

## FUNDING AGREEMENT

This Funding Agreement ("Agreement") is by and between Multnomah County, a municipal subdivision of the state of Oregon ("County"), and the Oregon Historical Society, a nonprofit corporation organized under Oregon State law ("OHS"), with each referred to as a "Party" and collectively as the "Parties."

### Recitals

WHEREAS, OHS acts as the Multnomah County Historical Society by collecting, maintaining, and preserving the vast majority of historical records and artifacts for the City of Portland and the state of Oregon, with about 60% of the its collection relating directly to Multnomah County history.

WHEREAS, approximately 70,000 visitors, including about 8,000 schoolchildren, yearly use these OHS' facility in downtown Portland to research and otherwise learn about Oregon history.

WHEREAS, on May 18, 2021, Multnomah County voters approved Ballot Measure 26-174 ("Measure") which renewed a local option levy of \$0.05 (five cents) per \$1,000 of assessed real property value in Multnomah County ("Levy"). Levy revenue will be collected beginning in fiscal year 2020-2021 for a period of five years, expiring in fiscal year 2025-2026.

WHEREAS, the Levy funds OHS programs and other operations, as well as the operations of four east Multnomah County historical societies.

WHEREAS, the Parties enter into this Agreement to outline the roles and responsibilities of the County and OHS with regard to the Measure and Levy revenues.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby covenant and agree as follows:

### Agreement

1. **Effective Date; Term.** The Agreement shall be effective as of August 1st\_\_\_\_, 2021 (the "Effective Date"), and shall run from the Effective Date until June 30, 2025 ("Term"), unless earlier terminated by a Party as provided herein.

2. **Obligations of County.**

a. **Pay Levy Revenues to OHS.** County has developed estimates of the revenue that the Levy will generate through the Term. The Parties understand and agree that the estimates will vary from year to year and depend upon a number of variables related to the

state of Oregon's property tax system. Around October 15 each year, County will assess the Levy and bill taxpayers, with tax payments generally due by November 15 (taxpayers may choose to pay in installments). County will remit Levy collected revenues to OHS based on the property tax distribution schedule set forth in ORS 311.390.

The Parties acknowledge that revenue from the Levy will continue to be collected for several years following expiration of the Term (and Levy). The Parties will agree upon an estimate of the outstanding taxes not later than October 15, 2025. County will transfer the full amount of the agreed upon estimate of prior year taxes by June 30, 2026.

If County determines that OHS is out of compliance with either the terms of the Measure or this Agreement, it reserves the right to suspend distribution of Levy revenue under this Agreement until compliance is achieved to the satisfaction of County.

b. **Support Levy Oversight Committee.** County, acting through its Chair of the Board of County Commissioners, will continue to support the Levy Oversight Committee (LOC) in a manner consistent with the Measure, including as follows:

- i. County will cause the LOC to meet at least semiannually.
- ii. Minutes from LOC meetings will be provided by OHS to the Chair's Office and posted publicly on the County website.
- iii. County will provide an annual briefing to the Board of County Commissioners regarding OHS compliance with the Measure.

### 3. **Obligations of OHS.**

a. **Allocate Levy Revenues.** OHS agrees to comply with relevant obligations set forth in ORS 358.315 to 358.230 and make payments from levy proceeds to the following east Multnomah County historical societies:

- i. ECHO (East County Historical Organization)
- ii. Gresham Historical Society
- iii. Troutdale Historical Society
- iv. Crown Point Country Historical Society

Annually, OHS will allocate and pay to the above historical societies at least \$200,000 over the Term. Payments will be made in equal amounts of at least \$25,000 to each organization not later than July 31 and January 31 of each year the Levy is in place.

In addition, OHS agrees that no less than \$250,000 of Levy revenues received during the Term will be dedicated to funding a new permanent exhibit on the history of the City of Portland.

b. **Establish Contracts with Historical Societies.** By September 1, 2021, OHS will establish formal partnership agreements with each organization set forth in **Section 3(a)**. OHS will cause each of these societies to make a report to the LOC at least once annually. These reports shall provide an accounting for the expenditure of the Levy funds received under this Agreement. In the event that any of the organizations set forth in **Section 3(a)** fail to report at least once annually to the LOC, OHS is authorized to withhold distribution of Levy funds under this Agreement until the report is made to the satisfaction of OHS and the LOC. In the event that one of the historical societies stops providing services to the public, or is otherwise dissolved or becomes inactive, the funds shall be distributed equally among the remaining organizations in **Section 3(a)**.

c. **Pay County Administrative Fee.** On June 30, annually during the Term, County will withhold from the revenues paid to OHS under **Section 2(a)** not more than \$29,000 as compensation for administrative duties related to the collection and distribution of Levy revenues and appropriate staff support for the LOC.

d. **Conduct Annual Fiscal Audit.** Consistent with the Measure, OHS will annually conduct and pay for a fiscal audit detailing its use of Levy revenues. Within a reasonable time period after the results of such audit are available, OHS will make the audit results available to the public by publishing the results on its website. County will select and approve the auditor to perform these annual fiscal audits.

e. **Cooperate with LOC Oversight Actions.** OHS understands that the LOC's role is to provide oversight of the expenditure of Levy funds on behalf of the Board of County Commissioners and to identify for OHS and the community any perceived or persistent practices that are inconsistent with the Measure. OHS agrees that it will:

i. cooperate with the LOC, including by promptly providing any and all relevant documents, materials, and other information as required by the LOC to fulfill its reporting function; and

ii. reasonably comply with recommendations from the LOC on matters related to their role as stated above.

f. **Conduct Performance Audit.** OHS agrees to have a performance audit performed at its own expense and by an auditor approved by County if:

i. the LOC finds that it has cause to believe that OHS is not in compliance with the Levy provisions and this Agreement;

- ii. the County Chair concurs; and
- iii. the Parties have completed the dispute resolution set forth at **Section 6**.

The performance audit provided for under this section would be in addition to, and not in place of, the annual fiscal audit described in **Section 3(d)**. OHS agrees to fully cooperate with respect to all documents, materials, and other information deemed necessary by the auditors to complete the audit in a timely fashion.

4. **Budget Law Compliance.** The Parties will comply with Oregon local budget law, as set forth in Chapter 294 of the Oregon Revised Statutes, with regard to the expenditure of Levy funds.

5. **Termination.** The Agreement may be terminated: (a) at any time by mutual written agreement of the Parties; or (b) at any time after a Party has failed to cure a breach of the Agreement after receiving 30 days written notice from the non-breaching Party. Unless extended by written mutual agreement of the Parties, the Agreement shall terminate at the end of the Term.

6. **Dispute Resolution.** Any dispute regarding the interpretation or application of the terms of this Agreement shall first be brought to the Co-Chairs of the LOC and the Executive Director of OHS for resolution. If they are unable to agree, the matter shall be brought to the attention of the County Chair for final resolution. The Co-Chairs may refer the matter to mediation or alternative dispute resolution for resolution.

Any legal action involving any question arising under this Agreement may be brought only after the conclusion of the dispute resolution outlined in this Agreement and must be brought in the circuit court of Multnomah County, Oregon. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon. In the event of litigation each side agrees to bear the cost of its own legal fees.

7. **Entire Agreement; Governing Law.** This Agreement contains the entire agreement between the Parties with regard to the matters set forth in it, and any prior negotiations and understandings between the Parties have been merged herein. The Agreement shall be construed in accordance with the laws of the state of Oregon and ordinances of Multnomah County, Oregon.

8. **No Assignment; Successors; Third-Party Beneficiaries.** No Party may assign its interest in the Agreement to a third-party without the prior written consent of the other Parties. The Agreement shall be binding upon and inure to the benefit of the Parties hereto jointly and severally and the heirs, executors, representatives, successors, predecessors and assigns of each. This Agreement shall be enforceable only by each Party in its own right and shall not be enforceable by any person or entity. Nothing contained in this Agreement is

intended to or shall confer any rights, benefits, remedies, or entitlements upon any person or entity other than the Parties.

9. **Mutual Preparation.** This Agreement, in all respects, shall be deemed and construed to have been prepared mutually and equally by all of the Parties. No uncertainty or ambiguity herein shall be construed against any Party.

10. **General.** The terms of this Agreement are contractual and not a mere recital. Each Party represents and warrants that it has the power and authority to enter into and perform the Agreement. No modifications or amendment of this Agreement shall be binding unless contained in a writing signed by the Parties and no waiver, promise or representation by a Party shall be binding thereon unless contained in a signed writing. The Agreement may only be amended or supplemented by a writing that: (a) is signed by duly authorized representatives of the Parties; (b) clearly recites the Parties' understanding and intent to amend the Agreement; and (c) clearly and with specificity describes the terms to be amended or supplemented. Any notice given hereunder must be in writing, which shall be deemed effective upon deposit in the U.S. mail, postage prepaid, if addressed to a Party at its address of record. If any part of this Agreement shall be deemed invalid, illegal, or unenforceable to any extent, the provision shall be construed to be enforceable to the fullest extent possible, and the remainder of the Agreement shall not be affected and shall be enforceable. Payments under the Agreement shall be made in the legal currency of the United States.

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### Signature Page

The Agreement may be executed in multiple counterparts and may be electronically signed. Any verified electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, admissibility, and enforceability. Any reproduction of the Agreement made by reliable means is considered an original.

**Oregon Historical Society**

By: 

Printed Name: Kerry Tymchuk

Title: EXECUTIVE DIRECTOR

Date: 12-16-21

**Multnomah County**

By: 

Printed Name: Deborah Kafoury

Title: Multnomah County Chair

Date: 12/14/2021

**Multnomah County Attorney Review:**

Reviewed: JENNY MADKOUR, COUNTY  
ATTORNEY FOR MULTNOMAH COUNTY,  
OREGON

By: 

Date: County Attorney  
December 20, 2021