

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Parks and Recreation

*SMA*

BOARD AGENDA # \*B-8

Urgent

Routine

AGENDA DATE September 14, 2010

CEO Concurs with Recommendation YES  NO

(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Amend the Agreement with Modesto Radio Control Club to Use and Maintain the Radio Control Glider/Electric Airplane Field Area at Modesto Reservoir Regional Park

STAFF RECOMMENDATIONS:

1. Approve the Director of the Department of Parks and Recreation to amend the agreement with Modesto Radio Control Club to use and maintain the Radio Control Glider/Electric Airplane Field at Modesto Reservoir Regional Park commencing on October 1, 2010, and terminating on September 30, 2015.
2. Authorize the Director of the Department of Parks and Recreation to sign the amendment.

FISCAL IMPACT:

The approval of this amendment ensures that the Modesto Radio Control Club and its members continue to provide complimentary maintenance support to the airplane field at Modesto Reservoir. All users who participate as members or guest of the Modesto Radio Control Club during exclusive uses are responsible for payment of entrance fees including day use fees or club annual passes.

(Continued on Next Page)

BOARD ACTION AS FOLLOWS:

No. 2010-566

On motion of Supervisor O'Brien, Seconded by Supervisor Chiesa

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Amend the Agreement with Modesto Radio Control Club to Use and Maintain the Radio Control Glider/Electric Airplane Field Area at Modesto Reservoir Regional Park

**FISCAL IMPACT (CONTINUED):**

Additionally, the Modesto Radio Control Club is responsible to maintain the area for members, guests, and to some extent for public use. As such, the exclusive use of the facility on the second Sunday of each month for members and guests is offset by the amount of maintenance service provided by club members on an annual basis including gopher and weed abatement; installation, maintenance, repair, and replacement of irrigation lines; mowing of turf; care of trees; and vandalism and graffiti abatement.

**DISCUSSION:**

The Modesto Radio Control Club (MRCC) is a chartered club of the Academy of Model Aeronautics which is the United States representative for model aviation under the Federal Aeronautique International Organization. Their purpose and objective is to offer leadership and assistance to modelers in the pursuit of their hobby as a recreational activity and to promote safe and enjoyable participation in modeling and flying for its members, other model clubs, guests, and surrounding communities.

In 2004, MRCC met with the Department of Parks and Recreation and requested permission to use and assist in maintaining a radio controlled glider and electric airplane field and area at Modesto Reservoir Regional Park.

On September 28, 2004, the Board of Supervisors approved a one year agreement with an option to extend for an additional five years for MRCC to use, operate, and maintain the determined area at the Reservoir (Attachment A). The agreement authorized MRCC the exclusive use on the second Sunday of each month for members and guest in exchange for maintenance of the area. During the remainder of the year, the airfield remains open for public use.

In 2005, Amendment One was signed which extended the agreement for an additional five years terminating on September 30, 2010 (Attachment B). The Department has carefully reviewed the future development plans for the Modesto Reservoir Regional Park and does not foresee any significant planned improvements that would impact the area utilized by MRCC that would preclude continued use. On this basis, staff recommends the signing of Amendment Two which would extend the Agreement with MRCC for an additional five years (Attachment C).

**POLICY ISSUE:**

Approval of this agenda item supports the Board of Supervisors' priorities of Effective Partnerships and A Well Planned Infrastructure System by partnering with a community based organization to provide on-going recreation programs and assistance in maintaining park land.

**STAFFING IMPACTS:**

There are no staffing impacts associated with this item.

**CONTACT PERSON:**

Sonya K. Harrigfeld, Director of Parks and Recreation

Telephone: 209-525-6770

**MODESTO RADIO CONTROL CLUB  
LICENSE (USE) AGREEMENT**

This License Agreement is entered into on October 1, 2004, by and between the County of Stanislaus, a political subdivision of the State of California ("County") and the Modesto Radio Control Club, a non-profit association (the "Club").

**RECITALS**

WHEREAS, the County Department of Parks and Recreation proposes to operate and maintain a radio control glider/electric airplane field at Modesto Reservoir Regional Park (the "Park") that is open to the general public and for organized radio control glider/electric airplane club events; and

WHEREAS, the Club is an *Academy of Model Aeronautics* chartered club with approximately 50 members and is willing to assist the County in the maintenance of the radio control glider/electric airplane field; and

WHEREAS, pursuant to Government Code section 25536 (a), and in consideration for the promise of the Club to assist in the maintenance of the radio control glider/electric airplane field, the County is willing to authorize the Club to use the radio control glider/electric airplane field;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereto agree as follow:

**TERMS AND CONDITIONS**

**1. License.**

1.1 The County hereby permits the Club, and all its members in good standing, upon payment of all applicable fees and charges (special club, Annual Permit fees), unless specifically waived by the County in this Agreement or another agreement, to enter the Park and that portion of the Park established for use as an radio control glider/electric airplane field (the "Premises"), as shown on the attached plat, for the purpose of operating and maintaining a field radio control glider/electric airplane field. This license is non-exclusive and is subject to and shall be subordinate to the use of the Park, including the radio control glider/electric airplane field, by the County for any present and future purpose. The County shall have the right to enter upon the Premises at any time for the purpose of inspecting the condition of the Premises and for verifying compliance by the Club with the provisions of this Agreement and all applicable laws.

1.2 It is understood that the property interest created by this Agreement may be subject to personal property taxation and that the Club will be subject to the payment of property taxes levied on such interest. The Club shall pay before delinquency all taxes, assessments or other charges levied or made as a result of the Club's possession or use of the Premises without contribution by the County, including the Club's personal property on the property.

**2. Term.**

2.1 The initial term of this license shall be for the period of one (1) year, commencing on October 1, 2004, and terminating on September 30, 2005, unless terminated sooner as provided in this Agreement.

2.2 The County, in its sole discretion, and upon the recommendation of the Parks and Recreation Commission, may extend the term of this Agreement for an additional period of five (5) years, commencing on

expiration of the original term specified in Section 2.1 of this Agreement, provided the Club has fully and faithfully performed all the terms, covenants, and conditions of this Agreement for the initial term. The extended term of this Agreement shall be subject to the same terms and conditions as are contained in this Agreement.

2.3 This Agreement may be relinquished by the Club at any time by giving at least 60 days prior written notice to the County. The County may revoke this Agreement and license at any time for cause and upon 90-day written notice without cause.

### 3. Use of Radio Control Glider/electric airplane Field.

3.1 The Club agrees to establish use of the public radio control glider/electric airplane field, and to obtain, and thereafter maintain, certification by the *Academy of Model Aeronautics*. The club shall have the right, during the term of the agreement, to erect such structures and to provide such equipment upon the Premises as may be reasonable and necessary for the purpose of establishing and maintaining a radio control glider/electric airplane field. No structure may be erected or altered upon the Premises until the type of use, design and proposed location or alteration shall have been approved in writing by the County.

3.2 The Premises shall be open daily to the public except that on the second Sunday of every month, the Premises shall be reserved for the exclusive use by the Club for its events.

3.3 The Club agrees to conduct at least one (1) youth radio control glider/electric airplane activity events, and one (1) public radio control glider/electric airplane event each year during the term of this Agreement.

3.4 The Club shall maintain the Premises in a clean and sanitary manner and shall comply with all laws, ordinances, rules, and regulations applicable to the Premises, enacted or promulgated by any public or governmental authority or agency having jurisdiction over the Premises or activities conducted on the Premises. The Club shall, at its own cost and expense, keep and maintain the Premises and the improvements on the Premises in good condition; provided, however, the Club is not responsible for the cost of material needed to maintain the Premises. The County shall not be obligated to make any improvements, alterations or repairs to the Premises or any portion thereof or improvements thereon, or to pay or reimburse the Club for any part of the cost thereof.

3.4.1 The Club shall coordinate with park staff on a monthly basis for assistance with the maintenance of the radio control glider/electric airplane field as listed, but not limited to the following: mowing, weeding, trimming, tree trimming, painting, and general cleanup.

3.5 The Club shall not use the Premises or permit the Premises to be used by others in any manner that creates waste or nuisance, damages the Premises or adjoining property, or unreasonably disturbs other Park users. Within the limits of its legal powers, the Club shall protect against pollution of waters surrounding the Park and adjacent to the Premises, and neither the Club nor any member of the Club shall discharge waste or effluent onto the Premises in any manner that might contaminate water sources or otherwise constitute a nuisance.

3.6 The Club shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity\* located or found upon the Premises. In the event such items are discovered on the Premises, the Club shall immediately notify the County or an authorized representative of the County.

3.7 The Premises shall not be used or permitted by the Club to be used in violation of any law or ordinance or for any unlawful purpose. The Club shall not allow or permit hunting or trapping on the Premises. The Club shall not sponsor, allow or permit gambling, on the Premises. The Club shall not sell, store or dispense,

or permit the, sale, storage or dispensing of beer or other intoxicating liquors unless specifically authorized in writing by the Director of the Department of Park and Recreation. The Club shall not use the Premises or permit the Premises to be used by others for any illegal or immoral business or purpose, or for any activity that would constitute a nuisance. It is understood that overnight camping is not to be permitted on the Premises without prior written consent from the Department Director or designee. It is understood that any camping would be extremely limited and subject to all requisite camping fees.

#### 4. Improvements.

4.1 All buildings, structures, installations, facilities or other improvements placed or constructed on the Premises by the Club shall be and remain the personal property of the Club so long, as this Agreement is in effect. Upon termination of this Agreement, either through expiration or earlier termination as herein provided, any and all such improvements affixed to the Premises shall become and remain the property of the County free and clear of all costs to the County.

4.2 The County may require the removal at any time of all or any part of any improvements constructed, made or installed without the required consent of County. Unless otherwise agreed in writing, the County may require that any or all improvements be removed by the expiration or earlier termination of this Agreement, notwithstanding their installation may have been consented to by the County. Any other improvement placed upon the Premises by the Club and not permanently affixed to the Premises, shall be removed by the Club within 30 days after termination of this Agreement, but if not removed within that period, such improvements shall be treated as abandoned property as provided herein.

4.3 If the Club abandons, vacates or surrenders the Premises, or is dispossessed by process of law, or otherwise, personal property belonging to the Club and left on the Premises, including any improvements, shall be kept for a reasonable time by the County, but in no event longer than 15 days after the County gives the Club written notice to remove such property from the Premises, after which time, if not so removed, it may be treated by the County as abandoned and may be disposed of by any means deemed appropriate by the County, including sale or disposal at a scrapper or at a landfill. Such procedure is in lieu of any process prescribed by law, including the provisions of Chapter 5 (commencing with Section 1980) of Title 5, Part 4, Division 3 of the California Civil Code, and Club specifically waives any rights under said Chapter 5.

#### 5. Insurance and Indemnification.

5.1 The Club shall take out, and maintain during, the term of this Agreement and any extended term of this Agreement, a comprehensive general liability insurance policy covering bodily injury, personal injury, property damage with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Club under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

5.2 The Club agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Club's defense and indemnification obligations as set forth in this Agreement.

5.3 The Club's insurance coverage shall be primary insurance regarding the acts and omissions of the Club and its members related to the radio control glider/electric airplane field. Any insurance or self-insurance maintained by the County or its officers and employees shall be excess of the Club's insurance and shall not contribute with Club's insurance.

5.4 At least ten (10) days prior to the date the Club occupies the Premises, the Club shall furnish County with certificates of insurance and applicable endorsements effecting coverage required by this

Agreement. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

5.5 The limits of insurance described herein shall not limit the liability of the Club.

5.6 To the fullest extent permitted by law, Club shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the Club's occupation and use of the Premises.

#### 6. Assignment.

6.1 The parties expressly agree that the Club shall not assign, sublet, encumber or otherwise transfer its rights under this Agreement, or any right or interest in the Premises, without the prior written consent of the County, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of this Agreement or any interest therein without the County's written consent, either by voluntary or involuntary act of Club, or by operation of law or otherwise, shall, at the option of County, terminate this Agreement. As a condition of assignment, the assignee shall execute an express written assumption of all of the obligations of Club under this Agreement.

6.2 The County may accept performance of the Club's obligations from any person other than Club pending approval of disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of any rent or performance shall constitute a waiver or estoppels of the County's right to exercise its remedies for the default or breach by the Club of any of the terms, covenants, or conditions of this Agreement.

6.3 The consent of the County to any assignment shall not constitute consent to any subsequent assignment by the Club or to any subsequent or successive assignment by the assignee. However, the County may consent to subsequent assignments of this Agreement or any amendments or modifications thereto without notifying the Club or anyone else liable on this Agreement and without obtaining their consent, and such action shall not relieve such persons from liability under this Agreement.

#### 7. Miscellaneous Provisions.

7.1 Notices. All notices permitted or required by this Agreement or by law to be served on or given to either party hereto by the other party, shall be in writing and shall be effective when personally delivered to the party to whom it is directed, or in lieu of personal service, when deposited in the United States mail addressed as follows, or any other address designated by the party:

**To County:**  
Stanislaus County  
Purchasing Department  
1010 Tenth Street, Suite 5400  
Modesto, CA 95354

**To Club:**  
Modesto Radio Control Club  
Attn.: Charles Eaton  
9924 Country Oak Drive  
Oakdale, CA 95361

7.2 Waiver. Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified or amended as provided herein.

7.3 Amendment. This agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed by an officer of the Club and by the Director of the County Department of Parks and Recreation.

7.4 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

7.5 Advice of Attorney. Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

7.6 Construction. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had, in fact, drafted this Agreement.

7.7 Governing Law and Venue. This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

COUNTY OF STANISLAUS

MODESTO RADIO CONTROL CLUB

By: James Nelson  
Asst. Purchasing Agent  
County of Stanislaus

By: Jeff Hunter  
Current President

Date: 10/7/04

Date: 9/10/04

APPROVED AS TO CONTENT:  
Department of Parks and Recreation

By: Sonya Hartyfeld  
Sonya Hartyfeld, Interim Director  
Department of Parks and Recreation

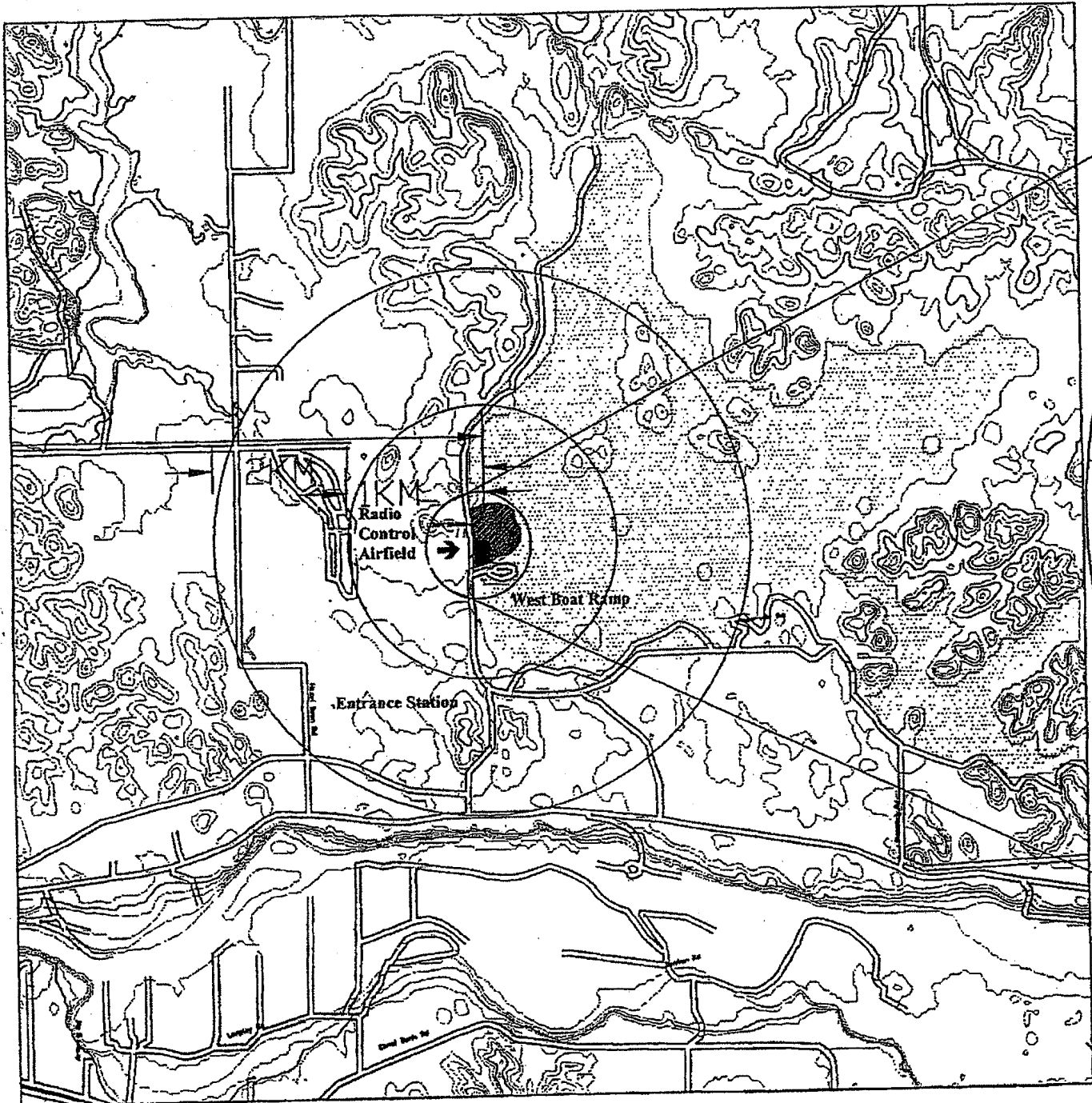
Date: 9/14/04

APPROVED AS TO FORM:

By: Edward R. Burroughs  
Edward R. Burroughs  
Deputy County Counsel

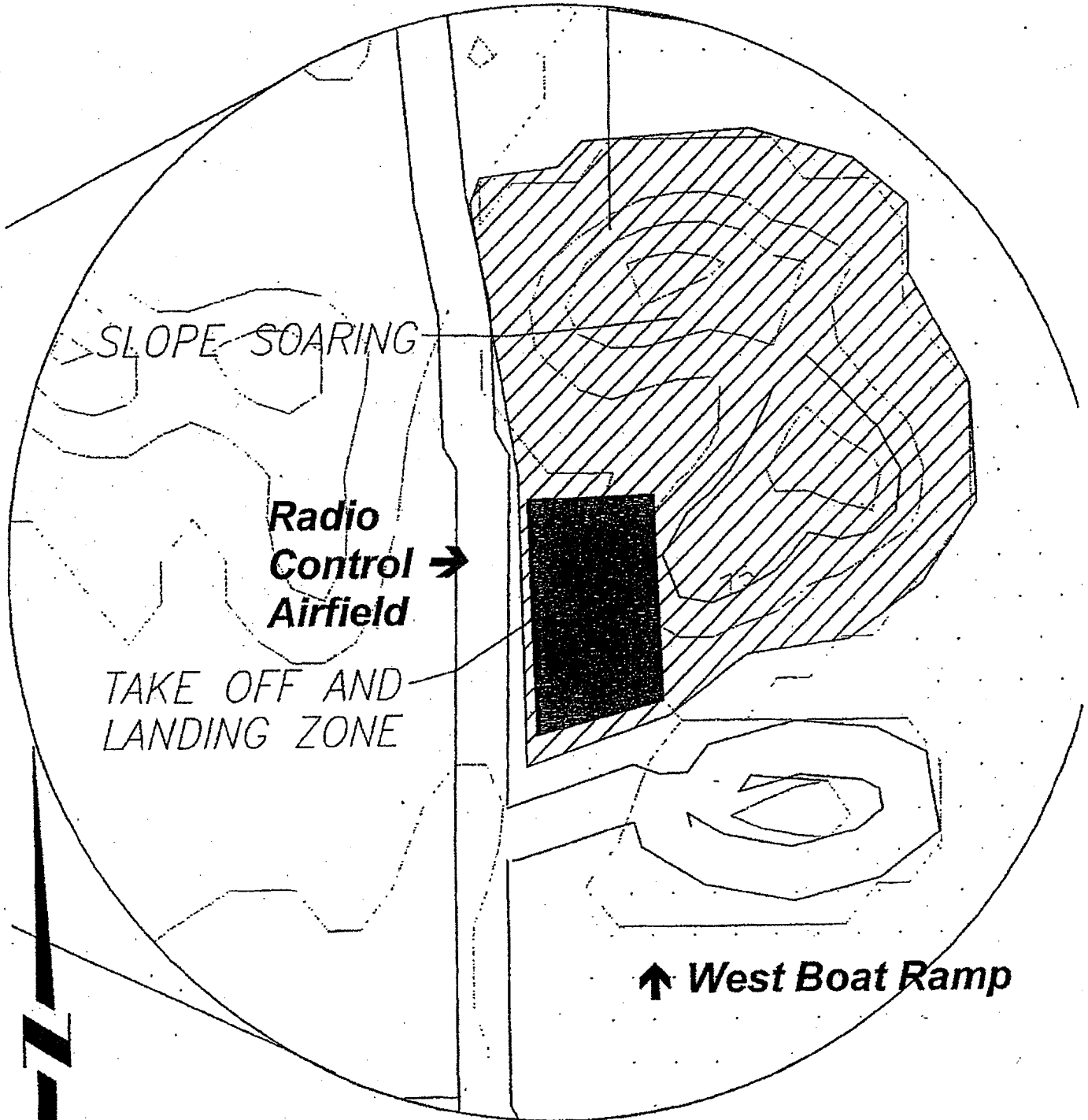
Date: 9-21-04

**MODESTO RESERVOIR**  
*Map Not To Scale*  
**Radio Control Glider/Electric Airplane Field Location**





**MODESTO RESERVOIR**  
*Map Not To Scale*  
**Radio Control Glider/Electric Airplane Field Detail**





**Agreement No. A00002  
GSA PURCHASING AGENT**

1010 10<sup>th</sup> Street, Suite 5400, Modesto, CA 95354  
PO Box 3229, Modesto, CA 95353-3229  
Phone: 209.525.6319 Fax: 209.525.7787

**AMENDMENT NO. 1  
To  
LICENSE USE AGREEMENT**

This Amendment Number 1 to the License Use Agreement dated October 1, 2004, (the "Agreement"), between the County of Stanislaus, a political subdivision of the State of California ("County") and the **Modesto Radio Control Club**, a non-profit association (the "Club") is made and entered into this 3 day of OCT, 2005, for and in consideration of the promises, covenants, terms, and conditions, hereinafter contained.

WHEREAS, Paragraph 7.3 of the Agreement provides that the Agreement may be amended by the mutual consent of the parties if such amendment is in written form and executed with the same formalities as the Agreement and attached to the Agreement to maintain continuity; and

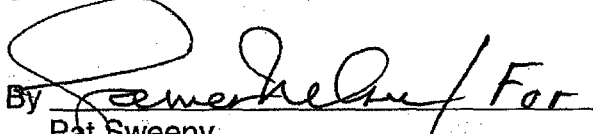
WHEREAS, 2.2 of the Agreement provides that the term of the Agreement may be extended for an additional period of five (5) years, commencing on the expiration of the original term specified in Section 2.1 of the Agreement; and

NOW, THEREFORE, the parties agree as follows:

1. Paragraph 2.1 is amended to read; "the extended term of this license shall be for a period of five (5) years, commencing on October 1, 2005, and terminating on September 30, 2010, unless terminated sooner as provided in this Agreement. "
2. Except as amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

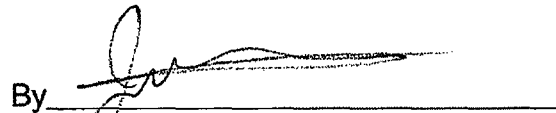
In Witness Whereof, the parties have executed this Amendment No. 1 to the Agreement

**COUNTY OF STANISLAUS**

By   
Pat Sweeny  
Interim Purchasing Agent

"County"

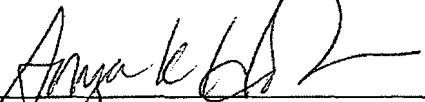
**MODESTO RADIO CONTROL CLUB**

By   
Jeff Hunter  
Current President

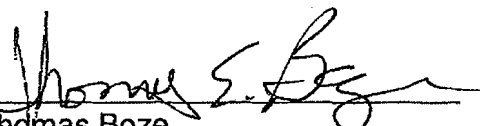
"Club"

Attachment B

Approved as to Content:  
Department of Parks and Recreation

By   
Sonya K. Harrigfeld  
Director

Approved as to Form:  
County Counsel  
Michael H. Krausnick

By   
Thomas Boze  
Deputy County Counsel



DEPARTMENT OF PARKS AND RECREATION  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Phone: (209) 525-6700  
Fax: (209) 525-6773

**AMENDMENT NO. 2  
To  
LICENSE USE AGREEMENT**

This Amendment to Use Agreement dated October 1, 2004, is entered into this 14 day of 9, 2010 between the County of Stanislaus, a political subdivision of the State of California ("County") and the Modesto Radio Control Club, a non-profit association (the "Club")

WHEREAS, the County and Club are parties to that certain Use Agreement, dated October 1, 2004, (the Agreement), as amended by that certain Amendment Number 1 to Use Agreement, dated October 3, 2005; and

WHEREAS, Amendment 1 extended the initial term for a period of five (5) years; and

WHEREAS, the County and the Club desire to extend the Use Agreement for an additional five (5) year period; and

WHEREAS, this amendment is for the mutual benefit of County and Club;

NOW, THEREFORE, the County and Club agree as follows:

1. Paragraph 2.1 is amended to read; "The initial term of the Agreement shall be from October 1, 2004, until September 30, 2005. The first extended term of the Agreement commenced on October 1, 2005 and terminates on September 30, 2010. The second extended term of the Agreement shall be for a period of five (5) years, commencing on October 1, 2010 and terminating on September 30, 2015.

2. Except as amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

In Witness Whereof, the parties have executed this Amendment No. 2 to the Agreement

COUNTY OF STANISLAUS  
Department of Parks and Recreation

By: [Signature]  
Sonya K. Harrigfeld  
Director

"County"

MODESTO RADIO CONTROL CLUB

By: [Signature]  
Name: Bernardk Simpige  
Title: PRESIDENT MRCC

"Club"

Approved as to Form:  
County Counsel  
John P. Doering

By: [Signature]  
Thomas Boze  
Deputy County Counsel