



City of Boise Resolution Agreement

Parks & Recreation
150 N Capitol Blvd
Boise, ID 83702
(208) 972-8531

6.E.36

TO: Mayor and Council
FROM: Doug Holloway, Parks & Recreation
NUMBER: RES-563-18
DATE: November 20, 2018
SUBJECT: Discovery Center of Idaho Right of Entry and Construction License Agreement

BACKGROUND:

The Discovery Center of Idaho (DCI), a tenant in Julia Davis Park, is proposing an expansion of their existing operations into green space west of their current location in the park. In exchange for approving the expansion, DCI would purchase the vacant lot west of the proposed expansion location, and then donate that vacant lot to the city as mitigation for their expansion. The city has had conversations with the Davis family and they have approved of the expansion and exchange.

FINANCIAL IMPACT:

No financial impact

ATTACHMENTS:

- Right of Entry and Construction License Agreement Final Executed Document (PDF)
- Discovery Center of Idaho Expansion Map (PDF)

CITY OF BOISE

Resolution NO. RES-563-18

BY THE COUNCIL

CLEGG, LUDWIG, MCLEAN, SANCHEZ,
THOMSON AND WOODINGS

A RESOLUTION APPROVING, AS TO BOTH FORM AND CONTENT, RIGHT OF ENTRY AND RIGHT OF CONSTRUCTION AGREEMENT (THE "AGREEMENT") BY AND BETWEEN THE CITY OF BOISE CITY (DEPARTMENT OF PARKS AND RECREATION) AND DISCOVERY CENTER OF IDAHO, INC.; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST THE AGREEMENT ON BEHALF OF BOISE CITY; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BOISE CITY, IDAHO:

Section 1. That the Right of Entry and Right of Construction Agreement by and between the city of Boise City, Idaho, and the Discovery Center of Idaho, Inc. (the "**Agreement**"), a copy of which is attached and incorporated by reference, shall be, and is, approved as to both form and content.

Section 2. That the Mayor and City Clerk, respectively, be, and are, authorized to execute and attest the Agreement for and on behalf of the city of Boise City, Idaho.

Section 3. That this Resolution shall be in full force and effect immediately upon its adoption and approval.

ADOPTED by the Council of Boise City, Idaho, on November 27, 2018.

APPROVED by the Mayor of the Boise City, Idaho, on November 27, 2018.

APPROVED:

 David H. Bieter, Mayor


ATTEST:

 Lynda Lowry, Ex-Officio City Clerk

RIGHT OF ENTRY AND CONSTRUCTION LICENSE AGREEMENT

THIS RIGHT OF ENTRY AND CONSTRUCTION LICENSE AGREEMENT (the “**Agreement**”) is made and entered into this_ day of OCTOBER 26, 2018, by and between the city of Boise City, an Idaho municipal corporation (“**City**”), and Discovery Center of Idaho Inc., a non-profit corporation organized under the laws of the state of Idaho (“**DCI**”). City and DCI may be referred to individually as “**Party**” or collectively as “**Parties.**”

FOR GOOD AND SUFFICIENT CONSIDERATION, IT IS AGREED THAT:

SECTION 1.

1.1 DCI operates the Discovery Center of Idaho located at 131 West Myrtle Street, Boise, Idaho (the “**Discovery Center**”).

- (a) The Discovery Center is located upon property owned by the City and managed by the Boise City Department of Parks and Recreation.
- (b) DCI intends to expand the Discovery Center and desires to construct these improvements on the parcel adjacent to the current location of the Discovery Center.
- (c) The adjacent parcel is owned by the City and managed by the Boise City Department of Parks and Recreation.

1.2 In order to complete the expansion of the Discovery Center it will be necessary for DCI to:

- (a) Acquire a permanent or temporary right to operate the proposed expansion on, over, under, and across the real property depicted in **Exhibit A** which is attached hereto, and incorporated herein by this reference (hereinafter the “**Future Expansion**”);
- (b) Enter upon land owned and operated by the City in order to construct and operate an expansion of the Discovery Center as depicted in **Exhibit A** which is attached hereto, and incorporated herein by this reference (hereinafter the “**Improvements**”).

1.3 The parties are presently negotiating an arrangement granting DCI the right to operate the expanded Discovery Center, but pending negotiation and execution of that agreement, it will become necessary for DCI, its employees, DCIs, or agents to enter upon the Property in order to commence construction of the Improvements.

1.4 For such purposes, and on the terms and conditions set forth by this Agreement, City will allow DCI to enter upon the Property while appropriate lease documents to execute the agreement are being negotiated.

1.5 Nothing in this Agreement shall be construed to create an expectation or reliance that the agreement to operate the expansion of the Discovery Center will be executed by either Party. The Parties acknowledge and agree that the grant, acceptance, and execution of any agreement is subject to approval and execution by each Party's respective governing board.

1.6 In consideration of the rights granted under this Agreement, DCI will purchase additional real property as depicted in **Exhibit A** which DCI intends to convey to the City in a real estate exchange as provided for by Idaho Code § 50-1403(2). This real estate exchange is expressly contingent upon future approval by the Boise City Council by separate agreement.

SECTION 2. ENTRY AND USE OF PROPERTY. In accordance with the terms of this Agreement, City extends to DCI, its employees, DCIs, and agents, the right to enter upon the Property for the purposes of constructing the improvements associated with the Discovery Center and as described by this Agreement and as further depicted by the Construction Plans depicted by **Exhibit B** which is attached hereto, and incorporated herein by this reference (hereinafter the "Plans").

- (a) In order to invoke its right of entry, DCI must give the City thirty days' written notice of its intent to exercise its rights under this agreement.
- (b) All staging, access, entry, and work upon the Property shall be in accordance with the Plans.
- (c) DCI shall ensure that all staging, access, entry, and work upon the Property shall be conducted in a safe and workmanlike manner, and shall ensure the safety of the general public, employees and agents of the City, or any other person allowed by the City to be upon the Property.
- (d) DCI shall not damage the Property, or any other property owned by the City, including landscaping, irrigation features, or any other feature or facility located upon the Property in any manner during the performance of its installation.
- (e) DCI shall require in the contracts with its contractors and subcontractors shall comply with all insurance obligations identified in the Donation Agreement.
- (f) DCI shall require in the contracts with its contractors and subcontractors comply with all applicable laws and regulations related to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- (g) With reasonable cause and at any time, the City may provide notice to DCI or its contractors to stop work. Immediately upon receipt of such notice, DCI and its contractors shall stop work as described in the notice and shall resume work only with written approval from the City. Any date for completion of the work shall be extended by a reasonable time in light of any stop work notice received from the City.

SECTION 3. CONDITIONAL TERMINATION. This Agreement shall terminate upon the following:

- (a) The execution of an agreement governing the use of the property for operation of the expansion of the Discovery Center from City to DCI.
- (b) Either Party may terminate this Agreement at any time with thirty days' written notice to the other Party.

SECTION 4. COVENANT TO RESTORE; ATTORNEY'S FEES.

- (a) In the event of termination of this Agreement without the Parties having negotiated a right to continue to use and occupy the property by DCI, then the possession and use of the Property shall immediately revert to City, and DCI covenants and agrees to restore, at its sole expense, the Property to its present condition, including removal of any improvements constructed or installed by DCI.
- (b) In any event, City shall have any and all remedies as are available at law or in equity to enforce this covenant and shall in any such action as may be required to enforce such remedies be entitled to recover its reasonable attorney's fees and costs.

SECTION 5. INDEMNIFICATION. DCI shall, subject to the limitations hereinafter set forth, indemnify, save, hold harmless and defend regardless of outcome, City from expenses of and against suits, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees caused by or arising out of any negligent acts by DCI or DCI's employees, DCIs and agents while acting within the course and scope of their employment or engagement, which arise from or which are in any way out of the use of the Property. Any such indemnification hereunder by DCI is subject to the limitations of the Idaho Tort Claims Act (currently codified at chapter 9, title 6, Idaho Code). Such indemnification hereunder by DCI shall in no event cause the liability of DCI for any such negligent act to exceed the amount of loss, damages, or expenses of attorney fees attributable to such negligent act, and shall not apply to loss, damages, expenses, or attorney fees attributable to the negligence of City.

SECTION 6. INSURANCE. The following insurance provisions shall only become effective upon DCI election to exercise its rights under this Agreement.

- (a) DCI shall maintain (and shall ensure the Related Parties maintain) liability insurance, self-insurance, or a combination of liability insurance and self-insurance in which the City shall be named as an additional insured, with minimum liability limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless. The policies shall provide coverage on an occurrence basis rather than a claims-made basis.
- (b) The DCI shall maintain, and shall ensure all its contractors maintain, workers' compensation insurance and employer's liability insurance, as required by Idaho law, and shall comply with all statutes, rules, and regulations regarding workers' compensation insurance.

- (c) The DCI shall maintain, and shall ensure all its contractors maintain, commercial automobile insurance with a minimum liability limit of \$1,000,000.

SECTION 7. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successor and assigns to the Property and otherwise throughout the term hereof. This Agreement does not obligate the City to enter into any future agreement or lease with DCI and is subject to annual appropriation by the Boise City Council.

SECTION 8. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall constitute an original, and all together shall constitute one and the same Agreement.

SECTION 9. DISCRIMINATION. DCI and its contractors shall comply with all applicable federal codes and regulations, state statutes, and local ordinances, including Title VI of the Civil Rights Act of 1964 and its implementing regulations in 43 C.F.R. part 17, and title 54, chapter 19 of the Idaho Code, and specifically Idaho Code section 54-1218.

SECTION 10. AMENDMENT. This Agreement may only be amended by written agreement executed by both Parties.

[signatures on next page]

IN WITNESS WHEREOF, the parties have executed this Right of Entry Agreement the day, month and year first above written.

CITY:

DCI:

CITY OF BOISE CITY, an Idaho municipal corporation

Utility

By: *David N. Bieter* 11/27/18
David N. Bieter, Mayor

By: *Chh. Nashy* 10/25/18
Its: *President, Board of Directors*

Attest: *Lynda Lowry* 11/27/18
Lynda Lowry, Ex Officio City Clerk



Attachment: Right of Entry and Construction License Agreement Final Executed Document (RES-563-18 : Discovery Center of Idaho Right of



DISCOVERY CENTER OF IDAHO

NEW FACILITY DESIGN
 PHASE 1
 07/10/18

