

RESOLUTION NO. 2052

**A RESOLUTION OF THE CITY COUNCIL OF GOLDEN,
COLORADO, APPROVING AN AGREEMENT BETWEEN THE
CITY OF GOLDEN AND GOLDEN HISTORY MUSEUMS,
REGARDING THE TRANSFER TO THE CITY OF GOLDEN OF
THE MANAGEMENT AND OPERATIONS OF THE CITY'S
MUSEUMS**

WHEREAS, the City owns the Astor House Museum, Clear Creek History Park and Golden History Museum (collectively "Museums"), including the real property, improvements and all non-loan artifacts within the Museums; and

WHEREAS, the Museums are an integral part of the community and serve to promote the appreciation and understanding of the Golden community's culture and history; and

WHEREAS, in November 2008, the City entered into a Museum Management Agreement with GHM, then known as "Friends of the Astor House and Clear Creek History Park," to provide management and operation services for all three of the City's Museums; and

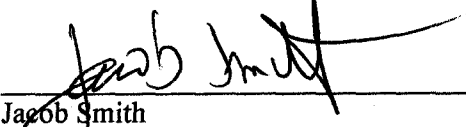
WHEREAS, the City and GHM desire to transition and transfer the management and operation of the Museums back to the City. GHM will continue in existence as a non-profit (Section 501(c)(3)) corporation, independent from the City, but shall have an ongoing relationship with the City to both coordinate with and support the City's Museums through fundraising, membership, and events; and

WHEREAS, the City and GHM wish to enter into a Museum Management Transfer Agreement, which shall amend, replace and supersede the previous November 2008 Museum Management Agreement between the Parties; shall provide for the transition and transfer of the operation and management of the Museums to the City; and acknowledge a separate "friends of" GHM non-profit corporation.

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

Section 1. The Museum Management Transfer Agreement between the City of Golden and Golden History Museums, regarding the transfer of the management and operations of the City's Museums to the City of Golden, is approved in substantially the same form as the copy attached hereto and made a part of this resolution. The Mayor is authorized to execute the Agreement on behalf of the City, with the above-noted modifications.

Adopted this 22nd day of April, 2009.



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 22nd day of April, A.D., 2010.



ATTEST:

Susan M. Brooks

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

MUSEUM MANAGEMENT TRANSFER AGREEMENT

This AGREEMENT is made and entered into this ____ day of _____, 2010, by and between the CITY OF GOLDEN, a Colorado home-rule municipal corporation ("City"), and GOLDEN HISTORY MUSEUMS, a Colorado non-profit corporation ("GHM").

RECITALS

A. The City owns the Astor House Museum, Clear Creek History Park and Golden History Museum (collectively "Museums"), including the real property, improvements and all non-loan artifacts within the Museums.

B. The Museums are an integral part of the community and serve to promote the appreciation and understanding of the Golden community's culture and history.

C. In November 2008, the City entered into a Museum Management Agreement with GHM, then known as "Friends of the Astor House and Clear Creek History Park," to provide management and operation services for all three of the City's Museums.

D. The City and GHM desire to transition and transfer the management and operation of the Museums back to the City. GHM will continue in existence as a non-profit (Section 501(c)(3)) corporation, independent from the City, but shall have an ongoing relationship with the City to both coordinate with and support the City's Museums through fundraising, membership, and events, which shall be further described in a memorandum of understanding subsequently executed by the Parties and then incorporated by reference hereto.

E. The City and GHM intend that this Museum Management Transfer Agreement shall amend, replace and supersede the previous November 2008 Museum Management Agreement between the Parties; shall provide for the transition and transfer of the operation and management of the Museums to the City; and acknowledge a separate "friends of" GHM non-profit corporation.

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

1. **Date of Transfer.** The Date of Transfer to the City of museum management and operations, as set forth in this Agreement, shall be on July 1, 2010.

2. **Transfer.** GHM agrees to transfer to the City, and the City agrees to relieve GHM of all operations, fiduciary responsibility, management, and oversight of the City's Museums (Astor House Museum, Clear Creek History Park, and Golden History Center), which transfer shall be effective on the Date of Transfer, as that term is defined in paragraph 1, above. On the Date of Transfer, all operations, management, artifacts, and other assets currently under the management of GHM shall become the sole responsibility of the City of Golden. The name

and brand, "Golden History Museums," shall also be transferred to the City, for reference to the City's Museums as described in paragraph 11 herein.

3. **Transfer of Employees.** From the time of execution of this Agreement until the Date of Transfer, all GHM employees shall be subject to the City's employment screening processes, including background checks and drug screening. All employees on GHM's payroll as of April 1, 2010, shall be eligible to become City employees (pending successful background checks and drug screening) during the Transition Period. The Transition Period shall be from the Date of Transfer until December 31, 2010, or until sixty (60) days after a Museum Manager is hired or designated by the City, whichever occurs first. On the Date of Transfer, eligible GHM employees become City employees and will be compensated at their current salary based upon their current work schedule and will be eligible for the City's benefits plan. GHM employees who become City employees under the terms of this Agreement are not guaranteed any specific job description, position, job title, responsibilities or compensation after the Transition Period. These employees will be considered new City employees for the purposes of tenure with the City and will begin establishing tenure immediately upon the Date of Transfer. Notwithstanding anything in this Agreement to the contrary, these employees shall be subject to all of the City's personnel policies and procedures.

4. **Volunteers.** GHM volunteers may become City volunteers and shall participate in the City's application and background screening processes. Upon completion of the City's application and background screening processes, City volunteers shall be covered as volunteers under the City's insurance policy.

5. **Museums Gift Shop(s) and Inventory.** Upon the Date of Transfer, the City shall assume ownership and responsibility for all operations and management of any and all Museums gift shops, including any Museums gift shops inventory, fixtures, and equipment, and revenues from the sales of such inventory.

6. **Insurance.** Upon the Date of Transfer, the City day shall assume responsibility for all insurance necessary to cover the Museums and Museums operations and maintenance, including comprehensive, liability, personal injury and workman's compensation insurance.

7. **Contracts.** Upon the Date of Transfer, the City shall assume those GHM contracts identified on the list attached hereto as **Exhibit A**.

8. **Revenues and Liabilities.** Upon the Date of Transfer, all new revenues generated by the Museums shall become the property of the City. Likewise, upon the date of transfer, all new liabilities generated or created by Museums operations or management on or after the Date of Transfer shall become the responsibility of the City. Any liabilities of GHM in existence up to the Date of Transfer shall remain the responsibility of GHM, except as provided in paragraph 7 herein.

9. **Receivables.** On and after the Date of Transfer, all GHM receivables shall be assigned to the City.

10. **Collaboration Between City and GHM to Carry Out Transfer.** After the Date of Transfer and for the duration of the Transition Period, the City shall collaborate and work with GHM to integrate the following functions into the City's operations with the intention of other City operations being a strong resource for the operations of the Museums and programs. Once integrated, the City anticipates continued appropriations to its Museums budget for these functions:

a. **Facilities Management:** Budgeting for facilities management and maintenance for the Museums, under the City's operations, shall be provided through the City's standard budgeting process.

b. **Marketing/Communications:** The City's Museums staff shall manage Museums marketing and communications, including the "Golden History Museums" website, newsletter, and other standard communications tools of GHM, in coordination with the City, and the City's Museums staff will remain responsible for marketing and communications through the end of 2010. On January 1, 2011, all rights and responsibilities for the website shall transfer to the City.

c. **Bookkeeping** shall be the responsibility of the City's Museums Staff in coordination with the City's Finance Department.

d. **Payroll, human resources, and benefits administration** will move fully under City operations.

e. **Accounts receivable, accounts payable, cash management, tax filings and audits, and legal** for the Museums operations after the Date of Transfer will move fully under City operations.

f. **Information technology services and support**, including computers, telephones and data networking shall be transferred to the City and shall move under City operations effective on January 1, 2011. Starting in 2011, the City will budget for information technology services and support, pursuant to the City's standard operating procedures. GHM shall provide a list of all GHM information technology assets and software to the City's Information Services Department at least 15 days prior to the Date of Transfer.

11. **"Golden History Museums" Brand, Name and Website.** All rights and ownership of the brand, name and website of "Golden History Museums" shall be transferred to the City on the Date of Transfer, and shall refer to the Museums and the City's operation, management and oversight of the Museums. Effective upon the Date of Transfer, the City expressly grants permission to GHM to use the "Golden History Museums" brand for the sole

and exclusive purpose of using the brand in its name, e.g., GHM may rename its non-profit corporation the "Friends of Golden History Museums." GHM expressly acknowledges and agrees that it has not and will not pursue ownership or trademarking of the "Golden History Museums" brand, name or website.

12. 2010 Transition Budget. The City and GHM have agreed to a budget for the transition of Museums operations to the City through December 31, 2010. Of the budgeted amounts, GHM shall pay the following expenses:

- a. Consulting fees for Transition Manager through the date of this Agreement;
- b. Payout of GHM employee benefits (e.g., unused vacation time, etc.);
- c. GHM projected operating deficit for the year 2010; and
- d. Legal/attorney fees incurred by GHM.

The City shall pay all other costs and expenses related to the transition of Museums operations to the City that are incurred through December 31, 2010, including:

- a. Higher cost of benefits for GHM employees;
- b. Pension contributions for GHM employees;
- c. Incremental insurance for GHM operations; and
- d. Other staff transfer related expenses.

Any and all operating and capital budgets for Museums operations in 2011 and beyond shall be created through the City budgeting process.

13. Museum Manager Recruitment. The City shall immediately recruit a Museum Manager, with input from the GHM Board of Directors. The GHM Board of Directors ("GHM BOD") shall submit a proposed job description to the City. One or more members of the GHM BOD shall serve on the hiring committee for the Museum Manager. The Parties agree that the City shall post the Museum Manager position upon execution of this Agreement and before the Date of Transfer. Any hiring decision shall be at the sole discretion of the City Manager. If and when hired or designated, the Museum Manager shall be supervised by the City Manager, and such other supervisors as the City Manager determines.

14. Creation of Cultural Services and Museum Advisory Board. The City will appoint the current GHM BOD as the City's newly created "Cultural Services and Museum Advisory Board" through the end of 2011. Appointed members may be removed by City Council with or without cause thereafter. In 2012 and beyond, this Advisory Board may be absorbed into the City's Parks and Recreation Advisory Board, Historical Preservation Board or as a stand-alone advisory board, or dissolved, at the discretion of the City. The 2010/2011 Cultural Services and Museum Advisory Board shall advise City staff and City Council on strategic planning, transition issues, and museum best practices, as well as act as "ambassadors to the community." The City acknowledges that several current members of the GHM BOD are

not residents of the City of Golden, and agrees to waive the residency requirement for this Advisory Board through the end of 2011. In 2012 and beyond, the City Council shall consider appointing the Chair of the Friends of Golden History Museums Board of Directors to serve as an ex-officio member of the Advisory Board, or of the board into which the Advisory Board is absorbed, if any.

15. **GHM Obligations.** During the 12 months after the Date of Transfer, the GHM BOD, under the operation of the newly named "friends of" 501(c)(3) ("Friends of GHM") shall remain operational, and shall perform and complete the following minimum obligations during the 12-month period:

a. Revise GHM's articles of incorporations, bylaws and federal tax filings to evolve into a Friends of GHM nonprofit corporation.

b. Complete all required tax filings for the Friends of GHM for fiscal year 2010.

c. Recruit board members for Friends of GHM nonprofit corporation.

d. Manage the Friends of GHM cash reserve and any gifts to the Friends of GHM for any and all permitted purposes.

e. Execute a memorandum of understanding with the City to define and clarify the ongoing relationship between GHM and the City as contemplated under Recital D.

16. The City's Museums staff, after the Date of Transfer, shall offer limited staff support to GHM. This support shall include maintaining and running member and donor lists, assisting in development of and submission of Form 990 and other tax filings, and review of financial information and data. Donor relations for Museums shall ultimately be the responsibility of the City.

17. **GHM Cash Reserves.** The current cash reserve of GHM as of the Date of Transfer will remain with GHM, with the intention that these funds will be given to the City to support key Museums projects. The remaining cash reserve may, at the discretion of the GHM BOD, be moved into an endowment account. GHM agrees to donate a minimum of \$15,000 to the City for Museums operations and management annually (either for operating or capital funds), provided that GHM has the resources to do so.

18. **Museum Operation Funds.** All payments by the City to GHM as contemplated in the November 2008 Museum Management Agreement shall cease as of the Date of Transfer. The City shall allocate the amounts of the two (2) remaining quarterly payments that would otherwise have been due to GHM in 2010, to the City's Museums operations for the remainder of 2010, and such monies shall be under the exclusive control of the City.

19. **Indemnification.** To the extent authorized by law, and without waiving any provisions of the Colorado Governmental Immunity Act, both Parties agree to indemnify and hold the other harmless from any and all loss or damage, including, without limitation, attorneys' fees, sustained or incurred resulting from any loss or injury or damage to any person or property related to the exercise of rights granted herein, or any act or thing done or omitted to be done during the term of this Agreement, by the other Party, its contractors, subcontractors, agents, employees, permittees, or invitees. The obligations of both Parties hereunder shall survive termination of this Agreement.

20. **Amendment.** This Agreement may be amended, modified or changed in whole or in part only by written agreement duly authorized and executed by the Parties.

21. **Venue.** Venue for the trial of any action arising out of any dispute hereunder shall be in the district court for the County of Jefferson, State of Colorado.

22. **Intent of Agreement; No Joint Venture.** Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between the Parties and is not intended to and shall not be deemed to confer rights upon any persons or entities not named as Parties, nor to limit in any way the powers and responsibilities of the City or GHM, or any other entity not a party hereto. Nothing contained herein shall be deemed to create a partnership or joint venture between the City and GHM with respect to the subject matter hereof.

23. **Notice.** Any notice or communication given pursuant to this Agreement shall be given in writing, either in person or by certified mail, return receipt requested. If given in person, notice shall be deemed given when actually given. If given by certified mail, notice shall be deemed given at the time indicated in the duly completed return receipt.

Notice to the City shall be delivered or mailed to:

Mike Bestor, City Manager
City of Golden
911 10th Street
Golden, CO 80401

Notice to GHM shall be delivered or mailed to:

Bill McKee
Golden History Museums
923 10th Street
Golden, CO 80401

24. **Assignability.** No Party hereto shall assign its rights or delegate its duties hereunder without the prior written consent of the other Parties hereto.

25. **Governing Law.** This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Colorado.

26. **Recitals.** The paragraphs contained in the section entitled "Recitals," above, are a material and integral part of this Agreement.

27. **Headings for Convenience.** Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

28. **Supersession of Former Agreement; Entire Agreement.** The Parties agree that this Agreement amends, replaces and supersedes the November 2008 Museum Management Agreement between the Parties. Moreover, this Agreement constitutes the entire agreement of the Parties hereto, but for that memorandum of understanding as described in paragraph 15.e., and Recital D, herein, which shall be incorporated by reference to this Agreement. The Parties agree that there have been no representations made regarding the subject matter hereof other than those (if any) contained herein, that this Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and further agree that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

29. **Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon the Parties, their successors and assigns.

30. **Officials Not to Benefit.** No member of the City government, commissioners or individual elected officers shall receive any share or part of this Agreement or any benefit that may arise therefrom.

IN WITNESS WHEREOF, the City and GHM have executed this Agreement as of the date(s) set forth below.

CITY OF GOLDEN

By: _____
Jacob Smith, Mayor of the City of Golden
Date: _____

ATTEST:

By: _____
Susan Brooks, City Clerk, MMC

APPROVED AS TO FORM:

By: _____
David S. Williamson, City Attorney

GOLDEN HISTORY MUSEUMS

By: _____
Bill McKee

Date: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____

EXHIBIT A

GHM CONTRACTS

Credit Lines	Utilities and Regular Services	Contract Pending Renewal
AlphaGraphics of Golden	All Copy Products	D' Deli at D' Creek
Bron Tape	Anthem Blue Cross Blue Shield	
Conserve-A-Watt	Easy DNS	
DW Mail	EDS Waste Solutions	
Fast Signs	Fronterra Interactive	
Fed Ex Kinkos	Kleen-Tech Services	
Golden Mill	Lewan and Associates	
Home Depot	Mountain Alarm	
Jordan's Building Center	Qwest	
Junda Graphics	Safe Systems	
Laura Caruso	Speakeasy Network	
Meyer Hardware	Super Clean Janitorial	
New Vista Image		
Office Max		
PR Communications		