



City Council Report

Date: July 8, 2015
To: City Council
Through: Natalie Lewis, Deputy City Manager
From: Cindy Ornstein, Arts & Culture Director
Tom Wilson, Arizona Museum of Natural History Director
Subject: Amendment and Consent to Assignment of License Agreement for operation of a Museum Store at AzMNH (District 4)

Strategic Initiatives



Purpose and Recommendation

To consider the Amendment of License Agreement and Assignment, Assumption, and Consent to Assignment and Assumption of the License Agreement among the Arizona Museum of Natural History Guild f/k/a Mesa Southwest Museum Guild (“Guild”), the Arizona Museum of Natural History Foundation (“Foundation”), and the City of Mesa (“City”).

Recommendation: Approval of the Amendment of License Agreement and Consent to the Assignment and Assumption.

Background

The Guild and Foundation, both Arizona nonprofit corporations organized to support the Arizona Museum of Natural History, merged on June 16, 2015. The Foundation being the surviving corporation. The Foundation and Guild came to the decision to merge after months of study and consultation with all stakeholders, including all volunteers of the Museum, that merger was beneficial to both organizations.

The City entered into an agreement with the Guild dated July 1, 1999 (“License Agreement”) whereby the Guild licenses to operate a gift shop (“Museum Store”) within the Arizona Museum of Natural History (“Museum”), a City facility. As the Guild merged with the Foundation, the Guild is requesting the City consent to the Guild assigning its obligations under the License Agreement to the Foundation.

In addition, per the written contractual terms of the License Agreement, the term ended on June 30, 2004, but the Guild and the City have continued to operate under the terms and conditions of the License Agreement, thus an amendment to the License Agreement is recommended to remedy the term of the License Agreement and allow for annual renewals.

Discussion

For the Museum Store to continue operations under the Foundation, the surviving corporation of the merger, the City, Guild and Foundation must agree to the Amendment of License Agreement and Assignment, Assumption, and Consent to Assignment and Assumption of the License Agreement, as required by Section 13 of the License Agreement which states, in relevant part, "The Guild shall not assign or otherwise transfer this Agreement or any of its rights or duties under this Agreement, nor pledge or mortgage this Agreement without first obtaining the written consent of the City."

Merger of the Guild and Foundation was registered with the Arizona Corporation Commission on June 17, 2015. City and Foundation will negotiate a new Memorandum of Understanding ("MOU") between the two entities, which will include terms for the license of the gift shop space. In order to cover the time period prior to the negotiation of the MOU and to demonstrate the understanding of the City and the Guild as to the term of the License Agreement, an amendment to the term of the License Agreement is recommended.

Alternatives

APPROVAL OF THE AMENDMENT OF LICENSE AGREEMENT AND ASSIGNMENT TO THE FOUNDATION

Approval of the Amendment of the License Agreement and Assignment of the License Agreement to the Foundation would allow the Foundation to operate the Museum Store for the benefit of the Museum. This Fiscal Year the Museum Store will have gross revenues of approximately \$228,000. Excess revenues after expenses go to benefit the Museum.

TAKE NO ACTION

The Foundation would lose the license to operate the Museum Store for the benefit of the Museum, which would result in closure of the store and loss of revenue to the Museum.

Fiscal Impact

Approval of the recommendation ensures continued smooth operation of the Store, with the benefits to the Museum as described. Taking no action would affect the Department of Art and Culture negatively, because all revenues after expenses of the Museum Store accrue to the Museum.

Coordinated With

Two nonprofit corporations, the Guild and Foundation, now merged into the Foundation, affected by the recommendation.