

SUBJECT

Items Relating to the Fort Collins Museum/Discovery Science Center Project.

- A. Second Reading of Ordinance No. 087, 2011, Appropriating Prior Year Reserves in the General Fund for Transfer to the Capital Projects Fund for the Fort Collins Museum/Discovery Science Center Project.
- B. Second Reading of Ordinance No. 088, 2011, Appropriating Prior Year Reserves in the Water Fund for the Purpose of Providing a Loan to FCDM, Inc. for the Fort Collins Museum/Discovery Science Center Project.

EXECUTIVE SUMMARY

At the July 5, 2011 City Council meeting, Council adopted on First Reading, two ordinances which appropriate funding to continue construction on the new Fort Collins Museum/Discovery Science Center facility. Ordinance No. 087, 2011, adopted 5-2 (nays: Kottwitz, Ohlson) appropriates \$1.5 million from General Fund reserves to the capital project. Council amended the original ordinance from \$3 million to \$1.5 million. Ordinance No. 088, 2011, adopted 6-1 (nays: Kottwitz) appropriates \$875,000 from Water Fund reserves to the Non-profit Corporation as a loan. These ordinances will keep the museum project moving forward for several months and avoid a costly work stoppage.

The building project is experiencing a \$3,875,000 cash flow issue from two sources. The Downtown Development Authority (DDA) has committed \$3 million for the building but funds are not currently available. The Non-profit Corporation has raised \$4,561,916 of which \$875,000 is in the form of pledges to be paid between 2011 and 2014. The two Ordinances allow construction to continue for several months. This additional time allows Council to consider the Building Community Choices reserve at the July 12 work session and other potential funding mechanisms; review the next few months of sales tax; and the DDA will receive its certification from the County in August, providing key data to determine when its \$3 million commitment can be paid to the project.

BACKGROUND / DISCUSSION

Through Council's support, the Fort Collins Museum and the Discovery Science Center (DSC) joined together to create an exceptional new museum experience and facility. In 2005, Council included the new museum in the Building on Basics (BOB) capital program, which received strong voter support. BOB provided \$6.183 million for the project and required DSC to provide at least \$3.6 million in matching funds. The DSC (which has transitioned into the Museum Non-Profit Corporation (NPC)) has raised more than \$8 million to date, far exceeding their original \$3.6 million commitment.

BOB also provides \$200,000 annually for seven years for operation and maintenance of the new facility. The BOB operations and maintenance dollars will end after seven years of operations. The current plan to replace these funds is to continue to build the institutional endowment over the next seven years to generate enough income to cover the \$200,000 BOB operations and maintenance dollars.

BUILDING

The building construction project is experiencing a \$3,875,000 cash flow problem. Two significant sources of funding are currently not available to pay into the construction project, which began on August 16, 2010 and is slated for completion in November 2011.

Council adopted on First Reading Ordinance No. 087, 2011, for \$1.5 million and Ordinance No. 088, 2011, for \$875,000, totaling \$2,375,000 to keep the museum project moving forward for several months and avoid a costly work stoppage.

To default on a construction contract would have an impact on the City's bond rating, and could have a significant impact on the City's reputation with contractors with the potential result of fewer firms willing to bid to the City and increased bids on future projects.

The Downtown Development Authority (DDA) committed \$3 million for the building but the funds are not currently available. The DDA is exploring funding options but will not have the funding in 2011. The Museum Non-profit Corporation (NPC) has committed \$4,561,916 to the museum building, with \$875,000 of that amount in the form of pledges. These pledges will be paid between 2011 and 2014 and are not available to fund the project now.

Ordinance No. 087, 2011 appropriates \$1.5 million from the General Fund to the capital project. Council amended the Ordinance for Second Reading from \$3 million to \$1.5 million. This funding covers half of the DDA's \$3 million commitment, but is not a loan to the DDA. The DDA will receive its certification from the County in August, providing key data to determine when and how the DDA will issue bonds for this and other upcoming DDA projects. It is possible the City could be the purchaser of the DDA's bonds. The remaining \$1.5 million will be needed in several months to complete the construction project. On First Reading, Council asked if the funding source could be a source other than the General Fund. Building Community Choices remaining balance is another possible source.

Ordinance No. 088, 2011, approves an \$875,000 loan to the NPC to cover pledges made to the project. The loan details are attached as an Exhibit to the Ordinance, and include a 3.5% interest rate (prime rate of 3.25% plus .25%) with a payout schedule starting in 2012 and ending in 2014.

EXHIBITS

Council did not adopt on First Reading, Ordinance No. 089, 2011, to loan the NPC an additional \$1.2 million to cover pledges designated specifically for fabrication of exhibits for the new facility. There are eleven themed areas in the master exhibit plan. Three themed areas are funded through designated donations that have been paid: music and sound, science, and natural areas. The \$1.2 million for the remaining zones is in the form of pledges to be paid between 2012 and 2017. NPC continues to explore private bridge loans to cover the pledges. Interest rates will be higher than what the City could provide, which will decrease the amount of funding available for exhibit fabrication. If a loan cannot be secured, the remaining zones will be phased into the gallery as pledges are paid, between 2012 and 2017.

Council asked if staff would be adding to the bottom line of the total exhibit costs if the exhibits were phased in over time. The bottom line will see a 10 – 20% increase by phasing the exhibits. The percentage moves toward 20% as the phases are spread farther apart over time.

On First Reading, Council requested a list of the top 4 or 5 operation and maintenance costs, besides staffing, for the new facility. These items include:

- Utilities – estimated at \$42,600 annually (based on modeling projections that could change according to the actual use of the building and future costs of utilities)
- Custodial, trash and recycling – estimated at \$59,000
- Maintenance and repair – estimated at \$55,000 year one (Primarily HVAC, electrical, preventive maintenance inspections, filters, etc. not covered under warranty. This number will ratchet up as warranties expire and the building begins to age)
- Grounds maintenance/snow removal - estimated at \$18,500

Council also directed staff to fill all three available City appointed seats on the NPC Board. Staff will work with the City Manager to appoint the two vacant seats as soon as possible.

FINANCIAL / ECONOMIC IMPACTS

Ordinance No. 087, 2011, appropriates \$1,500,000 in the General Fund to cover construction of the Museum building. The DDA's pledge has already been appropriated in the Capital Projects fund, however the project is underway and it is unable to make payment at this time.

To fund its pledge, the DDA plans to seek external financing. In that scenario the amount of available reserves in the General Fund at the end of 2012 are forecasted to exceed the policy minimum by \$7,500,000. If, however, the DDA

instead asks the City for a loan, and the loan is granted, available reserves above the policy minimum will be \$4.5 million.

Ordinance No. 088, 2011 authorizes \$875,000 in the Water Fund to be loaned to the NPC. The NPC building commitments have already been appropriated in the project, however the project is underway and they are unable to make payment at this time. The NPC has building pledges equal to their commitment but the pledges will come in installments through 2014. The Water fund currently has reserves that exceed its policy minimums allowing it to make this loan. The proposed terms are 3.5% annual interest and \$875,000 in principal to be paid according to the loan agreement.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on Second Reading.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - July 5, 2011
(w/o attachments)

DATE: July 5, 2011
STAFF: Mike Freeman

AGENDA ITEM SUMMARY
 FORT COLLINS CITY COUNCIL

27

SUBJECT

Items Relating to the Fort Collins Museum/Discovery Science Center Project.

- A. First Reading of Ordinance No. 087, 2011, Appropriating Prior Year Reserves in the General Fund for Transfer to the Capital Projects Fund for the Fort Collins Museum/Discovery Science Center Project.
- B. First Reading of Ordinance No. 088, 2011, Appropriating Prior Year Reserves in the Water Fund for the Purpose of Providing a Loan to FCDM, Inc. for the Fort Collins Museum/Discovery Science Center Project.
- C. First Reading of Ordinance No. 089, 2011 Appropriating Prior Year Reserves in the Water Fund for the Purpose of Providing a Loan to FCDM, Inc. for the Exhibits of the Fort Collins Museum/Discovery Science Center Project and Appropriating Unanticipated Revenue in the Capital Projects Fund.

EXECUTIVE SUMMARY

\$3,875,000 in funding for the new Fort Collins Museum/Discovery Science Center is needed now to complete the building. Completion is scheduled for November 2011.

The Downtown Development Authority (DDA) has committed \$3 million for the building, but the funds are not currently available. The DDA is exploring funding options but will not have the funding in 2011. Adoption of Ordinance No. 087, 2011, will appropriate \$3 million from General Fund reserves for the museum project to complete the building. The DDA plans to reimburse the City for the \$3 million through financing provided by the City or from other funds secured by the DDA.

The Non-Profit Corporation (NPC) has committed \$4,761,916 to the museum building, with \$875,000 of that amount in the form of pledges to be paid between 2012 and 2014. The NPC is working to obtain a private loan for the \$875,000 but the financing will be costly and difficult to obtain. Adoption of Ordinance No. 088, 2011, will appropriate \$875,000 from reserves in the Water Fund to complete the building. These funds will be transferred to the Capital Project Fund account for the museum in the form of a loan to the NPC. The anticipated loan terms include an interest rate of 3.5% and a maturity date of December 31, 2014. The loan will be evidenced by a loan and security agreement and corresponding promissory note.

The NPC has raised \$3.617 million for museum exhibits, with \$1.2 million in the form of pledges to be paid in future years (2011-2017). The new museum will open with a nice, but somewhat limited exhibit experience without a bridge loan for the \$1.2 million in exhibit pledges. Some exhibits will be postponed, and other exhibits will be more static, without the depth of knowledge or interactive technology that will be possible once the future year pledge money becomes available. Adoption of Ordinance No. 089, 2011, will appropriate \$1.2 million from Water Fund reserves for museum exhibits. These funds will be transferred to the Capital Project Fund account for the museum in the form of a loan to the NPC. The anticipated loan terms include an interest rate of 3.75% and a maturity date of December 31, 2017. The loan will be evidenced by a loan and security agreement and corresponding promissory note.

BACKGROUND / DISCUSSION

PROJECT FUNDING

Through Council's support, the Fort Collins Museum and the Discovery Science Center (DSC) joined together to create an exceptional new museum experience and facility. In 2005, Council included the new museum in the Building on Basics (BOB) capital program, which received strong voter support. BOB provided approximately \$6.183 million for the project and required DSC to provide at least \$3.6 million in matching funds. BOB also provides \$200,000 annually

for seven years for operation and maintenance of the new facility. The DSC (which, along with the Museum Advisory Board, has transitioned into the Museum Non-Profit Corporation (NPC)) has raised approximately \$8.879 million to date, far exceeding its original \$3.6 million commitment.

In addition to BOB funding, approximately \$6.529 million has been provided from other public sources as follows:

• City Natural Resources:	\$ 1,000,000
(building \$265,113 / exhibits \$734,887)	
• Art in Public Places (Utility Project):	\$ 435,000
• City land donation:	\$1,730,000
• Department of Local Affairs:	\$ 200,000
• Colorado Department of Public Health and Environment:	\$ 75,000
• Downtown Development Authority:	\$3,000,000
• Estate Gift to the Fort Collins Museum	<u>\$ 89,000</u>
Other Public Funding	\$6,529,000
Building on Basics	\$6,183,000
NPC	<u>\$8,879,000</u>

Together, public and private contributions to the project total: \$21,591,000.

Based on these funding commitments, the City sought and secured Council's approval to appropriate \$15,109,666 for the exhibit master plan, and design and construction of the new museum, as follows:

\$6,183,750	from BOB
\$3,275,000	(\$3 million DDA; \$200,000 DOLA; \$75,000 grant, Ordinance No.130, 2009)
\$4,561,916	from the NPC (Ordinance No. 117, 2010)
\$ 89,000	from Estate Gift (Ordinance No. 101, 2009)
\$1,000,000	from City Natural Areas Program

Allocation of Appropriated Funds

\$13,218,105	Building
\$ 1,891,561	Exhibit Master Plan and Natural Areas Exhibits

BUILDING FUNDS

On January 27, 2010, after completion of the Request for Proposal process, the City entered into a design/build contract with Oz Architecture and Hensel Phelps for \$11,400,000. On December 28, 2010, Change Order #1 was issued for \$577,347 which increased the building square footage from 39,905 to 46,928. Additionally, Change Order #2 was issued May 4, 2011, for \$159,824 for various additional items incorporated into the contract. This brought the contract total to \$12,137,171. Remaining appropriated building funds were used for soft costs (fees, environmental tests/services, project management etc.).

Building construction began in earnest on August 16, 2010 after completion of the development review process and resolution of a land title issue with railroad right-of-way that required a re-design of a storm water quality pond. Completion of the building is expected in November 2011.

As of June 30, 2011, the City has paid \$8,754,611 to the contractor for work performed. Additional payments of \$3,382,560 are anticipated to complete the building as follows:

July 31	\$786,000
August 31	\$672,560
September 30	\$603,500
October 31	\$493,500
November 30	\$440,000
December 31	\$387,000

All available funding for the building has been expended. Consequently, the design/build contract is short by \$3,382,560.

DDA FUNDING:

The \$3 million anticipated funding from the DDA is not currently available. The history of the DDA commitment of the funding is as follows:

- April 2004: DDA Board approves \$1 million for the museum project.
- May 2009: DDA Board approves an additional \$2 million for the project, with construction anticipated to begin in 2010.
- June 2010: DDA and City Finance begin negotiations of terms with Great Western Bank for a 2010 bond issuance and determine capacity is not available to fund the museum commitment in the 2010 bond series.
- July 2010: DDA inquires of City project staff as to when the \$3 million is required, indicating DDA had to limit the bond principal amount in 2010 and needs to include the museum commitment in its 2012 bond issuance, and suggests working together on some temporary solutions. Staff responds that DDA funds are needed in 2011, but does not take action to identify solutions.
- March 2011: DDA is notified by City that project has a funding deficit and needs DDA funds. DDA begins investigating options to fund the \$3 million commitment but confirms that funds will not be available in 2011.

NPC BUILDING FUNDS

The NPC has committed \$4,761,916 to the building, with \$875,000 of that amount in the form of pledges that will be paid over the next few years. The \$875,000 is needed in 2011 to complete the building. The NPC has been working to secure a bridge loan from private lenders for the \$875,000, but the tight credit market has made this very challenging and expensive. Annual interest payments in excess of \$50,000 are expected. The NPC is committed to bridging the \$875,000 in 2011 so the building can be completed. However, if the City provides the funding it would save the project considerable expense and assure timely completion (contingent on resolving the DDA funding problem). The outstanding building pledges are from very reliable organizations, as follows:

The Griffin Foundation:	\$400,000 (\$100,000 annually 2011-2014)
Woodward:	\$250,000 in 2012
The Gates Family Foundation:	\$250,000 in 2013
The Boettcher Foundation:	\$ 75,000 in 2013

Staff has investigated options for reducing the building expense. Unfortunately, the building project is too far along to afford any significant savings. Staff has already made \$300,000 worth of reductions to keep the project within the original budget. Additional reductions would require portions of the building to be unfinished.

APPROPRIATION FOR BUILDING

Adoption of Ordinance No. 087, 2011, appropriates \$3,000,000 from General Fund reserves for the museum project to complete the building. The DDA will reimburse the \$3 million by obtaining private financing, or through financing provided by the City, as approved by Council.

Adoption of Ordinance No. 088, 2011 appropriates \$875,000 from Water Fund reserves to be loaned to the NPC for the museum project to complete the building.

CONTRACT IMPLICATIONS

If the City fails to make a payment, the City may be in default under the contract.

NPC EXHIBIT FUNDS

\$2.975 million for exhibits has been raised by the NPC. These funds have been restricted by the donors for exhibits and cannot be used for the building. \$1.2 million in exhibit donations will be paid in future years as follows:

The Bohemian Foundation:	\$250,000 in late 2011
The Schatz Foundation:	\$250,000 in 2012
Woodward:	\$200,000 in 2014
Anonymous Donor:	\$500,000 (\$100,000 annually 2013-2017)

The new museum will open with a nice, but somewhat limited exhibit experience absent a bridge loan for the future year exhibit pledges. For example, the early childhood area would not be in place; the live animal exhibit would include only the City's modest current collection; the bike exhibit would have to wait; and the Flood Theater exhibit would be postponed. Additionally, many exhibits will be more static, without the depth of information or interactive technology that will be possible once the future pledge funds become available. In contrast, three areas (Natural Areas, Science Experience, and Music and Sound) will be fully executed on opening day because they are funded by donations specifically designated for these exhibits.

APPROPRIATION FOR EXHIBITS

Adoption of Ordinance No. 089, 2011, appropriates \$1.2 million from Water Fund reserves to be loaned to the NPC for Museum exhibits and appropriates the same amount in the Capital Projects Fund.

THE DIGITAL DOME

The Digital Dome Theater is the capstone element of the Museum of Discovery. It provides a 360 degree immersive experience for the exploration of astronomy, music, earth and climate science, art, cultural history, presentations, and events. A \$2 million campaign is underway to fund the dome and \$500,000 has been raised with \$350,000 in the form of future year pledges. The NPC is working to secure a private bridge loan for the \$350,000 so the infrastructure for the dome can be completed by the on-site building contractor. Completing this work in the future would be much more (\$125,000 to \$200,000) expensive.

No Council action is being requested regarding the Digital Dome.

FINANCIAL / ECONOMIC IMPACTS

Adoption of Ordinance No. 087, 2011 appropriates \$3,000,000 in the General Fund to cover construction of the Museum building. The DDA's pledge has already been appropriated in the Capital Projects Fund, however the project is underway and they are unable to make payment at this time.

To fund its pledge, the DDA plans to seek external financing. In that scenario the amount of available reserves in the General Fund at the end of 2012 are forecasted to exceed the policy minimum by \$7,500,000. If however the DDA instead asks the City for a loan, and the loan is granted, available reserves above the policy minimum will be \$4,500,000.

Adoption of Ordinance No. 088, 2011 authorizes \$875,000 in the Water Fund to be *loaned* to the NPC. The NPC building commitments have already been appropriated in the project, however the project is underway and they are unable to make payment at this time. The NPC has building pledges equal to their commitment but the pledges will come in installments through 2014. The Water Fund currently has reserves that exceed their policy minimums allowing them to make this loan. The proposed terms are 3.5% annual interest and \$875,000 in principal to be paid according the loan agreement.

Adoption of Ordinance No. 089, 2011 authorizes \$1,200,000 in the Water Fund to be *loaned* to the NPC, and *appropriates* the same amount in the Capital Projects Fund for exhibits in the Museum. The NPC has received exhibit pledges of \$1,200,000 but the pledges will come in installments through 2017. The Water Fund currently has reserves that exceed their policy minimums allowing them to make this loan. The proposed terms are 3.75% annual interest and \$1,200,000 in principal to be paid according the loan agreement.

Utilities anticipates that significant capital project needs in the future and ongoing systemic adjustment of Water Utility revenues and operating costs may necessitate water rate increases in the future. The proposed loan of Water Fund reserves is not expected to create additional need for rate increases or to cause the reserves to fall below required levels, assuming that staff-projected rate increases are implemented. The Ordinance provides that it is the Council's intent that in the event that unexpected capital projects needs or timing results in an increased need for reserves in the Water Fund, the Council would provide replacement funds in order to repay the loan to the Water Fund to meet that need.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

COPY

ATTACHMENTS

1. Powerpoint presentation.
2. Downtown Development Authority memo

COPY

COPY

COPY

ORDINANCE NO. 087, 2011
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE GENERAL FUND FOR
TRANSFER TO THE CAPITAL PROJECTS FUND FOR
THE FORT COLLINS MUSEUM/DISCOVERY SCIENCE CENTER PROJECT

WHEREAS, on November 1, 2005, Fort Collins voters passed Ordinance No. 092, 2005, approving the “Building on Basics” (“BOB”) tax for certain capital projects; and

WHEREAS, \$6,000,000 was included in the BOB capital project program for construction of a new combined-use facility for the Fort Collins Museum/Discovery Science Center (the “Project”); and

WHEREAS, the City and Discovery Center, a Colorado non-profit corporation, d/b/a/ Discovery Science Center, now officially known as FCDM, Inc. (the “NPC”), entered into an operating agreement for the construction and operation of the Project; and

WHEREAS, the Project will be jointly owned, managed and funded by the City and the NPC; and

WHEREAS, the City Council, through various appropriation ordinances, has previously appropriated \$15,109,666 for the construction of the Project, which appropriations include \$3,000,000 in anticipated revenues from the Downtown Development Authority (“DDA”); and

WHEREAS, in January 2010, the City entered into a design-build contract for the construction of the Project and construction commenced in August 2010; and

WHEREAS, construction on the Project is continuing and the Project will incur additional construction costs through December 31, 2011; and

WHEREAS, the DDA expected that its \$3,000,000 commitment to the Project, which has been approved by the DDA Board of Directors, would be funded with proceeds from its 2010 bond issuance; and

WHEREAS, because of market conditions and state legislation that had the effect of lowering the DDA’s tax revenue, the DDA was not able to issue bonds in an amount sufficient to generate the funds needed to meet its obligation to the Project; and

WHEREAS, the DDA is continuing its efforts to obtain financing for its share of the funding shortfall so that the City can be repaid and the funds advanced by this ordinance restored to the General Fund reserve account as soon as possible; and

WHEREAS, as a result of the inability of the DDA to provide \$3,000,000 in time to meet the Project’s construction schedule, the Project’s capital project account does not have sufficient

funds to cover the remaining construction costs of approximately \$3,382,560 that are likely to be incurred by the City to complete the Project; and

WHEREAS, in order to ~~avoid delaying the opening of the Project, and~~ to avoid the potentially significant ~~and~~ additional contract expenses that may result if construction of the Project is suspended, the City Council believes that it is in the best interest of the City to appropriate from General Fund reserves the amount of ~~\$3,000,000~~ **\$1,500,000** to be used for construction of the Project; and

WHEREAS, the funds appropriated by this Ordinance, in combination with the funds made available to the Project by the City's loan to the NPC, which the City Council has approved through the adoption of Ordinance No. 088, 2011, will fund the construction costs of the Project through the end of September 2011; and

WHEREAS, City Council desires additional information and discussion as to the possible sources for the additional funds that will be needed to pay the remaining costs to complete the Project; and

WHEREAS, Article V, Section 9, of the City Charter permits the City Council to appropriate by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that there is hereby appropriated for expenditure from prior year reserves in the General Fund the total sum of ~~THREE MILLION DOLLARS (\$3,000,000)~~ **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000)** to be transferred to the Capital Projects Fund for expenditure in the Fort Collins Museum/Discovery Science Center capital project.

Introduced, considered favorably on first reading, and ordered published this 5th day of July, A.D. 2011, and to be presented for final passage on the 19th day of July, A.D. 2011.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 19th day of July, A.D. 2011.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 088, 2011
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE WATER FUND FOR
THE PURPOSE OF PROVIDING A LOAN TO FCDM, INC. FOR
THE FORT COLLINS MUSEUM/DISCOVERY SCIENCE CENTER PROJECT

WHEREAS, on November 1, 2005, Fort Collins voters passed Ordinance No. 092, 2005, approving the “Building on Basics” (“BOB”) tax for certain capital projects;

WHEREAS, \$6,000,000 was included in the BOB capital project program for construction of a new combined–use facility for the Fort Collins Museum/Discovery Science Center (“Project”); and

WHEREAS, the City and Discovery Center, a Colorado non-profit corporation, d/b/a Discovery Science Center, now officially know as FCDM, Inc. (the “NPC”), entered into an operating agreement for the construction and operation of the Project; and

WHEREAS, the Project will be jointly owned, managed, and funded by the City and the NPC; and

WHEREAS, the City Council, through various appropriation ordinances, has previously appropriated \$15,109,666 for the construction of the Project, which appropriations include \$4,561,916 in anticipated revenues raised by the NPC and its predecessor; and

WHEREAS, in January 2010, the City entered into a design–build contract for the construction of the Project and construction commenced in August 2010; and

WHEREAS, construction on the Project is continuing and the Project will incur additional construction costs through December 31, 2011; and

WHEREAS, \$875,000 of the NPC funds previously appropriated by the City Council for construction of the Project is in the form of donor pledges that are to be paid between 2011 and 2014, so the majority of these donor funds are not available at this time to be applied to the remaining construction costs of the Project; and

WHEREAS, the \$875,000 in NPC funds is needed to help cover the remaining construction costs that are likely to be incurred by the City to complete the Project; and

WHEREAS, in order to avoid delaying the opening of the Project, and to avoid the potentially significant and additional contract expenses that may result if construction of the Project is suspended, the City Council believes that it is in the best interest of the City to appropriate from reserves in the Water Fund the amount of \$875,000 and to transfer that amount to the Capital Projects Fund in the form of a loan to the NPC for the Project (the “NPC Loan”); and

WHEREAS, City staff has prepared a proposed promissory note (the “Note”) and a loan agreement in the form entitled “Loan and Security Agreement Between the City of Fort Collins, Colorado and FCDM, Inc. for Funding the Fort Collins Museum/Discovery Science Center Project” (the “Loan Agreement”) attached hereto as Exhibit “A”; and

WHEREAS, Article V, Section 12, of the City Charter permits the City Council to provide direction as to the investment of City funds; and

WHEREAS, while the NPC Loan does not fit within the categories of approved investments established in the Investment Policy approved by the City Council in 2008, the City Council finds that, based on the interest rate, the collateral provided for the loan, and other conditions in the Loan Agreement, the NPC loan is a suitable investment for the Water Fund reserves; and

WHEREAS, the NPC Loan will not necessitate any increase in water rates above those already projected by staff, and after investing the Water Fund reserves in the NPC Loan, the Water Fund will still have a sufficient balance of reserve funds to meet reserve fund requirements, assuming that the projected rate increases are implemented; and

WHEREAS, in the event that the timing of, or unanticipated need for, Water Utility capital improvements results in a need for the NPC Loan funds to be restored to the Water Fund, it is the intent of the Council to provide a replacement funding source for the NPC Loan; and

WHEREAS, Article V, Section 9, of the City Charter permits the City Council to appropriate by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That there is hereby appropriated from Water Fund reserves the amount of EIGHT HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$875,000) for the purpose of making a loan to the NPC for its remaining share of the construction costs for the Project.

Section 2. That the Note, Loan Agreement, and related documents are hereby approved on substantially the terms and conditions contained therein, subject to modifications in form and substance as the Mayor may, in consultation with the City Attorney, deem to be desirable and necessary to protect the interests of the City.

Introduced, considered favorably on first reading, and ordered published this 5th day of July, A.D. 2011, and to be presented for final passage on the 19th day of July, A.D. 2011.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 19th day of July, A.D. 2011.

Mayor

ATTEST:

City Clerk

**LOAN AND SECURITY AGREEMENT
BETWEEN THE CITY OF FORT COLLINS, COLORADO
AND FCDM, INC. FOR FUNDING THE FORT COLLINS MUSEUM/DISCOVERY
SCIENCE CENTER PROJECT**

THIS LOAN AND SECURITY AGREEMENT (the "Agreement") is made this ___ day of July, 2011, by and between the CITY OF FORT COLLINS, COLORADO, a municipal corporation (the "City"), and FCDM, Inc., a Colorado nonprofit corporation (the "NPC").

RECITALS

1. The NPC is a nonprofit corporation that was formerly known as the Discovery Center d/b/a Discovery Science Center. The purpose of the NPC is to support the construction and operation of the Fort Collins Museum/Discovery Science Center joint facility project (the "Project").
2. In March 2008, the City and the NPC entered into an operating agreement for the funding and operation of the Project (the "Operating Agreement"). The Operating Agreement describes the Project as consisting of, among other things, the "Facility". The Facility is defined in the Operating Agreement as the land, buildings and associated improvements that make up the physical plant for the Project.
3. In the Operating Agreement, the NPC agreed to provide no less than \$2,500,000 for design and construction of the Project. Subsequently, the NPC has committed to provide an additional \$ 2,061,961.00 , for a total of \$4,561,916. By Ordinance No. 117, 2010, the City Council appropriated this amount into the City's capital project fund for the construction of the Project.
4. Included in the amount committed by the NPC are amounts the NPC anticipates receiving from pledges by private donors, in the aggregate amount of \$875,000, which the donors have committed to fund in years 2012 through 2014 (the "Outstanding Pledges").
5. Construction of the Project is expected to be completed in November 2011. In order to help fund the remaining construction costs, the City and the NPC would like the funds represented by the Outstanding Pledges be made available by the NPC in 2011, instead of the schedule by which the NPC anticipated collection of Outstanding Pledges. In the spirit of the Operating Agreement, the NPC desires to make the funds available to the City, but will require financing in order to do so. Although private lenders have expressed some interest in providing financing to the NPC, the proposed terms are unfavorable. The parties acknowledge that the cost of the financing will reduce the NPC's capital available for future support for the Project.
6. The City and the NPC are willing to enter into this Loan and Security Agreement to provide for the extension of credit by the City to the NPC, as Borrower, and for the creation of a

security interest in certain property of the Borrower to secure repayment of the Loan, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

Section 1. The Loan. After the effective date of this Agreement (the “Effective Date”), the adoption of the required ordinances and resolutions by the City, the approval of the Agreement by the NPC Board of Directors, and the execution of a promissory note and other documents as may reasonably be required, the NPC agrees to pay to the City the principal sum actually transferred by the City to the capital project account for the Project on the NPC’s behalf, but not to exceed Eight Hundred Seventy Five Thousand Dollars (\$875,000). The NPC agrees and acknowledges that the loan proceeds will be transferred by the City to the City’s capital project account for the Project, and will not be disbursed to the NPC.

Section 2. Interest. Interest on the Loan will accrue at a rate equal to _____%.

Section 3. Payment Terms. The Loan and accrued interest will be due and payable by the NPC to the City as set forth in the payment schedule contained on Exhibit A, attached hereto and incorporated into this Agreement. All unpaid principal of the Loan, interest, default interest, fees and charges for the Loan will mature on the December 31, 2014 (the “Maturity Date”).

Section 4. No Prepayment Penalty. The NPC, in its sole discretion, may prepay all or any portion of the Loan at any time and any such prepayment will be without any prepayment penalty. If a prepayment is made, the funds will be applied first to any interest that has accrued and then the balance of the payment will be applied to the reduction of principal.

Section 5. Security Agreement. As security for the Loan, the Borrower agrees:

(a) that any unpaid principal and interest due and payable to the City on the Maturity Date will be considered a documented expenditure under Section 3.1 of the Operating Agreement for purposes of determining the City’s Ownership Interest in the Facility.

(b) that any surplus Institution Revenue, defined in Section 7.2 and Section 7.3 of the Operating Agreement, will be used, if necessary, to pay the principal and interest due on the Loan.

(c) to execute a promissory note (the “Note”) substantially in the form of Exhibit B.

(d) that Borrower grants to the City a security interest in all of the Borrower’s rights to payment under any and all donor pledge agreements, including the Outstanding Pledges, that represent unrestricted pledges or pledges

for the construction or operation of the Project (the “Collateral”). This Agreement does not grant the City a security interest in pledge agreements that are specifically, by the terms of the pledge agreement, for pledges by private donors that are to be used solely for the purpose of the creation or acquisition of Project exhibits or other designated Project components.

(1) Borrower represents that it has not previously granted a security interest in any of the Collateral.

(2) Borrower agrees that if it is in default under this Agreement or the Note, the City may notify any donor whose pledge to the NPC constitutes Collateral for the City’s security interest and request payment directly to the City, on behalf of the NPC.

Section 6. Default. Upon the occurrence of any of the events listed below in this Section 6, all of the obligations of the Borrower under the Note and this Agreement and any other documents executed by Borrower in connection with the loan contemplated by this Agreement (“Loan Documents”), at the option of the holder thereof, shall become immediately due and payable:

(a) the Borrower, without the consent of the City, allows the creation of any lien or encumbrance on the Collateral.

(b) the Borrower fails to comply with any of the terms, covenants or conditions contained in this Agreement, the Note, or the other Loan Documents, and the situation is not remedied within 10 business days after Borrower’s receipt of written notice from the City.

(c) a petition in bankruptcy is filed by or against the Borrower and is not dismissed within 60 days, or a receiver or trustee of the Borrower is appointed, or the Borrower makes an assignment for the benefit of creditors, or Borrower is adjudged insolvent by any state or federal court of competent jurisdiction.

If Borrower is in default, in addition to the remedies provided in the Note or this Agreement, the City shall have any and all rights and remedies permitted under applicable law.

Section 7. Waiver. No consent or waiver, express or implied, or the acceptance of a late payment, or the failure to enforce any of Borrower’s obligations under this Agreement, the Note, or other Loan documents, will be construed as a waiver of any breach or default by Borrower.

Section 8. Attorney’s Fees and Costs. In the event either party commences any proceeding to enforce the Agreement, or the Note, the prevailing party therein shall be entitled to an award of all of its costs and expenses incurred therein and in connection therewith, including its reasonable attorney’s fees.

Section 9. Assignment. This Agreement, the Note, and the Loan Documents, are nonassignable and nontransferable by Borrower, by operation of law, or otherwise, and any attempt to do so shall be null and void. This Agreement, the Note, and the Loan Documents may be fully assigned by the City.

Section 10. Notice. Any notice required with respect to the Agreement or the Note, is to be delivered in writing to be accomplished by personal delivery or mailing postage prepaid by the United States Postal Service, or other commercial carrier to the following addresses:

If to the City
City of Fort Collins
Director of Finance
PO Box 580
Fort Collins, CO 80522-0580

If to the NPC
Executive Director
FCDM, Inc.
200 Mathews St.
Fort Collins, CO 80524.

Section 11. Entire Agreement. This Agreement will be construed according to its fair meaning, as if prepared by both Parties. This Agreement, and the documents executed pursuant to the Agreement, contain the sole and entire agreement and understanding of the parties with respect to the subject matter of the Agreement, and incorporate all prior discussions, negotiations and understandings. This Agreement cannot be changed, modified or amended, except in writing, executed by both parties. This Agreement is solely for the benefit of Borrower, and no person shall be deemed a third party beneficiary of this Agreement.

Section 12. Governing Law. This Agreement will be construed and interpreted in accordance with the laws of the State of Colorado.

CITY:

CITY OF FORT COLLINS, COLORADO, a
municipal corporation

By: _____
Karen Weitkunat, Mayor

ATTEST:

By: _____
Wanda Krajiceck, City Clerk

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

FCDM, Inc.:

By: _____
Board President

Non Profit Corporation

Building Pledges

Loan agreement from City's Water Fund to Museum Non-Profit Corporation

Loan Amount	875,000.00
Interest Rate	3.500%*

Start Date	1-Aug-11
Matures	31-Dec-14
Years	3 5/12

Time in Years	Date	Payment	Interest	Principal	Balance
-	1-Aug-11				875,000.00
1.42	31-Dec-12	393,385.42	43,385.42	350,000.00	525,000.00
2.42	31-Dec-13	443,375.00	18,375.00	425,000.00	100,000.00
3.42	31-Dec-14	103,500.00	3,500.00	100,000.00	-
		940,260.42	65,260.42	875,000.00	

* Dates and rates are preliminary. Specifics will be set after the loan is authorized.

The interest rate equals the current prime lending rate of 3.25% plus 0.25%

PROMISSORY NOTE

\$875,000

July __, 2011

FOR VALUE RECEIVED, FCDM, Inc., (“Borrower”), promises to pay to the order of THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (“Lender”), at its office at 300 LaPorte Avenue, Fort Collins, Colorado 80524, in lawful money of the United States of America the principal amount of Eight Hundred Seventy Five Thousand Dollars (\$875,000). This Promissory Note is issued pursuant to the Loan and Security Agreement between the City of Fort Collins and FCDM, Inc. dated July __, 2011, between Borrower and Lender (the “Agreement”). Capitalized terms used herein but not defined herein have the meanings given such terms in the Loan Agreement. The obligations of Borrower evidenced by this Promissory Note are payable in accordance with the terms and conditions of the Agreement.

The rate of interest borne by this Promissory Note is a fixed rate equal to _____ % per annum (“Interest Rate”). Final payment of all unpaid Principal and accrued interest, plus any default interest, fees and charges owing under this Note, will be due and payable on December 31, 2014 (the “Maturity Date”). The annual interest rate of this Promissory Note is computed on a 360 day year basis, multiplied by the actual number of days elapsed.

The Loan may be drawn 100% upon execution of the Loan Documents, or in part from time to time, but not more frequently than monthly.

Unless otherwise agreed to or as may be required by applicable law, payments will be applied first to any accrued interest; then to principal; then to any late charges; and then to any unpaid collection costs.

If Lender refers this Note to an attorney for collection or seeks legal advice following a default beyond all cure periods allowed under this Note, or the Lender is the prevailing party in any action instituted on this Note, or if any other judicial or non-judicial action, suit or proceeding is instituted by Lender or any future holder of this Note, and an attorney is employed by Lender to appear in any such action or proceeding, or to reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve or enforce Lender’s interest in this Note, the Loan Documents or any other security for this Note (including, but not limited to, proceedings under federal bankruptcy law or in connection with any state or federal tax lien), then Borrower promises to pay reasonable attorneys’ fees and reasonable costs and expenses incurred by Lender and/or its attorney in connection with the above-mentioned events. If not paid within ten (10) days after such fees become due and written demand for payment is made, such amount shall be due on demand or may be added to the principal, at the Lender’s discretion.

If any payment or installment due under this Note is not paid when it becomes due and payable, Borrower recognizes that the Lender will incur extra expenses for both the administrative cost of handling delinquent payments and the cost of funds incurred by Lender after the due date. Therefore, Borrower shall, in such event, without further notice, and without prejudice to the right of Lender to collect any other amounts provided to be paid herein, including default interest or to declare a default hereunder, pay to Lender to cover such expenses

incurred as a result of any installment payment due being not received within ten (10) days of its due date, a "late charge" of five percent (5%) of the amount of such delinquent payment.

Except as otherwise provided herein, the Borrower waives presentment and demand for payment, notice of acceleration or of maturity, protest and notice of protest and nonpayment, bringing of suit and diligence in taking any action to collect sums owing hereunder and agrees that its liability on this Note shall not be affected by any release or change in any security for the payment of this Note or release of anyone liable hereunder. No extension of time for the payment of this Note, or any installment or other modification of the terms made by the Lender with any person now or hereafter liable for the payment of this Note, shall affect the original liability under this Note of the Borrower, even provided the Borrower is a party to such agreement.

In no event whatsoever shall the amount paid, or agreed to be paid, to the holder of this Note for the use, forbearance or retention of the money to be loaned hereunder ("Interest") exceed the maximum amount permissible under applicable law. If the performance or fulfillment of any provision hereof or of any of the Loan Documents or any agreement between Borrower and the Lender of this Note shall result in Interest exceeding the limit for interest prescribed by law, then the amount of such Interest shall be reduced to such limit. If, from any circumstance whatsoever, the Lender of this Note should receive as Interest, an amount which would exceed the highest lawful rate, the amount which would be excessive Interest shall be applied to the reduction of the principal balance owing (or, at the option of the Lender, be paid over to Borrower) and not to the payment of Interest.

If any provision hereof or any of the Loan Documents shall, for any reason and to any extent, be invalid or unenforceable, then the remainder of the document or instrument in which such provision is contained and any of the other Loan Documents shall not be affected thereby but instead shall be enforceable to the maximum extent permitted by law.

Borrower and Lender hereby knowingly, voluntarily, and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon or arising out of, under or in connection with this note or any course of conduct, course of dealing, statements (whether oral or written) or actions of the other party.

This Promissory Note shall be construed in accordance with the laws of the State of Colorado.

IN WITNESS WHEREOF, Borrower has duly executed this Promissory Note as of the day and year first above written.

BORROWER:

FCDM, Inc.

By: _____
Executive Director