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

This User 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~~ HSS 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~~,~~ ~~however HSS shall be responsible that all users of the site and their guests ("Flyers") comply with the requirements set forth herein~~.

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. ~~HSS shall be responsible to ensure that all~~ Flyers must~~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 ~~Flyersits members~~ shall not fly their model aircraft higher than 400 feet above ground level.

Commented [BJB1]:

5. ~~HSS shall also be responsible to ensure the following:~~ All ~~f~~Flyers shall perform a "pre-flight check" on 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~~ are 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~~five (5) years, 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~~ five (5) 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.

Formatted: Strikethrough

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 by HSS, or the use of the Site by any HSS members and/or their guests ~~or any Flyer~~, except that which is the result of the sole negligence or willful misconduct 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