

RESOLUTION NO. 15-20

A Resolution of the Scientific and Cultural Facilities District
Pertaining to Adopting an Amended and Restated
Public Records Policy Pertaining to the Inspection, Retention and
Disposal of Public Records

WHEREAS, the Colorado Open Records Act (“Open Records Act”), as set forth in Section 24-72-200.1, *et seq.*, C.R.S., as amended, requires all public records of political subdivisions of the State to be open for inspection by any person at reasonable times except as otherwise provided in the Open Records Act; and

WHEREAS, on February 26, 2009, via Resolution No. 09-03, the Board of Directors (the “Board”) for the Scientific and Cultural Facilities District (the “District”) adopted a Policy and Schedule for Inspection, Retention and Disposal of Public Records in compliance with the Open Records Act (the “2009 Public Records Policy”); and

WHEREAS, the passage of Colorado House Bill 13-1041 amended the Open Records Act regarding certain procedures for transmitting public records, upon request, via United States Mail, other delivery service, facsimile, or electronic mail, as set forth in Section 24-72-205(1)(b), C.R.S.; and

WHEREAS, the passage of Colorado House Bill 14-1193 further amended the Open Records Act and permits the custodian of public records to impose a fee for the research and retrieval of public records if the custodian has, prior to the date of receiving the request, either posted on the custodian’s web site or otherwise published a written policy that specifies the applicable conditions concerning the research and retrieval of public records by the custodian, including the amount of any current fee; provided that no fee shall be charged for the first hour of time expended in connection with the research and retrieval of a public record and, after the first hour has been expended, the fee shall not exceed thirty dollars (\$30.00) per hour, or such other amount as may be adjusted by the State Director of Research of the Legislative Council, as set forth in Section 24-72-205(6), C.R.S.; and

WHEREAS, the Colorado State Archives (the “State Archives”) has created a “Special District Records Management Manual,” attached hereto and incorporated herein as Exhibit A, which sets forth a timeline for special districts to retain and dispose of their public records; and

WHEREAS, the State Archives requires special districts to obtain approval from the State Archives to follow the Special District Records Retention Schedule; and

WHEREAS, the District desires to amend and restate its public records policy as set forth in the 2009 Public Records Policy to incorporate the new requirements for the transmission of public records and for imposing a fee for the research and retrieval of public records, to adopt and obtain approval from the Colorado State Archives to follow the Special District Records Management Manual, and to set forth policies and procedures for the inspection, retention and disposal of the District’s public records.

NOW THEREFORE, THE BOARD OF DIRECTORS OF THE SCIENTIFIC AND CULTURAL FACILITIES DISTRICT HEREBY ADOPTS THE FOLLOWING AMENDED AND RESTATED PUBLIC RECORDS POLICY (“Public Records Policy”):

1. Definition of Public Records. The term "public records," as used herein, shall have the same meaning given to such term in the Open Records Act.

2. Official Custodian. The District hereby appoints the Executive Director of the District as the official custodian of the District's public records. The official custodian shall be responsible for the maintenance, care, and keeping of public records as provided in the Open Records Act. All references herein to "custodian" shall mean the "official custodian" appointed herein.

3. Inspection of Public Records. All public records of the District, which are retained but not yet disposed of pursuant to the Special District Records Management Manual, shall be available for public inspection by any person at reasonable times as provided in the Open Records Act. All requests for public records shall be made in writing and submitted to the custodian of the District, and such requests shall comply with the requirements of the Open Records Act. The District and the custodian will comply with the requirements of the Open Records Act and any other federal or state laws with respect to whether it must, may, or cannot produce public records, or other documents or information requested, and the fees it charges for producing such public records, or other documents or information.

4. Fees for Copies of Public Records. The custodian shall furnish copies, printouts or photographs of public records requested for a fee as follows:

a. Where the fee for a certified copy or other copy, printout, or photograph of a public record is specifically prescribed by law, the specific fee shall be charged. If a fee is not specifically prescribed by law, the custodian will furnish copies, printouts, or photographs of a public record for a fee of \$0.25 per standard page. The custodian shall charge a fee not to exceed the actual cost of providing a copy, photograph, or printout in a form other than a standard page. The custodian shall charge the actual costs that the custodian incurs in having the copies made off-site by an outside copying facility.

b. If, in response to a specific request, the custodian performs a manipulation of data so as to generate a record in a form not used by the District, an administrative fee of \$30.00 per hour shall be charged the person or entity making the request. An individual or entity making a subsequent request for the same or similar records shall be charged the same fee.

c. If the amount of time required by the custodian to research and retrieve the documents necessary to fulfill a specific request exceeds one hour, including the time required to identify and segregate records that must or may not be produced, the person or entity making the request shall be charged a research and retrieval fee of \$30.00 per hour. Such fee shall be automatically adjusted, without further approval by the District, to such amount established by the State Director of Research of the Legislative Council from time to time. The District will not impose a charge for the first hour of time expended in connection with the research and retrieval of public records. This imposition of this fee shall be effective upon the publishing of this Public Records Policy in accordance with the Open Records Act.

d. In the event a public record must be scanned and saved electronically prior to transmitting the public record via electronic mail to the requestor as provided in Paragraph 5 hereof, the requestor shall be charged fifteen cents (\$0.15) per scanned page unless otherwise waived by the custodian.

5. Transmission of Copies of Public Records. Upon request for transmission of a copy of a public record, the custodian will transmit the public record by United States mail, other delivery service, facsimile, or electronic mail. If transmitting the public record pursuant to this paragraph, the custodian will

notify the record requester that a copy of the public record is available, but will be sent only when the custodian receives payment or makes satisfactory arrangements for payment of all costs associated with transmitting the public record and for all other fees lawfully allowed; provided, however, that no transmission fees will be charged for transmitting the public record via electronic mail. Upon receiving such payment or making arrangements to receive such payment at a later date, the custodian shall send the public record to the requestor as soon as practicable not no more than three business days after receipt of, or making arrangements to receive, such payment.

6. Electronic Records and Signatures. Pursuant to Section 32-1-1001(1)(o), C.R.S., the Board hereby authorizes the use of electronic records and electronic signatures relating to a transaction. The use of electronic records and electronic signatures in a transaction shall be governed by the Uniform Electronic Transaction Act ("UETA"), as set forth in Section 24-71.3-101 *et seq.*, C.R.S., as amended.

a. The term "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means. The term "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. The term "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, charitable or governmental affairs, except as otherwise provided by the UETA.

b. The use of electronic records and signatures is authorized in transactions between and among the District, its directors, officers, agents, employees, and assigns, and third parties (collectively, the "Parties") that have agreed to conduct transactions by electronic means. Whether the Parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the Parties' conduct.

c. An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

d. If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

7. Electronic Mail Policy. Pursuant to §24-72-204.5, C.R.S., the Board hereby adopts the following electronic mail policy ("E-mail Policy") to establish guidelines for the inspection of and the responsible and efficient use of electronic mail ("E-mail") and to clearly set forth the rights and responsibilities of the District's current and/or future employees regarding their use of E-mail.

a. E-Mail Defined. *E-Mail* means an electronic message transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. *E-mail* includes electronic messages that are transmitted through a local, regional, or global computer network.

b. Scope of Policy. All E-mail communications and associated attachments transmitted or received over the District's network are subject to the provisions of this policy. Additionally, since

Colorado law provides that E-mail communications written in the conduct of public business are generally considered to be public records, all E-mail communications written and sent in the conduct of public business by employees of the District is subject to applicable provisions of this E-mail Policy, regardless of whether the communication was sent or received on a public or privately owned personal computer.

c. Application of Public Records Statute to E-Mail. The Open Records Act treats electronic documents and files, including E-mails, in the same manner as paper documents. All such documents are generally considered to be public records and are subject to public inspection unless such documents are covered by a specific statutory exception. E-mail messages which are public records must be retained in either paper or electronic format in accordance with the Special District Records Management Manual adopted by the District, as set forth in Paragraph 8 hereof. E-mail messages which are not public records should be deleted after viewing.

d. Monitoring of E-Mail Communications by the District. The District does not intend to monitor E-mail usage by its employees, if any, in a regular or systematic fashion; however, it does reserve the right to monitor such usage from time to time and without prior notice. Such monitoring may include tracking addresses of E-mails sent and received, accessing in-box messages, accessing messages in folders, and accessing archived messages. Furthermore, the District may disclose E-mail communications sent to, received by, or relating to an employee to law enforcement officials without giving prior notice to the employee.

8. Retention and Disposal of Public Records.

a. Public Records Retention and Disposal Schedule. Subject to approval by the Colorado State Archives, the District hereby adopts the "Special District Records Management Manual" attached hereto and incorporated herein as Exhibit A, which schedule may be amended from time to time by the Colorado State Archives, for purposes of identifying all public records to be retained by the District for a specified time period as provided therein. The District hereby designates General Counsel as its authorized representative to submit the approval request form to the Colorado State Archives requesting approval from the Colorado State Archives for the District to follow Special District Records Retention Manual.

b. Destruction of Public Records. Public records of the District shall be destroyed in accordance with the Special District Records Management Manual by shredding, recycling, or disposing of such public records in a landfill; provided, however, that those public records of the District deemed to be confidential in nature shall be destroyed by shredding or destroyed professionally by a company that can certify to the security of the destruction. Furthermore, no public records of the District shall be destroyed pursuant to the Special District Records Management Manual so long as such public records pertain to any pending legal case, claim, action or audit involving the District or if the District's legal counsel determines such documents should be retained for other purposes.

9. Conflicts. In the event a conflict arises between a provision set forth in this Public Records Policy and the Open Records Act, or this Public Records Policy and any other federal or state law including the UETA, the federal or state law provision shall control and this Public Record Policy shall be deemed amended to comply with all federal or state law provisions without further action by the Board.

10. Superseding Public Records Policy. This Amended and Restated Public Records Policy Resolution shall supersede and replace all prior resolutions or motions previously adopted by the District's

Board, including the 2009 Public Records Policy, which prior resolutions or motions are hereby rescinded and null and void for all purposes.

11. Amendments to Public Records Policy. The Board may further amend this Public Records Policy from time to time as the Board deems necessary.

12. Effective Date. This Resolution shall take effect on the date and at the time of its adoption.

Introduced and approved at a regular meeting of the Board of Directors of the Scientific and Cultural Facilities District, the 23rd day of July, 2015.

Dan Hopkins
Chairman

ATTEST:

Sybil Jeffers
Secretary

EXHIBIT A
Special District Records Management Schedule

