CITY COUNCIL AGENDA REPORT

MEETING DATE: JANUARY 17, 2012 ITEM NUMBER:

SUBJECT: RENEWAL OF THE USE AGREEMENT WITH THE HARBOR SOARING SOCIETY

DATE: JANUARY 5, 2012

FROM: PUBLIC SERVICES DEPARTMENT / ENGINEERING DIVISION

PRESENTATION BY: ERNESTO MUNOZ, INTERIM DIRECTOR, PUBLIC SERVICES DEPARTMENT

FOR FURTHER INFORMATION CONTACT: ROBERT STAPLES, CONTRACT ADMINISTRATOR, (714) 754-5303

RECOMMENDATION

Renew the Use Agreement with the Harbor Soaring Society for use of Fairview Park for a period of one year.

BACKGROUND

The Harbor Soaring Society (HSS) is a club committed to promoting and improving the enjoyment of radio-controlled model aircraft flying in Orange County. HSS is an Academy of Model Aeronautics (AMA) charter club. All members of HSS belong to the AMA, which provides each flyer with $2,500,000 in liability insurance.

For over thirty years, HSS has used the southern portion of Fairview Park at the northern end of Canyon Drive as a flying field. This area was designated as a launch/land site for silent flyers in the approved Fairview Park Master Plan (Attachment 1). In 1996 HSS and the City entered into an agreement for the placement and use of a temporary storage facility at Fairview Park. This facility is currently located in the park immediately north of the Waldorf School of Orange County.

In January 2007, after review by the Parks and Recreation Commission, the City Council approved the Use Agreement between HSS and the City for the group's use of Fairview Park for a period of five years. The agreement allows HSS to use the launch/land site at Fairview Park and requires that all members and the organization are properly insured. As per the agreement, HSS maintains the site by clearing weeds, mowing and removing loose impediments. The term of the agreement is up for renewal in January of 2012.

In 2007 a permit system was developed by the City and required amendments to the Costa Mesa Municipal Code for its proper establishment and enforcement. The permit system includes a permit application, rules and regulations, field rules, and the Academy of Model Aeronautics (AMA) Safety Code. With the creation of a model aircraft permitting process, anyone wanting to fly a radio-controlled model aircraft at Fairview Park registers with the Recreation Division and obtains a permit. The Recreation Manager oversees the permit process. To obtain a permit the flyer provides proof of liability insurance in the amount of $500,000 either through the Academy of Model Aeronautics (AMA), their homeowner's insurance policy, or some other form acceptable to the City. Model aircraft flyers pay an annual fee of $20.00 and agree to abide by the Model

Aircraft Permit Application and Flying Regulations, the AMA Safety Code, Fairview Park Flying Field Rules, and Costa Mesa's Flying Regulations for Fairview Park Ordinance. Approximately 300 flyers pulled permits in 2011.

ANALYSIS

At their November 16, 2011 meeting, the Parks and Recreation Commission reviewed the request by HSS to renew the current five year Use Agreement. After hearing from HSS and the public, the Parks and Recreation Commission recommended to the City Council that the Use Agreement be renewed for one year. If approved as recommended, the terms of the proposed Use Agreement with HSS (Attachment 2) will remain the same as the previous agreement. HSS maintains the field, performs weed abatement twice per year and provides the City with oversight of the flying area. The Public Services Department administers the agreement and meets with the club's president on a regular basis at the site to walk the field and review any proposed HSS improvement projects.

ALTERNATIVES CONSIDERED

The Council may consider denying the one (1) year extension to the Use Agreement with HSS. If this alternative is selected, the agreement would be terminated and HSS would need to remove their storage container and signage. City staff would resume the responsibility for the maintenance of the field for the permitted flyers.

FISCAL REVIEW

No fiscal review is required.

LEGAL REVIEW

The City Attorney's office has reviewed and approved the Use Agreement.

CONCLUSION

The Parks and Recreation Commission reviewed the Harbor Soaring Society's request to renew their Use Agreement for an additional period of one (1) year beginning January 2012. The Parks and Recreation Commission recommend that the City Council renew the Use Agreement with the Harbor Soaring Society for an additional one (1) year term.

FARIBA FAZELI,
Interim City Engineer

ERNESTO MUNOZ, Interim Director
Public Services Department

Attachments: 1. Fairview Park Master Plan
2. Use Agreement

c: Tom Hatch, Chief Executive Officer
Peter Naghavi, Deputy CEO/Economic Development Director
Bruce Hartley, Maintenance Services Manager
Robert Staples, Contract Administrator

ATTACHMENT 1

MASTER PLAN

Approved by City Council March 1998
Revised February 2001
Revised again November 2002

FAIRVIEW PARK
CITY OF COSTA MESA

DAVID EVANS AND ASSOCIATES INC

April 22, 2003

AGREEMENT BETWEEN THE HARBOR SOARING SOCIETY AND THE CITY OF COSTA MESA FOR THE USE OF A PORTION OF FAIRVIEW PARK

This Use Agreement ("AGREEMENT") is by and between the City of Costa Mesa ("CITY"), a municipal corporation and public body, and the Harbor Soaring Society ("HSS"), a non-profit organization chartered by the Academy of Model Aeronautics ("AMA") and incorporated in the State of California.

RECITALS

WHEREAS, CITY is the owner of Fairview Park, a public park in the City of Costa Mesa; and

WHEREAS, HSS is committed to promoting and improving the enjoyment of model aircraft flying in Orange County, has determined that the use of Fairview Park would further this purpose, and desires for a portion of Fairview Park to be used for the flying of certain model aircraft; and

WHEREAS, the approved Fairview Park Master Plan allows for the flying of model aircraft and provides for model aircraft launching/landing sites at Fairview Park.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. As used in this AGREEMENT, the term "model aircraft" means all forms of radio controlled gliders, electric motor gliders, and electric powered model airplanes and electric helicopters, but does NOT include internal combustion engine powered aircraft, rockets, and aircraft exceeding the AMA weight limit. No person shall be permitted to fly an internal combustion engine powered aircraft or rocket at Fairview Park. All model aircraft must comply with all applicable provisions of the AMA Safety Code and all other applicable AMA specifications and safety codes and as defined as a model aircraft by the Federal Aviation Administration (FAA).

2. CITY shall allow the taking off and landing of model aircraft in the area of Fairview Park marked "Silent Flyer Launch/Land Site (Lawn)" (the "Site") on the City of Costa Mesa Fairview Park Master Plan attached hereto as Exhibit "B" and incorporated herein by this reference. Such use of the Site shall be non-exclusive. Model aircraft may only take off from and land in the Site. Model aircraft may be flown during posted hours. Model aircraft may be flown as far as unaided visual contact will allow, which means distance-wise from the pilot, as opposed to altitude. Membership in HSS shall not be required to fly model aircraft at Fairview Park.

3. HSS shall coordinate with CITY to install and maintain a Frequency Board

at or near the Site and a system to post and monitor which potential frequencies may be used for remote control model aircraft operation and which frequencies are currently in use. All persons flying model aircraft at Fairview Park ("flyers") shall only use frequencies that are not already being used as demonstrated by the Frequency Board. Pilots shall only use radio-controlled frequencies allowed for model aircraft by the Federal Communications Commission (FCC).

4. Flyers must comply with 1) the Fairview Park rules posted; 2) the most recent version of HSS's "Fairview Park Flying Field Rules" ("HSS Flying Rules") (including the provision requiring an active AMA license for liability insurance purposes or proof of homeowner's or other type of liability insurance with a limit of no less than $500,000 covering flying of model aircraft), which HSS shall keep posted at a kiosk next to the Canyon Drive parking lot entrance to the Site, and which are attached hereto as Exhibit "C" and incorporated herein by this reference; 3) all applicable sections of the AMA Safety Code and all other applicable AMA specifications and safety codes; 4) all applicable FAA regulations, guidelines, and advisory circulars; 5) all applicable sections of the Costa Mesa Municipal Code, and 6) this AGREEMENT. In particular, HSS acknowledges that FAA Advisory Circular 91-57 advises as a safety operating standard that model aircraft not be flown over 400 feet, and HSS affirms that its members shall not fly their model aircraft higher than 400 feet above ground level.

5. All flyers shall "pre-flight check" their model aircraft on the ground before they are flown in order to assure that all controls are working properly. Flyers shall not engage in combat flying at Fairview Park. Flyers shall take all actions necessary to avoid flying near other park users. Model aircraft may not be flown over residences, schools, or parking areas. Model aircraft shall remain clear of other aircraft at all times in a safe manner to the extent possible.

6. HSS shall grade, mow, weed, and otherwise maintain the Site. HSS may submit to CITY for consideration any proposals to make any modification to the Site, such as plantings, irrigation or modifications to buildings or grounds or any construction or improvements. All such requests must be made in writing to the City of Costa Mesa's Public Services Department, Parks Project Manager. Such modifications may be undertaken by HSS only with prior written approval of CITY, shall be subject to all applicable laws and regulations, and shall conform to the approved Fairview Park Master Plan.

7. CITY shall provide HSS with no less than fourteen (14) days' notice in the event that a third party obtains a permit for an event at or in the vicinity of Fairview Park which model aircraft flying might disrupt or which might cause danger to the participants thereof. In response, HSS will postpone and reschedule any flying activity that might disrupt the event or endanger participants thereof, as determined by CITY.

8. HSS shall have permission to hold scheduled events at Fairview Park, such as model aircraft competitions, which may occur over a one or two day period and include less than 25 participants. HSS shall provide CITY with notice of such events at least thirty (30) days prior to the event by electronic mail to the Parks and Recreation Manager. Notice of these events will be advertised in the HSS monthly newsletter and on the HSS kiosk at Fairview Park at least thirty (30) days prior to the event. For events involving 25 or more participants, a Special Events Permit Application must be obtained, filled out, and approved by CITY a minimum of thirty (30) days prior to the start of the event. Applications may be obtained at City Hall.

9. This AGREEMENT will commence as of the date in which the latter of CITY and HSS approve and execute this AGREEMENT and will continue for a period of one (1) year, unless earlier terminated. Either party may terminate this AGREEMENT at any time, with or without cause, by providing 30 days' written notice of such termination to the other party. Upon or just prior to the expiration of the one-year term, this AGREEMENT may be considered for renewal by the Costa Mesa City Council, at the request of HSS, for an additional term, the length of which will be determined by the City Council. Termination or expiration of the Agreement will not relieve any individual member of the public from the insurance requirements referenced in Section 4 of this Agreement when utilizing Fairview Park for model aircraft purposes, provided that CITY allows such model aircraft activity. CITY may terminate this AGREEMENT, effective immediately upon notice to HSS, at any time, if HSS breaches this AGREEMENT in any way and/or if CITY determines that HSS'S use of Fairview Park creates a safety hazard.

10. HSS may not assign or transfer any of its rights or duties hereunder, either in whole or in part, in any manner whatsoever.

11. For the term of this AGREEMENT, HSS must submit annually to CITY, and maintain on file with CITY at all times, a valid certificate of liability insurance with insurance limits of no less than one million dollars ($1,000,000) Bodily Injury and Property Damage. Such insurance policy shall contain or be endorsed to contain the following provisions:

    A. Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject use and contract with City."

    B. Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."

    Other insurance: "Any other insurance maintained by the City of

Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

12. HSS shall protect, indemnify, defend, and hold harmless CITY, its elected and appointed officials, officers, agents, employees, representatives, and volunteers from any damage to property and for injury to or death of any person and from all claims, demands, actions, liability, expenses, including attorney's fees, or damages of any kind or nature arising out of or in connection with the performance of this AGREEMENT, or the use of the Site by any HSS members and/or their guests, except that which is the result of the sole negligence of CITY.

13. Whenever possible, each provision of this AGREEMENT will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT is held by a court to be invalid under the applicable law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision, or the remaining provisions of this AGREEMENT. This AGREEMENT, and all documents attached hereto or made reference to and incorporated herein, constitutes the entire agreement between CITY and HSS to the subject matter of this AGREEMENT. No addition to, or alteration of, the terms of this AGREEMENT shall be valid unless made in writing and executed by both parties. This AGREEMENT is made and entered into in the State of California and the laws of said State will govern the validity and interpretation hereof and the performance hereunder by the parties herein. In the event of any legal action to enforce or interpret this AGREEMENT, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

14. All notices, statements, demands, requests, consents, approvals, authorizations, appointments, or designations hereunder by either party to the other will be in writing and will be deemed given and served upon the other party, if delivered personally or three (3) days after depositing in the United States mail, postage prepaid, addressed to:

CITY:
Parks Project Manager
City of Costa Mesa, California
77 Fair Drive
P.O. Box 1200
Costa Mesa, CA 92628-1200

HSS:
President, Harbor Soaring Society
P.O. Box 1673
Cost Mesa, CA 92626

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers.

CITY OF COSTA MESA,
A municipal corporation

_____ Date: _____
Mayor

HARBOR SOARING SOCIETY

_____ Date: _____
President

ATTEST:

_____
Deputy City Clerk and ex-officio Clerk
of the City of Costa Mesa

APPROVED AS TO FORM:

_____
City Attorney