

# CITY COUNCIL REPORT



Meeting Date: July 5, 2016  
General Plan Element: *Public Services & Facilities*  
General Plan Goal: *Provide services to improve neighborhoods and the lives of Scottsdale residents*

## ACTION

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**Scottsdale Live Steamers License Agreement** Adopt Resolution No. 10511 approving Contract No. 2016-101-COS, a revocable license agreement with Scottsdale Live Steamers, an Arizona non-profit corporation, to use space at McCormick-Stillman Railroad Park to operate a 1:8 scale model train layout that provides rides to the public.

## BACKGROUND

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Scottsdale Live Steamers is an Arizona non-profit corporation, which has provided a 1:8 scale railroad operation at the McCormick-Stillman Railroad Park arboretum since 2001 and has been in continuous operation since that date. During that time Scottsdale Live Steamers has operated a train ride for the general public and maintained, repaired and expanded the 7.5" gauge live steam track throughout the park arboretum. Scottsdale Live Steamers provides volunteers to run the trains on weekends and during special events for park guests.

Scottsdale Live Steamers train layout is also utilized by the park staff to provide a ride for the public at the cost of two dollars (\$2.00) per ticket per rider for ages three and over and this provides an additional revenue stream to park operations. With the assistance of funding and labor from the club, the track/layout is maintained and expanded to provide an enjoyable and unique riding experience for park guests.

Previously, Scottsdale Live Steamers used the space pursuant to a one-year license agreement. These one-year license agreements have been renewed annually with terms and conditions similar to this new agreement. This Revocable License Agreement allows Scottsdale Live Steamers to continue using the space in the park to operate the layout for a three-year term with up to two successive one-year renewals. The operation of the model train layout provides a service to the public which is of value to the park and the city. No fee will be charged for Scottsdale Live Steamers' use of the space.

## **ANALYSIS & ASSESSMENT**

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### **Recent Staff Action**

Parks and Recreation staff has built a strong relationship with Scottsdale Live Steamers and believes that the continued agreement benefits the City of Scottsdale, Scottsdale Live Steamers, the park and the public. Scottsdale Live Steamers has been housed at McCormick-Stillman Railroad Park since its inception in 2001 and hopes to continue the strong relationship with the park and the public for the years to come. Contract No. 2016-101-COS would authorize Scottsdale Live Steamers to use space in the Model Railroad Building as well as continue to maintain, upgrade and utilize the layout currently constructed at the park arboretum.

### **Policy Implications**

Contract No. 2016-101-COS allows Scottsdale Live Steamers to continue to operate its model train layout and provide rides for the public at the park arboretum. This provides a highly utilized service to the public and is an asset to the park.

### **Community Involvement**

The continued agreement between the City and Scottsdale Live Steamers will be advantageous to the city and the public due to the historical and ongoing support and enhancement of the park, most specifically the arboretum.

## **RESOURCE IMPACTS**

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### **Available funding**

N/A

### **Staffing, Workload Impact**

City staff will work with Scottsdale Live Steamers and communicate regularly to ensure the terms of the license agreement are being met by each party. City staff also will meet with Scottsdale Live Steamers at least once every six months while the agreement is in effect to discuss matters of mutual concern and interest relating to the services being provided at the park.

### **Maintenance Requirements**

Scottsdale Live Steamers will maintain its layout and provide janitorial and trash disposal services to the use area. As with the rest of the park, the city will maintain and provide utilities.

### **Future Budget Implications**

N/A

### **Cost Recovery Options**

N/A

## OPTIONS & STAFF RECOMMENDATION

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### Recommended Approach

Adopt Resolution No. 10511 to approve Contract No. 2016-101-COS, a revocable license agreement with Scottsdale Live Steamers, an Arizona non-profit corporation, to use space at McCormick-Stillman Railroad Park to operate a 1:8 scale model train layout that provides rides to the public.

### Description of Option B

Do not approve Resolution 10511 approving Contract No. 2016-101-COS, a revocable license agreement with Scottsdale Live Steamers, and Arizona non-profit corporation, to use space at McCormick-Stillman Railroad Park to operate a 1:8 scale model train layout. This option would result in the elimination of the utilization of space at the arboretum and train rides for the public on the 1:8 scale model train.

## RESPONSIBLE DEPARTMENT(S)

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Community Services Division, Parks and Recreation Department

## STAFF CONTACTS (S)

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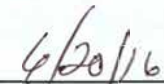
Nick Molinari, Parks & Recreation Operations Supervisor, McCormick-Stillman Railroad Park  
(480) 312-2731, [nmolinari@scottsdaleaz.gov](mailto:nmolinari@scottsdaleaz.gov)

Reed Pryor, Parks and Recreation Director  
(480) 312-1011, [rpryor@scottsdaleaz.gov](mailto:rpryor@scottsdaleaz.gov)

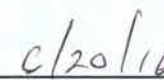
## APPROVED BY

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William B. Murphy, Community Services Director  
(480) 312-7954, [bmurphy@scottsdaleaz.gov](mailto:bmurphy@scottsdaleaz.gov)

  
\_\_\_\_\_  
Date

  
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Jeffery M. Nichols, City Treasurer  
(480) 312-2364, [jenichols@scottsdaleaz.gov](mailto:jenichols@scottsdaleaz.gov)

  
\_\_\_\_\_  
Date

## ATTACHMENTS

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1. Resolution No. 10511
2. License Agreement – Contract No. 2016-101-COS

RESOLUTION NO. 10511

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, APPROVING REVOCABLE LICENSE AGREEMENT NO. 2016-101-COS WITH SCOTTSDALE LIVE STEAMERS TO USE SPACE AND PROVIDE A RAILROAD RIDE TO THE PUBLIC AT THE MCCORMICK-STILLMAN RAILROAD PARK; AUTHORIZING AND DIRECTING THE MAYOR TO SIGN THE AGREEMENT; AND AUTHORIZING AND DIRECTING THE COMMUNITY SERVICES DIRECTOR TO TAKE SUCH OTHER ACTIONS AS ARE NECESSARY TO CARRY OUT THE INTENT OF THIS RESOLUTION.

WHEREAS, subject to certain requirements, Scottsdale Revised Code Section 2-221(c) provides that the City of Scottsdale ("City") may enter into temporary licenses or similar agreements for the use of city-owned property, including but not limited to, land, buildings, office space, rooms and other interior and exterior space; and

WHEREAS, the City owns and operates certain real property known as McCormick-Stillman Railroad Park, a public park located at 7301 East Indian Bend Road, Scottsdale, Arizona, 85250 ("Facility"), which has a railroad theme and offers many recreational opportunities to City residents and visitors, including railroad-related rides, exhibits and events; and

WHEREAS, Scottsdale Live Steamers ("Live Steamers") is ready, willing and able to provide services, programs or activities of the kind and character that the City wishes to provide for the public at the Facility, including a railroad ride, and the City wishes to license certain space in the Facility ("Use Area") for the Live Steamers to provide such services, programs or activities, subject to the terms and conditions set forth in Revocable License Agreement No. 2016-101-COS ("Agreement"); and

WHEREAS, under the terms of the Agreement, there will be no license fee to the City for Live Steamers to use the Use Area; and

WHEREAS, the City Council has considered any City expenditure authorized by this Agreement, the direct consideration that the City will receive, and the services provided by Live Steamers, and finds that there is a clearly identified public purpose for the City's expenditure, if any, and that the City will receive direct consideration substantially equal to its expenditure;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The recitals above are hereby incorporated as if fully set forth herein.

Section 2. The City Council hereby authorizes, approves and directs the Mayor to execute, on behalf of the City, Revocable License Agreement No. 2016-101-COS between the

City and Live Steamers, for Live Steamers to use the Use Area to provide a railroad ride to the public.

Section 3. The City Council also hereby authorizes, approves and directs the Community Services Director to execute any other documents and take such other actions as are necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this 5<sup>th</sup> day of July, 2016.

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

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Carolyn Jagger, City Clerk

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W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:



Bruce Washburn, City Attorney

By: Kimberly McIntier  
Assistant City Attorney

## REVOCABLE LICENSE AGREEMENT

This license agreement ("Agreement") is made and entered into this 1st day of July, 2016, by and between the City of Scottsdale, an Arizona municipal corporation ("City"), and Scottsdale Live Steamers, an Arizona non-profit corporation ("Licensee"). The City and the Licensee will collectively be referred to in this Agreement as the "Parties."

### RECITALS

A. The City is a municipal corporation organized under the constitution and laws of the State of Arizona.

B. The City owns and operates real property within its city limits including McCormick-Stillman Railroad Park, a public park located at 7301 East Indian Bend Road, Scottsdale, Arizona 85250 ("Facility"), which has a railroad theme and offers many recreational opportunities to City residents and visitors, including railroad-related rides, exhibits and events.

C. The Licensee has provided a 1:8 scale railroad operation at the Facility's arboretum since 2001 and has been in continuous operation since that date. During that time, the Licensee has operated a train ride for the general public and maintained, repaired and expanded the 7.5" gauge live steam track throughout the Facility's arboretum. The Licensee provides volunteers to run the trains on weekends and during special events.

D. The Licensee is ready, willing and able to provide services, programs or activities of the kind and character that the City wishes to provide for the public at the Facility, and the City wishes the Licensee to provide such services, programs or activities, subject to the terms and conditions set forth in this Agreement.

E. Pursuant to Scottsdale Revised Code Section 2-221(c), the City desires to enter into this Agreement with the Licensee to establish the terms by which the Licensee may use the Facility.

NOW, THEREFORE, in consideration of the covenants and promises contained in this Agreement and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### TERMS

1.0 Recitals. The recitals which appear above are incorporated into this Agreement by this reference.

2.0 Applicability. The terms and conditions of this Agreement shall apply to the Licensee's use of the Facility. Unless otherwise required by the context, the use of "Facility" in this Agreement shall include the plural as well as the singular.

3.0 Term. The initial term of this Agreement shall be for a period of three (3) years, commencing on July 1, 2016, and ending on June 30, 2019 (the "Initial Term"), unless terminated as otherwise provided in this Agreement. After the expiration of the Initial Term, this Agreement may be renewed for up to two (2) successive one-year terms (each, a "Renewal Term") upon mutual written agreement by the City Contract Administrator and Licensee's Contract Administrator (each as defined in Section 11.0 below, Contract administrator). The Initial Term and any Renewal

Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

4.0 Use Area.

4.1 City provision of Use Area. The City agrees to provide the Licensee with suitable space in the Model Railroad Building at the Facility ("Model Railroad Building") and the Facility's arboretum, subject to the terms and conditions contained in this Agreement, to enable the Licensee to render those services and conduct the programs and activities, as applicable, as more specifically provided in Section 5.1 below. The space designated for the Licensee to provide Services (as defined in Section 5.1 below) in the Facility shall be referred to in this Agreement as the "Use Area."

4.2 Acceptance of Use Area. The Licensee acknowledges by the execution of this Agreement that it has examined the Use Area along with the times of use, which are shown in the diagram on Exhibit "A," and provided in Section 5.3 below, and the Licensee agrees that it is appropriate and suitable for providing Services. Unless otherwise provided in this Agreement, the Licensee accepts the Use Area in "as is" condition.

4.3 Changes in Use Area. If the Parties desire to change the Use Area or the times of use that are set forth in Exhibit "A" during the Term of this Agreement, the following procedure applies:

4.3.1 For a change that does not increase the aggregate size of the Use Area or total hours of use, the Parties will prepare an Amended Exhibit "A" containing a diagram showing the new Use Area with associated times of use and signatures of both the City Contract Administrator and the Licensee's Contract Administrator. The Amended Exhibit "A" will then be substituted for this Agreement's Exhibit "A."

4.3.2 For a change that increases the aggregate size of the Use Area or total hours of use, an amendment to this Agreement is required, which is subject to Scottsdale City Council approval.

4.4 Parking. Unless otherwise specifically provided in this Agreement, no exclusive parking will be provided to the Licensee. The Licensee may use parking spaces in the Facility parking lot on a first-come, first-served basis.

4.5 Signage. The City shall furnish signage at the Facility to direct members of the public to the Licensee's Use Area. The City will confer with the Licensee concerning signage, but the City shall have discretion to determine the signage, based upon the need for existing signage at the Facility, the need for consistency and uniformity in signage, and other considerations. The Licensee shall erect no additional signage upon the Facility or in the Use Area without the prior written approval of the City Contract Administrator.

5.0 Use of Facility; Services.

5.1 Services. The Licensee shall provide services in the Use Area ("Services"), which are more specifically described as follows: The Licensee shall construct, maintain operate and provide rides to the general public on a miniature scale railroad built to various scales from 1 $\frac{3}{4}$ " gauge to 7.5" gauge ("Railroad") in the Use Area that will be viewed by the

general public. All track used for the Railroad will be permanent and not removable at the termination of this Agreement.

5.1.1 Work room and storage. A room for working on the Railroad is located within the Model Railroad Building and a building for storage and maintenance is located within the Facility's arboretum. The Licensee is responsible for upkeep of all Railroad, Railroad equipment and storage unit maintenance in the Use Area.

5.1.2 Operating conditions. The Licensee is responsible for ensuring safe operating conditions at all time.

5.1.3 Railroad open to public. The Licensee shall provide Railroad rides, or coordinate with the City to make such rides available, to Facility patrons on all Saturdays and Sundays that the Facility is open to the public, as set forth in a published schedule posted by the City unless the City determines not to provide Railroad rides to Facility patrons on such day(s), and during any additional days and times reasonably requested by the City (collectively, "Operating Hours"). As part of this requirement, Licensee's members ("Members") shall facilitate the Railroad rides at least one (1) day per weekend. The Licensee shall not deviate from providing Services during the Operating Hours without the prior written approval of the City Contract Administrator. When working in the Use Area, during designated hours or other work hours, Members will communicate with the public in a respectful manner.

5.2 Permitted Use of Use Area. The Use Area shall be used solely for the purposes of rendering Services to the general public and Members; provided, however that the Licensee may use the Use Area to conduct activities relating to the Railroad ("Other Activities"), but only upon the prior written approval of the City Contract Administrator. Such activities may be attended by Members, prospective Licensee members and members of other railroad clubs, at the invitation of the Licensee. The Licensee shall not use or permit the use of the Use Area for any other purpose.

5.3 Time restrictions. The Licensee may use the Use Area (i) to provide Services to the general public during the Operating Hours, (ii) to conduct the Other Activities only during the times authorized by the City Contract Administrator as set forth in Section 5.2 above and (iii) for Licensee and its Members to operate the Railroad for Licensee use and perform work, maintenance and repair of the Railroad, only during the times set forth in Exhibit "A."

5.4 Background of Service Providers. The Licensee shall be responsible for ensuring that the persons providing Services, including but not limited to the Licensee's Members, employees, agents and volunteers ("Service Providers"), are of good character and suitable background to do so, given the clients to whom Services are to be provided (e.g. minor children, youth, elderly, disabled, etc.). The Licensee shall provide to the City, prior to its occupation and use of any Use Area, its written policies and procedures regarding background investigation and substance abuse testing of its Service Providers.

5.5 Discrimination; diversity; other applicable laws. The Licensee shall be responsible for ensuring that its work environment is free from unlawful discrimination, as provided by Title VII of the Civil Rights Act of 1964 and other state and federal laws. The Licensee shall further ensure a commitment to respecting individual differences and valuing diversity.



5.6 Licenses; permits. The Licensee shall ensure that the Service Providers have all required and applicable licenses, permits and permissions required by federal, state, county and city statutes, ordinances, laws, rules and regulations, prior to providing Services at the Facility. All such licenses, permits and permissions must be current and in good standing.

5.7 Separation from the City. The Licensee, its officers, employees and agents shall clearly identify that it is the Licensee, rather than the City of Scottsdale, that is providing Services in the Use Area. The Licensee shall not represent that it is a part of the City of Scottsdale government, or that it is acting on behalf of the City. The Licensee shall not use the name of the City of Scottsdale, its seal, signs or logos in any advertising, promotional materials or for any other purpose without the express, written prior approval of the City Contract Administrator.

5.8 Facility rules and regulations. The City reserves the right to adopt, amend and enforce reasonable rules and regulations governing the operation of the Facility and the use of the Use Area. Rules and regulations shall be consistent with the safety, security, public use and utility of the Facility, as applicable. These rules and regulations shall apply to the Licensee, its officers, employees and agents, including all Service Providers, and the Licensee agrees to comply with them.

5.9 Representations in funding applications. The Licensee shall obtain the prior written approval of the City Contract Administrator before making any representation, in any application for a grant or other funding, that it has or will secure the continuing use of the Use Area, or any other City property, whether real, personal or financial, in connection with the application.

5.10 Additional terms and conditions. The terms and conditions attached as Exhibit "B," if any, are incorporated by this reference and made a part of this Agreement. There is an Exhibit "B" to this Agreement.

6.0 Consideration; fees.

6.1 Consideration. As and for consideration for rights and privileges which are the subject of this Agreement, the Licensee agrees to provide the Services described in Section 5.0 above, which the City regards as serving a valuable public purpose and constituting fair and direct consideration that is substantially equal to the City's expenditure. There shall be no license fees.

6.2 "Holdover" Use Fee. In the event of "holding over" as described in Section 13.5 below, "Holding over," the Licensee shall pay the City \$1.00 per day which is due on the first City working day of the month for the usage during the previous month.

7.0 Utilities. The City shall arrange and pay for all utilities furnished to the Use Area, including electricity, gas, water and sewer services, for the Term of this Agreement. There shall be no additional charges to the Licensee for these services.

8.0 Meetings with City. The Licensee agrees that it will meet with the City Contract Administrator every six (6) months this Agreement is in effect in order to discuss matters of mutual concern and interest relating to the services being provided at the Facility.

9.0 Maintenance.

9.1 Maintenance; janitorial service; inspection; repair. The City shall maintain the structural elements, heating, cooling and other systems of the Facility, including the Use Area, at its own expense and shall keep them in good repair. The Licensee shall provide janitorial services and trash disposal services to the Use Area at its sole cost and expense. The Licensee shall provide such other maintenance as may be required by this Agreement. The City reserves the right to enter the Use Area at any reasonable times to inspect, survey and perform required maintenance and repairs.

9.2 Waste or damage of Facility. The Licensee shall not, during any Facility use, commit or permit any waste, damage or defacement of the Facility or its equipment, nor permit any act or use that is prohibited by any law, ordinance, rule or regulation. The Licensee shall use its best efforts to act to prevent the waste of any utilities provided by the City at the time of any Facility use. The Licensee shall be solely responsible for any damage at/to the Facility caused by the acts of the Licensee or its Members, ordinary wear and tear excepted.

9.3 Licensee access; keys. The Licensee agrees to minimize the number of persons authorized to have keys to the Use Area for the performance of this Agreement and shall provide to the City Contract Administrator, in writing, the names of persons who are authorized to have the keys. Members with keys are not permitted to allow others to use their keys. The Licensee shall report any changes, additions or deletions of persons authorized to have keys to the City Contract Administrator, in writing, prior to the time that a change, addition or deletion is made.

9.3.1 Reporting; replacement costs. The Licensee shall immediately report lost, missing or stolen keys to the City Contract Administrator. The Licensee shall be responsible for all costs associated with replacing lost, missing or stolen keys, and for re-keying locks when, in the sole discretion of the City, it is determined that re-keying is necessary.

9.3.2 Licensee responsibility for damages. The Licensee agrees that it shall be solely financially responsible for any damage to City's real or personal property that results from the Licensee's failure to comply with the access/security provisions contained in this Agreement.

9.3.3 Risk of loss. The Licensee is not required to purchase property insurance coverage pursuant to this Agreement. However, the Licensee agrees that it assumes the risk of any loss to the Licensee's equipment and property brought onto the premises.

10.0 Damage to or destruction of Use Area. If the Use Area is damaged by fire, explosion, the elements, the public enemy, or other casualty through no fault of the Licensee, then this Agreement shall terminate. Otherwise, the Licensee shall restore the Use Area at the Licensee's sole cost and expense.

11.0 Contract administrator.

11.1 City Contract Administrator. The Director of Community Services for the City of Scottsdale, who at the time of execution of this Agreement is William B. Murphy, or designee, shall be the City contract administrator ("City Contract Administrator"), who will be responsible for administering the terms of this Agreement for the City, and will be the contact between the City and the Licensee.

11.2 Licensee's Contract Administrator. Prior to the commencement of this Agreement, the Licensee shall designate a contract administrator ("Licensee's Contract Administrator"), who will be responsible for administering this Agreement for the Licensee and be the contact between the Licensee and the City. **Prior to using the Facility and by June 30 of each year of the Term, the Licensee shall furnish to the City Contract Administrator and the City of Scottsdale Senior Real Estate Manager the contact information, including phone numbers, email addresses and emergency contact information, for the Licensee's Contract Administrator.**

12.0 Notice. Any notice required or permitted to be given pursuant to this Agreement, unless otherwise expressly provided herein, shall be given in writing, either personally to the authorized representative of the other party, or by United States Postal Service certified mail, return receipt requested, as shown below or to such other street address(es) as may be designated by the respective parties in writing from time to time. The notice shall be deemed complete when received by the person receiving it or, when certified mail is used, five (5) calendar days from the date of mailing, whichever occurs first.

<b>City</b>	<b>Licensee</b>
City of Scottsdale 7447 East Indian School Road, Suite 300 Scottsdale, AZ 85251 ATTN: Community Services Office Manager	Scottsdale Live Steamers 7301 East Indian School Road Scottsdale, Arizona 85250 ATTN: George Marshall, President

Copy to: City Attorney  
3939 N. Drinkwater Blvd.  
Scottsdale, AZ 85251

Copy to: City of Scottsdale  
7447 East Indian School Road, Suite 205  
Scottsdale, AZ 85251  
ATTN: Senior Real Estate Manager

13.0 Termination; cancellation.

13.1 Termination for cause or convenience. The City may terminate this Agreement for cause or convenience by giving the Licensee thirty (30) days' written notice, as provided in Section 12.0 above, Notice.

13.2 Termination for health or safety. The City shall have the right to terminate this Agreement upon two (2) City working days' prior written notice to the Licensee, if there is any threat to public health or safety in the performance of this Agreement by the Licensee.

13.3 Conflict of interest. Pursuant to A.R.S. § 38-511, the City may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of either party is, at any time while this Agreement is in effect, an employee of the other party in any capacity, or a consultant to the other party with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice is received by the Licensee, unless the notice specifies a later time.

13.4 Availability of funds. This Section will control despite any provision of this Agreement or any exhibit or other agreement or document related to this Agreement. In the event

funds necessary to fulfill the City's obligations under this Agreement are not appropriated by the Scottsdale City Council, the City may terminate this Agreement by giving notice to the Licensee. The City agrees to use its best efforts to give notice of such termination to the Licensee at least fourteen (14) days prior to the end of the City's then-current fiscal period. Termination in accordance with this provision will not constitute a breach of this Agreement by the City. No person will be entitled to any compensation, damages or other remedy from the City if this Agreement is terminated pursuant to the terms of this Section.

13.5 "Holding over." In any circumstance whereby the Licensee would remain in possession or occupancy of the Use Area after termination or expiration of this Agreement, such "holding over" shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a use right from day to day which may be terminated at any time by the City upon one (1) day's notice to the Licensee, or by the Licensee upon seven (7) days' notice to the City. Except as provided in this Section 13.5, such use of the Use Area shall otherwise be subject to the terms and conditions specified in this Agreement, so far as applicable. Nothing contained herein shall be construed as the City's permission for the Licensee to remain in the Use Area or as limiting the City's remedies as to such "holdover."

13.6 Rights at termination. The following provisions shall apply upon expiration or termination of this Agreement for any reason:

13.6.1 Delivery of possession. The Licensee shall, at the expiration of the Term or upon any sooner termination of this Agreement, without demand, peaceably and quietly quit and deliver up the Use Area to the City thoroughly cleaned, in good repair, maintained and repaired and in as good order and condition, reasonable use and wear excepted, as the same now are or in such better condition as the Use Area may hereafter be placed by the Licensee or the City.

13.6.2 Confirmation of Licensee's obligations. Termination of this Agreement for any reason does not terminate the Licensee's obligations arising prior to or simultaneous with, or attributable to, the termination.

13.6.3 Licensee's personal property; re-entry. At the expiration of the Term or upon any sooner termination of this Agreement, the Licensee shall remove all its property from the Use Area. The City, at its election, may re-enter the portion of the Facility occupied by the Licensee pursuant to this Agreement and may immediately demand that any property or personnel of the Licensee found therein be removed by the Licensee. If such property is not removed within ten (10) City working days, the City may remove and store any such property in a public warehouse or at a place selected by the City at the expense of the Licensee, and may dispose of it as it sees fit, subject only to the limitations of state law.

14.0 Indemnification. To the fullest extent permitted by law, the Licensee, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, related to, arising from or out of, or resulting from any acts, errors, mistakes or omissions or negligent, reckless or intentional actions caused in whole or in part by the Licensee relating to or arising from work or Services in the performance of this Agreement, including but not limited to, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of the Licensee's or

subcontractor's agents or employees. The above defense indemnity and hold harmless obligations do not apply to claims resulting from the sole negligence of the City.

14.1 Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

15.0 Insurance representations and requirements.

15.1 General. The Licensee agrees to comply with all applicable City ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of the Licensee, the Licensee shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to the City. Failure to maintain insurance as specified may result in termination of this Agreement at the City's option.

15.2 No representation of coverage adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the Licensee. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements stated in this Agreement or failure to identify any insurance deficiency will not relieve the Licensee from, nor be construed or considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

15.3 Coverage term. All insurance required by this Agreement shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

15.4 Claims made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

15.5 Policy deductibles and or self-insured retentions. The policy requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. The Licensee shall be solely responsible for any deductible or self-insured retention amount. The City, at its option, may require the Licensee to secure payment of the deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

15.6 Use of subcontractors. If any work under this Agreement is subcontracted in any way, the Licensee shall execute written agreements with its subcontractors containing the same Indemnification Clause and Insurance Requirements as stated in this Agreement protecting the

City and the Licensee. The Licensee is responsible for executing the agreement with its subcontractors and obtaining Certificates of Insurance verifying the insurance requirements.

15.7 Evidence of insurance.

15.7.1 Prior to using the Facility and on or before the annual anniversary date of this Agreement, the Licensee shall furnish the City with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by the Licensee's insurer(s) as evidence that policies are placed with acceptable insurers as specified in this Agreement and provide the required coverage, conditions, and limits of coverage and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. **Such Certificates shall identify the contract number, the date of this Agreement and the Parties' names, and shall be sent to the designated City Contract Administrator and the City of Scottsdale Senior Real Estate Manager.** Certificates of Insurance submitted without referencing the appropriate contract number and reference to this Agreement will be subject to rejection and may be returned or discarded. If any of the above-cited policies expire during the life of this Agreement, it is the Licensee's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions.

15.7.2 Certificates shall contain the specific provisions that follow:

15.7.2.1 City of Scottsdale, its agents, representatives, officers, directors, officials and employees is an Additional Insured under the following policies:

15.7.2.1.1 Commercial General Liability

15.7.2.1.2 Auto Liability

15.7.2.1.3 Excess Liability - Follow Form to underlying insurance as required.

15.7.2.2 The Licensee's insurance shall be primary insurance as respects performance of subject agreement.

15.7.2.3 All policies, except Professional Liability, if applicable, shall waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by the Licensee under this Agreement.

15.7.2.4 If the Licensee receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be the Licensee's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

15.7.3 Required coverage.

15.7.3.1 Commercial general liability. The Licensee shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than

\$2,000,000 for each occurrence, \$5,000,000 Products and Completed Operations Annual Aggregate, and a \$5,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, bodily injury, property damage, and contractual liability. For any Service that involves children or at-risk individuals, the commercial general liability must include coverage for sexual abuse and molestation. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

15.7.3.2 Professional liability. If the Licensee or any of the Licensee's employees or subcontractors are licensed professionals, the Licensee shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Licensee, or anyone employed by the Licensee, or anyone for whose acts, mistakes, errors and omissions the Licensee is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims.

15.7.3.3 Automobile liability. If any vehicle is used by the Licensee to perform the Services, the Licensee shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on the Licensee's owned, hired, and non-owned vehicles assigned to or used in the performance of the Services. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this Agreement, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. If vehicles are not used by the Licensee to perform the Services, this requirement for Automobile Liability may be waived. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

15.7.3.4 Workers' compensation insurance. If the Licensee has employees, the Licensee shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Licensee's employees engaged in the performance of work or Services under this Agreement and shall also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

16.0 Non-assignability. The rights, privileges and responsibilities of the Licensee under this Agreement are non-assignable.

17.0 City's remedies.

17.1 Available remedies. If the Licensee breaches any provision of this Agreement, the City will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance.

17.2 No waiver. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of Services, shall not release the Licensee from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

18.0 Miscellaneous.

18.1 No real property interest. Notwithstanding any provision of this Agreement to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the Parties, the Licensee's rights are limited to the Use Area and the Licensee's rights in the Use Area are limited to the license rights created by this Agreement, which creates only a revocable license in the Use Area. The City and the Licensee do not by this instrument intend to create a lease, easement or other real property interest. The Licensee shall have no real property interest in the Use Area. The Licensee's sole remedy for any breach or threatened breach of this Agreement by the City shall be an action for damages. The Licensee's rights hereunder are subject to all covenants, restrictions easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Use Area. Notwithstanding the preceding sentence, the City shall provide to the Licensee during the term of this Agreement peaceable use and enjoyment of the Use Area in accordance with the terms of this Agreement. It is the Licensee's responsibility to resolve any issues related to nearby property owners. The Licensee's rights hereunder are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of all bodies, bureaus, commissions and bodies of any municipal, county, state or federal authority, now or hereafter having jurisdiction over the Use Area or the Licensee's use thereof.

18.2 Entire agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the Facility, the Use Area or the Services to be provided pursuant to this Agreement, unless such other agreement is referenced in Section 5.1 above.

18.3 Law governing; venue. This Agreement shall be governed by the laws of the State of Arizona, and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

18.4 Compliance with law. The Licensee shall perform its obligations under this Agreement in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended.

18.5 Taxes, liens and assessments. Licensee shall pay, when due and as the same become due and payable all taxes and general and special fees, charges and assessments of every description which during the Term of this Agreement may be levied upon or assessed against the Use Area, the operations conducted therein, other performances under this Agreement by either party, and all possessory interest in the Use Area and improvements and other property thereon, whether belonging to the City or the Licensee; and the Licensee agrees to indemnify, defend and hold harmless City and the Use Area and such property and all interest therein and improvements thereon from any and all such taxes and assessments, including any interest, penalties and other expenses which may be imposed, and from any lien therefor or sale or other proceedings to enforce payment thereof. The Licensee shall have the right to contest, but not the right to refuse to timely pay, any taxes and assessments. The City shall have the right from time to time to require that all of the foregoing payments be made by the Licensee through the City. The Licensee shall pay all sales, transaction privilege and similar taxes.



18.6 Arizona Legal Workers Act. Under the provisions of A.R.S. § 41-4401, the Licensee warrants to the City that the Licensee and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Licensee and all its subcontractors now comply with the E-Verify Program under A.R.S. § 23-214(A).

A breach of this warranty by the Licensee or any of its subcontractors will be considered a material breach of this Agreement and may subject the Licensee or subcontractor to penalties up to and including termination of this Agreement or any subcontract. The Licensee will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Licensee's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Agreement by the City.

The City retains the legal right to inspect the papers of any employee of the Licensee or any subcontractor who works on this Agreement to ensure that the Licensee or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Licensee and any of its subcontractors to ensure compliance with this warranty. The Licensee agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

18.7 Survival of liability. All obligations of the Licensee hereunder and all warranties and indemnities of the Licensee hereunder shall survive termination of this Agreement for any reason.

18.8 Attorneys' fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court, sitting without jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

18.9 Non-exclusive contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like services from another source when necessary.

18.10 Severability. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

18.11 Exhibits. All Exhibits referred to in this Agreement are hereby incorporated by this reference.

IN WITNESS WHEREOF, the Parties have executed this Agreement by signing their signatures, as of the day and date first written above.


SCOTTSDALE LIVE STEAMERS, an  
Arizona non-profit corporation

  
George Marshall, President


CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

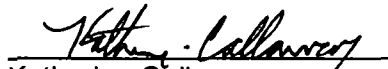
  
Carolyn Jagger, City Clerk

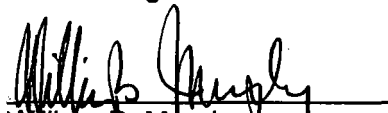
  
W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:

  
Bruce Washburn  
City Attorney  
By: Kimberly M. McIntier  
Assistant City Attorney

REVIEWED BY:

  
Katherine Callaway  
Risk Management Director

  
William B. Murphy  
Community Services Director

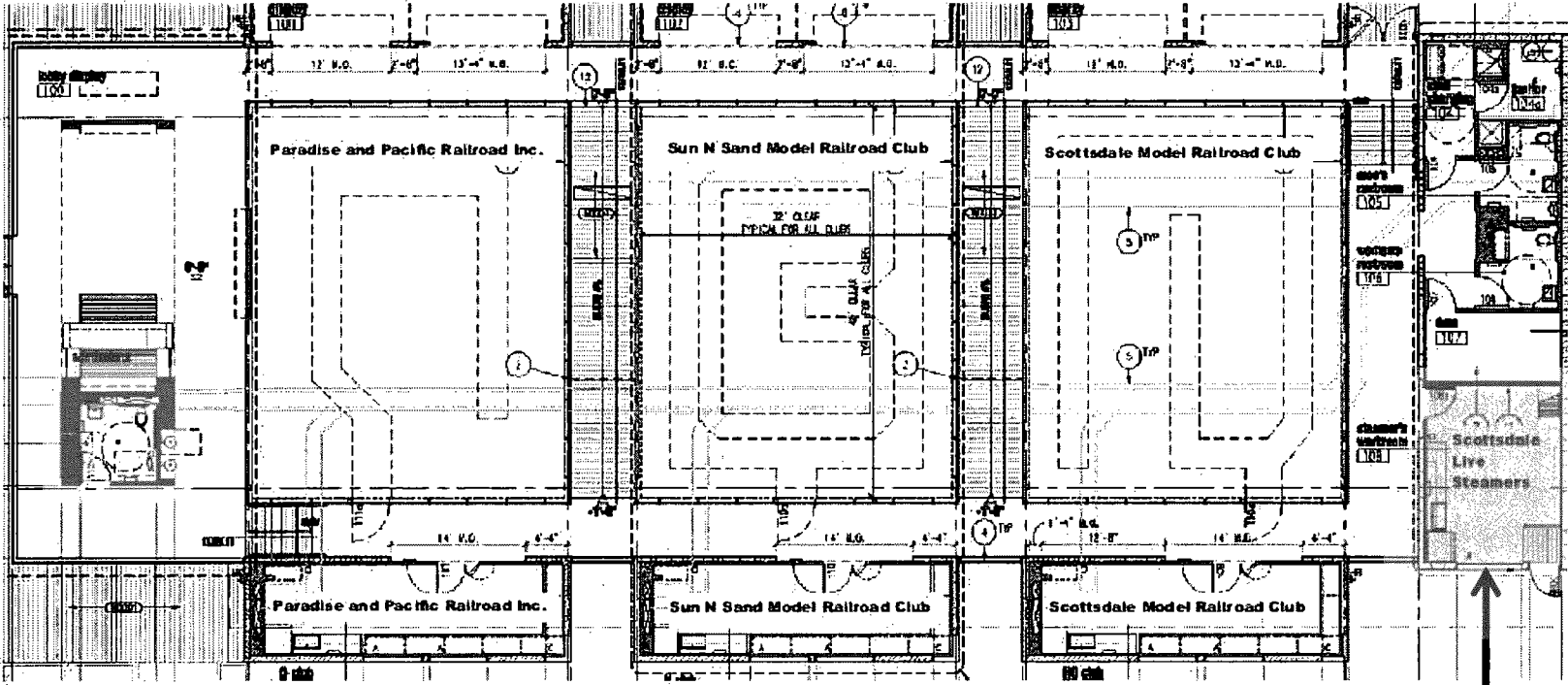
**TABLE OF EXHIBITS**

<u>Exhibit</u>	<u>Title</u>
A	Diagram of Use Areas and Times of Use
B	Additional Terms and Conditions

Exhibit "A"

DIAGRAM OF USE AREAS AND TIMES OF USE

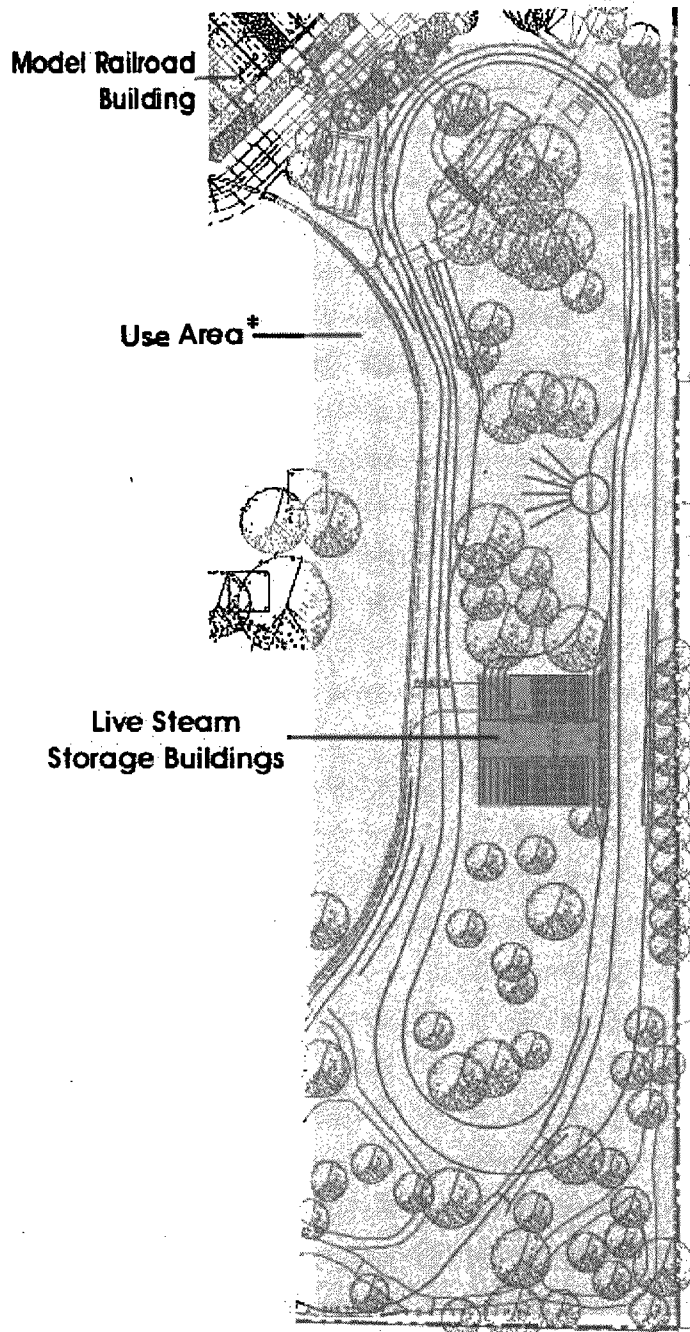
Model Railroad Building Use Area at McCormick-Stillman Railroad Park



\*Licensee and its Members may use the Use Area to operate the Railroad for Licensee use and to perform work, repair and maintenance on the Railroad twenty-four (24) hours per day, seven (7) days per week. Other time restrictions for the Use Area are as set forth in Section 5.3 of the Agreement.

Use Area\*

**Arboretum Use Area at McCormick-Stillman Railroad Park  
Scottsdale Live Steamers South Storage Area**



\*Licensee and its Members may use the Use Area to operate the Railroad for Licensee use and to perform work, repair and maintenance on the Railroad twenty-four (24) hours per day, seven (7) days per week. Other time restrictions for the Use Area are as set forth in Section 5.3 of the Agreement.

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## Exhibit "B"

### ADDITIONAL TERMS AND CONDITIONS

The following additional terms and conditions shall apply to the Agreement between the Parties:

I. Revenues and financial records.

(a) Donations. The Licensee may solicit and accept donations from the public to help offset costs incurred in providing Services. All donations received are required to be used for the operation, maintenance and improvements of the Licensee's activities in the Use Area.

(b) Storage Fees. The Licensee may charge its Members storage fees in the Use Area to help offset costs incurred in providing Services, pursuant to this Agreement. All such storage fees are required to be used for the operation, maintenance and improvements of the Licensee's activities in the Use Area.

(c) Fundraising activities. The Licensee may conduct fundraising activities, only with the prior written approval of the City Contract Administrator, to help offset costs incurred in providing Services, pursuant to this Agreement. All revenue from such fundraising activities is required to be used for the operation, maintenance and improvements of the Licensee's activities in the Use Area.

II. Membership. The Services, which are the subject of this Agreement, will be offered to the general public. The City recognizes, however, that membership is available in Licensee's organization and that the Licensee may charge dues for such membership, which may be used at the discretion of the Licensee. Membership in Licensee's organization shall be offered to anyone, regardless of race, color, religion, sex, age, national origin or disability.

III. Documentation. The Licensee will provide copies of its written policies, bylaws, membership requirements and restrictions, current proof of non-profit status and a current membership roster to the City Contract Administrator, at the time of commencement of this Agreement, and as may be requested by the City Contract Administrator thereafter.

IV. Access; security. In addition to the provisions of Section 9.3 of this Agreement, the Licensee agrees to the following:

(a) Locking doors. It is the responsibility of the Licensee and its Members to lock all doors to/in the Use Area when they leave, if it is after or outside of public/staffed hours. Members are not permitted to allow members of the public into the restricted access portions of the Use Area.

(b) Terminating access. At its sole discretion, with or without cause, the City may terminate the access privileges of any Member.

(c) Unused keys. The Licensee shall return to City any unused keys or key cards as soon as possible.

(d) Cost for replacing keys. The cost of the replacement of lost, missing or stolen key cards, at the time of this Agreement, is \$8.00 per key card, which is subject to change at any time at the sole discretion of the City.

(e) Electrical access. Members will not access breaker boxes, or do any electrical work within the Use Area, other than the wiring necessary for the Railroad. Power tools, including, but not limited to saws that create dust, may not be operated in the area of the Railroad, without the prior written approval of the City Contract Administrator.

V. Improvements to Use Area. The City has not promised to and is not obligated in any manner to make any improvements or alterations to the Use Area. The Licensee shall not make improvements or alterations to the Use Area without the prior written approval of the City Contract Administrator. Changes that do not result in a betterment of the Use Area will not be approved. Upon the termination or cancellation of this Agreement, for any reason, or its expiration, any and all improvements made to the Use Area by the Licensee, including, but not limited to railroad track, shall become the property of the City.

VI. Chemicals. Any and all chemicals used by the Licensee in providing Services, pursuant to this Agreement, will be kept in an Occupational Safety and Health Administration ("OSHA") approved chemical cabinet in the Use Area. Licensee shall be responsible for purchasing the chemical cabinet. All chemicals are required to have a material safety data sheet or regulatory equivalent ("MSDS"), which will be placed together in a notebook by the Licensee and located in an area where it can be easily located and accessed. No chemicals, or cleaning of tools, are permitted in the public restrooms or showers.

VII. Boiler Inspection. Appropriate boiler inspection certificates are required to be on file with the City Contract Administrator prior to rendering any Services under this Agreement.