



DAN JOHNSON
DIRECTOR

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

September 5, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Funding Agreement with the Museum of the Oregon Territory to provide educational programs, cultural and historical preservation and to maintain and manage the facility and venue. Agreement value is \$100,000 for 1 year. Funding through County-allocated Lottery Dollars. No County General Funds are involved.

Previous Board Action/Review	September 3, 2024: Request for Consent June 26, 2024: Policy Session regarding Dues and Memberships paid for by Lottery Dollars. BCC approved Membership Dues as recommended, including Museum of Oregon Territory (MOOT) at \$100,000		
Performance Clackamas	1. Grow a Vibrant Economy		
Counsel Review	Yes, AN	Procurement Review	N/A
Contact Person	Laura Edmonds	Contact Phone	503-742-4366

EXECUTIVE SUMMARY: In a June 26, 2024 policy session, staff presented to the BCC a proposed slate of dues and memberships for local Chambers of Commerce and business organizations, which included recommendations for non-competitive grants for arts and cultural organizations. The BCC directed staff to advance Membership Dues as recommended, including MOOT at \$100,000, with funding to come from State of Oregon Lottery Dollars.

MOOT may use the funds for the following 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

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

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 June 26, 2024, 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, 2025, unless otherwise terminated or extended as provided herein.
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. County may terminate this Agreement in the event County fails to receive expenditure authority sufficient to allow the 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, MOOT shall immediately return all unspent funds to the County.
 - D. Waiver. Neither County nor 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.** MOOT 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 MOOT under this Agreement. MOOT 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.

<input checked="" type="checkbox"/> Required - Workers Compensation: MOOT 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. MOOT.

Stephen Greenwood
 Clackamas County Historical Society, Museum of the Oregon Territory, Executive Director
 211 Tumwater Drive
 Oregon City, OR 97045
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: Stephen Greenwood
Its: Executive Director

Date

Date 7/25/2024

Approved as to Form:



County Counsel
08/01/2024

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 2024-25 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 to be displayed in furtherance of educational opportunities
- Maintain and manage the facility and museum, keeping it open for business operations
- Manage venue for community and business meetings and events for purposes of furthering economic development in Oregon

In addition, MOOT agrees to:

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

Reporting

MOOT shall provide one preliminary and one annual report 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 | (503) 742-4366

The progress report 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:

June 01, 2025 – This “preliminary” report may be in the form of a draft annual report, summarizing programs supported, use of funds and accompanied by Year-to-date P&L and Balance Sheet.

All “final” reports are to be provided to the Office of Economic Development no later than July 15, 2025 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.