



January 4, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Lease with the Clackamas County Historical Society for the Museum of the Oregon Territory. No fiscal impact. No County General Funds are involved.

Previous Board Action/Review	Previous discussions in Executive Session and discussion at Administrator Issues on January 3, 2024.		
Performance Clackamas	N/A		
Counsel Review	Yes	Procurement Review	No
Contact Person	Nancy Bush	Contact Phone	503-655-8581

EXECUTIVE SUMMARY: The lease is between Clackamas County and the Clackamas County Historical Society for the property at 211 Tumwater Drive, Oregon City, OR 90745. This premises is to be used for the operation of the Museum of the Oregon Trail (MOOT).

The premises includes a building that was constructed and owned by the Lessee. The County is leasing the premises to the Clackamas County Historical Society for the sole purpose of operations of the Museum of the Oregon Trail.

Upon execution of the lease by both parties, the premises will be leased for a term of ten years, unless earlier terminated according to terms in the lease, with an option of a five year extension upon a written amendment.

The County is not charging rent for the premises as long as it is being used for purposes outlined in the agreement.

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RECOMMENDATION: Staff recommends BCC approve the Clackamas County Historical Society lease agreement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy Bush". The signature is written in a cursive, flowing style.

Nancy Bush
Clackamas County Operating Officer

**LEASE
BETWEEN CLACKAMAS COUNTY
AND THE CLACKAMAS COUNTY HISTORICAL SOCIETY**

THIS LEASE ("Lease") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the Clackamas County Historical Society ("Lessee"), collectively referred to as the "Parties" and each a "Party."

RECITALS

County owns certain real property commonly known as 211 Tumwater Drive, Oregon City, OR 97045, and more particularly described in Exhibit A, attached hereto and incorporated by this reference herein, together with any and all rights, privileges, and easements, located on or made to the aforementioned real property (collectively, the "Premises"). The Premises includes a building (the "Facility") that was constructed by Lessee on the Premises. The Facility is owned by Lessee.

County desires to lease to Lessee, and Lessee desires to lease from County, the Premises subject to the terms and conditions in this Lease. Lessee will use the Premises for the operation of the Museum of the Oregon Trail (the "Museum").

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. **Lease of Premises; Condition of Premises:** County hereby leases the Premises to Lessee, subject to the terms and conditions contained herein. Lessee acknowledges that it has examined the Premises and agrees to accept the Premises in "as-is" condition, and that County has made no representations or warranties regarding the condition of the Premises or its fitness for any particular use.
2. **Term.** Upon execution of this Lease by both parties ("Effective Date"), the Premises will be leased for a term of ten (10) years, unless earlier terminated pursuant to the terms of the Lease. The parties may, by mutual written consent, agree to extend this Lease for an additional five (5) years by execution of a written amendment executed on or before expiration of the original Term.
3. **Rental Payment.** Lessee shall not be charged monetary rent. The consideration for this Lease is the Parties' agreement to perform pursuant to the terms and conditions herein.
4. **Net Lease.** This Lease is a net lease. Except as specifically provided in this Lease, Lessee will be responsible for paying all costs and expenses relating to the Premises, including any personal property taxes, fees, utilities, maintenance, interior and exterior repairs, insurance, and all other costs and expenses relating to the general occupancy and use of the Premises. Without notice or demand and without abatement, deduction, or setoff except as may be otherwise provided in this Lease, Lessee is required to pay, all sums, impositions, costs, and other payments that Lessee assumes or agrees to pay in any

provision of this Lease. If Lessee fails to make a payment, County will have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law for nonpayment of rent.

5. **Management Obligations:** Lessee shall direct, manage, supervise, and operate the Facility and all other related or subsequently constructed improvements to the Premises. Lessee will employ all personnel necessary for these operations, and perform all other activities necessary to operate and maintain the Facility.
6. **Use of Premises.** Lessee may use and occupy the Premises during the Term of this Lease solely for the following purposes:
 - a. Operation of the Museum in a reasonably presentable condition of maintenance for the general use and benefit of the public within the spirit of the devise of Latourette Park to Clackamas County, Oregon, as set forth in that certain deed recorded on December 29, 1957, in Book 534, Page 637, of the real property records of Clackamas County, Oregon.

Any use of the Premises other than those reasonably necessary to those described above is strictly prohibited.

7. **Compliance with Legal Requirements.** Lessee shall observe and comply with all "Legal Requirements," defined below, that may apply to the Premises, or to the use or manner of uses of the Premises. Lessee will pay all costs of compliance with the Legal Requirements.

"Legal Requirements" means all applicable present and future federal, state, and local laws, ordinances, orders, rules, regulations, codes, and requirements that now or hereafter apply to the Premises, or any component hereof or any activity conducted thereon, including but not limited to those pertaining to Environmental Laws and the use and storage of Hazardous Substances (as these terms are defined below).

"Environmental Laws" means all present or future federal, state, and local laws or regulations related to the protection of health or the environment, including the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC § 9601 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), the Federal Water Pollution Control Act (the Clean Water Act) (33 USC § 1251 et seq.), the Clean Air Act (42 USC § 7401 et seq.), amendments to the foregoing, and any rules and regulations promulgated thereunder.

"Hazardous Substances" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local, state, or federal governmental authority, including without limitation, any hazardous material, hazardous substance, ultra-hazardous material, toxic waste, toxic substance, pollutant, radioactive material, petroleum product,

and PCB, as those and similar terms are commonly used or defined by Environmental Laws.

8. Restrictions on Use of the Premises.

- a. Lessee shall not use or occupy the Premises, or permit or suffer all or any part of the Premises to be used or occupied: (a) for any unlawful or illegal business, use, or purpose; (b) in any manner so as to constitute a nuisance of any kind; (c) for any purpose or in any way in violation of any Legal Requirements, including Legal Requirements respecting Hazardous Substances; or (d) for any business, use, or purpose deemed disreputable.
- b. Lessee shall not lien, mortgage, or otherwise encumber its interest in the Premises, including the Facility, without the County's written consent, which may be denied in the County's sole discretion.
- c. Lessee shall not cause or permit any waste, damage, disfigurement, or injury to the Premises.
- d. Lessee shall not use the Premises in any manner that would conflict with the terms and conditions of this Lease.
- e. Lessee shall not engage in any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent County from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing County to obtain reduced premium rates for long-term fire insurance policies.
- f. Lessee shall refrain from any use that would be reasonably offensive to other tenants, owners, or users of neighboring properties, or that would create a nuisance or damage the reputation of the Premises.

9. Continuous Operation. Lessee shall occupy, operate, and manage the Premises continuously for the purposes stated in Section 6, above, during normal business hours. Lessee may not close portions of the Premises for greater than fourteen (14) business days without the prior written consent of County.

10. Improvements. Lessee may not make any modifications, alterations, or improvements to the Premises without first obtaining County's prior written consent. Any such modification, alteration, or improvement will be performed in compliance with all Legal Requirements and in a good and workmanlike manner.

Provided, however, that the requirement to obtain County's prior written consent before making any modifications, alterations, or improvements does not apply to Lessee's operation of the Facility. Lessee is solely responsible for the operation and maintenance of the Facility, including any modifications, alternations, or improvements to the Facility.

11. Taxes and Utilities

- a. **“Taxes” Defined.** As used in this Lease, the terms “Tax” and “Taxes” mean any and all taxes, service payments in lieu of taxes, general or special assessments, excise taxes, transit charges, utility assessments, and any and all charges, levies, fees, or costs, general or special, ordinary or extraordinary, of any kind that are levied or at the direction of laws, rules, or regulations of any federal, state, or local authority on the Premises, or based on or otherwise in connection with the use, occupancy, or operations of the Premises, or with respect to services or utilities in connection with the use, occupancy, or operations of the Premises, or in connection with the business of leasing space in the Facility, including any tax on rents, whether direct or as a part of any “gross receipts” tax, and whether or not in lieu of, in whole or in part, ad valorem property taxes.
- b. **Payment of Taxes.** Throughout the Term, Lessee shall pay any Taxes that may be applicable as they become due. If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Lessee may pay the same in installments as each installment becomes due and payable, but in any event shall do so before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest.
- c. **Contesting Taxes.** If Lessee in good faith desires to contest the validity or the amount of any Tax, Lessee may be permitted to do so by giving to County written notice requesting permission to do so before commencement of such contest. If approved, Lessee may contest with respect to the Property and/or the Facility. County may, at Lessee’s expense (including reimbursement of attorney fees reasonably incurred by County), cooperate with Lessee in any such contest to the extent that Lessee may reasonably request, but County shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Lessee, and Lessee shall indemnify and save County harmless from any such costs or expenses. Any rebates on account of the Taxes required to be paid and paid by Lessee under the provisions of this Lease shall belong to Lessee, except that to the extent any rebates or refunds are related to a period of time in which this Lease is not in effect (either before commencement or after expiration or termination), the portion of the rebate attributable to such time shall be returned to County to the extent previously paid by County.
- d. **Evidence of Payment.** Promptly after payment, Lessee shall provide County with evidence reasonably satisfactory to County that all Taxes required to be paid by Lessee have been paid.
- e. **Utilities and Services.** Lessee shall pay, directly to the appropriate supplier, for all water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, and all other utilities and services used by Lessee on the Premises as they become due, together with any taxes thereon, from and after the Effective Date. County shall not be in default hereunder nor be liable in damages or otherwise for

any failure or interruption of any utility or other service being furnished to the Premises, and no such failure or interruption will entitle Lessee to terminate this Lease.

12. Insurance. Lessee shall secure at its own expense and keep in effect during the term of the performance under this Lease the insurance required and minimum coverage indicated below. Lessee shall provide proof of said insurance and name Clackamas 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, 2051 Kaen Road, Oregon City, OR 97045.

Required - Workers Compensation: Lessee shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 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.

This policy(s) shall be primary insurance as respects to County. Any insurance or self-insurance maintained by County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

13. Responsibility for Damages; Indemnity.

Lessee shall be in exclusive control of the Premises. Lessee shall be solely responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, Lessee's use of the Premises, or from any act, omission, or neglect of Lessee, its subcontractors, agents, or employees.

To the fullest extent permitted by law, Lessee agrees to indemnify, hold harmless and defend County, and its officers, elected officials, agents and employees from and against all claims and actions, including reasonable attorney and accounting fees, and all expenses incidental to the investigation and defense thereof, collectively "Claims," arising out of or based upon (1) damage or injuries to persons or property caused by the errors, omissions, fault or negligence of Lessee or Lessee's employees, subcontractors, or agents; or (2) Lessee's operation, construction, maintenance, or repair of the Facility on the Premises. Lessee's indemnity and defense obligation excludes Claims arising solely from the negligent or willful acts or omissions of the County.

However, neither Lessee nor any attorney engaged by Lessee 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 Lessee 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 in the event that it determines that Lessee is prohibited from defending County or that Lessee is not adequately defending County's interests, or that

an important governmental principle is at issue or that it is in the best interests of County to do so. County reserves all rights to pursue claims it may have against Lessee if County elects to assume its own defense.

14. Liens.

- a. No Liens.** Lessee shall not suffer or permit any construction liens to attach to or be filed against any part of the Premises owned by County, including the Facility, by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee. If any such lien is filed against any portion of the Premises, including the Facility, Lessee shall cause the same to be discharged of record within 15 days after the date of its filing by payment, deposit, or bond.
- b. County Right to Post Notices.** County may post and keep posted at all reasonable times on the Premises notices of non-responsibility and any other notices that County desires or is required to post for the protection of County's interest in the Premises from any such lien.
- c. No Right to Lien County's Interest.** Nothing in this Lease may be deemed to be, or be construed in any way as constituting, the consent or request of County, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises, or as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against County's interest in the Premises or against County's interest, if any, in the Facility. Lessee shall not be an agent for County.

15. Repairs and Maintenance. Except as expressly provided in this Lease, Lessee, at its sole expense, must maintain, repair, and replace the Premises, including the Facility, as and when needed so as to keep them clean and in good condition and repair, throughout the entire Term. All of Lessee's maintenance, repairs, and replacements required under this Lease shall be performed in a good and workmanlike manner, of a quality at least equal to the original work, and shall be in compliance with all standards and requirements of law, licenses and municipal ordinances.

16. Inspection and Access. County may enter onto the Premises at reasonable times during reasonable business to perform inspections, to inspect and take measurements, samples or other activities to access any potential contamination issues, to perform repairs and maintenance under Section 15, above, and to ensure compliance with the terms of this Lease. Nothing in this Lease implies any duty or obligation, however, on County's part to make such inspections or perform such work unless County is otherwise obligated to do so under this Lease. County's performance of any work will not constitute a waiver of Lessee's default in failing to perform the same.

17. Damage and Destruction. If any Lessee owned Improvement(s) on the Premises are damaged or destroyed by flood, fire or other casualty, Lessee's obligations under the lease will not abate and Lessee shall promptly determine whether to repair, replace, reconstruct, demolish or abandon the Improvement(s). Lessee shall promptly inform County of its decision and its proposed plan of action. Should the Lessee decide to abandon or demolish the damaged Lessee owned Improvement(s) Lessee shall at Lessee's expense clear the remains of the Improvement(s) from the premises unless otherwise directed by County.

18. Condemnation. In the event the Premises is subject to condemnation by right of eminent domain by any federal, state, or local agency, the following provisions shall govern.

a. Total Taking. If all the Premises is taken or condemned by right of eminent domain or by purchase in lieu of condemnation (a "Taking"), or if in Lessee's reasonable judgment the Taking of any portion of the Premises renders the portion remaining insufficient and unsuitable to permit the restoration of the Facility following the Taking, then either party may terminate this Lease by providing written notice thereof within 30 days after the terminating party is notified of the Taking, in which case the Lease will cease and terminate (except those provisions intended to survive the expiration or termination of the Lease) and Lessee shall vacate the Premises as of the date on which the condemning authority takes possession (any Taking in this section being called a "Total Taking").

b. Partial Taking and Award for Partial Taking. If, during the Term, there is a Taking of the Premises, but the Taking is not a Total Taking and not a temporary taking of the kind described below, this Lease will not terminate but will remain in full force and effect with respect to the portion of the Premises not taken.

c. Temporary Taking. If there is a Taking of all or a part of the Premises for temporary use, this Lease will continue without change, as between County and Lessee, and Lessee will be entitled to the entire award made for that use.

a. Award for Total Taking. It is specifically understood and agreed that County shall be entitled to all of the proceeds of a Total or Partial Taking, and Lessee shall have no claim against County as a result of condemnation. Lessee shall be entitled to the relocation benefits, if any, and all the proceeds of condemnation which are on account of the taking of the improvements, equipment, fixtures or personal property, if any, belonging to Lessee.

b. Dispute Resolution. In the event of any dispute between Lessee and County regarding any issue of fact arising out of a Taking mentioned in this Section, the dispute shall be resolved by the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the dispute.

19. Assignment and Subletting. Lessee shall not sell, assign, sublet, grant, or transfer this Lease, or any portion of Lessee's interest therein, without the prior written consent of

County. Any attempted assignment or sublet without such prior written consent will be void. County's consent to an assignment or sublease will in no event release Lessee from its liabilities or obligations under this Lease, nor relieve Lessee from the requirement of obtaining County's prior written consent to any further assignment or sublease. County's acceptance of Rental Payments from any other person will not be deemed to be a waiver by County of any provision of this Lease or consent to any assignment or sublease. By execution of this Lease, County hereby consents to Lessee's existing relationship between Lessee and adjacent property owners to use a portion of the parking lot on the Premises, when such parking lot is not used by Lessee for museum purposes. County requires no additional compensation or notice for this existing use.

20. Default. The following constitute a default under this Lease:

- a. Lessee's violation of any term or condition in this Lease following 10 days' notice and opportunity to cure; after written notice of such violation;
- b. Lessee's failure to occupy the Premises for one or more of the purposes permitted under this Lease for a period of ten (10) business days or more, unless such failure is excused by County;
- c. Lessee's failure to use the Premises solely for purposes of a Museum;
- d. Lessee becomes insolvent, makes an assignment for the benefit of creditors, a receiver is appointed for Lessee's properties.

21. Termination

- a. **Non-default Termination:** This Lease may be terminated for the following non-default reasons:
 - i. i. By mutual agreement of the parties;
 - ii. ii. By County for the following reasons:
 1. Upon ninety (90) day's written notice to Lessee, for convenience; or
 2. If County fails to receive expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to perform under this Lease; or
 3. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Lease is prohibited.
- b. **Termination for Default:** upon occurrence of an event of default and failure to cure, if permitted, County may immediately terminate this Lease upon written

notice to Lessee and exercise any remedy provided herein.

- c. **Title to the Facility.** If this Lease is terminated for Lessee's default of this Lease under Section 20, above, or by mutual termination of the parties, County may purchase the Facility from Lessee for \$1.00. If this Lease is terminated for any other reason, the parties shall negotiate, in good faith, to resolve how to address the Facility following termination of the Lease.

22. Remedies.

- a. Upon the occurrence of an event of default, County may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease:
 - i. **Termination.** County may terminate this Lease by written notice to Lessee, which is effective immediately.
 - ii. **Reletting.** County may relet the Premises, but County shall not be required to relet the Premises for the purposes specified in the Lease or which purposes County may reasonably consider injurious to the Premises, or to any lessee that County may reasonably consider objectionable. County may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, on any reasonable terms and conditions County determines, in its sole discretion, to be in the County's best interest. To the extent allowed under Oregon law, County shall not be liable for refusing to relet the Premises or, in the event of reletting, for refusing or failing to collect any rent due on such reletting; and any action of County will not operate to relieve Lessee of any liability under this Lease or otherwise affect such liability. County at its option may make any physical change to the Premises that County, in its sole discretion, considers advisable and necessary in connection with any reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability.
 - iii. **Damages.** Whether or not County retakes possession of or relets the Premises, County may recover its damages from Lessee, including without limitation, all costs incurred by County in restoring the Premises or otherwise preparing the Premises and for reletting, and all costs incurred by County in reletting the Premises.
 - iv. **Right to Sue More than Once.** County may sue periodically to recover damages during the period corresponding to the remainder of the Term, and no action for damages shall bar a later action for damages subsequently accruing.

- v. **All Other Remedies.** The County shall have any remedy available to it in law or equity, whether or not specified herein.
- b. **No Waiver.** No failure by County to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial Rental Payments during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, may be waived, altered, or modified except by a written instrument executed by County. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.
- c. **Remedies Cumulative and Nonexclusive.** Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for now or hereafter existing at law or in equity or by statute or otherwise, and County's or Lessee's exercise or beginning to exercise of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

23. Surrender and Holdover

- a. **Condition of Premises and Improvements.** Upon expiration of the Term or earlier termination of this Lease, Lessee shall deliver to County the Premises in good condition, free and clear of all occupancies other than subleases to which County has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by County. Lessee shall surrender the Premises and County-owned improvements in good condition and repair (reasonable wear and tear excepted), free and clear of all occupancies other than subleases to which County has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by County. Lessee shall be solely responsible for the removal or remediation, in compliance with all Legal Requirements, of any Hazardous Substances on the Premises.
- b. **Lessee's Property.** Before the expiration or earlier termination of this Lease, Lessee shall remove all Lessee owned furnishings, furniture, and trade fixtures that remain Lessee's property (the "Lessee's Property"). If Lessee fails to do so, at County's option, (a) the failure to remove Lessee's Property will be deemed an abandonment of Lessee's Property, and County may dispose of Lessee's Property

in any manner permitted by law; or (b) by written notice given to Lessee, County may elect to hold Lessee to Lessee's obligation of removal, in which case County may remove, transport, and store Lessee's Property and Lessee shall reimburse County for the costs incurred in connection therewith on demand.

- c. **Holdover.** If Lessee shall hold over and remain in possession of the Premises after expiration of this Lease without any written lease actually being made, such holding over shall not be deemed to operate as a renewal or extension of this Lease but shall only create a month-to-month tenancy which may be terminated at any time by County upon sixty (60) days written notice to Lessee.

24. Notice All notices given pursuant to this Lease shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier, or (iii) sent by email.

Lessee	County
Administrator: Clackamas County Historical Society Attn: Christopher Owens Phone: (503) 951-1805 Email: president@clackamashistory.org	Administrator: Clackamas County Administration Attn: Nancy Bush Phone: (503) 655 8893 Email: NBush@clackamas.us

25. General Terms and Conditions

- a. **Relationship.** Nothing contained in this Lease will create a joint venture or partnership, establish a relationship of principal and agent, establish a relationship of employer and employee, or any other relationship of a similar nature between County and Lessee.
- b. **Independent Contractor.** The service(s) to be rendered under this Lease are those of an independent contractor. Although the County reserves the right to determine work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Lessee's performance. Lessee is responsible for determining the appropriate means and manner of performing under this Lease. Lessee is not to be considered an agent or employee of County for any purpose. This Lease is not intended to entitle the Lessee to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.

- c. **Waiver.** Failure of either party at any time to require performance of any provision of this Lease shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.
- d. **Integration.** Except as otherwise set forth herein, this Lease constitutes the entire agreement between the parties on the subject matter of this Lease. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Lease.
- e. **Further Assurances.** The parties to this Lease agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.
- f. **Survival.** All rights and obligations shall cease upon termination or expiration of this Lease except for the rights and obligations set forth in Sections 13, 21, 22, and 25 (c), (e), (f), (h), (i), (j), (m), (n), (o), (p), and (q), and all other rights and obligations which by their context are intended to survive.
- g. **Invalidity.** If any term or provision of this Lease or the application of the Lease to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.
- h. **Force Majeure.** If either party's performance of an obligation under this Lease (excluding a monetary obligation) is delayed or prevented in whole or in part by (a) any Legal Requirement (and not attributable to an act or omission of the party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, terrorism, civil disorder, strike, or other labor difficulty; (c) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (d) any other cause not reasonably within the party's control, whether or not the cause is specifically mentioned in this Lease, the party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind.
- i. **Non-Waiver of Governmental Rights.** Subject to the terms and conditions of this Lease, County is specifically not obligating itself with respect to any discretionary action relating to the Premises including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental approvals that are or may be required.
- j. **Entire Agreement; Counterparts.** This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified,

amended, or terminated only by an instrument in writing executed by the parties. Lessee and County mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of counterparts, including by fax signatures, each of which will constitute an original, but all of which will constitute one Lease.

- k. Binding Effect.** The covenants and agreements contained in this Lease are binding on and inure to the benefit of County, Lessee, and their respective successors.
- l. Recordation of Lease.** County may elect that a copy of this Lease or a memorandum of it, executed and acknowledged by both parties, be recorded in the public records of Clackamas County, Oregon. Lessee will pay the recording costs.
- m. Time Is of the Essence.** Time is of the essence as to the performance of this Lease.
- n. No Third Party Beneficiaries.** County and Lessee are the only parties to this Lease and are the only parties entitled to enforce its terms. Nothing in this Lease 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 Lease.
- o. Access to Records.** Lessee shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Lease. County and its duly authorized representatives shall have access to the books, documents, papers, and records of Lessee, which are directly pertinent to this Lease for the purpose of making audit, examination, excerpts, and transcripts. Lessee shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Lease, or until the conclusion of any audit, controversy or litigation arising out of or related to this Lease, whichever date is later.
- p. Governing Law.** This Lease, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Lessee that arises out of or relates to the performance of this Lease shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and

exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by 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. Lessee, by execution of this Lease, hereby consents to the personal jurisdiction of the courts referenced in this section.

- q. No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

- r. Limitation of Liabilities.** This Lease is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Neither party shall be liable for any indirect, incidental, consequential or special damages under this Lease or any damages of any sort arising solely from the termination of this Lease in accordance with the non-default termination provisions of Section 21.

[Signature Pages to Follow]

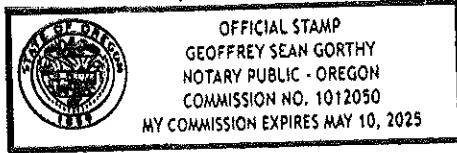
By their signatures below, the parties to this Lease agree to the terms, conditions, and content expressed herein.

Lessee: Clackamas County Historical Society

By: Chris Owens
Its: President

State of OREGON
County of Clackamas

This record was acknowledged before me on November 03, 2023 by
Christopher Owens as President of the Clackamas County Historical Society.



[Signature]
Notary Public – State of Oregon

Lessor: Clackamas County

By: _____
Its: _____

State of OREGON
County of Clackamas

This record was acknowledged before me on _____, 20__ by
_____ as _____ of the County of Clackamas.

Notary Public – State of Oregon

EXHIBIT "A"
Legal Description

Parcel I:

Lots 1 to 11, BLOCK 3 FALLS VISTA, in the City of Oregon City, County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to the State of Oregon for highway purposes by deed recorded June 30, 1936, in Book 232, Page 46, Clackamas County Deed Records.

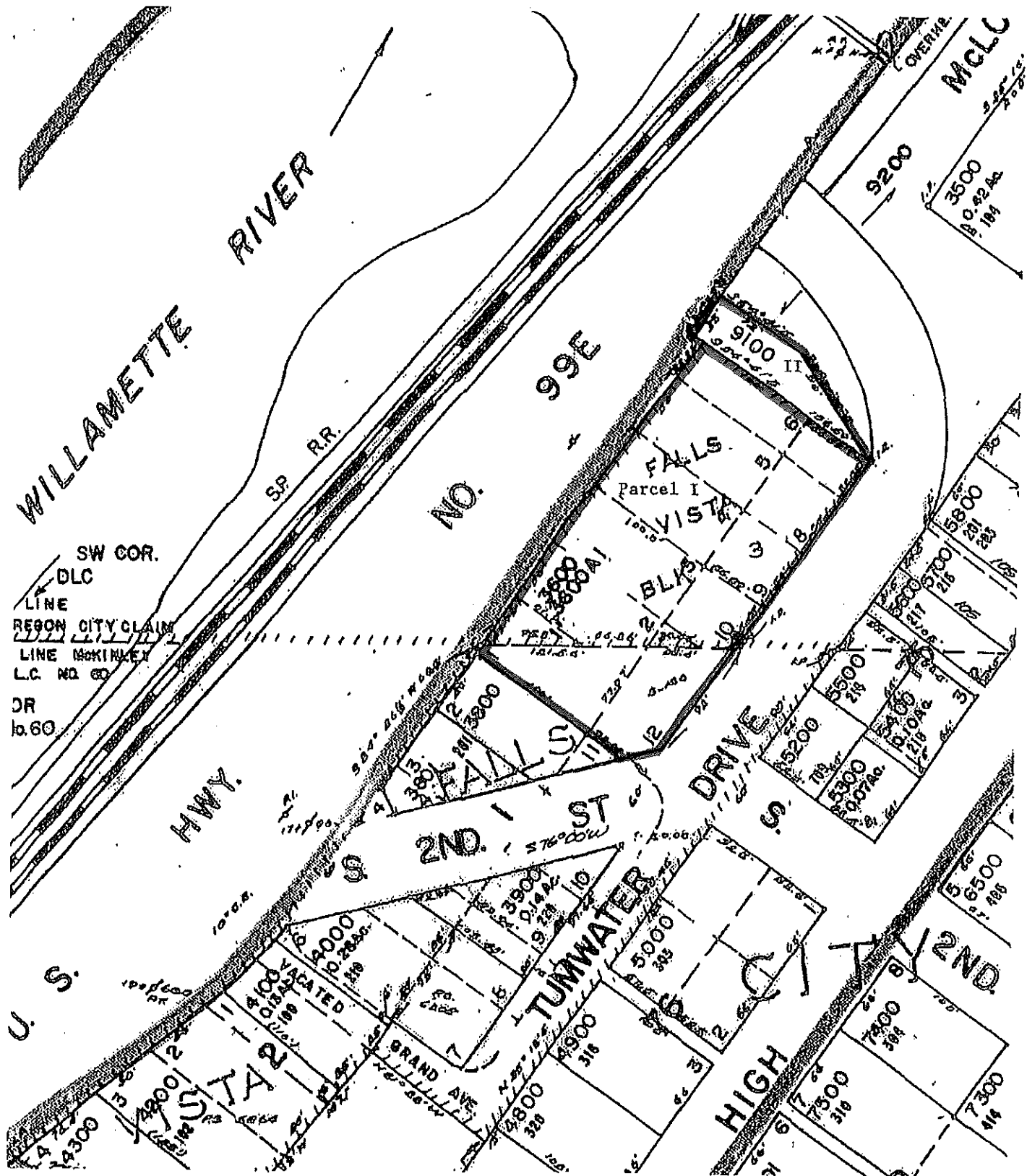
TOGETHER WITH all of Lots 1 and 12, Block 1, FALLS VISTA, in the City of Oregon City, County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion of said Lot 12 lying within Second Street.

Parcel II:

Part of the Public Promenade, OREGON CITY, a subdivision plat of record, in the Southwest quarter of Section 31, Township 2 South, Range 2 East, of the Willamette Meridian, in the City of Oregon City, County of Clackamas and State of Oregon, described as follows:

Beginning on the Easterly line of the Pacific Highway, and at a cross on the bed rock, said cross being the North corner of Lot 6, BLOCK 3 FALLS VISTA, and being the true point of beginning; thence North 34°27' East, along the Easterly line of the Pacific Highway, 35.00 feet; thence South 54°41' East, parallel with the Northerly line of BLOCK 3 FALLS VISTA, 72.00 feet; thence South 31°31'33" East 90.00 feet to the East corner of Lot 7, BLOCK 3 FALLS VISTA; thence North 54°41' West, along the Northeasterly line of said BLOCK 3 FALLS VISTA, 156.59 feet to the true point of beginning.



SW COR.
 DLC
 LINE
 REGION CITY CLAIM
 LINE MCKINLEY
 L.C. NO. 60
 DR
 10.60



This map/plat is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.