

December 2, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Funding Agreement between
Clackamas County and Clackamas County Historical Society –
Museum of Oregon Territory

Purpose/Outcomes	Clackamas County is providing support to the Clackamas County Historical Society – Museum of Oregon Territory (CCHS) to provide solely operational support for the Museum of Oregon Territories.
Dollar Amount and Fiscal Impact	The agreement is for \$100,000 total dollars.
Funding Source	General Fund dollars approved by the BCC in the 2021-22 budget cycle.
Duration	Becomes effective upon all signatures and ends on June 30, 2021
Strategic Plan Alignment	Honor, Utilize, Promote and Invest in our Natural Resources
Previous Board Action	No Previous Board Action
County Counsel Review	This Service Level Agreement has been reviewed and approved by A. Naylor on 11/22/21.
Procurement Review	No. Funding agreements are not reviewed by Procurement.
Contact Person	Nancy Bush x8893

BACKGROUND:

The Museum of the Oregon Territory (MOOT) is a regional benefit that overlooks Willamette Falls. The MOOT provides the history behind the land and how the Willamette Falls transformed the region's industry and is the home to Native American petroglyphs and artifacts, the original 1850 and 1851 San Francisco plat maps, a piece of the Willamette Meteorite, original belongings of Clackamas County's earliest re-settlers, as well as thousands of other objects, photographs, and documents that reflect Clackamas County history and culture.

MOOT will support the Board of County Commissioners in a proactive way enabling them to understand the various needs as well as the positive impact of historic preservation and culture in the county.

RECOMMENDATION:

Staff respectfully recommends approval of the Funding Agreement between Clackamas County and the Clackamas County Historic Society – Museum of Oregon Territory.

Sincerely,
Nancy Bush
Clackamas County Operations Officer

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

THIS AGREEMENT (this "Agreement") is entered into and between **Clackamas County** ("County"), a political subdivision of the State of Oregon, and Clackamas County Historical Society, doing business as the Museum of Oregon Territories (MOOT), an Oregon non-profit, collectively referred to as the "Parties" and each a "Party."

RECITALS

Clackamas County desires to provide MOOT funding to support operations at the MOOT, which was approved in the FY21/22 budget adopted by the Board of Commissioners on June 17, 2021.

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, and shall expire June 30, 2022.
2. **Scope of Work and Consideration.** County agrees to award MOOT a grant in an amount not to exceed \$100,000.00. MOOT shall use the funds awarded under this grant solely for the operation of the Museum of Oregon Territories, as further described in Exhibit A.
3. **Payment.** County will grant funds in two payments. Following execution of this Agreement, and within thirty (30) days following receipt of a written letter requesting disbursement, County will disburse the first payment of \$50,000.00. On or after January 21, 2022, and within thirty (30) days following receipt of a written letter requesting disbursement, County will disburse the second payment of \$50,000.00.
4. **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.
5. **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 120 days written notice to the other Party. In the event a party terminates this agreement under this Section 5 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 breach, the terminating Party 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.

6. Indemnification.

- A.** MOOT agrees to indemnify, hold harmless and defend County and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of MOOT or MOOT's employees, subcontractors, or agents. 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.

7. Insurance.

- A.** MOOT agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage. Such insurance shall name Clackamas County, and its officers, elected officials, agents, and employees as additional insureds.
- B.** MOOT agrees to provide statutory workers' compensation insurance coverage for all subject workers it employs, as defined in ORS 656.027, and in compliance with ORS 656.017, unless the workers meet the requirement for an exemption under ORS 656.126(2). MOOT agrees to furnish the County with evidence of this workers' compensation coverage.

- 8. 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 Operations Officer, or their designee will act as liaison for the County.

Nancy Bush
2051 Kaen Road
Oregon City, OR 97045
nbush@clackamas.us | (503) 655-8893

Executive Director or their designee will act as liaison for MOOT.

Jenna Barganski
Executive Director, Clackamas Historical Society
PO Box 2211
Oregon City, Oregon 97045
director@clackamashistory.org | 503-655-5574

9. 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 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 4, 6, and 9 (A), (C), (D), (E), (F), (G), (H), (I), (J), (K), (N), (Q), (S), 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. Confidentiality. MOOT acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by MOOT or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). MOOT agrees to hold Confidential Information in strict confidence, using at least the same degree of care that MOOT uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

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

Chair, Board of County Commissioners

Jean Banzand

Executive Director

Date _____

Date 11/15/2021

County Counsel Approves to form

[Signature]

County Counsel

Date 11/22/21

EXHIBIT A

SCOPE OF WORK

Background

The Clackamas County Historical Society – Museum of Oregon Territory (MOOT) is a regional museum that provides history behind the land and how Willamette Falls transformed the region's industry. MOOT is home to Native American petroglyphs and artifacts, the original 1850 Oregon City and 1851 San Francisco plat maps and other original belongings of Clackamas County's earliest settlers as well as documents that reflect Clackamas County history and culture.

Guiding Principles

This Agreement holds the following statements as guiding principles for Clackamas County Historic Society – Museum of Oregon Territory (MOOT) and Clackamas County (County):

- The historic preservation is important to our cultural and understanding of Clackamas County. MOOT provides education for all children and the general public.
- The unique cultural heritage and history of Clackamas County must be preserved and celebrated.
- The synergy that takes place when organizations and individuals share resources leads to a thriving arts and culture environment.

Use of Funds

MOOT shall use the \$100,000.00 of General Fund budgeted in Clackamas County's FY 2021-22 Adopted Budget and granted under this Agreement for the following:

Clackamas County Historic Society – Museum of Oregon Territory (MOOT)

MOOT will use funds for operational expenses related to the operation of the Museum of Oregon Territory including, but not limited to, salaries; utility bills, educational program needs, needed repairs, etc.

MOOT will support the Board of County Commissioners in a proactive way enabling them to understand the various needs as well as the positive impact of historic preservation and culture in the county.

Monitoring. MOOT agrees to allow access to conduct financial and performance audits for the purpose of monitoring 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's 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.

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 request the first \$50,000 via a letter in order to process the disbursement. The second \$50,000 must be requested no earlier than January 1, 2022 via a letter to the County Operations Officer.

Reporting

MOOT shall provide quarterly reports to the Clackamas County Operations Officer. Quarterly reports will include the following information:

- Reporting period
- How funds were spent
- If funding was used to support staff, provide name and position
- How did funding support the operations of MOOT for the quarter

Quarterly reports are due by:

September 30, 2021

December 31, 2021

March 31, 2022

June 30, 2022 – This quarterly report should be in the form of an annual report and presented to the Board of County Commissioners on an agreed date.