

FULLERTON ARBORETUM COMMISSION

MINUTES
REGULAR MEETING
December 10, 2014
-APPROVED-
March 11, 2015

The 177th meeting of the Fullerton Arboretum Commission was held in the Pavilion Classroom at the Fullerton Arboretum.

Commissioners present: Kay Miller, Frank Mumford, Tony Florentine, Eugene Jones, Joe Felz, and Greg Saks

Others present: Gregory Dymont, Director
Steve Eldredge, Friends Investment Committee
Monique Shay, University Counsel
Mary Dalessi, Past Friends President
Marta McDaniel, Interim Analyst
Laura Hultman, CSUF Finance Office
Miguel Macias, Education Manager
Jack Reynolds, Friends President
May Wong, Recorder

Miller called the meeting to order at 3:02 p.m.

PUBLIC COMMENTS:

No public comments.

NEW BUSINESS

1. ***Approve minutes of June 11, 2014 – Miller***
 - Minutes submitted and approved by Frank Mumford and Joe Felz.
2. ***Review Joint Investment Committee actions***
 - Steve Eldredge presented an update on the Joint Investment Committee Review of Investment Organizations: 1)Fidelity, 2)Vanguard, 3)Wells Fargo Advisor.

- Presentation included background and review of handout titled “2020 Fund Recap”. After careful consideration and review of the three investment funds, it was determined that Wells Fargo Advisor was selected as they have the lowest fee structure and local support. The expectation is to review the portfolio three times a year.

3. Action Item: Approve Destination Science non-exclusive license to use Fullerton Arboretum facilities for summer of 2015 - **Dyment**

- Background: Run summer camp on Fullerton Arboretum. It was noted that contract item 12.1 needed a verbiage changed to reference Fullerton Success Agency rather than Fullerton Redevelopment Agency.
- Motion was made by Eugene Jones, second by Frank Mumford to accept current contract with revision.

OLD BUSINESS

4. Director’s Report – Dyment

- Greg Dyment mentioned financial statements will be available the March 2015 meeting
- Recap of Arboretum staffing changes
 - Chris Barnhill, Jonathan Davis, and Ann Thiele have left
 - Greg Pongetti has replaced Chris Barnhill which creates a vacancy for the Nursery Manager. Johnathan Davis position has not been filled. Ann Thiele’s position is pending HRDI action.
- Phase I Lighting Project is complete, Phase II will add wi-fi and cameras
- Water Sustainability and Irrigation
 - Need to upgrade to smart irrigation system. Much of the current system dates back to 1975.
 - Goals to save 20% each year and avoid broken pipes as well as water waste.
- Governor’s Bill 4622 1826 on 0 Yard Waste
 - Greg Dyment spoke to OC Sanitation regarding education projects, composting. Fullerton Arboretum currently works with five districts in Orange County providing yard waste education.

5. Friends Report – Reynolds

- Jack Reynolds reporting on various fund raising events including Victorian Tea, Summer Gala, Summer Concert Series, Native Plant Sale, and the upcoming Victorian Christmas.

OTHER BUSINESS

- Miguel Macias reported on Arboretum Environmental Education programs including CEEP and JHEEP. Additionally reviewed class offerings including

Fall Composting classes, Bug Safari, and History of Botanical Art as well as new Spring offerings of art classes for all ages.

- Joe Felz updated members on State College Sewer Project and impact to CSUF employees and students due to street closures. Project will last approximately 2.5 years beginning January 7, 2015. May hold public communication/education meetings regarding street closures at the Arboretum Facility.

ADJOURNMENT

- Miller adjourned the meeting at 3:48 p.m.
- The next Commission meeting will be held Wednesday, March 11, 2015 at 3:30 p.m.

Lucinda Williams

Fullerton City Clerk and Secretary for the Fullerton Arboretum Commission

By May Wong

May Wong, Executive Assistant to the AVP of Business and Administrative Services
Recording Secretary for the Fullerton Arboretum Commission

Destination Science Contract for 2015 (Exhibit A)

December 2014

Fullerton Arboretum Authority
NON-EXCLUSIVE LICENSE

**Fullerton Arboretum Authority
Non-exclusive License to Use Fullerton Arboretum Facilities
by Destination Science**

This non-exclusive License (License) is entered into between the Fullerton Arboretum Authority (ARBORETUM) and Destination Science (DS).

The ARBORETUM finds that the Property of the Arboretum is available for DS purposes at the time or times covered by this License, and that this License will not interfere with the requirements of the ARBORETUM,

THEREFORE the Parties agree as follows:

GENERAL TERMS

1. **USE.** The ARBORETUM grants a nonexclusive license to DS to use the grounds, facilities, and equipment of the ARBORETUM under the conditions and for the purposes which follow.
2. **RENTS.** DS agrees to pay the ARBORETUM for use of grounds, facilities, and equipment 25% of all ARBORETUM camp and day use gross receipts with a minimum guarantee of \$500 each week the camp runs. DS shall deposit \$500 on or before June 5, 2015. This deposit shall be refundable to DS upon the payment of all amounts due to the ARBORETUM on or before August 15, 2015. Payment will be made WEEKLY to the ARBORETUM after payment is collected by DS from participants in the Destination Science program. WEEEEKLY financial reports indicating gross receipts, the amount due to the ARBORETUM and a check for the amount due will be presented to the ARBORETUM by DS each Monday for fees/receipts from the preceding week.
3. **RECORDS AND ACCOUNTS.** DS shall keep or cause to be kept, true and complete books, records and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents. The books and records of DS for all funds related to the use of the ARBORETUM shall be subject to audit by the ARBORETUM at any time prior to October 31, 2015.
4. **TERM AND USE.** DS agrees to use the grounds and facilities at the ARBORETUM for the express purpose of conducting Destination Science programs for children between the hours of 8:00 a.m. and 5:00 p.m. from June 15, 2015 to July 24, 2015; Monday through Friday. The number of participants and specific programs shall be subject to approval by the Director of the ARBORETUM, which approval shall not be unreasonably withheld. The ARBORETUM will also be open to the General Public during June 15, 2015 to July 24, 2015.
5. **AREA.** The property subject to this License for use by DS shall consist of specific portions of the grounds and facilities at the ARBORETUM as agreed upon by the Arboretum Director. DS shall use the said property only for the purpose specified in this License.
6. **UTILITIES.** The ARBORETUM agrees to furnish water and trash collection necessary for the property, except when services cannot be supplied for causes beyond the control of the ARBORETUM and except when there is a failure or defect in the physical plant or water line whether or not such failure or defect is beyond the control of the ARBORETUM if the failure or defect cannot be reasonably remedied in time for use by DS during term hereof.

7. **ALTERATIONS.** DS may not make alterations or place or attach any fixtures, signs, or equipment in, about, or upon the property except those alterations, fixtures, signs and equipment approved by the ARBORETUM Director or designee. Any fixtures, signs, and equipment provided by DS shall remain the property of DS and shall be removed by DS from the property on or July 24, 2015. DS, if required by the ARBORETUM, shall, upon expiration of this License, restore said property to the same condition as that existing at the time of entering under this License, reasonable wear and tear, damages by the elements, or circumstances over which DS had no control excepted.
8. **PROPERTY DAMAGE.** DS shall be liable for property damage arising out of their use of the facilities and equipment of the Arboretum under the terms of this License.
9. **ARBORETUM FURNITURE OR APPARATUS.** ARBORETUM owned furniture or apparatus may not be removed or displaced by DS or any agent, employee, or invitee of DS without permission of the ARBORETUM. DS shall cause any furniture or apparatus displaced to be replaced to the satisfaction of the ARBORETUM immediately after any event or occasion for which the property is used by DS.
10. **STATE LAWS, LOCAL ORDINANCES, RULES AND REGULATIONS.** DS agrees to abide by all State and Federal laws, local ordinances, rules and regulations of the ARBORETUM and rules of the University. DS agrees that the property shall not be used for the commission of any act intended to further any program or movement, the purpose of which is to accomplish the overthrow of the Government of the United States or of California or any of their agencies by force or any other unlawful means.
11. **ARBORETUM OCCUPANCY.** It is understood and agreed that the ARBORETUM at all times is the primary occupant of its land, and its agents shall have the right to enter, occupy, and use the said property or any part thereof at any time for any purpose including but not limited to examination and supervision, or for the purpose of making repairs and alterations thereto as may be determined necessary by the ARBORETUM.
12. **HOLD HARMLESS.**
 - 12.1 **Indemnification.** DS agrees to indemnify, defend and hold harmless the ARBORETUM; Fullerton Arboretum Commission; Fullerton Redevelopment Agency; Friends of the Fullerton Arboretum; State of California; Trustees of the California State University; California State University, Fullerton and their respective officers, employees, volunteers and agents from and against any claim, action, judgment, loss, liability, cost or expense, including reasonable attorney fees and costs, arising out of or in any way connected with this Agreement, except for any liability arising out of the sole negligence of the ARBORETUM or its officers, employees, agents or volunteers.
 - 12.2 **Representation.** In the event ARBORETUM is named co-defendant, ARBORETUM shall notify DS of such fact and DS shall defend ARBORETUM in such legal action unless ARBORETUM undertakes to represent itself as co-defendant in such legal action, in which event DS shall pay to ARBORETUM its litigation costs, expenses and attorney's fees. If judgment is entered against ARBORETUM and DS because of the concurrent negligence of ARBORETUM and DS, their officers, agents or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.
13. **NON-ASSIGNMENT.** It is mutually understood and agreed that this License is not assignable by DS either in whole or in part.

14. INSURANCE.

14.1 During the Term, DS will maintain at its own expense general liability coverage (comprehensive or commercial form) (including a fire liability endorsement) at a minimum combined single limit of \$1,000,000 per occurrence, \$1,000,000 general aggregate, and workers' compensation as required by California law. Each insurance policy must be purchased from a carrier licensed to transact business in the State of California and who has an AM Best rating level of "A, VII" or higher. This insurance will be primary, and any insurance or self-insurance maintained by the ARBORETUM will be in excess and will not contribute to it.

14.2 The general liability policy must name "The ARBORETUM; Fullerton Arboretum Commission; State of California; the Trustees of the California State University; California State University, Fullerton; Fullerton Redevelopment Agency; Friends of the Fullerton Arboretum and their respective officers, employees, volunteers and agents as additional insureds." DS will provide the ARBORETUM within thirty (30) days of the execution of this Agreement certificates of insurance and endorsements evidencing the required coverages, limits and endorsements. The policy must specifically provide that it may not be cancelled or terminated, nor materially changed in any manner, without thirty (30) days prior written notice by the insurer to the ARBORETUM.

15. **LIMITED USE.** California State University, Fullerton, and the ARBORETUM are not partners of Destination Science. The ARBORETUM is merely providing a License for the limited use of its facilities by Destination Science. DS is licensee for use of the property. ARBORETUM is not responsible for the content nor the manner of services by DS to its customers.

16. **NON-ENDORSEMENT.** Neither ARBORETUM nor California State University, Fullerton, endorses DS or the summer camps. DS shall not claim or imply such endorsement in any statement, advertisement, or publication. DS shall not use then names California State University, Fullerton, CSUF or the ARBORETUM for any purpose other than to state the location of the camp or directions to the facility. DS shall provide to the Arboretum Director reasonable advance review of DS publications, including advertisements, which refer to either the ARBORETUM or California State University, Fullerton.

17. **ARBORETUM BENEFIT.** The ARBORETUM hereby finds that execution of this License under provisions stated herein will benefit the ARBORETUM and its purposes.

18. **TERMINATION BY ARBORETUM OR DS.** This License may be terminated by either party without cause on three (3) months written notice, by certified mail, to the other party. The ARBORETUM may terminate this License for the non-payment of any amount due or other material breach by DS, upon 3 days written notice and failure by DS to cure the breach.

19. **DISPOSITION OF ABANDONED PERSONAL PROPERTY.** If DS abandons or quits the licensed premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to DS and left on the premises fifteen (15) days after such event shall be deemed to have been transferred to ARBORETUM. ARBORETUM shall have the right to remove and to dispose of such property without liability therefore to DS or to any person claiming under DS, and shall have no need to account therefore.

20. **EXCLUSIVE PROPERTY.** It is understood and agreed that the Destination Science program is the exclusive property of Destination Science, and neither the ARBORETUM nor California State University, Fullerton, shall have any right to ownership of the Destination Science program or to use of its name, materials, programs, or customer lists. The ARBORETUM shall deal in good faith with DS and shall not use any information gained under this contract

to compete with DS or to interfere with any DS business opportunity. All materials and programs developed and used under this License are exclusively the property of DS.

21. **ENFORCEMENT.** If legal action is necessary to enforce this agreement, the prevailing party shall recover attorney fees and actual costs incurred. This License shall be subject to the laws of the State of California.

IN WITNESS WHEREOF, this nonexclusive License has been executed in quadruplicate by the parties hereto on the dates hereon as of the date hereof.

BY: _____
Kay Miller Date
Title: President,
Fullerton Arboretum Commission

BY: _____
Kathleen Heraghty Date
Title: President,
Destination Science

Arboretum Billing

JOC Contractor	\$105,738.00
Gordian (.0195%)	\$2,061.89
O&P (15%)	\$15,860.70
Credit for Fixtures	(\$52,957.57)
Constructor Total	\$70,703.02
Campus Total	\$113,566.87
Subtotal	\$184,269.89
WCC Project Mgmt./Const. Mgmt./Inspection	\$27,640.48
Grand Total	\$211,910.37

Detailed Items

Outside Service Total Cost

Fixtures and Poles	\$57,504.00
Trenching	\$32,630.00
Pole Base Engineering	\$7,904.00
Underground Survey	\$3,400.00
NuAge Labor Support	\$4,300.00
Gordian (.0195%)	\$2,061.89
O&P (15%)	\$15,860.70
Credit for Fixtures	(\$52,957.57)
Total OS Cost	\$70,703.02

Campus Costs

PR7003239	Trade	Labor	Material	Invoices	Total
WO7204922	EL	\$25,240.78	\$26,438.05	\$18,312.06	\$69,990.89
WO7204923	CR	\$17,467.22	\$1,988.92	\$4,933.58	\$24,389.72
WO7214066	EL	\$9,260.48	\$101.44	\$4,949.11	\$14,311.03
WO7214067	EL	\$3,171.60	\$526.31	\$319.70	\$4,017.61
WO7215319	EL	\$857.62	\$0.00	\$0.00	\$857.62
WCC PM, CM, Inspection	WCC	\$27,640.48	\$0.00	\$0.00	\$27,640.48
Total Campus Cost		\$83,638.18	\$29,054.72	\$28,514.45	\$141,207.35
Total Project Cost					\$211,910.37

**Fullerton Arboretum
2020 Fund Recap**

2020 Fund

		Fidelity Investment Activity						Wells Fargo	
	From	1/1/11	1/1/12	1/1/13	1/1/14	1/1/14	10/20/14	10/20/14	11/30/14
	To	12/31/11	12/31/12	12/31/13	10/17/15	10/17/15			
Beginning Balance		859,675	826,550	960,542	1,154,283	1,154,283		1,136,106	
Contributions		-	30,000	-	-	-		-	
Earnings		(33,125)	103,992	193,742	(18,177)	(18,177)		27,326	
Ending Balance		826,550	960,542	1,154,283	1,136,106	1,136,106		1,163,432	
Percent Return		-3.9%	12.6%	20.2%	-1.6%	-1.6%		2.4%	