This Agreement is executed by and between THE COUNTY OF SAN DIEGO (County), a political subdivision of the State of California, and First Weedwacker Aero Squadron, a California nonprofit corporation.

WHEREAS, County provides parks for public recreation; and

WHEREAS, Organization wants to reserve an area at Cactus Park for Organization to use at certain times; and

WHEREAS, in exchange for reserving the area for its use, Organization is willing to help maintain the area; and

WHEREAS, County is willing to reserve the area for Organization in exchange for Organization’s providing certain maintenance services.

WHEREAS, Organization uses the area to fly radio controlled model airplanes; and

WHEREAS, lithium batteries are now commonly used for radio controlled model airplanes; and

NOW, THEREFORE, the parties agree as follows:

1. **RESERVED AREA.** County reserves the following area in Cactus Park for Organization to use: East section of Cactus Park bounded on the West by Ashwood St., on the South and East by the County Department of Public Works fence and on the North by the Hering Ranch easement road (Reserved Area). The Reserved Area is reserved for Organization to use daily from 7 a.m. to dusk. County reserves the right to authorize others to use the Reserved Area at times that do not conflict with the days and times listed in this paragraph.

2. **TERM.** The term of this Agreement is from 01 March 2012 through 28 February 2015. Before the term expires, the parties may agree in writing to extend the term for a maximum of three additional years.

3. **USE.** Organization may use the Reserved Area for flying radio controlled model airplanes.

4. **PUBLIC USE.** At all times other than those specified in Paragraph 1, the Reserved Area is to remain secured by locks on the perimeter gates.

5. **FEES.** When Organization is using the Reserved Area during the times specified in Paragraph 1, Organization may charge participants a reasonable fee to cover Organization’s cost to maintain the Reserved Area and to operate Organization’s programs at this area. However, Organization shall obtain the prior written approval of
the Director of Parks and Recreation or her designated representative before Organization charges any fees. Fees or charges that preclude low and moderate-income persons from participating will not be approved. All fees that Organization collects shall be used to maintain the Reserved Area and to operate Organization’s programs at the Reserved Area.

6. **BYLAWS.** Membership in Organization’s organization shall be open to anyone meeting the requirements of Organization’s articles of incorporation, by-laws or rules. Organization shall not discriminate against a prospective member because of age, race, color, religion, physical handicap, ancestry, sex, or national origin. At the request of the Department of Parks and Recreation, Organization shall provide the Department with a copy of Organization’s articles of incorporation, by-laws and rules and any proposed changes thereto.

7. **MAINTENANCE.** At its sole cost and expense, Organization shall maintain the Reserved Area as follows: maintenance and upkeep of Organization’s installed equipment, temporary storage and shade structures, paved areas, rest room facility and trash disposal bins and weed control on un-paved areas. Failure to comply with this paragraph is a material breach of this Agreement and is a basis for County to terminate this Agreement.

8. **IMPROVEMENTS OR ALTERATIONS.** Organization shall not make or cause to be made any improvements, changes or alterations in or to the Reserved Area without obtaining the prior authorization and approval of the Director of Parks and Recreation or her designated representative. Any improvements, changes or alterations that Organization makes or causes to be made to the Reserved Area are and shall remain the property of County. County, in its sole discretion, may retain, remove, sell, or destroy the same after this Agreement terminates.

9. **PERSONAL PROPERTY.** Upon termination of this Agreement including any extension thereof, Organization shall promptly remove all of Organization’s personal property from the Reserved Area. If, 10 days after this Agreement terminates, any personal property belonging to Organization remains at the Reserved Area, County may dispose of the personal property in accordance with the law.

10. **OPERATION.** Organization shall operate its recreational program(s) at the Reserved Area at Organization’s sole cost and expense. County has no obligation to provide any funds to Organization for its programs.

11. **CONCESSIONS RIGHTS.** When using the Reserved Area, Organization may operate a concession stand for sale of confections, soft drinks, gum and other food products. If Organization operates a concession stand, Organization shall comply with all applicable laws regarding the preparation, handling and sale of food including, but not limited to, the County ordinances and regulations enforced by the County Department of Environmental Health. All profits from the concession sales shall be used by Organization to maintain the Reserved Area and to operate Organization’s programs at this area. If these profits are not needed for maintenance and operations expenses, Organization may make a written proposal to the Director of Parks and Recreation to use the profits for a different purpose. The Director of Parks and Recreation or her designee
may approve or disapprove any such proposed use. Organization shall not sell anything in the Reserved Area except confections, soft drinks, gum and other food products at a concession stand.

12. **ADVERTISING.** Organization shall not place or cause to be placed on or in the Reserved Area any billboards, banners, posters, or any other media advertising products, services or anything else unless Organization obtains the prior written consent of the Director of Parks and Recreation or her designee. Organization shall not install any sign in or on the Reserved Area without obtaining the prior written approval of the Director of Parks and Recreation or her designee. Any billboards, banners, posters, or signs erected, installed or placed in violation of this paragraph may be removed and disposed of by County.

13. **POSSESSORY INTEREST AND TAXES.** This Agreement may create a taxable possessory interest in Organization. Organization shall pay and discharge before delinquency, all taxes and assessments which may be levied against the property by reason of any interest of Organization during the term of this Agreement and any extensions thereof.

14. **NON-EXCLUSIVE USE.** Organization’s reservation and use of the Reserved Area under this Agreement shall be non-exclusive and shall not result in any proprietary rights in Organization. This Agreement does not transfer to Organization any interest in real property. County reserves and shall always have the right to enter the Reserved Area at any time for any reason.

15. **COMPLIANCE WITH LAW.** At its sole cost and expense, Organization shall comply with all laws and regulations now in effect or which may become effective in the future which pertain to Organization’s use of the Reserved Area including section 41.123 of the County Parks and Recreation Rules and Regulations regarding pets.

16. **DEFENSE AND INDEMNITY.** To the fullest extent permitted by law, County shall not be liable for, and Organization shall defend and indemnify County and its officers, agents, employees and volunteers (collectively, “County Parties”), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics’ liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys’ fees and court costs (collectively, “Claims”), which arise out of or are in any way connected to Organization’s use of the Reserved Area arising either directly or indirectly from any act, error, omission or negligence of Organization or its members, officers, employees, agents, contractors, licensees or servants, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of County Parties. Organization shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole active negligent act or willful misconduct of County Parties.

17. **INSURANCE.** Without limiting Organization’s defense and indemnification obligations to County, Organization shall, at its sole expense, provide and maintain during the
duration of this Agreement and any extensions thereof and for such other periods as may be required herein, insurance in the amounts and form described below:

A. **Minimum Scope of Insurance.**

Coverage shall be at least as broad as:

Commercial General Liability, Occurrence form, Insurance Services Office form CG0001.

B. **Minimum Limits of Insurance.**

Organization shall maintain limits no less than:

Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be $2,000,000.

C. **Deductibles and Self-Insured Retentions.**

Any deductible or self-insured retention must be declared to and approved by the County’s Risk Manager. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers; or the Organization shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. **Other Insurance Provisions.**

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

(1) **Additional Insured Endorsement.** Any general liability policy provided by Organization shall contain an additional insured endorsement applying coverage to the County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively.

(2) **Primary Insurance Endorsement.** For any claims related to this Contract, the Organization’s insurance coverage shall be primary insurance as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Organization’s insurance and shall not contribute with it.
(3) **Notice of Cancellation.** Each required insurance policy shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the County at the address shown in section of Contract entitled “Notices”.

(4) **Severability of Interest Clause.** Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.

(5) **Qualifying Insurers.** All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder’s alphabetic and financial size category rating of not less than A-, VII according to the current Best’s Key Rating guide, or a company of equal financial stability that is approved in writing by County’s Risk Manager.

(6) **Evidence of Insurance.** Prior to commencement of this Contract, but in no event later than the effective date of the Contract, Organization shall furnish the County with certificates of insurance and amendatory endorsements effecting coverage required by this clause. Organization shall furnish certified copies of the actual required insurance policies within thirty days after commencement of Contract. Thereafter, copies of renewal policies, certificate and amendatory endorsements shall be furnished to County within thirty days of the expiration of the term of any required policy. Organization shall permit County at all reasonable times to inspect any policies of insurance which Organization has not delivered to County.

(7) **Failure to Obtain or Maintain Insurance; County’s Remedies.** Organization’s failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to make premium payments required by such insurance, shall constitute a material breach of the Contract, and County may, at its option, terminate the Contract for any such default by Organization.

(8) **No Limitation of Obligations.** The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Organization, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Organization pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.

(9) **Review of Coverage.** County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Organization to obtain insurance reasonably sufficient in coverage, form
and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. **Self-Insurance.** Organization may, with the prior written consent of County’s Risk Manager, fulfill some or all of the insurance requirements contained in this Contract under a plan of self-insurance. Organization shall only be permitted to utilize such self-insurance if in the opinion of County’s Risk Manager, Organization’s (i) net worth, and (ii) reserves for payment of claims of liability against Organization, are sufficient to adequately compensate for the lack of other insurance coverage required by this Contract. Organization’s utilization of self-insurance shall not in any way limit liabilities assumed by Organization under the Contract.

11. **Subcontractors’ Insurance.** Organization shall require that any and all Subcontractors hired by Group are insured in accordance with this Contract. If any Subcontractors coverage does not comply with the foregoing provisions, Organization shall defend and indemnify the County from any damage, loss, cost or expense, including attorney fees, incurred by County as a result of Subcontractors failure to maintain required coverage.

12. **Waiver of Subrogation.** Organization and County release each other, and their respective authorized representatives, from any Claims (as defined in the Article entitled “Indemnity” of the Contract), but only to the extent that the proceeds received from any policy of insurance carried by County or Organization, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by Organization hereunder shall be a standard waiver of rights of Subrogation against County by the insurance company issuing said policy or policies.

18. **EQUAL OPPORTUNITY.** Organization shall not discriminate against any employee or applicant for employment because of age, race, color, religion, physical handicap, ancestry, sex or national origin. This provision applies, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

19. **AFFIRMATIVE ACTION.** Organization shall comply with the Affirmative Action Program for Vendor(s) as set forth in County Administrative Code at section 84 and following unless Organization is exempt from the Program.

20. **NON-DISCRIMINATION.** When using the Reserved Area pursuant to this Agreement, Organization shall not discriminate or permit discrimination in any manner against any person or class of persons because of race, color, creed, national origin, sex, age, handicap or marital status.

21. **AUDIT.** During normal business hours, County or County’s representatives or agents may inspect, audit and copy any of Organization’s records related to this Agreement including, but not limited to, records regarding Organization’s finances, by-laws, articles
of incorporation, rules and regulations, membership, insurance, concessions, operations, legal status (nonprofit corporation, etc.) meetings, etc. County may conduct an audit of Organization’s records related to this Agreement semi-annually in January and August.

22. **UTILITIES AND SERVICES.** If Organization requires any utility service when Organization uses the Reserved Area, Organization shall notify the Director of Parks and Recreation or her designee and make arrangements for the service to be provided. Organization shall be solely responsible for paying all utility costs.

23. **ENTIRE AGREEMENT.** This Agreement contains all representations and the entire understanding of the parties with respect to the subject matter contained herein. All prior correspondence, memoranda, agreements or representations, oral or written, whether or not consistent with this Agreement, are superseded by this Agreement. Neither party is relying on any representation outside of this Agreement. This Agreement may be amended only by written amendment signed by both parties.

24. **PARTIAL INVALIDITY.** If any provision of this Agreement or its application to any person or circumstances is determined to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and every other provision of this Agreement shall remain valid and in full force and effect.

25. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the parties hereto and on their respective successors and assigns.

26. **ASSIGNMENT.** Organization shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation) without the prior written consent of County.

27. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of California.

28. **PROVISIONS REQUIRED BY LAW.** Each and every provision of law and clause required by law to be included in this Agreement shall be deemed to be included herein, and this Agreement shall be read and enforced as though each were included. If for any reason any such provision is not included in the Agreement or is not correctly stated, then upon request of either party, the Agreement shall forthwith be amended to make such insertion or correction.

29. **NOTICE.** Any notice required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice or may be served by certified mail, return receipt requested, to the following address:
30. **COMPLIANCE WITH STORMWATER LAWS.** Organization's use of the Reserved Area is subject to federal, state and local laws regarding the discharge of pollutants into the storm water conveyance system in storm water and non-storm water. Compliance with these laws may require Organization to develop, install, implement and maintain pollution prevention measures, source control measures and Best Management Practices ("BMPs"). BMPs can include operational practices; water or pollutant management practices; physical site features; or devices to remove pollutants from storm water, to affect the flow of storm water or to infiltrate storm water to the ground. BMPs applicable to Organization's use of the Reserved Area may include a requirement that all materials, wastes or equipment with the potential to pollute urban runoff be stored in a manner that either prevents contact with rainfall and storm water, or contains contaminated runoff for treatment and disposal. Organization shall use, operate, maintain, develop, redevelop and retrofit the Reserved Area, as necessary, in accordance with all applicable federal, state and local laws restricting the discharge of non-storm water at or from the Reserved Area; and all such laws, regulations, or local guidance requiring pollution prevention measures, source control measures, or the installation or use of BMPs. Organization further agrees to develop, install, implement and/or maintain, at Organization's sole cost and expense, any BMPs or similar pollution control devices required by federal, state and/or local law and any implementing regulations or guidance.

If County receives any fine or fines from any regulatory agency as a result of Organization's failure to comply with applicable storm water laws as set forth in this section, Organization shall reimburse County for the entire amount of any such fine. Organization understands and acknowledges that the storm water and non-storm water requirements applicable to Organization's use of the Reserved Area may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Organization's activities or development by Organization or County.

31. **SPECIAL PROVISIONS.** Organization shall comply with the following special provisions:
If there is any conflict or inconsistency between these special provisions and any other provision in this Agreement, the special provisions in this paragraph shall take precedence.

a. On March 1 of each year, provide a one-year calendar of special events to the Department of Parks and Recreation for the following year (March 1 through February 28). A "special event" is when model airplane pilots who are not members of Organization use the Reserved Area by invitation from Organization.
b. Organization shall install a locker in the Reserved Area and shall equip the locker with two ten-pound fire extinguishers and two shovels. In addition, Organization shall maintain in the Reserved Area one or more covered bucket(s) of clean sand, at least one of which shall be located near the fire equipment locker.
c. At Organization's monthly business meetings, Organization shall train its members on proper use of fire extinguishers and other fire suppression methods.
d. Organization shall not fly any model airplanes on "red flag" (high fire danger) days.
e. Only a member of Organization in good standing who has attended a seminar on Proper Electric Airplane Protocol and who is a certified electric airplane pilot may fly a model airplane with an electric motor. Anyone else wishing to fly a model airplane with an electric motor may do so only under the supervision of a member of Organization who is a certified electric plane pilot.
f. If while in Cactus Park, a member of Organization sees a fire in the park, the member shall call the Lakeside Fire Department immediately.
g. Organization shall have at least one operating cell phone on site at all times when a model airplane is being flown.
h. Lithium polymer (LiPo) batteries shall be charged only on the asphalt of the pits or on a designated table and must never occur with the battery in an automotive vehicle or in a model. LiPo batteries must be charged in a fireproof container provided by a member of Organization or a guest. The surface of designated LiPo charging tables shall be of a fireproof, non-electricity conducting material.
i. Organization shall conduct a monthly seminar for members, if needed, on Proper Electric Airplane Protocol. The seminar shall cover the following subjects: battery care, transportation, charging and use; and matching electric motor, speed control, propeller and battery for optimum safety and performance.
j. If a member of Organization attends a Proper Electric Airplane Protocol seminar and becomes a certified electric airplane pilot, Organization shall issue to that member a membership card clearly indicating that the member is a certified electric airplane pilot.
k. County may prohibit the use of lithium polymer (LiPo) batteries in model airplanes in the Reserved Area at any time.

32. **DRUGS AND ALCOHOL.** When using or maintaining the Reserved Area, Organization and its employees, members, and volunteers shall not: (i) be impaired in any way because of being under the influence of alcohol or a drug; (ii) possess an open container of alcohol or consume alcohol; (iii) possess or be under the influence of an illegal drug; or (iv) sell, offer or provide alcohol or a drug to another person.

33. **TERMINATION.**
A. **FOR CAUSE.** County may terminate this Agreement in whole or in part for cause by the Director of Parks and Recreation giving written notice of default and specifying a date not less than five days after the date of written notice by which Organization may cure the default. If Organization fails to cure the default by that date, County may terminate this Agreement immediately by the Director of Parks and Recreation notifying Organization of the termination. Default includes the following:

1. Organization’s failure for any reason to fulfill any of its obligations under this Agreement in a timely manner;

2. Any use of the Reserved Area by Organization or its employees, members, volunteers, agents, subcontractors, guests or any person or group under Organization’s responsibility that the Director of Parks and Recreation determines to be improper; or

3. Any conduct by Organization’s employees, members, volunteers, agents, guests or subcontractors that the Director of Parks and Recreation determines to be inappropriate or unacceptable.

B. **FOR CONVENIENCE:** Either County or Organization may terminate this Agreement on 30 days’ written notice to the other party.

34. **INDEPENDENT CONTRACTOR.** For all purposes under this Agreement, Organization is an independent contractor with sole control of the manner and means of performing its obligations under this Agreement. Organization shall complete its obligations under this Agreement according to Organization’s own means and methods of work, which shall be in the exclusive charge and control of Organization and shall not be subject to control or supervision by County. Neither Organization nor any employee, member or volunteer of Organization shall be deemed to be an employee of County for any purpose.

35. **NO WAIVER.** The failure of either party to enforce any term, covenant or condition of this Agreement shall not be construed as a waiver of that party’s right to subsequently enforce this, or any other term, covenant or condition of this Agreement. No waiver shall be deemed effective unless the waiver is expressly stated in writing and signed by the party waiving the right or benefit.
36. **INTERPRETATION.** The provisions of this Agreement shall be liberally construed to effectuate its purpose. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party.

**IN WITNESS WHEREOF,** County and Organization have executed this Agreement, effective the date first above written, by their duly authorized agents.

**FIRST WEED WACKERS**

**AERO SQUARDON:**

By [Signature]
Chairperson

By [Signature]
Secretary

Date 3/14/2012

**COUNTY**

By [Signature]
Brian Albright, Director
Parks and Recreation Department

Date 3/22/2012

Note: if Organization is a California non-profit corporation, need 1 signature from each of the following 2 groups:

(1) Executive Group: President, Vice-President or Chairman of the Board; and

(2) Management Group: Secretary, Assistant Secretary, Assistant Treasurer or Chief Financial Officer. (Corp. Code § 5214.)