

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

DEPT: Sheriff ELM

BOARD AGENDA # *B-5

Urgent

Routine

AGENDA DATE September 1, 2015

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval for the Sheriff to Enter Into a Sublease Agreement with Modesto Executive Air Charter (Sky Trek Aviation) for Hanger No. 5

STAFF RECOMMENDATIONS:

Authorize the Purchasing Agent to sign the sublease agreement and any additional renewals with Modesto Executive Air Charter (Sky Trek Aviation) for all of the space at Hangar No. 5.

FISCAL IMPACT:

The Sheriff has been leasing Hanger No. 5 from Sky Trek Aviation for the past five years at a rate of \$1,560 per month. Along with this lease extension the monthly rate has increased to \$2,300 per month to reflect that the Sheriff is using the entirety of Hangar No. 5. With the original lease, the Sheriff's Department shared the hanger with Medi-Flight.

Continued on Page 2

BOARD ACTION AS FOLLOWS:

No. 2015-410

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

and approved by the following vote,

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

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT: (Continued)

In 2013 Medi-Flight moved into a larger space and the Department was able to secure the entire space for Hangar No. 5, which allowed the Department to move in equipment and vehicles associated with the Dive Team. When this occurred Sky Trek did not increase the rent owed by the Sheriff's Department. With the renewing of the contract the Department is being charged an increased rate to reflect the continued use of the entire Hangar space. The total annual cost for this lease is \$27,600.

The appropriations to fund the expenses associated with the this lease have been included in the Sheriff's 2015-2016 Adopted Proposed Budget.

DISCUSSION:

The Sheriff has maintained a lease for hangar space at the Modesto Airport for its Air Support Unit since its inception over 15 years ago. Originally the Department rented space in Hangar No. 1 but eventually that space grew outdated and was smaller than the Department needed to adequately house the aircraft and related equipment. In 2005 the Department was offered the chance to move into Hangar No. 5 and contributed a one-time cost of \$60,000 from its dedicated funds budget to pay for its share of the remodeling costs to make the space usable for both the Sheriff's Department and the other tenant Medi-Flight. In 2013 Medi-Flight moved into a larger space and the Department was able to secure the space in Hangar No. 5 to secure the vehicles and equipment for the Sheriff's Dive Team in addition to the equipment for the Air Support Unit.

The Hangar contains approximately 10,000 square feet of space which adequately houses all of the aircraft and equipment necessary for the operations conducted by these two teams. The facility also provides adequate office space to house pre-flight planning and briefing space as well as quarters designed to be used when pilots and flight crews are placed on standby for short notice operations.

The current five year lease agreement with Sky Trek Aviation for Hanger No. 5 was signed in June 2010 and expired May 31, 2015. The Sheriff has been operating on a month to month lease while the details of this lease have been worked out between the parties. The proposed lease will extend the current lease another five years and ensure that the Sheriff has the appropriate facilities to house and maintain the sophisticated and sensitive aircraft and related equipment currently used by the Sheriff's Department. The new lease term will be for the period of June 2015 through May 2020. An extended lease period is available through May 2025 should the Department desire to extend the lease.

Approval for the Sheriff to Enter Into a Sublease Agreement with Modesto Executive Air Charter (Sky Trek Aviation) for Hanger No. 5
Page 3

POLICY ISSUES:

By approving this Agenda Item, the Sheriff will continue to have available space in which to safely store all of the Air Support and Dive Team Equipment. This agenda item meets the Board of Supervisors stated priority of a safe community.

STAFFING IMPACTS:

There is no staffing impact associated with this request.

CONTACT INFO:

Mike Parker, Lieutenant, Telephone (209) 552-3901

SUBLEASE

This Sublease is made and entered into as of Monday, the 1st of June 2015.

(The Effective Date) and is by and between MODESTO EXECUTIVE AIR CHARTER, INC d/b/a Sky Trek Aviation (a corporation formed and organized under the law of the State of California) (the Lessee/Sublessor) and STANISLAUS COUNTY a political subdivision of the State of California (the Sublessee).

RECITALS OF FACT

The Lessee/Sublessor warrants that the Lessee/Sublessor has the legal capacity to enter into this Sublease, is validly constituted, and is a corporation in good standing under the laws of the State of California and was duly formed and organized under the laws of the State of California.

The Sublessee warrants that the Sublessee has the legal capacity to enter into this Sublease, is validly constituted, and duly formed and organized under the laws of the State of California.

The Lessee/Sublessor as the "Lessee" executed an agreement in writing with the City of Modesto as the Lessor entitled "Airport Lease" that is dated 24th day of November 1998.

By the terms of the Airport Lease that portion of the municipal airport of the City of Modesto (the Airport) described as Corporate Hangar Plots 1,2,3,4 & 5 with adjacent apron area and corporate hangar plot that on the date of execution of the Airport Lease was unimproved (the Premises) was leased by title Lessor to the Lessee/Sublessor and hired by the Lessee/Sublessor from the Lessor for the term and subject to the conditions stated in the Airport Lease.

A portion of the Premises consists of an enclosed structure designated as Hangar 5. The Lessee/Sublessor leases to Sublessee and Sublessee hires from Lessee/Sublessor one hundred percent (100) of Hangar 5 (the Sublease Premises).

The Parties agree that the Sublease Premises contains ten thousand square feet of leasable space (10,000) (the Square Footage) no matter what the actual size thereof in square footage may be.

The Sublessee acknowledges, understands and agrees that neither the Lessee/Sublessor nor any person claiming to act on behalf of the Lessee/Sublessor has made any representation, warranty, estimation of promise of any kind or nature whatsoever relating to the actual dimensions of the Sublease Premises.

Subject to obtaining the prior written consent of the Lessor in accordance with terms, conditions, covenants, provisions, and restrictions for the Airport Lease and subject to earlier

termination in accordance with the terms, conditions, provisions, and restrictions of this Sublease, the Lessee/Sublessor intends to Sublease the entirety of the Sublease Premises to the Sublessee for a term of sixty (60) months, (the "Initial Term").

Subject to the Sublease then being in effect and the Sublessee being in full compliance with the terms, conditions, covenants, provisions, and restrictions of this Sublease upon exercise and commencement thereof, the Lessee/Sublessor is willing to grant to the Sublessee, to be solely exercisable by the Sublessee personally, a single option to extend the Initial Term of this Sublease for a further sixty (60) months as is the (Extended Term").

The word "Term" as utilized in this Sublease shall mean collectively the Initial Term and the Extended Term if exercised in accordance with the terms, conditions, covenants, provisions, and restrictions of this Sublease, and any holding over of the Premises by the Sublessee permitted by the Lessee/Sublessor.

The Sublessee desires to sublease the entirety of the Sublease Premises from the Lessee/Sublessor for the Initial Term.

The Parties agree that this Sublease embodies each and all of the terms, conditions, covenants, provisions, and restrictions desired by such Party in relation to the subject matter of this Sublease.

The Parties agree this Sublease may be terminated for convenience and without cause by the Sublessee with written notice of no less than six (6) months.

The Parties represent and warrant that upon each has duly executed and delivered this Sublease to the other party.

The Parties represent and warrant that upon execution and delivery of this Sublease to the other Party, this Sublease will constitute the legal, valid and binding obligation of each of the Parties, enforceable against each of the Parties in accordance with terms, conditions, covenants, provisions, and restrictions of this Sublease.

NOW, THEREFORE, in consideration of the premises, the mutual covenants of the Parties contained in this Sublease and other good and valuable consideration had received by each of the Parties (the receipt and sufficiency of which each of the Parties acknowledges), the Parties agree to be bound by each and all terms, conditions, covenants, provisions, and restrictions of this Sublease (whether or not in a given instance, a term conditions, covenant, provisions of restriction has one or both Parties specifically agreeing thereto).

INCORPORATION OF THE RECITALS OF FACT

1. The Parties covenant and warrant and acknowledge the (a) the Recital of Fact are true and correct at this time of execution of this Sublease, (b) the Recital of Fact express the intent of the Parties at the time of execution of this Sublease, (c) the Recitals of Fact are incorporated by this reference in the body of this Sublease, (d) the Recitals of Fact are binding upon each of the Parties, and the personal representatives, successors, and assigns each of the Parties, and (e) each of the Parties has no knowledge of any fact that would now or any time in the future make anyone or more or all of the Recitals of Fact untrue.

GRANT

2. In accordance with and subject to the terms, conditions, covenants, provisions and restrictions contained in the Sublease and the observance and performance by the Sublessee of each and all of the terms, conditions, covenants, provisions and restrictions contained in the Airport Lease to be observed and performed by the Lessee/Sublessor thereunder, commencing as of, the 1st day of June 2015 (the "Commencement Date") and subsisting for the Initial Term the Lessee/Sublease to the Sublessee and the Sublessee hires from the Lessee/Sublessor the entirety of the Sublease Premises.

The right of the Sublessee over the Sublease Premises pursuant to the terms, conditions, covenants, provisions, and restrictions of the Sublease includes the non-exclusive right to use the ramp area that is contiguous to the Sublease Premises for the parking of aircraft in common with the Lessee/Sublessor and the clients, customers, invitees, authorized representatives, and agents of the Lessee/Sublessor. The Parties acknowledge, understand, and agree that the Sublessee and the Lessee/Sublessor shall operate in good faith and with a cooperative spirit to effect the efficient, coordinated, and safe parking on and about the ramp area that is contiguous to the Sublease Premises of aircraft that belongs to the Sublessee, the Lessee/Sublessor and the clients, customers, invitees, authorized representatives, and agents of the Lessee/Sublessor.

In accordance with and subject to the terms, conditions, covenants, provisions, and restrictions contained in this Sublease and the observance and performance by the Sublessee of each and all of the terms, conditions, covenants, provisions, and restrictions contained in the Airport Lease to be observed and performed by the Lessee/Sublessor thereunder, the Lessee/Sublessor grants to the Sublessee the option to extend the Initial Term for an additional sixty (60) months (the Extended Term) on all of the same terms, conditions, covenants, provisions, and restrictions contained in the Sublease, except actual monies paid for Monthly Rent. In order to exercise the option for the Extended Term, the Sublessee shall have to give the Lessee/Sublessor written notice of exercise of the option (the "Option Notice") at least Six (6) months before the expiration date of the Initial Term, provided, however, if the Sublessee in material default either on the date

of giving the Option Notice or on the date the Extended Term is to commence, then the Option Notice shall be totally ineffective and the Extended Term shall not commence, and this Sublease shall expire on the earlier of the expiration date of the Initial Term or in accordance with terms, conditions, covenants, provisions, and restriction specified in this Sublease.

RENT FOR THE SUBLEASE PREMISES

3. The term "Rent" as used in this Sublease includes the collective obligation of Sublessee to pay the following in lawful money of the United States of America:

a) Monthly Rent for the Initial Term (June 2015 through May 2020) in the amount of \$2,300.00 (10,000 sq. ft. @ \$0.23/sq. ft.). Monthly Rent for Extended Term (June 2020 through May 2025) shall increase annually in an amount equal to the increases of Consumer Price Index (CPI) for San Francisco-Oakland Index, published by the US Department of Labor.

During the Initial Term, the Extended Term of and any period of holding over of the Subleased Premises, Monthly Rent is due on the first day of the month in which the obligation accrues and payable at the office of the Lessee/Sublessor appearing in Section 14 (or at such other place or places as the Lessee/Sublessor may from time to time designate by written notice to the Sublessee.

b) Building insurance, property taxes, and utilities for said Subleased Premises shall be inclusive in the monthly rate of \$2,300.00 per month.

COVENANTS OF THE SUBLESSEE

4. The Sublessee represents and warrants to the Lessee/Sublessor and Lessor and covenants for the benefit of the Lessee/Sublessor and the Lessor that throughout the Term of the Sublessee shall in respect of the Sublease Premises and areas under the Airport Lease impacted by the Sublessee perform each and all of the terms, conditions, covenants, provisions, and restrictions on the part of the Lessee/Sublessor contained in the Airport Lease to be paid, observed, and performed with respect to the Sublease Premises except for the obligations of the Lessee/Sublessor to pay rent or other sums to the Lessor under the Airport Lease. Sublessee agrees to provide \$3,000,000 Liability coverage; The Lessee/Sublessor shall provide insurance coverage for the building throughout the Term of the Lease.

COVENANT OF THE LESSEE/SUBLESSOR AND THE SUBLESSEE

5. The Lessee/Sublessor and the Sublessee represent, and warrant to the Lessor and covenants for the benefit of the Lessor that neither this Sublease nor Sublease Premises no any part of the Sublease Premises may be assigned (including an assignment by operation of law), sublet, encumbered, hypothecated or otherwise transferred, nor shall the Sublessee part with or share position of the Sublease Premises or any part of the Sublease Premises with any person(s) or entity(is), unless the written consent of both the Lessor and the Lessee/Sublessor is first obtained (which consent the Lessee/Sublessor agrees will not be unreasonably withheld) in accordance with the terms, conditions, covenants, provisions, and restrictions of the Airport Lease.

ACKNOWLEDGEMENTS BY THE LESSEE/SUBLESSOR

6. The Lessee/Sublessor acknowledges, understands and agree that:
- (a) The Lessee/Sublessor remains liable with the Sublessee under the Airport Lease with respect to each and all of the terms, conditions, covenants, provisions, and restrictions of the Airport Lease and that the Lessee/Sublessor is not released from the performance of any covenants, duty, obligation, responsibility, agreement or liability of the Lessee/Sublessor under the terms, conditions, covenants, provisions, and restrictions contained in the Airport Lease; and
 - (b) The consent of the Lessor contained in the "Consent to Sublease" attached to this Sublease does not constitute a waiver of the necessity of obtaining consent from the Lessor to any assignment of the Airport Lease or further subletting of the Sublease Premises or any other transfer of the Airport Lease, nor is the Consent to Sublease to be construed or interpreted as a forfeiture of any of the rights of the Lessor contained in the Airport Lease.

EXERCISE OF RIGHTS BY THE LESSEE/SUBLESSOR

7. A. Right to enter and take possession of the Sublease Premises and terminate this Sublease. The Sublessee acknowledges, understands, and agrees that if
- (a) The Sublessee fails to pay to the Lessee/Sublessor Rent or any other sum due under the Sublease on the day or dates appointed for the payment thereof
- or
- (b) The Sublessee fails to observe or perform any of the terms, conditions, covenants, provisions, and restrictions of the Airport Lease or this Sublease to be observed
- or*
- performed by the Sublessee,

Then the Lessee/Sublessor shall have the right to terminate this Sublease and upon so doing the Lessee/Sublessor may forthwith reenter the Sublease Premises as though the Sublessee had not been in possession thereof, subject, however, to the terms, conditions, covenants, provisions, and restrictions contained in this Sublease that are to be observed and performed by the Lessee under the Airport Lease.

B. **Right in the Lessee/Sublessor to cure defaults.** Notwithstanding the provisions of subsection A of the Section, if the Sublessee is in default in the performance of any of the terms, conditions, covenants, provisions, and restrictions of the Airport Lease or this Sublease (other than the payment of rent or other sums required to be paid pursuant to the Airport Lease or this Sublease), then the Lessee/Sublessor may from time to time, after giving such notice as the Lessee/Sublessor considers sufficient having regard to the circumstances applicable "(or without notice in the case of an emergency) perform or cause to be performed all or any part of any of the covenants, duties"

obligations, responsibilities, agreements or liabilities of the Sublessee to be performed under the Airport Lease or this Sublease and for such purpose may do such things as may be required, including, without limitation, entering upon the Sublease Premises and doing such reasonable considers necessary in the premises. The Sublessee agrees that the costs, expenses, and fees paid or incurred by the Lessee/Sublessor shall have no liability to the Sublessee for any loss or damage resulting from any such action taken by the Lessee/Sublessor pursuant to the right of the Lessee/Sublessor under this Subsection.

MODIFICATION FOLLOWING SUBLEASE

8. The liability of the Lessee/Sublessor and any immediate and remote successor in interest of the Lessee/Sublessor under the Airport Lease and the due performance of the covenants, duties, obligations, responsibilities, and agreements of the Airport Lease on the part of the Lessee/Sublessor to be performed or observed shall not in any way be discharged, released or impaired by any (a) agreement that amends, modifies or adds to the Airport Lease and whether such agreement impacts the rights of the Lessor under the Airport Lease or the covenants, duties, obligations, responsibilities, agreements or liabilities of the Lessee/Sublessor under the Airport Lease, (b) stipulation that Lessee/Sublessor under the Airport Lease is to be performed, (c) waiver of the performance of a covenant, duty, obligation, responsibility, agreement or liability of the Lessee/Sublessor under the Airport Lease, or (d) failure to enforce any of the covenants, duties, obligations, responsibilities, agreements, or liabilities of the Lessee/Sublessor under the Airport Lease.

9. The Parties agree that the operation of this Sublease is specifically conditioned upon the pre-happening of the execution by the Lessor of the Consent to Sublease.

ASSIGNMENT OF RIGHTS OF THE LESSEE/SUBLESSOR AGAINST THE SUBLESSEE

10. **A. Defaults by the Sublessee.** The Lessee/Sublessor and the Sublessee agree that if the Sublessee should be in default of any covenant, duty, obligation, responsibility or agreement of the Sublessee under this Sublease, which default also constitutes a default by the Lessee/Sublessor under the Airport Lease, then the Lessor shall be permitted to avail itself of any and all of the rights and remedies of the Lessor/Sublessor in connection therewith.

B. Right of the Lessor. Without limiting the generality of Subsection A of this Section, the Lessor shall be permitted (by assignment of cause of action or otherwise) to institute an action or proceeding against the Sublessee in the name of the Lessee/Sublessor in order to enforce the rights of the Lessee/Sublessor under this Sublease and the Lessor shall also be permitted to take all ancillary actions (e.g., serve default notices and demands) in the name of the Lessee/Sublessor as the Lessor reasonable determines to be necessary or proper or convenient in the premises.

C. Cooperation by the Lessee/Sublessor. The Lessee/Sublessor agrees to cooperate with the Lessor and to perform such acts and execute such documents as may be reasonable necessary, proper or convenient in the premises in connection with the implementation of the rights of the Lessor under the provisions of this Section.

D. No Election of Remedies. The Lessee/Sublessor expressly acknowledges and agrees that the exercise by the Lessor of any of the rights and remedies of the Lessor under the provisions of this Section shall not constitute an election or remedies by the Lessor and shall not in any way impair the entitlements of the Lessor to pursue directly against the Lessee/Sublessor any and all other rights and remedies in the Lessor under the Airport Lease, at law or in equity each and all of which continue unabated and available to the Lessor.

11. DEFAULT BY THE SUBLESSEE AND REMEDIES OF THE LESSEE/SUBLESSOR

A. Events of Default by the Sublessee. The occurrence of anyone of more of the following events (“Events of Default”) shall constitute a breach of this Sublease by the Sublease by the Sublessee:

- a) If the Sublessee fails to pay any Rent as due in Section 3 hereof within ten (10) days of when and as the same becomes due and payable under the terms, conditions, covenants, provisions or restrictions of this Sublease; or
- b) If the Sublessee fails to obtain or maintain any policy of insurance that is requires of the Sublessee by this Sublease of the Airport Lease; or
- c) The Failure of the Sublessee to observe or perform any of the material terms, conditions, covenants, provisions, and restrictions of this Sublease or the Airport Lease to be observed or performed by the Sublessee, other than those described in Parts (a), (b), and (c) supra, if such failure continues for a period of thirty (30) days after written notice thereof from Lessee/Sublessor to the Sublessee (provided, however, that if the nature of the failure of the Sublessee is such that more than (30) days are reasonably required for the cure thereof, then the Sublessee shall not be deemed to be in default if the Sublessee commences such cure within the (30) days period and thereafter diligently prosecutes such cure to completion); or
- d) Any assignment of all or any part of this Sublease (including an assignment by operation of law), subletting of all or any part of the Sublease Premises or transfer of possession or contingent right of possession of all or any portion of the Sublease Premises including, without limitation, a concession, mortgage, deed of trust, devise, hypothecation, agency, franchise or management agreement, or the occupancy or use by any other person or entity of any portion of the Sublease Premises (the employees or agents of the Lessee excepted) attempted by the Sublessee without first complying with the terms, conditions, covenants, provisions or restrictions of this Sublease and the Airport Lease and obtaining the written consent of the Lessee/Sublessor thereto;
- e) If the Sublessee (I) makes a general assignment for the benefit of the creditors, or (II) admits in writing the inability of the Sublessee to pay the debts of the Sublessee as such debts become due, or (III) files or has filed against the Sublessee a petition in bankruptcy, or (IV) is adjudicated a bankrupt or insolvent, or (V) files a petition seeking any reorganization, arrangements, composition, readjustment, liquidation, dissolution or similar relief under any present or future statue, law or regulation (a “Proceeding”), or (VI) files an answer admitting or fails reasonably to contest the material allegations of a petition files against the Sublessee in a Proceeding, or (VII) seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of the Sublessee or any material part of the properties of the Sublessee or

f) If within ninety (90) days after the commencement of a Proceeding, the Proceeding has not been dismissed, or if within ninety (90) days after the appointment without the Sublessee or of any trustee, receiver or liquidator of the Sublessee or of any material part of the properties of the Sublessee such appointment has not been vacated; *or*

g) If this Sublease or any estate of the Sublessee under this Sublease is levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) days; *or*

h) The vacating or abandonment of the Sublease Premises by the Sublessee; *or*

I) If thrice during any twelve (12) month period the payment by the Sublessee of any Rent is not accepted by the financial institution of the Lessee/Sublessor or lack of sufficient funds (the Lessee/Sublessor may elect to declare the Sublessee in default or require future payments of Rent to be made by cashier's check or in cash and if the Lessee/Sublessor elects to declare the Sublessee in default, then notwithstanding the language of Section B of this Section, such default shall be non-curable).

B. Remedies of The Lessee/Sublessor. If an Event of Default should occur, without limiting the Lessee/Sublessor in the exercise of any right or remedy which the Lessee/Sublessor may have by reason of such Event of Default either under this Sublease or at law or in equity, then the Lessee/Sublessor may, at any time thereafter, with or without notice or demand:

(a) Terminate the right of the Sublessee to possession of the Sublease Premises by any lawful means, in which case the Sublease shall terminate and the Sublessee shall immediately surrender possession of the Sublease Premises to the Lessee/Sublessor;

Upon termination of this Sublease under this remedy, the right of the Sublessee to possession of the Sublease Premises shall terminate and this Sublease shall terminate, unless on or before the effective date of such termination all arrears of Rent and all other sums payable by the Sublessee under this Sublease (together with interest thereon at the rate of late charges in such sum as are set forth in Subsection C of this Section) and any and all costs, expenses, and fees (including, without limitation, reasonable attorneys' and consultants' costs, expenses, and fees) incurred by or on behalf of the Lessee/Sublessor under this Sublease have been paid by the Sublessee any and all of the obligations, promises or covenants or any other Event of Default and all other breaches of this Sublease by the Sublessee at the existing have been cured and fully remedied to the sole satisfaction of the Lessee/Sublessor:

Absent a cure and upon termination under this Sublease, the Lessee/Sublessor may recover from the Sublessee;

(I) The Worth At The Time of Award of the unpaid Rent that had been earned at the time of termination; plus

(II) The Worth At The Time of Award of the unpaid Rent that had been earned after termination until the time of award exceeds the amount of such Rent loss that the Sublessee proves could have been reasonably avoided. *plus*

(III) The Worth At the Time of Award of the amount by which the unpaid Rent for the balance of the Term then remaining after the time of award exceeds the amount of such Rent loss that the Sublessee proves could be reasonably avoided; *plus*

(IV) Any other amount necessary to compensate the Lessee/Sublessor for all the detriment proximately caused by the failure of the Sublessee to perform the obligations of the Sublessee under this Sublease or which in the ordinary course of things would be likely to result there from; and

(V) At the election of the Lessee/Sublessor, such other amounts in addition to or in lieu of the foregoing sums as may be permitted from time to time by the applicable law of the State of California.

The "Worth At The Time of Award" of the amounts referred to in Subparts (I) and (II) of Part (a) of this Subsection C of this Section; The "Worth At The Time of Award" of the amount referred to in Subpart (III) of Part (a) of this Subsection is computed by discounting such amount at the discount rate of the Federal Reserve Bank: of San Francisco at the time of award plus one percent (1); *or*

(b) Maintain the right to possession of the Sublessee, in which case this Sublease shall continue in effect whether or not the Sublessee has abandoned the Sublease Premises, in such event, the Lessee/Sublessor shall be entitled to enforce all of the rights and remedies of the Lessee/Sublessor under this Sublease, including the right to recover Rent as Rent becomes due under this Sublease; *or*

(c) Pursue any other remedy now or hereinafter available to the Lessee/Sublessor in equity of under the statutes and judicial decisions of the State of California.

C. **Interest and Late Charges.** Every installment of Monthly Rent and every other payment constituting Rent which is not paid within ten (10) days after the same has become due and payable shall bear interest at the highest rate then legally permitted in the State of California from the date that such payment became due and payable until paid, whether or not demand be made therefore.

D. **No Termination without Election by the Lessee/Sublessor.** The Sublessee acknowledges, understands, and agrees that this Sublease shall continue in effect for so long as the Lessee/Sublessor does not terminate the rights of the Sublessee to possession of the Sublease Premises, and the Lessee/Sublessor may enforce all the rights and remedies of the Lessee/Sublessor under this Sublease, including the right to recover Rent as such becomes due under this Sublease. The Sublessee, acknowledges, understands, and agrees that acts of maintenance or preservation or efforts to re-let the Sublease Premises or the appointment of a receiver upon initiative of the Lessee/Sublessor to protect the interest of the Lessee/Sublessor under this Sublease shall not constitute a termination of the right of the Sublessee under this Sublease to possession of the Sublease Premises.

E. **Mitigation.** The Lessee/Sublessor shall not have any obligation to mitigate the damages of the Lessee/Sublessor that arise out of, in connection with or as result of the happening of any one or more of the Events of Default. Efforts by Lessee/Sublessor to mitigate the damages caused by anyone or more of the Events of Default shall not constitute a waiver of the right of the Lessee/Sublessor to recover damages under this Sublease or at law or in equity. In the event that due to the occurrence of one or more of the Events of Default the Lessee/Sublessor has terminated this Sublease in accordance with the terms, conditions, covenants, provisions or restrictions thereof, then the Lessee/Sublessor shall have the obligation to mitigate the damages of the Lessee/Sublessor that arose out of, in connection with or resulted from the happening of such Events of Default.

F. **Remedies Not Exclusive.** The remedies provided for in this Sublease to the Lessee/Sublessor in the event of a breach of the terms, conditions, covenants, provisions or restrictions of this Sublease are in addition to any other remedy available to the Lessee/Sublessor at law, in equity, by statute otherwise.

HOLDING OVER AND EFFECT THEREOF

12. Any holding over after the expiration of the Initial Term or the Extended Term of this Sublease with the written consent of the Lessee/Sublessor shall be construed to be tenancy from month-to-month terminable by either Party upon not less than thirty (30) days written notice and shall otherwise be on the terms, conditions, covenants, provisions or restrictions of this Sublease. However, if the Sublessee remains in possession without the written consent of the Lessee/Sublessor (which consent the Lessee/Sublessor may withhold for any reason whatsoever), such possession shall be on the applicable, *except* that Monthly Rent shall be two (2) times the Monthly Rent payable for the last month of allowable possession, prorated on a daily basis for each day that the Sublessee remains in possession. Furthermore, in case of an unauthorized holdover, the Sublessee shall also be liable to the Lessee/Sublessor and any third party for all damages arising out of or in connection with or resulting from or related to a failure by the Sublessee to surrender possession of the Sublease Premises as required, including any claim made by a successor tenant or owner for failure by the Lessee/Sublessor to timely deliver possession of the Sublease Premises to the successor tenant or owner.

NOTICES

13. A. **Manner of Notice.** Each notice or other communication permitted or required to be given under this Sublease ("Notice") shall be in writing and executed by the Party giving Notice. Every Notice shall be: (a) served personally, or (b) delivered by postage prepaid first class, certified, return receipt requested United States of America Mail, or (c) delivered by charges prepaid reputable overnight carrier that provides a receipt (such as FedEx® or UPS® or Express Mail®) or, (d) by telefax.

B. **Delivery of Notices and Address.** Any Notice shall be deemed received: (a) in the case of personal delivery, the date of actual receipt or rejection as noted on the delivery ticket; or (b) in the case of mailing, the date of receipt of rejection as noted on the official receipt provided by the United States Postal Service; or (c) in the case of overnight delivery, one (1) business day if timely deposited with the overnight carrier.

C. **Particulars.** Any Notice that a Party denies or is required to give to the other Party shall, until further Notice. To be addressed to the other Party at the address/telefax number for such Party appearing.

The Lessee/Sublessor

Modesto Executive Air Charter Inc.
D/B/A Sky Trek Aviation
Attention: Walter Van Heukelem
825 Airport Way
Modesto, CA 95354
209-525-8677

Telefax:

The Sublessee

Stanislaus County Purchasing Agent
1010 Tenth St. Suite 5400
Modesto, CA 95354

Either Party may from time to time and at any time change the address number of such Party for purposes of receipt of notice by notifying the other Party of the change of address number of such Party in accordance with the provisions of the Section.

ACKNOWLEDGMENT

14. The Sublessee acknowledges that the Sublessee has received a copy of the Airport Lease and is familiar with the terms, conditions, covenants, provisions or restrictions contained in the Airport Lease.

SUCCESSORS AND ASSIGNS

15. While this Sublease shall endure to the benefit of and be binding upon the personal representatives, successors, and assigns of the Parties, the rights of the Parties to further Sublease or assign all or portion of the rights of the Lessee under the Airport Lease shall at all times be subject to the terms, conditions, covenants, provisions or restrictions of the Airport Lease.

PARTNERSHIP

16. This Sublease is not to be construed as a partnership or joint venture between the Parties.

COSTS, EXPENSES, AND FEES-DISPUTES AND LITIGATION AND ENFORCEMENT

17. A. **Costs, Expenses, and Fees-Disputes and Litigation.** If any dispute arises between the Parties concerning the interpretation of enforcement or declaration of any right or obligation under his Sublease or if any litigation is commenced between the Parties for the interpretation or enforcement or declaration of any right or obligation under this Sublease, then the prevailing Party shall be entitled to receive from the non-prevailing Party any and all of the costs, expenses, and fees incurred by the prevailing Party in connection with the dispute or litigation between the Parties, including without limitation, attorneys and consultants costs, expenses, and fees.

This provision for costs, expenses, and fees incurred in the dispute or litigation between the Parties (including, without limitation, attorneys' and consultants' costs, expenses and fees).

For the purpose of this Sublease, the words "costs, expenses, and fees" shall also include the costs, expenses, and fees incurred by legal counsel to a Party for photocopies, duplications, deliveries, postage, telephone and facsimile communications, transcripts of proceedings relating to the action, and all other costs not ordinarily recoverable under Section 1033.5(b) of the Code of Civil Procedure of the State of California, and fees billed for law clerks, paralegals, librarians, secretaries, and other not admitted to the Bar of the State of California but performing services under the supervision of an attorney-at-law.

If arbitration is used to settle a dispute, both Parties agree that costs will be shared according to the decision of the arbitrator. In the event of litigation, the court hearing the trial or appeal of the matter (or any court of competent jurisdiction in separate action brought for the purpose of recovery of cost, expenses, and fees under this Subsection) shall order the non-prevailing Party to pay the prevailing Party the costs, expenses, and fees of the prevailing Party incurred in relation to the litigation or on any appeal.

B. Costs, Expenses, and Fees – Enforcement. In addition to any right afforded by Section 685.040 and 685.070 of the Civil Procedure Code, costs, expenses, and fees incurred in enforcing any judgment, to include without limitation, attorneys' and consultants' costs, expenses, and judgment costs, expenses and fees incurred to enforce a judgment be merged into any judgment obtained.

C. Survival. This Section and the rights conferred by this Section shall be deemed severable from the other terms conditions, covenants, provisions, and restrictions of this Sublease and survive the Term or earlier termination of this Sublease.

MULTIPLE COUNTERPARTS

18. This Sublease may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument.

AUTHORITY

19. Each person executing this Sublease on behalf of a corporation represents and warrants (I) that such person is duly authorized to execute and deliver this Sublease on behalf of such corporation, in accordance with a duly adopted resolution of the board of directors of such corporation or in accordance with the bylaws of such corporation and (II) that this Sublease is binding upon such corporation in accordance with the terms, conditions, covenants, provisions or restrictions of this Sublease.

AFFIRMATION AND REPUBLICATION

20. Each of the Parties agrees that the Airport Lease is affirmed and republished in its entirety.

Each of the Parties agrees that this Sublease does not amend the terms, conditions, covenants, provisions or restrictions of the Airport Lease, each and all of which continue unabated.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties or their duly authorized representatives have executed this Sublease as of the date first written above.

LESSEE/SUBLESSOR
MODESTO EXECUTIVE AIR CHARTER, INC.

By: Walter J. Van Heukelem
Walter J. Van Heukelem, CEO/President

SUBLEESSEE
COUNTY OF STANISLAUS
GSA Purchasing Division

By: [Signature]
Keith D. Boggs, Deputy Executive Officer,
Interim GSA Director/Purchasing Agent

APPROVED AS TO CONTENT
Stanislaus County

By: [Signature]
FOR Adam Christianson, Sheriff

By: [Signature]
Robert J. Taro, Deputy County Counsel

CONSENTED TO:
CITY OF MODESTO, LESSOR

By: [Signature]
Jim Holgersson, City Manager