

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 22

DATE: April 21, 2009

STAFF: Marty Heffernan
Jill Stilwell
Cheryl Donaldson

SUBJECT

Resolution 2009-035 Authorizing the City Manager to Enter into a License to Enter and Fee Sharing Agreement with the Discovery Science Center.

RECOMMENDATION

Staff recommends adoption of the Resolution.

EXECUTIVE SUMMARY

The License to Enter and Fee Sharing Agreement between the City and Discovery Science Center (DSC) allows the DSC to share office and exhibition space with the Fort Collins Museum (FCM) in the City building located at 200 Mathews Street. The agreement includes a provision for charging an admission fee and paying those fees, along with certain other museum-related fees, to the DSC to fund DSC employee salaries, benefits and program costs. The Fee Sharing Agreement will keep aspects of the Discovery Science Center open, operating, and providing benefit to the public during this transition phase until the new facility is operational. The DSC has historically charged an admission fee to fund operations and an admission fee will be charged at the new museum when it opens. The Agreement also clarifies the parties' rights and obligations in sharing the Museum property and is in keeping with the Operating Agreement that was signed between the City and the DSC in March 2008.

BACKGROUND

In 2005, the voter-approved Building on Basics Capital Tax Renewal included \$6 million towards a new museum facility for the Fort Collins Museum and the Discovery Science Center. DSC was responsible for raising \$3.6 million towards the project. The two entities developed an Operating Agreement that was approved by City Council in March 2008 and will be fully enacted through the construction and opening of the new museum facility. The two entities will become one new institution in the new facility and provide a one-of-a-kind experience for the Fort Collins community.

As the FCM and DSC staff prepare to undertake the largest museum project in the history of northern Colorado, it is critical that the entities begin to function as a single organization. The FCM and DSC plan to relocate key staff and some exhibitions from the DSC to the FCM in 2009. This decision is based on two primary factors. The first consideration is that DSC's lease in the Barton

Elementary building ends in May 2009. The second consideration is the two organizations need to begin functioning as a cohesive team to complete fund raising efforts, and formulate the concepts for exhibitions, programming, and building design, while providing experiences and programming visitors have come to expect.

This early merger will not be a burden on the General Fund, and will allow both organizations to continue to provide quality service to visitors during this time of transition. A nominal admission fee of \$4 will be enacted for entry into the current museum. This fee, along with other program fees, will keep the DSC operational and solvent during the transition. Scholarships and free days will be offered. The Local History Archive and the Heritage Courtyard will continue to be open to the public at no cost. The fee will require the approval of the City Manager.

ATTACHMENTS

1. License to Enter and Fee Sharing Agreement.

LICENSE TO ENTER AND FEE SHARING AGREEMENT

THIS LICENSE TO ENTER AND FEE SHARING AGREEMENT (“Agreement”) is entered into by and between the CITY OF FORT COLLINS, a Colorado municipal corporation (“City”), and the DISCOVERY SCIENCE CENTER, a Colorado non-profit corporation (“NPC”), and will be effective on the date signed by the City.

RECITALS

1. On March 6, 2008, the City and NPC entered into an Operating Agreement pursuant to which the City and NPC agreed to combine the missions of the Fort Collins Museum and the NPC into a new Institution and to collaborate on the construction of a new Facility for the Institution, with the City and NPC sharing major decisions regarding the Facility and Institution.
2. On June 1, 2009, the NPC will have to move most of its operations out of its current facility at 703 East Prospect Road, Fort Collins, Colorado.
3. In furtherance of the City and NPC’s shared mission under the Operating Agreement, and in recognition of the benefit to the public from the continued provision of science and technology exploration and education in the Fort Collins community through a program like the NPC’s, the City has agreed:
 - (a) to permit the NPC to share office and exhibit space with the Fort Collins Museum (“Museum”) in the City building located at 200 Mathews St., Fort Collins, Colorado (the “City Property”); and
 - (b) to charge a fee for admission to the Museum and to pay those fees, along with certain other Museum-related fees, to the NPC, to be used for funding NPC employee salaries and benefits and program costs.
4. The parties wish to enter into this Agreement to clarify the parties’ rights and obligations in sharing the City Property.

NOW, THERFORE, the parties agree as follows:

1. License Period. NPC is hereby authorized to access the City Property for a period not to exceed four years, beginning on _____, 2009, unless earlier terminated by either party in accordance with the terms and conditions of this agreement. This right of access is non-exclusive, and the City retains the right to use and access all portions of the City Property at all times.
2. Use of City Property.
 - (a) Facility. NPC may use the City Property for the following purposes and no other purposes: for shared office space for City and NPC employees, for storage and display to the public of NPC exhibits, and for other related and appropriate NPC uses as agreed to and coordinated between the Museum Director and NPC Director. The City Property may not be used to influence the passage or defeat of ballot issues or to promote candidates for political

office. NPC may not make any alterations or improvements to the City Property, or affix, erect or maintain any sign or advertisement on the City Property without the City's prior, written consent. NPC shall cooperate with the City in properly securing the City Property and the City shall cooperate with NPC in properly securing any of NPC's property stored on the City Property.

(b) Technology. Use of the City Property includes access to City telephone and fax lines, and use of City computers and internet access. This access and use may be shared with City staff; however, all information of any kind pertaining to NPC's donors ("Donor Records") shall be deemed confidential and shall at all times remain the sole property of NPC. The parties believe that the Donor Records are not "public records" as that term is defined in CORA (defined below), because the Donor Records are not: (i) made, maintained, or kept by the City, or (ii) held for use in the exercise of functions required or authorized by law or involving the receipt or expenditure of public funds. To the extent permitted by law, the City will not access, copy, disclose to any third party, or use for any purpose whatsoever the Donor Records, without the prior written consent of NPC, which may be withheld in NPC's sole discretion. NPC's storage or use of the Donor Records on City computers is not intended to give rise to any right or interest of the City of any kind in or to the Donor Records.

(c) Colorado Open Records Act. Notwithstanding the provisions of subparagraph (b), if the City receives a request for all or part of the Donor Records made pursuant to the terms of the Colorado Open Records Act, C.R.S. Sec. 24-72-101 et seq. (CORA), the City will deny such request on the basis stated in subparagraph (b), unless the City believes, in good faith that to do so would be a willful and knowing violation of CORA. If the City, in good faith, believes it cannot deny the request without causing a willful and knowing violation of CORA, or if the City denies a request for the Donor Records made pursuant to CORA and the requesting party then initiates legal action against the City to compel the release of the Donor Records, the City will promptly notify the NPC of the situation. The NPC may then take such legal action as the NPC believes is appropriate to protect the Donor Records from disclosure. If the NPC does not take such action within two business days of receiving notice from the City (five days, in the event of legal action filed following the denial of a CORA request), the City may choose not to contest the requesting party's right to view the records and may provide the records to the requesting party in accordance with CORA. The NPC agrees that in such circumstances the City's release of the records will not constitute a breach of this Agreement.

3. Fees and Costs. The NPC receives all revenue from Museum gate fees. The NPC receives net revenues, after reimbursement for City expenses, from program fees and store sales. NPC may spend the revenue from such fees and sales only on employee salaries and benefits and museum activities. To the extent the revenue from such fees exceeds the NPC's budgeted costs for such salaries, benefits and program costs, the NPC will refund the balance to the Fort Collins Museum. The City will not charge NPC a fee for use of the City Property. The City is responsible for all maintenance and repairs to the City Property, and the cost of all utilities.

4. Indemnity. NPC agrees to indemnify and hold harmless the City, its officers, representatives, employees, agents and assigns against all claims, causes of action, damages, liability, injury, loss or costs, including reasonable attorneys' fees, of every kind and nature

whatsoever, directly or proximately resulting from or caused by any act or omission of the NPC or any of its officers, agents, employees, volunteers, contractors, representatives, assigns or invitees or by NPC's use or occupation of the City Property. To the extent permitted by law, including the Charter of the City of Fort Collins, the City shall defend, indemnify and hold harmless the NPC, its officers and employees from and against all claims, costs, damages, losses and expense, including but not limited to reasonable attorney's fees, arising out of or resulting from, in whole or in part, the acts or omissions of the City, its officers, employees, agents, contractors or volunteers in the performance of this Agreement. Nothing herein shall be construed as a waiver of the provisions of the Colorado Governmental Immunity Act.

5. Insurance. NPC, at its sole cost and expense, must, during the term of this Agreement, procure, pay for and keep in full force and effect a policy of commercial general liability insurance covering the City Property insuring the NPC in an amount not less than One Million Dollars (\$1,000,000) covering bodily injury, including death to persons, personal injury and property damage liability arising out of a single occurrence. Such coverage must include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the use of the City Property (including acts or omissions of the NPC). All policies of insurance carried by the NPC must name the NPC as insured and shall name the City as an additional insured. The policy or policies must contain a provision that the policy or policies cannot be canceled or materially altered either by the insureds or the insurance company until thirty (30) days prior written notice thereof is given to the NPC and the City. Upon issuance or renewal of any such insurance policy, the NPC must furnish a certificate of insurance showing evidence of coverage that names the City of Fort Collins as additional insured.

6. Expiration of License. At the end of the license period, or upon termination of this Agreement by the City or NPC as described below, the NPC shall relinquish all rights to access the City Property.

7. Compliance with Laws. The NPC will comply with all rules and regulations prescribed by the Museum Director for use and occupancy of the City Property and with all other applicable rules, laws, ordinances and regulations.

8. Assignment. The NPC may not assign this Agreement without the prior written consent of the City.

9. Smoking. Pursuant to City Code, smoking is not allowed in City buildings or within twenty (20) feet of windows or doors.

10. Obstructions. No portion of sidewalks, entries, lobbies, passages, vestibules, halls or ways of access to public portions of the City Property shall be obstructed, or caused to be obstructed, by the NPC, or used for any purpose other than ingress or egress to and from the City Property.

11. Default. Should either party default in the performance of any of the terms and conditions of the Agreement, and if that default has not been cured by the defaulting party within five business days after receiving written notice of the default, the non-defaulting party, at its option, may terminate this Agreement.

12. Occupancy Interruption. Should the City Property or any portion of its facilities be destroyed or damaged, other than through the fault of the NPC, to such an extent that the damage interferes substantially with the use of the City Property, or should a strike, public emergency, or other unforeseen occurrence beyond the control of the City prevent the NPC from accessing said facilities, then the City shall have the right to terminate this Agreement and the City shall not be liable to the NPC for any damages or costs incurred by the NPC as a result of this termination.

13. Termination of Agreement. Either party may terminate this Agreement at any time for any reason, in such party's discretion after not less than 30 days prior written notice, except in the case of a default under section 11, in which case the termination shall take effect after the fifth day following the defaulting party's receipt of the notice of default or such later date as the nondefaulting party may specify in writing to the defaulting party. Neither party shall be liable to the other for any damages or costs incurred by the other party as a result of any termination of this Agreement. This Agreement is entered into in accordance with Article XI, Section 10, of the Charter of the City of Fort Collins, which authorizes the City Council of the City of Fort Collins to permit the use or occupation of any street, alley, or public place, and Resolution 2009-__ approved by the City Council on _____, 2009. Pursuant to the City Charter, the Council may revoke a permit to use City property at its pleasure.

14. Entire Agreement. This Agreement embodies the entire agreement between the parties with respect to the NPC's use and occupation of the City Property. This Agreement is not intended to implement any provisions of the Operating Agreement, specifically including sections 5 through 12, sooner than they are intended to be implemented under the terms of the Operating Agreement. Nor is this Agreement intended to amend or replace the Operating Agreement, and the Operating Agreement remains in full force and effect unless amended or terminated according to its terms. No changes, amendments or modifications of any of the terms or conditions of this Agreement are valid unless in writing executed by the parties. Any provisions of this Agreement rendered void by operation of law shall not invalidate the remainder of this Agreement to the extent allowed by law.

IN WITNESS WHEREOF, the City and the NPC have signed this Agreement to be effective on the date signed by the City.

THE CITY OF FORT COLLINS
a Colorado municipal corporation

BY: _____
Darin A. Atteberry, City Manager

ATTEST:

DATE: _____

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

DISCOVERY CENTER
a Colorado non-profit corporation
d/b/a/ DISCOVERY SCIENCE CENTER

BY: _____
Steven VanderMeer, President

ATTEST:

DATE: _____

Corporate Secretary

RESOLUTION 2009-035
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO ENTER INTO A LICENSE TO ENTER
AND FEE SHARING AGREEMENT WITH THE DISCOVERY SCIENCE CENTER

WHEREAS, the City is the owner of the Fort Collins Museum (“Museum”) property located at 200 Mathews Street, Fort Collins, Larimer County, Colorado (the “Property”); and

WHEREAS, on March 6, 2008, pursuant to Resolution 2008-008, the City and the Discovery Science Center (“DSC”) entered into an agreement (the “Operating Agreement”) in which the City and DSC agreed to combine the missions of the Museum and the DSC into a new institution (the “Institution”), and to collaborate on the construction of a new facility for the Institution (the “Facility”), with the City and DSC sharing major decisions regarding the Facility and Institution; and

WHEREAS, the DSC currently leases space from Poudre School District, which lease will end in May, 2009; and

WHEREAS, in order to remain operational, the DSC must move to another location; and

WHEREAS, rather than wait until the Facility is completed, as was contemplated by the Operating Agreement, City and DSC staff are proposing that the Museum and DSC merge their operations now by relocating key DSC staff and exhibits to the Museum; and

WHEREAS, a draft of a proposed License to Enter and Fee Sharing Agreement (“License Agreement”) that would allow DSC staff to share use of the Property with the Museum is on file in the office of the City Clerk; and

WHEREAS, the License Agreement would permit the DSC to use the Property for up to four years for shared office space, including use of the City’s computer network and telephone lines, for storage and display to the public of DSC exhibits, and for other related and appropriate DSC uses; and

WHEREAS, under the terms of the License Agreement, and subject to the approval of the City Manager, the City would also charge a fee for entry to the Museum, with the proceeds of the fee, along with the proceeds of store sales and other program fees, going to the DSC to be spent on DSC staff salaries and benefits and program costs; and

WHEREAS, in consideration of the public benefit to be gained through the shared mission outlined in the Operating Agreement, the City would not charge the DSC for use of the Property; and

WHEREAS, Article XI, Section 10, of the City Charter authorizes the City Council to permit the use or occupation of any street, alley, or public place, provided that such permit shall be revocable by the City Council at its pleasure, whether or not such right to revoke is expressly reserved in such permit.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Manager is hereby authorized to execute the License to Enter and Fee Sharing Agreement in substantially the form on file in the office of the City Clerk, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, deems necessary or appropriate to protect the interests of the City or to effectuate the purposes of this Resolution, including any necessary changes to the description of the license area, as long as such changes do not materially increase the size or change the character of the license area.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of April A.D. 2009.

Mayor

ATTEST:

City Clerk