



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: July 7, 2016

Staff Contact: Vern L. Krahn, Senior Park Planner - VKrahn@carson.org

Agenda Title: For Possible Action: To approve a use agreement between Carson City and the Carson City Railroad Association and to authorize Mayor Robert L. Crowell to sign the agreement on behalf of Carson City.

Staff Summary: Attached is a proposed use agreement between Carson City and the Carson City Railroad Association to use the premises known as the station, engine house, storage shed, water tower, and adjoining said premises, and accommodate approximately four thousand three hundred (4,300) linear feet of train track for the operation of a miniature riding train. These facilities are located in the eastern half of Mills Park, APN No. 002-181-01. This new use agreement will replace an expired use agreement with the Carson City Railroad Association.

Agenda Action: Formal Action/Motion

Time Requested: 10 Minutes

Proposed Motion

I move to approve a use agreement between Carson City and the Carson City Railroad Association and to authorize Mayor Robert L. Crowell to sign the agreement on behalf of Carson City.

Board's Strategic Goal

Quality of Life

Previous Action

N/A

Background/Issues & Analysis

The City's use agreement with the Carson City Railroad Association has expired. The Carson City Railroad Association wishes to continue to provide the miniature riding train in Mills Park for the public to use and enjoy. This new use agreement is consistent with other recent City use agreements with non-profit corporations using City facilities. The association is planning to run the miniature riding train regularly over the summer and throughout the fall. Approval of the proposed use agreement will allow the Carson City Railroad Association to continue management of the railroad facilities in Mills Park and provide the organization with opportunity to operate this unique recreation facility for the enjoyment of the community.

Applicable Statute, Code, Policy, Rule or Regulation

CCMC 2.16 Parks and Recreation Commission

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number: N/A

Is it currently budgeted? Yes No

Explanation of Fiscal Impact: N/A

Alternatives

- 1) Request City staff to alter the proposed use agreement
- 2) Reject the proposed use agreement

USE AGREEMENT
BETWEEN CARSON CITY, NEVADA
AND CARSON CITY RAILROAD ASSOCIATION

THIS AGREEMENT is made and entered into this _____ day of _____, 2016, between CARSON CITY, a consolidated municipality, political subdivision of the State of Nevada (“CITY”), and the CARSON CITY RAILROAD ASSOCIATION, a Nevada non-profit corporation (“CCRA”).

WHEREAS, the CITY owns and operates Mills Park, located in Carson City, Nevada, as shown in Exhibit A, attached hereto and incorporated by reference.

CCRA wishes to operate a miniature riding train in Mills Park; and

WHEREAS, it is in the best interest of the City and its residents for the City to enter into this Agreement; and

WHEREAS, this Agreement serves a public purpose and aligns with CITY’S strategic goals in quality of life and community in that it promotes educational, cultural, and recreational opportunities that contribute to health and well-being.

NOW THEREFORE, the CITY and CCRA mutually agree as follows:

1. Description of Premises.

a. The CITY shall permit CCRA to use the premises known as the station, engine house, snow shed, storage shed, and water tower, located in Mills Park. Surrounding and adjoining said premises (“premises”).

b. The CITY also shall permit CCRA to use an area within Mills Park that will accommodate approximately four thousand three hundred (4,300) linear feet of train track for the operation of a miniature riding train. The approximate location of said train track is shown on Exhibit A of this Agreement.

2. Term and Rent. This agreement supersedes and replaces any Use Agreements between the CITY and CCRA in prior years.

a. This Agreement shall automatically be renewed for a period of one (1) year on each anniversary date, unless terminated by either party with notice as set out in Section 17 of this Agreement, ninety (90) days prior to the expiration date. As used here the words “expiration date” shall refer to the last day of the Agreement or the last day of any extended one (1) year period under the terms of the Agreement.

b. The annual rental fee shall be 10% of the gross income of ticket sales from operation of the miniature riding train, payable on or before January 15th of each year.

3. Concessions.

a. CCRA shall be granted a concession to operate, manage, and repair a miniature riding train and train track in Mills Parks and a food and drink concession in the station.

b. CCRA shall keep said miniature riding train in good working order and shall repair any damage to the assigned premises or other areas of Mills Park that is caused by the operation, maintenance, or removal of said train.

c. CCRA shall operate said train concession between Memorial Day and Labor Day on Saturdays and Sundays, between 12:00 P.M. and 5:00 P.M. minimum, weather permitting. The train may be operated between 8:00 A.M. and 12:00 P.M. for maintenance and repair purposes only. CCRA may make reasonable adjustments of the actual hours and months of operation with notice to the CITY as provided in Section 17.

d. In consideration for said concessions, CCRA agrees:

1) To pay the CITY a fee equal to the sum as described in Section 2(b) above. For purposes of this Agreement, gross total income shall include all income earned from the operation of said ridership ticket sale revenues without deduction for taxes, overhead, rental or any other expenses involved in said operation. Said payment shall be accompanied by a

statement of revenues for that year.

2) To furnish all equipment, materials and labor, and obtain all permits and licenses required to operate said miniature riding train and food and drink concessions, and to keep said miniature riding train and station in good and safe working order at all times.

3) To provide daily trash policing and janitorial services of the premises, excluding the Marv Teixeira Pavilion. The CITY will provide trash receptacles at no expense to CCRA. The CITY will dispose of the trash placed in the receptacles.

4. **Conduct of CCRA.** CCRA shall not conduct any activity that is unlawful or hazardous. CCRA further agrees that all practices and activities conducted on the assigned premises shall be subject to the approval of the Carson City Parks & Recreation Director (“Director”) or his/her designee.

5. **Utilities.** The CITY agrees to furnish water, sewer, gas and electrical services to the assigned premises. CCRA shall be responsible for obtaining all other utility services and for payment of same.

6. **Repairs, Alterations, Modifications and Maintenance.**

a. CITY, at its own expense, shall maintain the assigned premises in good repair and shall further be responsible for reasonable maintenance of the premises.

b. CCRA may, at its expense, alter or modify the premises to suit its needs, provided that written consent of the Director is first obtained.

c. All current additions, alterations, and improvements, that constitute fixtures, on or in the assigned premises, or installed during the term of the Agreement, shall become part of the assigned premises and the sole property of the CITY.

7. **Insurance.**

a. CCRA shall obtain proof of general liability insurance coverage in the amount of TWO MILLION DOLLARS (\$2,000,000) - General Aggregate; ONE MILLION DOLLARS

(\$1,000,000)-Products and Completed Operations Aggregate; ONE MILLION DOLLARS (\$1,000,000)-Each occurrence; and this proof of insurance shall name CITY as additional insured on the policy. CCRA shall furnish the CITY with a certificate evidencing proof of such insurance annually at the beginning of each policy year. Said certificate shall provide that the insurance will not be cancelled or changed until at least ten (10) days after written notice of such cancellation or change has been mailed to the CITY by certified mail and received by the CITY. Each certificate shall list Carson City c/o Carson City Purchasing and Contracts, 201 North Carson Street, Suite 3, Carson City, Nevada 89701 as a certificate holder. By Endorsement to the general liability insurance policy evidence by CCRA, the City, its officers, employees and immune contractors shall be named as additionally insured for all liability arising from this agreement.

8. **Indemnity.** CCRA shall indemnify the CITY against all expenses, liabilities, and claims of every kind, including reasonable attorney fees arising out of either a failure by CCRA to perform any of the terms or conditions of this Agreement, or any injury or damage happening on or about the demised premises, or the failure to comply with any law of any governmental authority, or any mechanics lien or security interest filed against the demised premises or equipment, materials, or alteration of the premises or improvements thereon.

9. **Default or Breach.** Each of the following events shall constitute a default or breach of the Agreement by CCRA:

a. CCRA fails to pay the CITY rent or fees when the rent or fees shall become due and does not make the payment within thirty (30) days after notice thereof by the CITY to CCRA.

b. CCRA fails to perform or comply with any of the conditions of this Agreement and such nonperformance continues for a period of ten (10) days after notice thereof by the CITY to CCRA.

c. CCRA vacates or abandons the assigned premises.

10. **Effect of Breach or Default.** In the event of any uncorrected breach or default hereunder, the CITY shall have the right to immediately cancel and terminate the Agreement, as well as all of the right, title, and interest of the CCRA hereunder, by giving CCRA notice of the cancellation and termination as provided in Section 17.

11. **Termination by CITY.** The CITY shall have the right to terminate the Agreement, as well as all of the right, title and interest of the CCRA hereunder, by giving CCRA not less than ninety (90) days notice of termination. With the exception of termination under Section 2(a) and Section 10 above, CITY agrees that any termination date shall only fall between the dates of November 1 and March 30 in order to protect the train ride operation. In the event of termination under this Section, the CITY shall pay CCRA the sum equal to the amount described in Section 2(b), based on the two (2) previous years' average, for each year or fraction thereof remaining in the term of this Agreement, and the CITY shall have the option to purchase as described in Section 12 below.

12. Right To Purchase.

a. If this Agreement is terminated, the CITY shall have the right of first refusal to purchase, at their fair market value, any or all of the facilities, equipment, appurtenances and materials constructed by CCRA that do not constitute fixtures, including the model railroad display. Said value shall not include any value attributed to CCRA's contractual rights hereunder. Said value shall be determined by agreement of the parties, or, if the parties are unable to agree on such figure, as follows:

1) Each party shall appoint a competent appraiser to determine the fair market value of said facilities, equipment and appurtenances and the two appraisers shall then appoint a third appraiser. The appraised fair market value of the subject property shall then be the average of the three appraisals. If the CITY elects to purchase said property, it shall have

sixty (60) days after agreement as to fair market value or determination of such value by appraisal in which to pay CCRA said amount. Upon such payment, said property shall be conveyed to the CITY free and clear of all liens and encumbrances whatsoever.

b. Said right of first refusal and the procedure for determining fair market value shall also apply to any facilities, equipment, appurtenances or materials that do not constitute fixtures that CCRA decides to sell during the term of this Agreement.

c. The CITY shall have thirty (30) days to exercise said right of first refusal after (1) CCRA gives written notice of an offer to purchase; or (2) either party gives written notice of its intention to terminate this Agreement.

d. If this Agreement is terminated and the CITY declines to exercise said right of first refusal, all facilities, equipment, appurtenances and materials installed by CCRA that do not constitute fixtures shall be removed from the leased premises at CCRAS's expense within sixty (60) days after the date of termination.

e. Said right of first refusal does not extend to CCRA's railroad artifacts or other personal memorabilia, or property.

13. **Vacation of Premises.** Upon expiration or termination of this Agreement, CCRA shall restore the assigned premises to the condition as first received from the CITY, less normal wear and tear.

14. **Access to Premises.** CCRA shall permit the CITY or its agents to enter the assigned premises at all reasonable hours to inspect the premises, and to audit the records of CCRA for purposes of verifying its ticket sale revenues.

15. **Ingress and Egress.** CCRA shall have the right of ingress and egress to the assigned premises as determined by the Director. Automobile parking shall also be as determined by the Director.

16. **Assignment or Sublease.** CCRA shall not assign or sublet the assigned premises in

whole or in part, or permit the premises to be used or occupied by any other person or entity, without the prior written consent of the CITY in each instance.

17. **Notice.** All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by regular mail, by e-mail or telephonic facsimile with simultaneous regular mail, or by certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified below.

18. **Notice shall be addressed to:**

Notice to **CCRA:**

Carson City Railroad Association
P.O. Box 2245
Carson City, NV 89702
Attention: President

Notice to **CITY:**

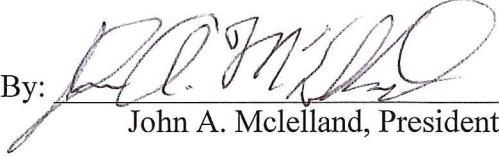
Carson City Purchasing and Contracts
Laura Tadman, Purchasing and Contracts Manager
201 North Carson Street, Suite 3
Carson City, NV 89701
775-283-7137 / FAX 775-887-2107
ltadman@carson.org

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first written above.

CARSON CITY,
a consolidated municipality, subdivision of
the State of Nevada

**CARSON CITY RAILROAD
ASSOCIATION,**
a Nevada non-profit corporation

By: _____
Robert L. Crowell, Mayor

By: 
John A. McLelland, President

ATTEST:

Sue Merriwether, Clerk & Recorder

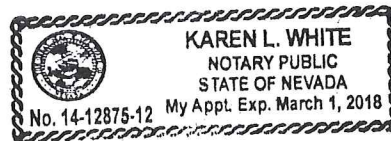
STATE OF NEVADA

COUNTY OF Carson City

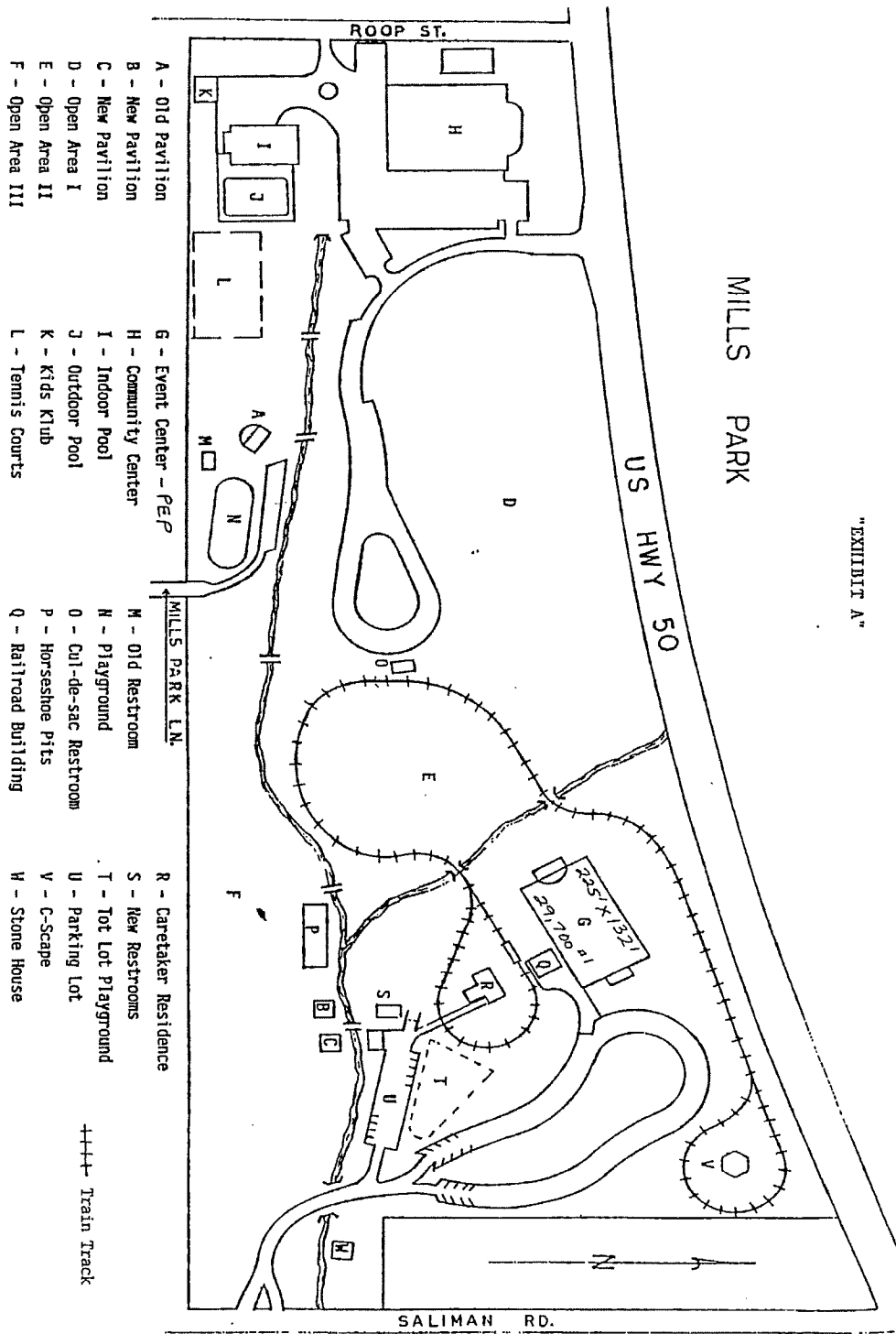
This instrument was acknowledged before me on this 23 day of June,
2016 by John A McLelland.



NOTARY PUBLIC



"EXHIBIT A"



"EXHIBIT A"

- A - Old Pavilion
- B - New Pavilion
- C - New Pavilion
- D - Open Area I
- E - Open Area II
- F - Open Area III

- G - Event Center - PeP
- H - Community Center
- I - Indoor Pool
- J - Outdoor Pool
- K - Kids Klub
- L - Tennis Courts

- M - Old Restroom
- N - Playground
- O - Cul-de-sac Restroom
- P - Horseshoe Pits
- Q - Railroad Building

- R - Caretaker Residence
- S - New Restrooms
- T - Tot Lot Playground
- U - Parking Lot
- V - C-Scape
- W - Stone House

+++++ Train Track