

AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2022 by and between Lewis County, a political subdivision of the State of Washington, 351 NW North St., Chehalis, WA hereinafter referred to as "COUNTY" and Lewis County Historical Society, 599 NW Front Way, Chehalis, WA hereinafter referred to as "MUSEUM".

WITNESSETH:

WHEREAS, MUSEUM desires to occupy the real properties and premises noted below for the purpose of operating a museum; and in consideration of the terms, covenants and agreements herein contained and those included in two attached leases between Burlington Northern, Inc. and Lewis County, the COUNTY agrees to allow MUSEUM to occupy the premises through the term specified below, the premises consisting of properties described in said leases.

Term. The term of this Agreement shall commence on the 1st day of May 2022, and end on the 31st day of May 2027. Agreement may be terminated without cause by either party at any time with 60 days' advance written notice. This agreement may be renewed for up to three (3) additional years by mutual consent of both parties.

1. Rental. This agreement is considered to be of benefit to COUNTY and MUSEUM and there is no other consideration beyond that mutual benefit.

2. Use. MUSEUM shall have the right to use the demised premises and improvements thereon for a museum and those events and programs that promote or provide a benefit to the Museum or Lewis County Historical Society in support of the Museum. MUSEUM shall not use or permit the demised premises to be used for any other purpose or purposes without the prior written consent of the COUNTY. MUSEUM agrees that during the term of this agreement, the demised premises shall be kept in a clean and orderly condition, free of refuse, and that MUSEUM will comply with all local, state and federal regulation, including police, health and fire regulations, and will comply with all other applicable statutes, ordinances and regulations. Failure to comply will constitute a breach and default of this agreement. Should any alteration of the demised premises be required by a governmental agency or regulation during the term of this Agreement, except as provided for below, MUSEUM shall bear the cost of any such alteration without contribution or reimbursement from COUNTY. Upon expiration or sooner termination of this Agreement, those alterations shall become the property of COUNTY.

3. Alterations and Improvements. The MUSEUM shall not make any changes in, alterations or additions to, the demised premises without the prior written consent of the COUNTY — which consent shall not be unreasonably withheld. Any alteration, addition or improvement made by the MUSEUM after such consent, shall be done at the MUSEUM'S expense and any fixture installed as a part thereof shall become the property of the COUNTY upon expiration or sooner termination of this Agreement; provided, however, COUNTY may require MUSEUM to remove any unauthorized alteration, addition or improvement and fixture installed as a part thereof, and restore the portion of the premises on which they were placed to the same condition they were in prior to such alteration, addition or improvement. Nothing herein shall prohibit COUNTY from conditionally approving any alteration, addition or improvement, such condition being that the premises must be restored at the end of the Agreement

term, or sooner termination of this Agreement, in its pre-altered or improvement condition—reasonable wear and tear excepted.

4. Repairs. MUSEUM agrees that all damage or injury to said property by MUSEUM, or any person who may legally be upon the demised premises at the invitation, direction or request of the MUSEUM, shall be repaired at MUSEUM'S expense; provided, however, this shall not be construed to limit recovery by MUSEUM for damage caused by third parties. MUSEUM agrees, at the expiration of this Agreement or sooner termination thereof, to quit and surrender said real property and improvements thereon in as good a condition and repair as the same now are, reasonable wear and tear from ordinary use excepted. Maintenance and Janitorial. Routine maintenance on all buildings, storage structures, HVAC Systems, and parking lots, and janitorial services on the demised premises, including improvements thereon, will be performed at the COUNTY'S expense.

5. Entry and Inspection of the Premises. The COUNTY, its agents and representatives, shall have the right to enter onto or upon the demised premises or any part thereof for the purpose of examining the conditions thereof, upon reasonable prior notice to MUSEUM. The COUNTY'S entry onto the demised premises will not unreasonably interfere with the MUSEUMS'S use of said property. In addition, the COUNTY, or their agents and representatives, shall have the right to enter into or upon said demised premises for the purposes of making repairs or improvements that COUNTY may, at its election, decide to make.

6. MUSEUM agrees to accept the demised premises in the present condition and state of repair.

7. Personal Property Tax. Any and all personal property taxes assessed against the personal property located on the deemed premises shall be timely paid before delinquent, and shall be the sole responsibility of COUNTY.

8. Insurance. During the Term of this Agreement, including any extensions, MUSEUM, at their sole expense, shall procure and maintain in full force and effect public liability insurance with limits of not less than one million dollars (\$1 million) per incident and three million dollars (\$3 million) in the aggregate, insuring any and all applicable liability with respect to the demised premises, right of occupancy or use thereof, and the conduct of any business therefrom, which coverage shall specifically include indemnification against accidents and the like arising from the use by MUSEUM of any of the real property subject to this Agreement. Any exclusion that may restrict required coverage must be pre-approved by the COUNTY. Occupation under this Lease shall not commence until evidence of all required insurance is provided to the COUNTY. The MUSEUM's insurer shall have a minimum A.M. Best's rating of A-VII and shall be licensed to do business in the State of Washington. Evidence of such insurance shall consist of a completed copy of the certificate of insurance, signed by the insurance agent for the MUSEUM and returned to the County Department with whom the Agreement is executed. The insurance policy or policies will not be canceled, materially changed or altered without Thirty (30) days prior notice submitted to the department with whom the Agreement is executed. The policy shall be endorsed and the certificate shall reflect that the COUNTY is an additional named insured on the MUSEUM's general liability policy with respect to activities under the Lease. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability. The policy shall be endorsed and the certificate shall reflect that the insurance afforded therein shall be primary

insurance and any insurance or self-insurance carried by the COUNTY shall be excess and not contributory insurance to that provided by the Tenant.

9. Indemnification / Hold Harmless. MUSEUM, its successors and assigns, will protect, save, and hold harmless the County, its authorized agents and employees, from all claims, actions, costs, damages (both to persons and/or property), or expenses of any nature whatsoever by reason of the acts or omissions of the MUSEUM, its assigns, subtenants, agents, contractors, licensees, invitees, employees, or any person whomsoever, arising out of or in connection with any acts or activities related to this Agreement, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Leased Premises. The MUSEUM further agrees to defend the County, its agents or employees, in any litigation, including payment of any costs or attorney's fees, for any claims or actions commenced, arising out of, or in connection with acts or activities related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Leased Premises. This obligation shall not include such claims, actions, costs, damages, or expenses which may be caused by the sole negligence of the County or its authorized agents or employees; provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) County, its agents or employees and (b) the MUSEUM, its assigns, subtenants, agents, contractors, licensees, invitees, employees, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the MUSEUM or its assigns, subtenants, agents, contractors, licensees, invitees, employees. MUSEUM specifically assumes potential liability for the actions brought by MUSEUM's employees, volunteers, board of directors or any person whomsoever arising out of or in connection with any acts or activities related to this Agreement, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the demised Premises, and solely for the purposes of this indemnification and defense, MUSEUM specifically waives any immunity under the State industrial insurance law, Title 51 RCW. MUSEUM recognizes that this waiver was the subject of mutual negotiations. The indemnification and waiver provisions contained in this section shall survive the termination or expiration of this Lease.

10. Damage or Destruction. In the event the demised premises are destroyed or damaged by fire, earthquake or other casualty to such an extent as to render the same untenable in whole or in substantial part thereof, it shall be optional with COUNTY to rebuild or repair the same; and after the happening of any such contingency, MUSEUM shall give the COUNTY immediate notice thereof. In the event of the occurrence of such contingency, COUNTY may elect to terminate this Agreement and shall do so by notifying MUSEUM within thirty (30) days of the occurrence of the loss. COUNTY may similarly elect to effect reconstruction and continue this Agreement in full force and effect. If COUNTY does elect to repair, restore and/or reconstruct, COUNTY shall proceed without unnecessary delay. MUSEUM agrees that COUNTY, if it so elects, may enter the demised premises to make any and all repairs, reconstruction or restoration. If COUNTY shall fail to give notice of COUNTY'S election aforesaid, Museum shall have the right to declare this Agreement terminated by notifying COUNTY. MUSEUM shall not be entitled to any compensation or damages from COUNTY for loss of use of the whole or any part of the demised premises, improvements or fixtures thereon, damage or destruction to MUSEUM'S personal property thereon, or inconvenience or other annoyance or loss suffered by MUSEUM as a

result of any such damage, destruction, reconstruction or restoration of the improvements and fixtures located on the demised premises.

11. Condemnation. If any part of the demised premises shall be taken by condemnation or under threat of condemnation, and the part remaining is such that MUSEUM may continue its business operation thereon, then this Agreement shall continue. In the event that the demised premises shall be condemned to an extent making it impossible or impracticable for the Museum to continue its business operations thereof, then this Agreement shall terminate as of the date said condemnation is effected, and the COUNTY and MUSEUM shall be relieved of further liability hereunder.

12. Waiver of Subrogation. COUNTY and MUSEUM, on behalf of themselves, their respective successors and assigns, if any, each hereby waive all right to subrogation that either may have, may or might have against the other, for any losses occurring during the period that this Agreement is in full force and effect on said demised premises or the improvements located thereon and telephone system therein, or to personal property therein belonging to either party where the loss is proximately caused by fire, lightning or any cause included in or covered by the standard fire insurance policy, or other casualty policy used for insuring said property, including perils insured in and covered by the extended coverage endorsements constituting a part of the standard fire insurance policy and/or all risk insurance policy

12. Utilities. All utilities shall be paid by MUSEUM.

13. Liens. MUSEUM agrees to pay, or cause to be paid, all costs for work done, or caused to be done, by MUSEUM and for services provided to MUSEUM, on the demised premises or improvements thereon, and MUSEUM will keep said demised premises and improvements thereon clear of all liens on account of work done for MUSEUM, caused to be done for MUSEUM, or other services provided for MUSEUM; except for such liens created or caused to be created by COUNTY. MUSEUM agrees to pay and shall indemnify and save COUNTY free and harmless against all liability, loss, damage, cost, attorney's fees and other expenses on account of such MUSEUM claims for laborers or materialmen, or others, for such work performed or services provided, or materials or supplies furnished to or on account of the demised premises or improvements thereon.

14. Additional Covenants. MUSEUM covenants as follows:

(a) Not to assign or otherwise transfer this Agreement without the prior written consent of COUNTY.

(b) Not to allow anyone to occupy the premises, or portion thereof, for any use not a Museum or related activity, without the prior written consent of COUNTY.

(c) Not to commit or suffer any waste of or about the demised premises or improvements thereon.

(d) Not to use said demised premises or improvements thereon in any way, for any purpose, or keep or maintain anything thereon, which will void any fire insurance policy applicable to the demised premises and improvements thereon, or which would in any way increase any premium to be paid on any existing fire insurance policy applicable thereto.

(e) Not to allow the demised premises or improvements thereon to fall into such a state of disrepair and to the extent MUSEUM is responsible for such repair, as to increase the fire insurance hazard thereon.

(f) To comply at MUSEUM'S own expense, with all orders, notices, regulations and requirements of any public authority having jurisdiction respecting the demised premises or improvements thereon, to the extent of MUSEUM'S obligations under this lease.

(g) To keep the demised premises and improvement thereon in a neat, clean condition,

(h) Pay all payroll expenses, supplier bills, taxes and other expenses incurred in the operation of MUSEUM'S business.

(i) Not to use or permit the use of the demised premises or improvements thereon for any illegal purpose.

15. Attorneys' Fees. In the event of any litigation between the parties hereto arising out of the construction or enforcement of this Agreement, the demised premises, or improvements thereon, the prevailing party shall be entitled to all reasonable attorneys' fees expended or incurred in such litigation and such shall be recovered as part of the costs therein.

16. Default. This Agreement is made upon the express condition that if MUSEUM fails or neglects to perform, meet or observe any of the MUSEUM'S obligations herein, then COUNTY, after ten (10) days written notice, may lawfully declare the termination of this Agreement, may re-enter said demised premises and the improvements thereon, or any part thereof, and by due process of law remove and put MUSEUM out, or any other person or persons occupying said demised premises or improvements thereon, and may remove all personal property therefrom without prejudice to any remedies which might or may otherwise be used for the breach of any covenants or conditions. If MUSEUM fails to perform any nonmonetary duty, obligation or covenant, COUNTY may, at its election, perform the duty or obligation, in which event MUSEUM shall, upon demand, pay to the COUNTY, COUNTY'S actual cost incurred in performing said duty or obligation, together with interest at twelve percent (12%) per annum until paid.

17. Nonwaiver of Default. The waiver of any breach of any term, covenant or condition by COUNTY shall not constitute a waiver of any other breach regardless of knowledge thereof, or a waiver of the breach, term or covenant itself.

18. MUSEUM agrees not to vacate or abandon the demised premises or improvements thereon at any time during the term of this Agreement. Should MUSEUM vacate or abandon said demised premises or improvements thereon, or should such demised premises or improvements be disposed by process of law or otherwise, such abandonment, vacation or disposition shall be a breach of this Agreement and, in addition to other rights which COUNTY may have, COUNTY may remove any personal property belonging to MUSEUM which remains on the demised premises or improvements thereon, and such removal and storage shall be for the account of MUSEUM.

19. Entirety. This Agreement constitutes the entire agreement and understanding between the COUNTY and MUSEUM as to the use of the demised premises. There are no other agreements or representations either oral or written, which modify or have an effect upon this Agreement except as expressly provided

in the grant agreement entered into by the County and Museum for 2012 and any successor grant agreement. The parties are not relying on any representations or promises, other than those specifically set forth herein. No modification of this Agreement shall be binding upon either party unless reduced to writing and signed by both parties.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto the-day and year first above written.

LEWIS COUNTY HISTORICAL SOCIETY

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY WASHINGTON

 4-29-22

Peter Lahmann – LCHS President

Lindsey R. Pollock, DVM, Chair

APPROVED AS TO FORM:
Kevin McDowell, Deputy Prosecuting Attorney

Sean D. Swope, Vice Chair

By: _____

F. Lee Grose, Commissioner