



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: June 2, 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.

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, and water tower, and a (10) foot wide nonexclusive easement surrounding and adjoining said premises. 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.

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

1 USE AGREEMENT FOR THE CARSON CITY RAILROAD ASSOCIATION

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3 THIS AGREEMENT is made and entered into this ____ day of
4 _____, 2016, by and between CARSON CITY, a consolidated municipality,
5 hereinafter referred to as “CITY”, and the CARSON CITY RAILROAD ASSOCIATION, a
6 Nevada non-profit corporation, hereinafter referred to as “CCRA”.

7

W I T N E S S E T H:

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9 This agreement supersedes and replaces any Use Agreements that were made by CITY and
10 CCRA in prior years.

11 In consideration of the mutual promises and covenants, hereinafter stated, CITY and
12 CCRA agree as follows:

13 1. Description of Premises.

14 a. CITY shall permit CCRA to use the premises known as the station, engine
15 house, snow shed, storage shed, and water tower, located in Mills Park in Carson City, a ten
16 (10) foot wide nonexclusive easement surrounding and adjoining said premises.

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

21 2. Term and Rent. The Agreement shall automatically be renewed for a period of
22 one (1) year on each anniversary date, unless either party serves by certified mail on the other

1 party a written notice of termination, thirty (30) days prior to the expiration date. As used
2 herein the words "expiration date" shall refer to the last day of the Agreement or the last day
3 of any extended one (1) year period under the terms of the Agreement. The annual rental fee
4 shall be 10% of the gross income of ticket sales from operation of the miniature riding train,
5 payable on or before January 15th of each year.

6 3. Concessions.

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

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

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

18 d. In consideration for said concessions, CCRA agrees:

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

1 statement of expenses and expenditures for that year.

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

5 3) To provide daily trash policing and janitorial services of the area as
6 described in Section 1a, excluding the Marv Teixeira Pavilion. CITY will provide trash
7 receptacles at no expense to CCRA. CITY will dispose of the trash placed in the receptacles.

8 4. Conduct of CCRA. CCRA shall not conduct any activity that is unlawful or
9 hazardous. CCRA further agrees that all practices and activities conducted on the assigned
10 premises shall be subject to the approval of the Carson City Parks & Recreation Director.

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

14 6. Repairs, Alterations, Modifications and Maintenance.

15 a. CCRA, at its own expense, shall maintain the assigned premises in good
16 repair and shall further be responsible for normal maintenance of the premises. CCRA may,
17 at its expense, alter or modify the premises to suit its needs, provided that written consent of
18 the Carson City Parks & Recreation Director is first obtained.

19 b. All additions, alterations, and improvements, that constitute fixtures, on or
20 in the assigned premises at the commencement of this Agreement, or installed during the
21 term of the Agreement, shall become part of the assigned premises and the sole property of
22 CITY.

1 7. Insurance. CCRA shall obtain proof of general liability insurance coverage in the
2 amount of ONE MILLION DOLLARS (\$1,000,000) - General Aggregate; ONE MILLION
3 DOLLARS (\$1,000,000)-Products and Completed Operations Aggregate; ONE MILLION
4 DOLLARS (\$1,000,000)-Each occurrence; and this proof of insurance shall name Carson
5 City as additional insured on the policy. CCRA shall furnish CITY with a certificate
6 evidencing proof of such insurance annually at the beginning of each policy year. Said
7 certificate shall provide that the insurance will not be cancelled or changed until at least ten
8 (10) days after written notice of such cancellation or change has been mailed to CITY by
9 certified mail and received by CITY. Each certificate shall list Carson City c/o Carson City
10 Purchasing and Contracts, 201 North Carson Street, Suite 3, Carson City, Nevada 89701 as a
11 certificate holder. By Endorsement to the general liability insurance policy evidence by
12 Contractor, the City and County of Carson City, Nevada, its officers, employees and immune
13 Contractors shall be named as additionally insured's for all liability arising from this
14 agreement. CCRA shall provide workers' compensation insurance as required by Nevada
15 Revised Statutes Chapters 616A through 616D inclusive and Employer's Liability insurance
16 with a minimum limit not less than ONE MILLION DOLLARS (\$1,000,000)- each accident
17 for bodily injury by accident or ONE MILLION DOLLARS (\$1,000,000)- each employee
18 for bodily injury by disease.

19 8. Indemnity. CCRA shall indemnify CITY against all expenses, liabilities, and
20 claims of every kind, including reasonable attorney fees arising out of either a failure by
21 CCRA to perform any of the terms or conditions of this Agreement, or any injury or damage
22 happening on or about the demised premises, or the failure to comply with any law of any

1 governmental authority, or any mechanics lien or security interest filed against the demised
2 premises or equipment, materials, or alteration of the premises or improvements thereon.

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

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

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

11 c. CCRA vacates or abandons the assigned premises.

12 10. Effect of Breach or Default. In the event of any uncorrected breach or default
13 hereunder, CITY shall have the right to cancel and terminate the Agreement, as well as all of
14 the right, title, and interest of the CCRA hereunder, by giving CCRA not less than thirty (30)
15 days notice of the cancellation and termination.

16 11. Termination by CITY. CITY shall have the right to terminate the Agreement, as
17 well as all of the right, title and interest of the CCRA hereunder, by giving CCRA not less
18 than ONE HUNDRED EIGHTY (180) days notice of termination. CITY agrees that the
19 termination date shall not fall between the dates of March 31 and October 31 in order to
20 protect the train ride operation. In the event of termination under this paragraph, CITY shall
21 pay CCRA the sum equal to the amount described in Section 2, based on the two (2) previous
22 years' average, for each year or fraction thereof remaining in the term of this Agreement, and

1 CITY shall have the option to purchase as described in Section 12 below.

2 12. Right To Purchase.

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

9 1) Each party shall appoint a competent appraiser to determine the fair
10 market value of said facilities, equipment and appurtenances and the two appraisers shall
11 then appoint a third appraiser. The appraised fair market value of the subject property shall
12 then be the average of the three appraisals. If the CITY elects to purchase said property, it
13 shall have sixty (60) days after agreement as to fair market value or determination of such
14 value by appraisal in which to pay CCRA said amount. Upon such payment, said property
15 shall be conveyed to the CITY free and clear of all liens and encumbrances whatsoever.

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

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

22 d. If this Agreement is terminated and CITY declines to exercise said right of

1 first refusal, all facilities, equipment, appurtenances and materials installed by CCRA that do
2 not constitute fixtures shall be removed from the leased premises at CCRAS's expense
3 within sixty (60) days after the date of termination.

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

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

9 14. Access to Premises. CCRA shall permit CITY or its agents to enter the assigned
10 premises at all reasonable hours to inspect the premises, and to audit the records of CCRA for
11 purposes of verifying the concession fees.

12 15. Ingress and Egress. CCRA shall have the right of ingress and egress to the
13 assigned premises as determined by the Carson City Parks & Recreation Director.
14 Automobile parking shall also be as determined by the Parks & Recreation Director.

15 16. Assignment or Sublease. CCRA shall not assign or sublet the assigned premises
16 in whole or in part, or permit the premises to be used or occupied by other, without the prior
17 consent in writing of CITY in each instance.

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

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CARSON CITY, a consolidated municipality

CARSON CITY RAILROAD ASSOCIATION, a Nevada non-profit corporation

By: _____
Robert L. Crowell, Mayor

By: _____

PRINT NAME & TITLE

ATTEST:

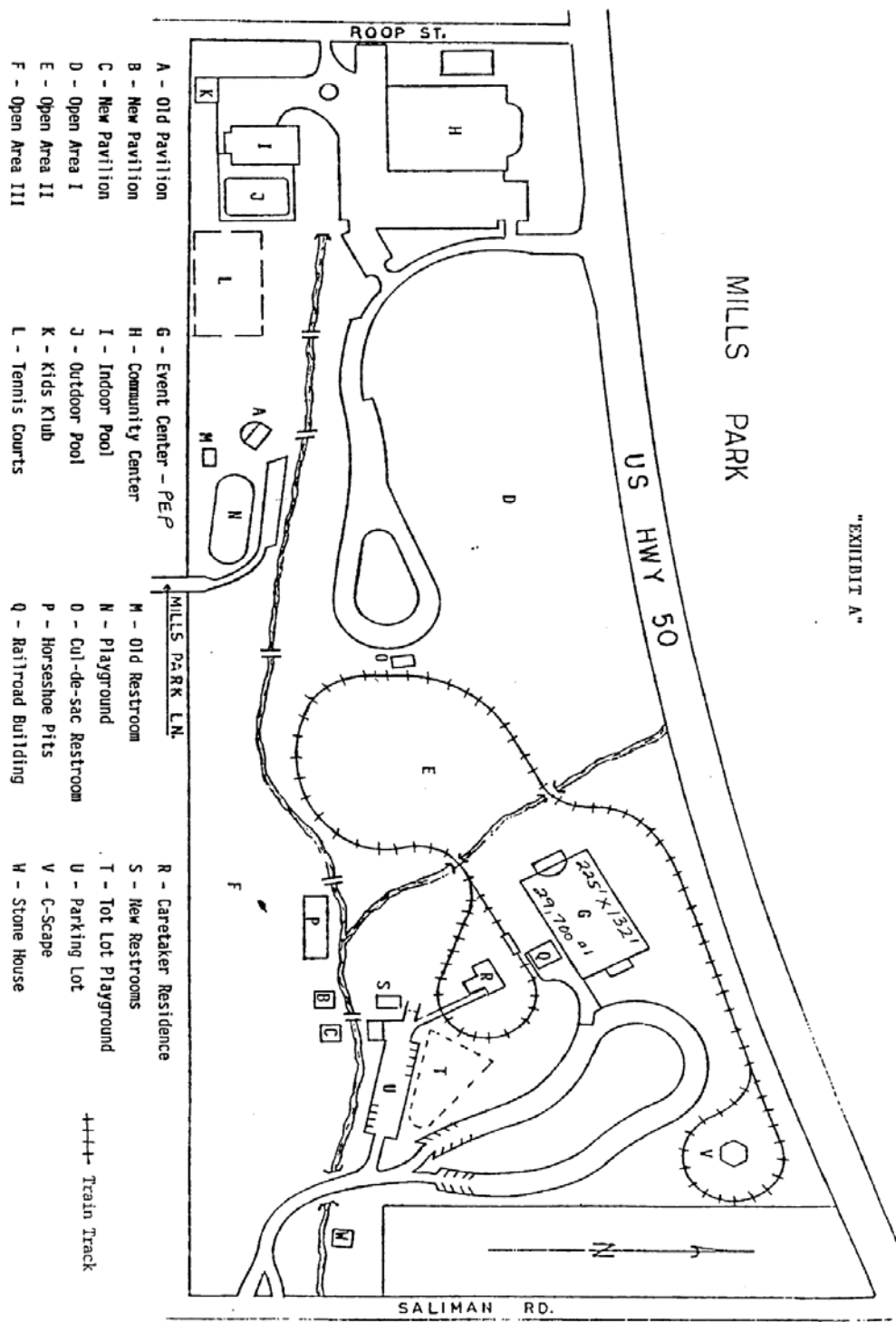
Sue Merriwether, Clerk & Recorder

STATE OF NEVADA
COUNTY OF _____

This instrument was acknowledged before me on this _____ day of _____, 2016 by _____.

NOTARY PUBLIC

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"EXHIBIT A"

"EXHIBIT A"