

CITY COUNCIL REPORT



Meeting Date: July 1, 2026
General Plan Element: *Community Well-Being*
General Plan Goal: *Develop quality recreation facilities*

ACTION

Z Guys Model Railroad Club License Agreement. Adopt Resolution No. 13740 to approve Contract No. 2026-130-COS, a revocable license agreement with Z Guys Model Railroad Club, an Arizona non profit corporation, to use space in the McCormick-Stillman Railroad Park's Model Railroad Building to operate a "Z" scale model train layout; and authorizing and directing the City Manager to take such other actions necessary to carry out the intent of this Resolution.

BACKGROUND

Z Guys Model Railroad Club is an Arizona non-profit corporation, which has provided a "Z" scale model railroad operation at the McCormick-Stillman Railroad Park (Park) since 2018 and has been in continuous operation since that date. During that time Z Guys Model Railroad Club has operated a model train layout for the general public and maintained, repaired and expanded a "Z" scale layout. Z Guys Model Railroad Club currently constructs, maintains, staffs and improves a multi-level model train layout that features a module of the Fort McCain army base and the Island of Sodor with Thomas the Tank Engine and Friends. Z Guys Model Railroad Club provides operating model trains that run during the public hours of operation of the Model Railroad Building. This layout is one of four unique layouts held within the Park's Model Railroad Building and provides the public with an interactive, entertaining, and educational experience while visiting the Park.

Previously, Z Guys Model Railroad Club used the space pursuant to a three-year license agreement that was renewed for two successive one-year terms. This new Revocable License Agreement, Contract No. 2026-128-COS, allows Z Guys Model Railroad Club 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. This Revocable License Agreement, Contract No. 2026-130-COS, allows Z Guys Model Railroad Club 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. Under the Revocable License Agreement, Z Guys Model Railroad Club is required to provide an operational exhibit during all operating hours of the Parks' Model Railroad Building and to

Action Taken _____

provide at least 365 hours of member service. Accordingly, no license fee will be charged for Z Guys Model Railroad Club's use of the space.

IMPACT ANALYSIS

Parks and Recreation staff has built a strong relationship with Z Guys Model Railroad Club and believe that the continued agreement benefits the City, Z Guys Model Railroad Club, the Park and the public. Z Guys Model Railroad Club has been housed at McCormick>Stillman Railroad Park since 2018 and it hopes to continue the strong relationship with the Park and the public for the years to come. Contract No. 2026-130-COS would authorize Z Guys Model Railroad Club to use space in the Model Railroad Building as well as continue to maintain, upgrade and utilize the layout that has been constructed.

Policy Implications

Contract No. 2026-130-COS allows Z Guys Railroad to continue to operate and improve its model train layout within the Park's Model Railroad Building. This provides a beloved attraction to the public and is an asset to the Park.

Community Involvement

The continued agreement between the City and Z Guys Model Railroad Club will be advantageous to the City and the public due to the historical and ongoing support and enhancement of the Park.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 13740 to approve Contract No. 2026-130-COS, a revocable license agreement with Z Guys Model Railroad Club, an Arizona non-profit corporation, to use space in the McCormick- Stillman Railroad Park's Model Railroad Building to operate a "Z" scale model train layout; and authorizing and directing the Assistant City Manager overseeing Community Services to take such other actions necessary to carry out the intent of this Resolution

Description of Option B

Do not approve Resolution No. 13740 approving Contract No. 2026-130-COS, a revocable license agreement with Z Guys Model Railroad Club, an Arizona non-profit corporation, which would eliminate the utilization of space at the Park's Model Railroad Building to provide a "Z" scale model train layout for the Park's visitors.

RESPONSIBLE DEPARTMENT(S)

Parks and Recreation Department, McCormick-Stillman Railroad Park

STAFF CONTACTS (S)

Stephanie Tippett, Parks and Recreation Manager

stippett@scottsdaleaz.gov, 480-312-2731

Nick Molinari, Parks and Recreation Manager

nmolinari@scottsdaleaz.gov, 480-312-1011

APPROVED BY



Nick Molinari, Senior Director, Parks & Recreation and Preserve Date

nmolinari@scottsdaleaz.gov, 480-312-1011



Judy Doyle, Deputy City Manager Date

jdoyle@scottsdaleaz.gov, 480-312-2691

ATTACHMENTS

1. Resolution No. 13740
 2. Contract No. 2026-130-COS
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RESOLUTION NO. 13740

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, APPROVING CONTRACT NO. 2026-130-COS, REVOCABLE LICENSE AGREEMENT WITH Z GUYS MODEL RAILROAD CLUB TO USE SPACE AND PROVIDE A MODEL RAILROAD EXHIBIT TO THE PUBLIC AT THE MCCORMICK-STILLMAN RAILROAD PARK; AND AUTHORIZING AND DIRECTING THE CITY MANAGER OR DESIGNEE TO TAKE SUCH OTHER ACTIONS 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;

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;

WHEREAS, Z Guys Model Railroad Club ("Z Guys") 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 "Z" scale model railroad exhibit, and the City wishes to continue to license certain space in the Model Railroad Building of the Facility ("Use Area") for Z Guys to continue to provide such services, programs, or activities, subject to the terms and conditions set forth in Contract No. 2026-130-COS, Revocable License Agreement ("Agreement");

WHEREAS, under the terms of the Agreement and given the services, programs, and activities provided by Z Guys, there will be no license fee to the City for Z Guys to use the Use Area;

WHEREAS, the City Council has considered any City expenditure authorized by the Agreement, the direct consideration that the City will receive, and the services provided by Z Guys, 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; and

NOW, THEREFORE, BE IT RESOLVED by the 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, Contract No. 2026-130-COS, Revocable License Agreement between the City and Z Guys, for Z Guys to use the Use Area to provide a "Z" scale model railroad exhibit to the public.

Section 3. The City Council also hereby authorizes, approves, and directs the City Manager or designee to execute any other documents and take such other actions necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this _____ day of _____, 2026.

CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Ben Lane, City Clerk

Lisa Borowsky, Mayor

APPROVED AS TO FORM:

Luis E. Santaella

Luis E. Santaella, City Attorney

By: Lindsay Hampshire, Assistant City Attorney

REVOCABLE LICENSE AGREEMENT

This license agreement ("Agreement") is entered into this 1st day of July, 2026, by and between the City of Scottsdale, an Arizona municipal corporation ("City"), and Z Guys Model Railroad Club, 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 provided a "Z" scale model railroad exhibit within the Sun N Sand Model Railroad Club's "N" scale layout in the Facility's Model Railroad Building ("Model Railroad Building") beginning in 2016.

D. In 2018, pursuant to a license agreement with the City, the Licensee constructed a new "Z" scale model railroad exhibit in the Model Railroad Building and has operated and maintained that exhibit since that time. The Licensee provides volunteers to run the trains during the public hours of operation of the Model Railroad Building.

E. 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.

F. 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. Recitals. The recitals which appear above are incorporated into this Agreement by this reference.
2. 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. Term. The initial term of this Agreement shall commence on July 1, 2026, and end on June 30, 2029 (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 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. Use Area.

4.1 City Provision of Use Area. The City agrees to provide the Licensee with the space in the Model Railroad Building designated in Exhibit "A" (the "Use Area"), 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.

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. Use of Facility/Use Area; 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, improve and

operate a "Z" scale model railroad exhibit ("Exhibit") in the Use Area that will be viewed by the general public. The Licensee shall provide volunteers to run trains during the public hours of operations of the Model Railroad Building. The Licensee's use of the Facility is limited to providing Services as set forth in this Agreement.

5.1.1 Definitions. For purposes of this Section 5.1, "operate" means to make the model railroad exhibit available for Facility visitors to view and to have the model trains functional and able to move along the track, either with the assistance of Licensee's dues-paying Members ("Members") or on an automated system. For purposes of this Agreement, "scenery" includes permanent elements of the Exhibit, including, but not limited to mountains, rock formations, trees, and other foliage, roads, bridges, rivers, and other elements that are not easily removed. "Scenery" does not include structures (e.g., buildings) on bases, model people, animals, vehicles, and all model rolling stock (i.e., locomotives, passenger, and freight cars), which may be removed from the Exhibit by the Licensee at the termination of this Agreement. In addition, for purposes of this Section 5.1, "wiring" refers to basic permanent wiring that is necessary to make the Exhibit operate when connected to the appropriate power packs and/or control systems. Power packs, DCC systems, electronic control boards, computers, and other elements connected to the basic permanent wiring, however, shall not be considered "wiring" and may be removed from the Exhibit by the Licensee upon termination or expiration of this Agreement.

5.1.2 Work Room. No separate room for working on the Exhibit will be available. The Licensee is responsible for upkeep of its Exhibit within the Use Area.

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

5.1.4 Exhibit Open to Public. The Exhibit is required to be constructed in a manner that will enable Facility visitors to view operating model trains in the Exhibit whenever the Model Railroad Building is open to the public, including times when Licensee's dues-paying members ("Members") are not present. The Licensee shall provide Services to the general public during all times that the Model Railroad Building is open to the public, currently Monday through Sunday, and as set forth in a published schedule posted by the City at appropriate locations in the Facility and at the Use Area ("Operating Hours"). The Licensee will not deviate from providing Services during the Operating Hours without the prior written approval of the City Contract Administrator. Additionally, the Licensee shall provide at least three hundred sixty-five (365) total Member hours per year of service toward the Exhibit, including staffing during Operating Hours and working on the Exhibit outside of Operating Hours. Members of the public will not be permitted to enter the Use Area, except in the limited area made accessible to the public by the City. When working in the Use Area, during designated hours or other work hours, Members will communicate 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 and building lobby to conduct activities relating to the Exhibit such as club meetings ("Other Activities"), but only upon the prior written approval of the City Contract Administrator. Such Other Activities may be attended by Members, prospective Licensee members, and members of other railroad clubs, at the invitation of the Licensee. Other Activities approved by the City Contract Administrator are limited to a maximum of forty (40) hours per week. 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 Exhibit for Licensee use and to perform work, maintenance, and repair of the Exhibit only during the times set forth in Exhibit "A"; provided, however, that the City may restrict Licensee's access to the Use Area if the City determines there is a threat to public health or safety.

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 selection of its Members and the use of legal or illegal substances. Additionally, the Licensee shall provide the City with sufficient information so the City can verify that each Service Provider is not on the national sex offender registry before Licensee permits a Service Provider within the Use Area.

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 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 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 \$10.00 per day, which is due on the first City working day of the month for the usage during the previous month.

7 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 Meetings with City. The Licensee agrees that it will meet with the City Contract Administrator upon request throughout the Term to discuss matters of mutual concern and interest relating to the services being provided at the Facility.

9 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, investigate, 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.

9.3.2 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.

9.3.3 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.

9.3.4 Risk of Loss. The Licensee is not required to purchase property insurance coverage for its own property 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 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. If the Use Area is damaged by the Licensee, its members or agents, or as a result of the Services, the Licensee shall provide money to restore the Use Area at the Licensee's sole cost and expense.

11 Contract Administrator.

11.1 City Contract Administrator. Parks and Recreation Manager Stephanie Tippett 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 Real Estate Asset Manager the contact information, including phone numbers, email addresses, and emergency contact information, for the Licensee's Contract Administrator.

12 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. If a copy of the notice is also given to a party's counsel or other recipient, the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

City

City of Scottsdale
8055 E Camelback Rd
Scottsdale, AZ 85251
ATTN: Senior Director, Parks & Recreation

Licensee

Z Guys Model Railroad Club
7301 East Indian Bend Road
Scottsdale, AZ 85250
ATTN: Richard Fillman, President

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

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

13 Termination; Cancellation. The City Contract Administrator is authorized to exercise the termination provisions set forth in this Agreement.

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 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:

13.6.2 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.

13.6.3 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.

13.6.4 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 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 contractor, independent contractor, subcontractor, volunteer, employee, 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, contractor'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 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.

15.7.2 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 and the Parties' names, and shall be sent to the designated City Contract Administrator - currently, the McCormick Railroad Park Manager, at 7301 East Indian Bend Road, Scottsdale, Arizona 85250 or stippett@scottsdaleaz.gov, and the City of Scottsdale Senior Real Estate Manager, at City of Scottsdale, Real Estate, 7447 East Indian School Road, Suite 205, Scottsdale, Arizona 85251 or realestate@scottsdaleaz.gov.** 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.

15.7.3 Certificates shall contain the specific provisions that follow:

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

15.7.3.1.1 Commercial General Liability

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

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

15.7.3.3 All policies 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.

15.7.3.4 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.

15.7.4 Required Coverage.

15.7.4.1 Commercial General Liability. The Licensee shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 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. 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.

15.7.4.2 [Intentionally omitted.]

15.7.4.3 [Intentionally omitted.]

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

17 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 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 Force Majeure. Neither party will be responsible for delays or failures in performance resulting from acts beyond its control. These acts include, but are not limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

18.6 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.

18.7 Amendment; Modification. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Licensee.

18.8 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.

18.9 Boycott of Israel. By executing this Agreement, Licensee certifies that it is not currently engaged in, and for the duration of this Agreement agrees not to engage in, boycott activities proscribed by A.R.S. §§ 35-393 *et seq.*

18.10 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.

18.11 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.

18.12 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.

18.13 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. In accordance with the provisions of A.R.S. § 41-194.01, should the Attorney General give notice to the City that any provisions of this Agreement violates state law or the Arizona Constitution, or that it may violate a state statute or the Arizona Constitution, and the Attorney General submits the offending provision to the Arizona Supreme Court, the offending provision(s) shall be immediately severed and struck from the Agreement, and the City and Licensee shall, within ten (10) calendar days after such notice, negotiate in good faith to resolve any issues related to the severed provision(s). If the Parties are unable to negotiate a resolution to any issues related to the severed provision(s), the City may terminate this Agreement immediately.

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

18.15 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument and each of said counterparts shall be deemed original hereof.

18.16 Authority. Each party warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

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

Z GUYS MODEL RAILROAD CLUB, an
Arizona non-profit corporation

By: Richard Fillman
Its: President

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

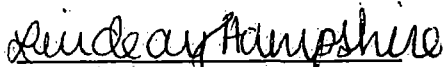
CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Ben Lane, City Clerk

Lisa Borowsky, Mayor

APPROVED AS TO FORM:


Luis E. Santaella, City Attorney
By: Lindsay Hampshire, Asst. City Attorney

REVIEWED BY:

George Woods Jr.
Risk Management Director

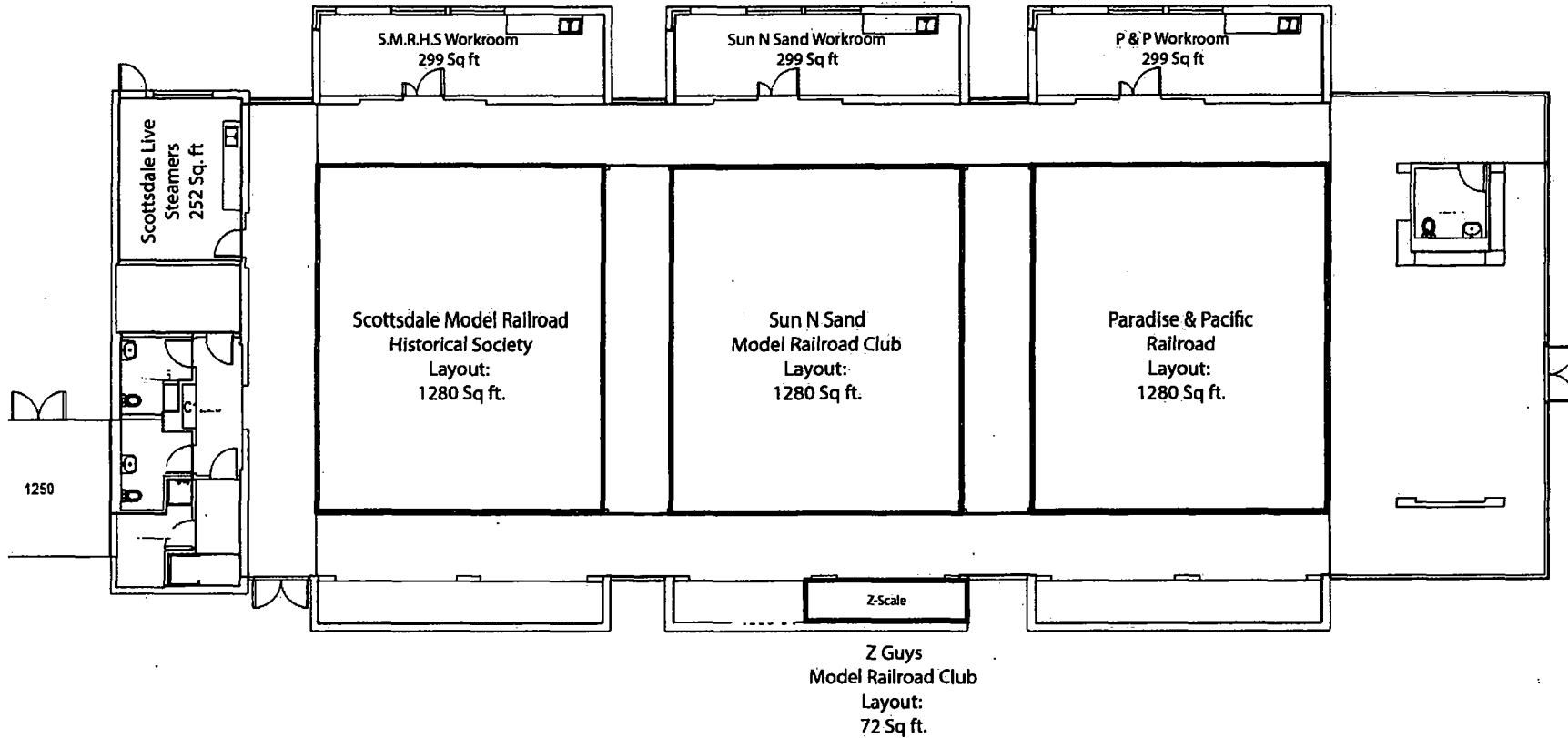
Nick Molinari
Senior Director, Parks & Recreation and Preserve

TABLE OF EXHIBITS

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

Exhibit "A"
DIAGRAM OF USE AREA AND TIMES OF USE

Model Railroad Building at McCormick-Stillman Railroad Park



*Licensee and its Members may use the Use Area to operate the Exhibit for Licensee use and to perform work, repair, and maintenance on the Exhibit daily from 5:00 a.m. to 11:59 p.m. Other time restrictions for the Use Area are as set forth in Section 5.3 of the Agreement.

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 portion of the Use Area where the Exhibit is located.

(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 \$9.70 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 Exhibit. Power tools, including, but not limited to saws that create dust, may not be operated in the area of the Exhibit, 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, Licensee shall remove its personal property including the Exhibit from the Use Area as set forth in Section 13.6.3 (Licensee's Personal Property; Re-entry). Any improvements provided by the City and the basic permanent wiring necessary to make the Exhibit operate when connected to the appropriate power packs and/or control systems will remain in the Use Area as 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.