

**FIRST AMENDMENT TO
CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT
AND INDEMNIFICATION AGREEMENT**

THIS FIRST AMENDMENT TO CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT AND INDEMNIFICATION AGREEMENT ("Amendment") is made by and between CHOLLAS LAKE PARK FLYERS, also known as CHOLLAS R/C FLYERS, a not-for-profit association ("PERMITTEE"), and THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective upon execution by CITY (the "Effective Date") and approval by the San Diego City Attorney, as follows:

RECITALS

- A. CITY, as licensor, and PERMITTEE, as licensee, are parties to that certain CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT AND INDEMNIFICATION AGREEMENT (the "Agreement") dated October 1, 2007, relating to CITY-owned real property known as Chollas Park/South Chollas Landfill and more particularly described in the Agreement (the "Permit Area").
- B. PERMITTEE would like to extend the term of the Agreement to a three-year term and be permitted to use the Permit Area seven days a week.
- C. Since surface improvements to the Permit Area that required a short term and limited access have been completed by CITY, CITY will allow the requested changes to the Agreement.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Recital A. The "Expiration Date" of the Agreement, as defined in Recital A of the Agreement, shall be **September 30, 2010**.
- 2. Right to Enter. Section 1, Right to Enter, of the Agreement shall be deleted in its entirety and replaced with the following:
 - 1. **Right to Enter**. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE and its members, employees, agents, contractors, guests and invitees to enter upon the Permit Area at any time after sunrise until sunset of each day during the term of this Permit, and at no other time whatsoever. CITY may at any time and for any reason suspend PERMITTEE'S right of entry granted by this Permit.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

3. No Other Changes. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment is executed to be effective as of the Effective Date.

Date: _____

CHOLLAS LAKE PARK FLYERS, also known as
CHOLLAS R/C FLYERS, a not-for-profit association

BY: _____
Name: Victor D. Noed
Title: President

Date: 10/30/07

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: _____
Name: Blaire McKenna
Title: ASST MANAGER

APPROVED AS TO FORM AND LEGALITY:

Date: 12/12/07

MICHAEL J. AGUIRRE, City Attorney

BY: _____
Name: BROCK LADSWIG
Title: CHIEF DEPUTY CITY ATTORNEY

**CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT
AND INDEMNIFICATION AGREEMENT**

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT AND INDEMNIFICATION AGREEMENT ("Permit") is entered into by and between CHOLLAS LAKE PARK FLYERS, also known as CHOLLAS R/C FLYERS, a not-for-profit association ("PERMITTEE"), and THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective as of **May 11, 2007** (the "Effective Date") when signed by the parties and approval by the San Diego City Attorney, as follows:

Recitals

- A. PERMITTEE seeks permission from CITY to allow its members to fly radio-controlled aircraft (the "Flight Activity") on City-owned land (the "Permit Area") known as Chollas Park/South Chollas Landfill and more particularly described in **Exhibit A: Permit Area**, attached hereto, on a continuing basis through **September 30, 2007** (the "Expiration Date"). Use of the Permit Area for Flight Activity after the Expiration Date will require either an amendment of this Permit extending Expiration Date and signed by the parties, or a new right-of-entry permit.
- B. CITY is willing to accommodate PERMITTEE'S request, but only if PERMITTEE strictly complies with the terms and conditions of this Permit, specifically including without limitation the insurance requirements, the indemnification provision, the necessity to obtain a waiver from each Flight Activity participant, and ensuring that each PERMITTEE member abide by its rules and those of the current Official Academy of Model Aeronautics National Model Aircraft Safety Code ("AMA Safety Code"). PERMITTEE will install and maintain markers within the Permit Area clearly identifying an "Authorized Flight Area" to CITY'S satisfaction and visible to all PERMITTEE members, Flight Activity participants and observers. Failure to restrict Flight Activity to such "Authorized Flight Area" will be a default of this Permit and result in CITY'S revocation and termination of this Permit.

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE and its members, employees, agents, contractors, guests and invitees to enter upon the Permit Area after sunrise on Saturday until sunset on Sunday of each week during the term of this Permit, and at no other time whatsoever. CITY may at any time suspend PERMITTEE'S right of entry under this Permit to accommodate CITY construction projects on or about the Permit Area.
- 2. Use of Permit Area. PERMITTEE and its members, employees, agents, and contractors may enter upon and use the Permit Area for the sole purpose of conducting the Flight Activity. PERMITTEE shall ensure that each participant in the Flight Activity is either (or

both a member of PERMITTEE or the Academy of Model Aeronautics. PERMITTEE shall also ensure that each participant in the Flight Activity complies at all times with the AMA Safety Code and PERMITTEE'S rules and regulations. PERMITTEE shall not allow any person to participate in the Flight Activity without having signed and delivered to PERMITTEE a "City of San Diego Waiver of Liability, Assumption of Risk, and Indemnity Agreement," substantially in the form attached hereto as **Exhibit B: Waiver**. Prior to quitting the Permit Area, PERMITTEE shall clear all trash and debris resulting from the Flight Activity.

3. Authorized Flight Area. Prior to any Flight Activity, PERMITTEE shall install, and maintain throughout the Flight Activity, markers clearly identifying an "Authorized Flight Area" within the Permit Area to CITY'S satisfaction and visible to all PERMITTEE members, Flight Activity participants and observers. PERMITTEE'S failure to restrict Flight Activity to the "Authorized Flight Area" shall be a default of this Permit, upon which CITY may immediately revoke PERMITTEE'S right of entry and terminate this Permit.
4. Term. The term of this Permit ("Term") shall commence on the Effective Date and expire at 5:00 P.M. on the Expiration Date.
5. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY at will. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S revocation and termination of this Permit. CITY may enter upon the Permit Area at all times.
6. Permit Fee. PERMITTEE shall pay to CITY a permit fee in the amount of Six Hundred Dollars (\$600), payable upon execution of this Permit.
7. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S members, employees, agents, or contractors, guests, and invitees which arise out of or are in any manner directly or indirectly connected with this Permit, the Flight Activity, or PERMITTEE'S occupancy or use of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

8. Insurance. Prior to PERMITTEE'S occupation of the Permit Area, PERMITTEE shall deliver to CITY a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000).
- a. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - b. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The certificate of insurance shall be filed with CITY'S Real Estate Assets Department.
 - c. Qualified Insurer(s). All insurance required by the terms of this Permit shall be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. CITY may accept non-admitted surplus lines insurers, provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
 - d. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy shall be the sole responsibility of PERMITTEE, and shall be disclosed and subject to CITY'S approval at the time evidence of insurance is provided.
 - e. Continuity of Coverage. All insurance policies shall be in effect prior to PERMITTEE'S occupation of the Permit Area. PERMITTEE shall maintain all insurance required by this Permit throughout the Term and any extended use, without lapse.
 - f. Accident Reports. PERMITTEE shall report to CITY any accident causing property damage or injury to persons on the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
 - g. Failure to Comply. If PERMITTEE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify PERMITTEE of such payment of premiums stating the amount paid, the name of each insurer, and the rate of interest. PERMITTEE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S

notice. Notwithstanding any other provision of this Permit, if PERMITTEE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit, in whole or in part, immediately upon such breach. Upon such termination, PERMITTEE shall immediately cease the use of the Permit Area and commence and diligently pursue the removal of all persons and property.

9. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
10. Drug-free Workplace. PERMITTEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, to maintain a drug-free workplace.
11. Disabled Access Compliance. PERMITTEE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
12. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S use of the Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
13. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
14. No Assignment. PERMITTEE shall not assign any rights granted by this Permit or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.
15. Signs. PERMITTEE shall not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense, or CITY may remove the item at PERMITTEE'S cost.
16. Maintenance of the Permit Area. PERMITTEE shall, to CITY'S satisfaction, maintain the Permit Area in a decent, safe, healthy and sanitary condition at all times during the Term.
17. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing

authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and PERMITTEE'S occupancy and use thereof.

18. Inspection. CITY may, at any time without prior notice, enter and inspect the Permit Area.
19. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area without CITY'S prior written consent.
 - a. If any release of a hazardous substance occurs, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
 - b. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S use or maintenance of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
 - c. If PERMITTEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Permit Area, PERMITTEE shall immediately notify CITY. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area.
 - d. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, or maintenance of the Permit Area ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Permit Area, CITY may cause an environmental assessment of the Permit Area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE'S Operations on, in, or under the Permit Area, and in what quantities. If any such hazardous substances exist in

quantities greater than allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor.

20. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
21. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
22. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
23. Legal Proceedings. If CITY commences legal proceedings to enforce any right or obligation under this Permit, PERMITTEE shall pay all costs in connection therewith, including reasonable attorney fees and costs.
24. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or PERMITTEE, respectively, as follows:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attn: Stephen L. Geitz, Supervising Property Agent
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

CHOLLAS PARK R/C FLYERS
c/o VICTOR NOEDER
2840 39th Street
San Diego, California 92105

25. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City

Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for PERMITTEE'S occupancy, use, or maintenance of the Permit Area.

26. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
27. Governing Law. This Permit shall be governed, construed, and enforced in accordance with the laws of the State of California.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

28. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY that such authority is valid and such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: 5/11/07

THE CITY OF SAN DIEGO, a California municipal corporation

BY: David Sandoval
Name: DAVID SANDOVAL
Title: DEPUTY DIRECTOR, REAL ESTATE ASSETS

Date: 5/11/07

CHOLLAS LAKE PARK FLYERS, also known as "Chollas R/C Flyers," a not-for-profit association

* BY: Victor D. Noedler
Name: Chollas Lake Flyer
Title: Pres

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is not a "project" and therefore exempt from CEQA pursuant to State CEQA Guidelines Sec. 15060(c)(2).

Date: 5/11/07

BY: Nicole A. McGinnis
Name: Nicole A. McGinnis
Title: SENIOR PLANNER

APPROVED AS TO FORM AND LEGALITY:

Date: 5/11/07

MICHAEL J. AGUIRRE, City Attorney

BY: Breck Labwig
Name: Breck Labwig
Title: CHIEF DEPUTY CITY ATTORNEY