

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

## Reporting

**MOOT** shall provide two progress and one annual reports to the Clackamas County Office of Economic Development.

Laura Edmonds

Economic Development Manager, Office of Economic Development  
Clackamas County

150 Beaver Creek Road

Oregon City, OR 97045

[ledmonds@clackamas.us](mailto: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 **MOOT** for the quarter

Reports are due by:

December 29, 2023

March 31, 2024

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.