

RESOLUTION NO. 1929

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
APPROVING AN AGREEMENT WITH THE FRIENDS OF THE
ASTOR HOUSE AND CLEAR CREEK HISTORY PARK TO
OPERATE THE ASTOR HOUSE, CLEAR CREEK HISTORY
PARK, AND GOLDEN PIONEER MUSEUM**

WHEREAS, the Astor House Museum, Clear Creek History Park and Golden Pioneer Museum (collectively "Museums") are an integral part of the community and serve to promote the appreciation and understanding of the community's culture and history; and

WHEREAS, Friends manages the Astor House Museum, located at 822 12th Street Golden, Colorado, on behalf of the City, which museum, including the real property, improvements and certain artifacts within the museum is owned by the City; and

WHEREAS, Friends manages the Clear Creek History Park, located north of Eleventh Street between Arapahoe and Illinois Street in Golden, Colorado, on behalf of the City, which park, including the real property, improvements and certain artifacts within the park is owned by the City; and

WHEREAS, the City's current management agreement regarding the Golden Pioneer Museum, located at 923 10th Street, Golden, Colorado, which museum including the real property, improvements and certain articles within the collection is owned by the City expires December 31, 2008; and

WHEREAS, Friends current management agreements with the City expire on December 31, 2008; and

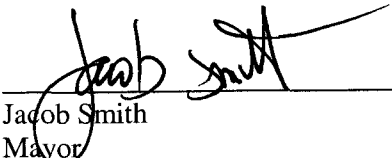
WHEREAS, the City through a Request for Proposal process has determined that Friends is qualified to manage the Golden Pioneer Museum; and

WHEREAS, City Council finds that it is in the best interest of the City that Friends manage all of the Museums.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. That the Museum Management Agreement between the City and the Friends of the Astor House and Clear Creek History Park is approved in substantially the same form as the copy attached hereto and made a part of this Resolution and the City Manager is authorized to sign the Agreement on behalf of the City.

Adopted this 13th day of November, 2008.



Jacob Smith
Mayor

ATTEST:



Susan M. Brooks

Susan M. Brooks, MMC

APPROVED AS TO FORM:

David S. Williamson

David S. Williamson
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular business meeting thereof held on the 13th day of November, A.D., 2008.



ATTEST:

Susan M. Brooks

Susan M. Brooks, City Clerk of the City of
Golden, Colorado

MUSEUM MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 13th day of November, 2008, by and between the City of Golden ("City"), a Colorado home rule municipality and the "Friends of the Astor House and Clear Creek History Park" ("Friends") a Colorado non-profit corporation.

WHEREAS, the Astor House Museum, Clear Creek History Park and Golden Pioneer Museum (collectively "Museums") are an integral part of the community and serve to promote the appreciation and understanding of the community's culture and history; and

WHEREAS, Friends manages the Astor House Museum, located at 822 12th Street, Golden, Colorado, on behalf of the City, which museum, including the real property, improvements and certain artifacts within the museum, is owned by the City; and

WHEREAS, Friends manages the Clear Creek History Park, located north of Eleventh Street between Arapahoe and Illinois Street in Golden, Colorado, on behalf of the City, which park, including the real property, improvements and certain artifacts within the park, is owned by the City; and

WHEREAS, the City desires that Friends manage the Golden Pioneer Museum, located at 923 10th Street, Golden, Colorado, which museum, including the real property, improvements and certain articles within the collection, is owned by the City; and

WHEREAS, it is the express intent of the parties that this Agreement is for management services and that it shall not in any manner or fashion be deemed to create a landlord tenant relationship between the parties; and

WHEREAS, Friends' current management agreements with the City expire on December 31, 2008, and the City desires that Friends manage all of the Museums.

THEREFORE, in consideration of the promises and covenants contained herein the parties agree as follows:

SCOPE OF SERVICES

Overview

Friends shall be entrusted in a fiduciary capacity with the operation and management and acceptance of donations for the Museums. All donations, artifacts, goods or supplies to or for use by the Museums received by Friends shall become the property of the City. All restricted cash or grant monies to or for use by the Museums received by Friends may be used only as specified in the grant to support the Museums' operations. Friends shall also be entrusted with the responsibility for the collection of all admittance, gift shop revenues, rental and use fees and all such monies may only be used to support Museums' operations.

Artifact Conditions

Absent the written permission of the City, Friends shall not accept loans of artifacts for more than one year which in the aggregate exceed an estimated value of \$5,000.00.

The parties acknowledge that most of the artifacts housed at the Astor House and some of the Clear Creek History Park are, at the time of execution of this Agreement, property of the Golden Landmarks Association. The City is attempting to obtain such artifacts and if successful all such artifacts shall be the property of the City and subject to the terms and conditions set forth in this Agreement.

The parties agree to jointly prepare an offsite collection storage needs assessment which shall be presented to City Council.

Management Responsibilities

Friends shall be responsible for the administration, management and preservation of the Museums, which duties include but are not limited to:

1. An annual inventory and the preservation, care, upkeep, acquisition and deaccession of artifacts. Deaccession of any artifacts shall require the prior written approval of the City.
2. Development and implementation of educational and cultural program activities and events which promote historical and cultural appreciation of the community.
3. Preparation and implementation of strategic and capital improvement plans to fulfill the Museums' goals, which may include, for example partnerships with other museums and accreditation through the American Association of Museums.
4. Grant application and administration.
5. Day-to-day operations of the Museums, which includes record keeping, financial oversight, public relations, marketing and community outreach.
6. Solicitation and coordination of volunteers.
7. Submittal to the City Manager of an annual management report no later than October 31st of the following year. Submittal to the City, no later than the first week of March, the Scientific Cultural and Facilities District ("SCFD") annual report for the prior year.
8. Submittal of an annual funding request to the City Manager no later than July 31 of the year preceding the proposed expenditures. Monthly submittal to the City Manager of Friends' profit and loss budget performance report. Submittal to the City Manager Friends' Certified Public Accountant's reviewed Internal Revenue Service 990 by September 1 for the prior fiscal year.

Friends warrants that it shall use the Museums' real and personal property only as permitted by the Agreement and that upon termination of the Agreement all such property excluding furniture, fixtures and equipment owned by Friends shall be returned to the City in its original condition absent normal wear and tear. Friends further warrants it is qualified to assume the responsibilities

and render the services stated in the Agreement and that it has all requisite authority to perform such services. All work and duties performed by Friends shall be done in accordance with generally accepted professional practices and the level of competency presently maintained by others performing the same or similar type of work with a similar staff and budget size in the Denver Metropolitan Area.

Performance Goals

The combined operations of Golden Pioneer Museum, the Astor House Museum and the Clear Creek History Park under the management of Friends, positions the three museums to reach their full potential.

The parties are entering into this Agreement to create a future where the Museums tell more interesting stories of Golden's past. The unification of the Museums is designed to make a more significant impact on students, seniors, families, tourists and other diverse groups.

This Agreement is intended to encourage Museum volunteers and Golden residents to be equally passionate about their local history. It should encourage business members to seek out more ways to associate themselves with the Museums' presence in the community. This Agreement anticipates some level of year-round programming at the Clear Creek History Park. To accomplish all of this, the following goals have been established:

- **Goal One:** Unify the Golden Pioneer Museum, the Astor House Museum and Clear Creek History Park under Friends management for greater impact on visitors and greater efficiency.
- **Goal Two:** Continue increasing visitors' access to the Clear Creek History Park.
- **Goal Three:** Support City and Golden Landmarks Association in artifact conveyance.
- **Goal Four:** Forge a stronger two-way relationship with the City.

Measurable outcomes include the following:

- Welcoming 14,000 visitors a year
- Included in those 14,000 visitors will be at least 4,000 school students, day campers, scouts or senior groups
- 200 tours or drop-in programs per year
- 9 special events per year
- 2,600 hours of volunteer service per year
- 3 fundraising drives or events per year
- 2 community collaborations per year
- 1 facilities improvement per year (subject to City funding)
- Annual acquisition of funding from government, foundation, corporate or individual sources

Hours of Operation

The Museums' hours of operations shall be established by Friends, subject to the City's approval, and shall go into effect upon commencement of Friends operation of the Museums.

Golden Pioneer Museum

The parties acknowledge that transition issues have arisen regarding cessation of the current operators' management agreement regarding the Golden Pioneer Museum and that resolution of such issues may require amendment of the Agreements terms and conditions as same relate to the Golden Pioneer Museum. The parties further acknowledge that amendments may include but are not limited to the Agreements, Scope of Services as to matters regarding inventory, artifact display and care, record keeping, financial oversight, reporting or exclusion of the Golden Pioneer Museum, Hours of Operation, Compensation, which may require an equitable adjustment due to increased or decreased duties and Term and storage issues.

CITY OBLIGATIONS

The City shall, absent negligence of Friends, be responsible for the repair, maintenance and upkeep of all Museums' grounds and structures. Such duties pertain to, but are not limited to the heating and air conditioning system, plumbing, grounds maintenance, and snow removal. The City shall be responsible for payment of all reasonable utility charges, including electricity, gas, water, sewer, and portable restroom facilities. The City shall not be responsible for janitorial services, trash removal, recycling, carpet cleaning, window washing, security systems, telephone systems, computer systems, or any Museums' exhibit areas and gardens.

City personnel may enter any of the Museums' properties or structures at any time to perform inspections and/or maintenance and repair services or for any other lawful purpose. The parties shall jointly conduct an annual inspection in April of all of the Museums, structures and grounds and the City shall make any repairs or improvements which it deems necessary. Any capital improvements shall be subject to approval and overseen by the City. With input from the Friends, the City will consider capital improvement projects for the Museums in its Capital Improvement Plan prioritization process.

COMPENSATION

In consideration of the services provided, the City shall annually pay Friends \$235,000.00, such payment to be made on a quarterly basis. The amount of compensation is subject to annual review and good faith negotiation of the parties.

Friends may, at its own expense, subject to the City's approval as to size, location and scope of services, and subject to compliance with all applicable City requirements, building and health codes, operate a concession stand on the Museums' premises. Revenues from the operations shall be retained by Friends. Upon termination of the Agreement, Friends shall promptly remove any concession facility in its entirety and return the site to its pre-existing condition.

In addition to any other rights City has under this Agreement to indemnification or recoupment, Friends agrees that the City is entitled to set off any amounts it may owe under this Agreement against such claims for indemnity or recoupment.

MISCELLANEOUS PROVISIONS

Term/Termination

The term of this Agreement shall commence on January 1, 2009, and expire on December 31, 2009, and shall unless terminated as provided herein be continued for four (4) additional one year terms.

The City may as it deems appropriate contract for a management audit of Friends' performance. The audit shall be conducted by qualified individuals or entities chosen by the City, which may seek recommendations from the Board of Directors of the Mountain Plains Museum Association or the American Association of Museums.

Either party may terminate this Agreement at any time, with or without cause upon providing the other party 120 days advance written notice.

Nothing herein shall constitute a multi fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, the City's obligations under this Agreement are subject to annual appropriation by City Council. Any failure of City Council to appropriate adequate monies to finance the City's obligations under this Agreement shall terminate this Agreement at such time as the existing appropriations are depleted. Notice shall be given promptly to Friends of any failure to appropriate such adequate monies.

Insurance

Friends understands and agrees that Friends shall have no right of coverage under any and all existing or future City comprehensive, liability or personal injury policies. Friends shall provide Worker's Compensation insurance to cover obligations imposed by applicable laws for any of the employees engaged in the performance of work under this Agreement, and Commercial General Liability insurance with a minimum combined single limit of Six Hundred Thousand Dollars (\$600,000). Friends shall file applicable insurance certificates with the City, if requested.

The parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time is amended, or otherwise available at law or equity to the City, its officers, or its employees.

Compliance With Law

The services to be performed by Friends hereunder shall be done in compliance with all applicable laws, statutes, ordinances, rules and regulations.

Indemnification

Friends agrees to indemnify and hold harmless the City, its officers, and its employees, from and against all liability, claims, demands, and expenses, including court costs and reasonable attorney fees, on account of any injury, loss, or damage, which arise out of or are in any manner connected with the work to be performed under this Agreement, if such injury, loss or damage is caused by or is claimed to be caused by the negligent act or omission, error, professional error, mistake, accident, or other fault of Friends, any subcontractor of Friends, or any officer, board member, employee, or agent of Friends. The obligations of this section shall not apply to damages which City shall become liable by final judgment to pay to a third party as a result of the negligent act or omission, error, professional error, mistake, accident, or other fault of City.

Default/Attorney Fees

In the event of default of any of the provisions herein, the defaulting party shall be liable to the non-defaulting party for all reasonable attorney fees, legal expenses and costs incurred as a result of the default.

Venue

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Jefferson, State of Colorado.

Independent Contractor

Friends is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Friends to perform any work under the terms of this Agreement shall be, and remain at all times, employees or agents of Friends for all purposes. Friends shall make no representation that any of its employees, volunteers or agents are employees of City for any purposes.

No Waiver

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

Entire Agreement

This Agreement constitutes the entire Agreement between Friends and City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified or changed, except as agreed upon in writing by both parties.

Assignability

The parties agree that this Agreement shall not be sold, transferred or assigned except that Friends may with the prior written consent of the City which shall not be unreasonably withheld, assign the Agreement to a successor corporation which acquires or retains possession of all of Friends' assets.

Notice

Any notice or communication between Friends and City which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

City of Golden
911 10th Street
Golden, CO 80401
Attn: City Manager

Friends
822 12th Street
Golden, CO 80401
Attn: Shannon Vairal

Immigration Status Obligation

A) Friends certifies, through signature of its authorized representative executing this Agreement, that it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the Friends will participate in the United States Government's E-Verify Program or the State of Colorado Department of Labor and Employment Program ("Department Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.

B) Friends shall not:

1) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

2) Enter into a contract with a subcontractor that fails to certify to the Friends that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

C) Friends shall affirm as required by C.R.S. § 8-17.5-102 (c) (II) the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

D) Friends is prohibited from using the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

E) If Friends obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, Friends shall be required to:

1) Notify the subcontractor and City within three days that Friends has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph (B)(2) the subcontractor does not stop employing or contracting with the illegal alien; except that Friends shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

F) Friends shall comply with all rules and regulations and any reasonable request by the State Department of Labor and Employment made in the course of the Department's performance of its lawful duties pursuant to C.R.S. 8-17.5-101 et. seq., as amended from time to time.

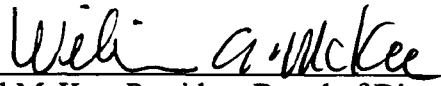
G) If Friends violates any of the provisions set forth in this section, City may terminate the Agreement and Friends shall be liable for all actual and consequential damages incurred by City.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT:

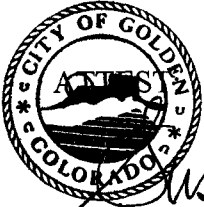
CITY OF GOLDEN

**FRIENDS OF ASTOR HOUSE
AND CLEAR CREEK HISTORY
PARK**


Mike Bestor, City Manager

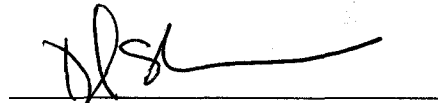

Bill McKee, President Board of Directors

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Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM


David S. Williamson
City Attorney