

CITY OF TRACY
GROUND LEASE AGREEMENT FOR PRIVATELY OWNED HANGAR AND AIRCRAFT STORAGE

THIS GROUND LEASE AGREEMENT (Lease) is made this _____ day of _____, 20____ between _____ (Lessee) and the City of Tracy, a California Municipal Corporation (Lessor). Lessee and Lessor are collectively referred to herein as "Parties."

RECITALS

- A. WHEREAS, Lessor owns and operates an airport commonly known as the ___ [Insert name of airport] _____ (the "Airport"), and
- B. WHEREAS, Lessee desires to lease a portion of the Airport for the purpose of building and maintaining an aircraft hangar and for the storage of aircraft, and
- C. WHEREAS, Lessee has read and understands the rules and regulations that apply to the Airport;

NOW THEREFORE, incorporating the foregoing Recitals herein, the Parties mutually agree as follows:

1. **PREMISES**

1.1 **DESCRIPTION OF PREMISES**: Lessor hereby leases to Lessee and Lessee hereby leases from Lessor a portion of Lessor's real property described in Exhibit A attached hereto and incorporated herein, hereinafter referred to as the "Premises," property located at hangar space # _____.

1.2 **CONDITION OF PREMISES**: Lessee has inspected the Premises and knows the extent and condition thereof and accepts same in its present condition, subject to and including all defects, latent or patent.

At commencement of the term specified in Section 2 below, the Premises shall be paved and in good condition. Lessee shall slurry seal hangar area prior to construction of hangar. This provision shall not be applicable to previously constructed hangars or those with concrete floors.

Lessee will keep and maintain the Premises, improvements and fixtures in a clean, safe and orderly condition at all times. Lessee shall not commit or suffer to be committed any waste upon the Premises, improvements, and fixtures or commit or allow any nuisance or other act which may disturb or interfere with the Airport, its surroundings, the departure and arrival of aircraft, or other aircraft operations and uses. If Lessee shall fail to perform the obligations under this paragraph, after thirty (30) days' written notice setting forth such failure, then Lessor shall have the right to perform the same and to charge Lessee therefore, and Lessee shall pay the Lessor such costs upon Lessor's demand. Noncompliance and/or non-payment by Lessee shall constitute a breach of this Lease. The making of such repairs or performance of maintenance by Lessor shall in no event be construed as a waiver of the duty of Lessee to make repairs or perform maintenance as provided in this paragraph. Lessee shall not alter the Premises without Lessor's prior written consent except as herein set forth. If Lessor so consents, then alterations shall be made at the sole cost and expense of the Lessee.

1.3 OWNERSHIP OF IMPROVEMENTS: All privately-owned portable hangars shall remain the property of Lessee during the term of this Lease agreement; provided however, that if Lessee is no longer able to maintain the hangar due to unforeseen circumstances, Lessee may request that the hangar revert to the Lessor in accordance with Section 2.3. At the end of the Lease term, or any renewal thereof, Lessee may remove the privately-owned hangar so long as the Lease has not been terminated by the Lessor due to a default by Lessee, in which case the Lessor shall have a lien on the hangar in an amount that fully satisfies Lessee's obligation under the Lease.

2. TERM

2.1 The term of the Lease shall be 20 years from the date this Lease is executed (the "Initial Term"), unless extended through the options described herein or sooner terminated as provided in this Lease:

2.1.1. OPTION TO EXTEND INITIAL TERM: Lessee shall have the option to extend the Initial Term of this Lease for two 10 year periods. Lessee shall provide Lessor with sixty (60) days' written notice of its intent to extend the Initial Term. No extension to the Initial Term of this Lease shall be granted by Lessor if Lessee is in default of any term of this Lease and has not cured said default as provided in Section 15.

2.2. REMOVAL: Lessee may remove said aircraft hangar from the Airport within ninety (90) days. Lessee shall continue to pay the rent then in effect during said ninety-day period.

2.3. REVERSION: Hangar may become the property of the City of Tracy at the request of the Lessee.

2.4. HOLDING OVER: Any holding over by Lessee past the term of this Lease shall not be deemed a renewal or extension of the term of this Lease.

3. RENT

3.1 RENT: Lessee shall pay to Lessor, as rent, the sum of \$ _____ per month on the first day of each month for which it is due, beginning on the date term commences and continuing during the term. The rent is calculated as _____ per square foot with the square footage of hangar being _____. Rent for any partial month shall be prorated at the rate of 1/30th of the monthly rate for each day. All rent shall be paid to Lessor at the address to which notices to Lessor are given, as specified in Section 16 below. Lease rates are set by resolution of the City Council. The rental rates are set forth in Exhibit B attached hereto.

3.2 RENT ADJUSTMENTS: Lessee shall pay to Lessor as additional rent a cost of living adjustment computed annually as follows: On July 1 of each year, regardless of the commencement date of the Lease, the monthly rent shall be re-computed.

3.2.1. For the purpose of the adjustment for years two (2) through five (5) of the Initial Term of the Lease, the adjustment shall as set forth in Exhibit "B" attached hereto. The minimum monthly rent payable following an adjustment under the terms of this subsection shall continue at the adjusted level until the next adjustment period.

3.2.2. For the purpose of the adjustment for year five (5) of the Initial Term of the Lease, and for all subsequent odd years until the end of the Lease term, the resulting monthly rent shall be equal to the base rent provided for the current year of the Lease, multiplied

by the ratio of the Bureau of Labor Statistics, Consumer Price Index (CPI), All Urban Consumers, West, all items published by the United States Department of Labor, Statistics (1982-84 = 100 base). If the CPI is changed or discontinued, the most nearly comparable official price index of the United States Government shall be used for computing the foregoing adjustments of minimum rent, after converting the existing index as of the base rate to the new index. The minimum monthly rent payable following an adjustment under the terms of this subsection shall continue at the adjusted level until the next adjustment period or the end of the Lease term, whichever occurs first.

3.3 CHARGE FOR LATE PAYMENT: Lessee hereby acknowledges that the late payment of rent or any other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, and loss of interest income. Accordingly, if any payment due to Lessor is not received by Lessor within fifteen (15) days after the due date, a late charge shall be added to the payment. The total sum shall become immediately due and payable to the Lessor. The late charge shall be ten percent (10%) of the unpaid balance. The late charge is in addition to interest as provided in Section 15.4.

3.4 UTILITIES: Lessee acknowledges that Lessor provides utilities to the Premises, which may include but are not limited to, gas, electricity, water, sewer and refuse collection services. For utilities provided to the Premises, Lessee shall pay as additional rent, the sum of \$_____, and shall be paid to Lessor as provided in Section 3.1 This additional rent paid for utilities shall be calculated using the Lessor's electric bills for the previous calendar year and averaging the electric surcharge for each hangar on the South Side Hangars and Lights meter. This newly adjusted surcharge will be applied starting January of each year through December and added to the Lease invoice.

Lessee also agrees to reimburse Lessor for any and all expenses Lessor incurs in modifying existing utilities for Lessee's benefit relating to possession and use of Premises. Lessor shall in no event be liable to Lessee for any interruption in the service of any utility furnished to the Premises howsoever caused, provided that such interruption is not caused by the intentional act or omission of Lessor or its authorized representatives. This Lease shall continue in full force and effect despite any such interruptions.

4. USE OF PREMISES

4.1. Lessee shall use the Premises solely for construction, installation, maintenance and repair of a hangar, storage of aircraft and related parts and equipment. Lessee further agrees any activity, including, but not limited to, repair and maintenance of aircraft in the storage area which violates any laws, rules or regulations, including, but not limited to, any Building or Fire Codes, causes structural or other damage to any property of the Lessor, including on, above and below surfaces, or detracts from a clean and orderly appearance of the Airport or storage space is prohibited.

4.2. Lessee shall provide his or her own lock and key and shall provide a duplicate key to Lessor.

4.3. Any and all commercial activities on the premises are strictly prohibited.

4.4. Lessee agrees to limit all repairs, maintenance, installation or other activity service performed on the aircraft to the extent permitted by the Federal Aviation Administration ("FAA") rules, regulations and requirements.

4.5. Only within the hangar, Lessee shall store and keep airworthy aircraft (those that have a current annual inspection certificate or deemed airworthy by the Airport Manager) or aircraft undergoing repair or construction (as determined so by the Airport Manager) (collectively, the "Aircraft") and parts and equipment directly related to the Aircraft, all of which must be owned or leased by Lessee while located on the Premises.

4.5.1. ASSEMBLY OF AIRCRAFT: If Lessee wishes to assemble an aircraft in a hangar and cannot initially obtain an FAA registration number and/or aircraft liability insurance, Lessee shall provide proof of registration and insurance, within one year of execution of this Lease. Any request for an extension of this one year period shall not be unreasonably refused by Lessor.

5. CONSTRUCTION OF IMPROVEMENTS

Lessee shall construct or cause to be constructed a portable hangar on the Premises within ninety (90) days after the execution of this Lease. The plans and specifications and location of the hangar must be approved in writing by the Director of Parks and Recreation, or designee, before construction begins. Minimum standards for construction of portable hangars are on file at the Tracy Municipal Airport and Development Services located at City Hall. All permits related to the construction of the hangar must be acquired from the City of Tracy prior to the start of any construction. Lessee shall pay for all labor done or materials furnished in the construction, repair, replacement, development, or improvement of the hangar by Lessee, and shall keep Premises and Lessee's possessory interest free and clear of any lien or encumbrance of any kind whatsoever created by Lessee's act or omission. All contractors and/or construction personnel must comply with all rules and regulations of every agency having jurisdiction over the Airport. The Contractor, in addition to and not by way of limitation of any other provision in this Lease, shall indemnify, defend, and hold harmless the City of Tracy (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorneys' fees) resulting from or arising out of Lessee's performance of the activities granted by way of this agreement. Any request for an extension of the ninety (90) day time period shall be reviewed by the Lessor. If Lessee commences construction without Lessor's written consent, then Lessee shall be in violation of this Lease, and Lessor, at its sole discretion may terminate this Lease.

6. REGISTRATION OF AIRCRAFT

6.1 AIRCRAFT REGISTRATION INFORMATION: Lessee will store on the Premises only the following aircraft:

Aircraft No. (s)

Aircraft Make/Model(s)

Aircraft Registered Owner (s) (All registered owners of the aircraft must be listed)

Registered Owner (s) Emergency Phone Number (s)

Aircraft Owner (s) Insurance Company/Policy Number(s)

Lessee, or approved sublessee, must be listed as one of the registered owners of the aircraft.

6.2 CHANGES IN AIRCRAFT: Lessee shall provide to Lessor all information set forth in Section 6.1, prior to (i) substitution of the aircraft, (ii) change in the ownership of the aircraft, or (iii) changes of addresses and telephone numbers of Lessee and other registered owner(s) of the aircraft.

7. TAXES

Lessee shall pay, before delinquency, all taxes, assessments, license fees, and other charges which are levied against Premises and Lessee's personal property located on the Premises and which become payable during the term of this Lease. Notice is hereby given that pursuant to California Revenue and Taxation Code Section 107.6, this Lease may create a possessory interest and, in that event, Lessee is hereby obligated to pay any and all real property taxes levied on said possessory interest.

8. HAZARDOUS MATERIALS

Lessee, its agents, employees and contractors, at all times, shall keep the Premises and common areas of the Airport free of non-contained Hazardous Materials to the extent caused by Lessee or its agents, employees or contractors. Lessee may keep, up to five (5) gallons of fuel and shall be stored in approved containers for the appropriate fuel being stored. Storage of more than five (5) gallons of fuel requires review and a permit from the South San Joaquin County Fire Authority. Lessee shall not generate, manufacture, release, or dispose of Hazardous Materials in, on, or about the Premises or the common areas of the Airport.

Lessee acknowledges that it is responsible for compliance during the entire term of the Lease with all federal, state, and local laws, rules, regulations relating to the emission into the air, discharge onto lands and ground and surface waters, storage, use, and disposal of hazardous or toxic materials, substances, and wastes (collectively, "Hazardous Materials"), and all other federal, state, and local environmental laws, rules and regulations applicable to the Premises. Lessee shall not store, use, or dispose of on the Premises or the Airport grounds any Hazardous Materials on the Premises or Airport grounds except in strict compliance with all Environmental Laws.

If Lessee or any of its sublessees causes or contributes to any soil, air, groundwater, surface water, or other environmental contamination (collectively "Environmental Contamination"), or if any Environmental Contamination is attributable to any Hazardous Materials brought onto the Premises or the Airport grounds by Lessee or any of its sublessees, Lessee shall at its sole expense promptly take all investigatory and/or remedial action reasonably required for the remediation of such Environmental Contamination. Prior to undertaking any investigatory or remedial action, however, Lessee shall first obtain Lessor's approval of any proposed investigatory or remedial action. Should Lessee fail at any time to promptly take such action, Lessor may enter the Premises and undertake such action at Lessee's sole cost and expense, and Lessee shall reimburse Lessor for all such expenses within thirty (30) days of being billed for those expenses, and any amount not paid within that thirty (30) day period shall thereafter be deemed delinquent rent.

Lessee further agrees to indemnify, defend, and hold harmless Lessor and its successors in interest for any claims, damages, judgments, awards, penalties or costs arising from any

Hazardous Materials brought to the Premises or Airport on behalf of Lessee or any Hazardous Materials spilled at the Airport by Lessee or Lessee's agents, employees or contractors.

"Hazardous Materials" shall include, but not be limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC § 9601, et seq.; the Hazardous Materials Transportation Act, 49 USC § 1801 et seq.; the Resource Conservation and Recovery Act, 42 USC § 6901 et seq.; and those substances defined as "hazardous wastes" in Section 25117 of the California Health and Safety Code or as "hazardous substances" in Section 25316 of the California Health and Safety Code and in the regulations adopted and publications promulgated pursuant to said laws.

9. INDEMNIFICATION

Lessee shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the Lessor from and against any claims arising out of this Lease or caused in any way by Lessee's use of the Premises or failure to comply with obligations under this Lease, except to the extent caused by the sole, active negligence or willful misconduct of the Lessor.

In this section, "Lessor" means the City of Tracy, its officials, officers, agents, employees and volunteers; "Lessee" means the Lessee, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

The provisions of this section survive the termination of this Lease, and are not limited by the provisions of Section 11 relating to insurance.

10. INSURANCE

Lessee shall procure and maintain, for the duration of the Lease Agreement, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the Lessee's construction, operation and use of the Leased Premises. The cost of such insurance shall be borne by the Lessee.

10.1 Coverage shall be at least as broad as:

10.1.1 Aviation Liability insurance coverage on a per occurrence basis which insures against all liability of City and its agents arising out of and in connection with Lessee's use of an aircraft associated with this agreement.

10.1.2 Property insurance against all risks of loss to any tenant improvements or betterments.

10.2 Lessee shall maintain limits no less than:

10.2.1 Aircraft/Aviation Liability: \$1,000,000 per occurrence for bodily injury or property damage.

10.2.2 Property Insurance: Full replacement cost with no coinsurance penalty provisions.

10.3 Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, and volunteers; or the Lessee shall

procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

10.4 Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its elected officials, officers, agents, employees or volunteers.

10.5 Each insurance policy required under this Lease Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage, scope or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

10.6 Each insurance policy required under this Lease Agreement shall name the City of Tracy as an additional named insured.

10.7 Insurance is to be placed with insurers authorized to do business in the State of California.

10.8 Lessee shall furnish City with original certificates and endorsements effecting coverage required under this Lease Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by City before this Lease commences. Thereafter, insurance certificates and endorsements must be submitted to Lessor annually to show proof of insurance.

11. FORCE MAJEURE

Except as to the payment of rent, neither of the parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, the elements, acts of God, riots, strikes or lockouts, and any delay due to said causes or any of them shall not be deemed a breach of or default in the performance of this Lease.

12. EMINENT DOMAIN

If all or any part of the premises is taken as a result of condemnation proceedings by a public entity other than the City of Tracy, in the lawful exercise of the power of eminent domain, either party hereto may terminate this Lease by providing written notice thereof to the other party, which notice shall be effective thirty (30) days after the date of mailing.

13. RIGHT OF ENTRY

Lessee shall permit Lessor's authorized agents the right and privilege of entering the Premises for the purposes of inspection, determining whether the terms of this Lease are being kept and performed, and posting notices of nonresponsibility. Lessee shall be given twenty-four (24) hours' notice by Lessor of any entry or inspection, except in an emergency.

14. SUBLETTING/ASSIGNMENT/SALE

14.1 Neither this Lease nor any interest herein shall be assigned, either voluntarily or involuntarily, by Lessee, or by operation of law or otherwise, nor shall Premises, or any part thereof, be sublet or sold by Lessee without the prior written consent of Lessor, which shall not be unreasonably withheld or delayed. Any such assignment, sublease or sale without such prior written consent of Lessor shall be void. If Lessee attempts to make or allows to be made any subleasing, encumbrance, assignment, sale or other transfer without the prior written consent and approval of Lessor, then any of the foregoing events shall be deemed a breach of the conditions and restrictions of this Lease, and upon such breach, Lessor may, at its option,

terminate this Lease at once by written notice, and upon such termination this Lease shall end and be of no further force.

14.1.1 Unless otherwise agreed to by Lessor, no assignment, even with Lessor's approval, shall relieve Lessee of its obligations under this Lease, and Lessee shall continue to be primarily liable, not as guarantor or surety, to the same extent as though no assignment had been made.

14.1.2 A change of control of Lessee will constitute an assignment. If Lessee is (a) a corporation, the stock of which is not publicly traded over a national exchange, or (b) an unincorporated association, limited liability company, or partnership, the transfer, assignment, or hypothecation of any stock or ownership interest, or voting control in such corporation, association, limited liability company, or partnership in the aggregate in excess of fifty percent (50%), whether in one or in multiple transactions, will be deemed an assignment for purposes of this section. Notwithstanding the above, the transfer, assignment, or hypothecation of any stock or ownership interest, or voting control of a corporation, association, limited liability company, or partnership in the aggregate, whether in one or multiple transactions, such that less than fifty percent (50%) of the stock or ownership interest, or voting control of a corporation, association, limited liability company, or partnership remains in the original Lessee, such transfer, assignment, or hypothecation of any stock or ownership interest, or voting control of a corporation, association, limited liability company, or partnership will be deemed an assignment for purposes of this section.

14.2 SUBLEASE: Lessee is permitted to sublease the Premises subject to the following conditions:

14.2.1 Lessee shall use the sublease provisions attached here to as Exhibit "C"

14.2.2 Prior to any occupancy of the Premises by a sublessee, Lessee shall require the sublessee to provide evidence of insurance in accordance with the provisions of Section 10.

14.2.3 Lessee shall provide a copy of the sublease agreement and certificate of sublease insurance to Lessor within thirty (30) days following occupancy of Premises by the sublessee.

14.2.4 All building improvements and alterations constructed on the Premises shall have been approved by City pursuant to Section 5 of this Lease

14.2.3 Lessee shall remain liable under this Lease;

14.2.4 Each sublease shall contain a provision satisfactory to Lessor requiring the sublessee, if Lessor shall so demand, to attorn to Lessor if Lessee defaults under this Lease, and if the sublessee is notified of Lessee's default and instructed to make sublessee's rental payments to Lessor, but Lessor shall have no obligation to recognize the sublessee or to allow any sublessee to remain in possession upon the default of Lessee.

14.2.5 In accordance with federal grant assurance requirements, sublease rental rates are not to exceed established City-owned Airport hangar rental rates for similar sized hangars. The rental rates are set forth in Exhibit B attached hereto.

14.2.6. The term of the sublease agreement shall not exceed the term of this Lease.

14.3 SALE OF HANGAR: Lessee hereby agrees that should Lessee desire to sell the hangar on the Premises, Lessee shall provide the record of bill of sale of the hangar to Lessor, within thirty (30) days of date of sale of hangar.

15. DEFAULT

15.1 LESSEE'S DEFAULT-DEFINITION: The occurrence of any of the following shall constitute a default by Lessee:

a. Failure to pay or cause to be paid any tax, assessment, insurance premium, lien, claim, charge, or demand herein provided to be paid or caused to be paid by Lessee at all times and in the manner herein provided; or

b. Failure to complete the construction, repair, restoration or replacement of the hangar and any other improvements in and about the Premises within the times and in the manners herein provided; or

c. Failure to pay rent when due or any other sum, if the failure continues for fifteen (15) days after said due date; or

d. Failure to use, maintain, and operate the Premises as herein required, or abandonment of the property; or

e. Failure to perform any other provision of this Lease, or breach of any other covenant, condition, or restriction of this Lease herein provided to be kept or performed by Lessee.

15.2 NATURE OF NOTICE – LESSEE'S OPPORTUNITY TO CURE: Lessor shall have the right but not the obligation to give written notice to remedy such default. If the default is remedied within thirty (30) days following the date of notice, then this Lease shall continue in full force and effect.

15.3 LESSEE'S DEFAULT – LESSOR'S REMEDIES: If Lessor's default is not remedied within thirty (30) days following the date of notice as provided in Section 15.2 above, then Lessor, may, at its option terminate this Lease, and, in addition to all of the remedies, the Lessor may re-enter and re-lease the Premises, and all improvements shall become the sole property of Lessor. Upon termination, all subleases permitted by this Lease, at the option of Lessor, shall terminate. Such termination shall not waive any remedy available to either party because of such default. In the event of default by the Lessee, Lessor may, in addition to all other remedies available in law or equity, recover all damages proximately resulting from default, including, but not limited to, the cost of recovering the Premises and attorneys' fees.

15.4 INTEREST: In the event that any sum owing hereunder is not paid within thirty (30) days after written notice that such sum is past due, such sum shall bear interest at the rate of ten percent (10%) per annum from the date due until paid.

16. NOTICES

Any notice required herein shall be given by first class mail, certified or registered, postage prepaid, addressed to the parties as provided below. Notices shall be deemed served three (3) working days after mailing.

LESSOR:

City of Tracy

Attn: Airport Manager

[Insert address]

LESSEE:

[Insert Lessee information here]

17. ATTORNEYS' FEES

Should any litigation result from any act or omission concerning this Lease or the premises, it is agreed that the prevailing party shall be entitled to attorney's fees and costs in addition to any other damages imposed by law.

18. SURRENDER OF PREMISES

Upon Lease expiration and/or termination, Lessee shall surrender the Premises to Lessor in good condition, excepting ordinary wear and tear. Lessee shall at its expense, return the Premises to their original state with all anchoring devices removed and any pavement breaks repaired.

After expiration or termination of the Lease, Lessor shall have a lien on any improvements in an amount sufficient to pay all expenses necessary for Lessor to return the Premises to their original state.

19. SUBORDINATION

This Lease shall be subordinate to the provisions of any existing or future agreement between the Lessor and the United States or the State of California relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the development of the Airport. Furthermore, this Lease may be amended to include provisions required by those agreements with the United States or the State of California.

20. NO EXCLUSIVE RIGHT GRANTED

It is understood and agreed that nothing in this Lease shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 USC § 1349a).

21. NON-DISCRIMINATION

Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration thereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from the participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin will be excluded from

participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.

22. INTERFERENCE WITH OPERATIONS

The Lessee, by accepting this Lease, agrees for itself, its successors, and its assigns that it will not make use of the Premises in any manner that might interfere with the landing and taking off of aircraft or otherwise constitute a physical, electronic, or otherwise, including wildlife attractants. If this covenant is breached, the Lessor reserves the right to enter the Premises and cause the abatement of such interference at Lessee's expense.

23. MISCELLANEOUS PROVISIONS

23.1 LESSOR WARRANTIES: Lessor covenants and warrants that:

- a. It has lawful title and right to make this Lease;
- b. It will, subject to the provisions of the Lease, maintain Lessee in full and exclusive possession of the premises; and
- c. If Lessee shall perform all the agreements, covenants, and conditions required by this Lease, Lessee may freely, peaceably, and quietly occupy and enjoy the premises without interference of any person.

23.2 TIME IS OF THE ESSENCE: Time is of the essence of each provision of this Lease. Any reference in this Lease to "days" shall mean calendar days unless specifically noted to the contrary.

23.3 SUCCESSORS AND ASSIGNS: This Lease shall be binding on and inure to the benefit of the parties, their successors, and assignees.

23.4 APPLICABLE LAWS: This Lease shall be construed and interpreted in accordance with the laws of the State of California.

23.5. COMPLIANCE WITH LAWS: Lessee shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Lease

23.6 MECHANICS LIENS: Lessee shall keep the Leasehold free from any and all mechanics liens.

23.7 MODIFICATION: This Lease cannot be amended or modified except by a written instrument signed by both parties.

23.8 CAPTIONS: The captions of this Lease shall have no effect on the interpretation of this Lease.

23.9 SEVERABILITY: The unenforceability, invalidity or illegality of any provision herein shall not render the other provisions unenforceable, invalid, or illegal.

23.10 WAIVER: Waiver of any provisions herein governing the use of the Premises shall not be permanent unless executed in writing and signed by both parties.

23.11 ENTIRE AGREEMENT: This Lease and the attached Exhibit(s) comprise the entire integrated understanding between the Parties concerning each party's rights and obligations. This Lease supersedes all prior negotiations, representations or agreements. All exhibit(s) attached hereto are incorporated by reference herein.

The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease.

The Parties agree to the full performance of the terms set forth here.

Lessor

By: _____

Title: City Manager

Date: _____

Lessor

By: _____

Title: _____

Date: _____

Attest:

By: _____

City Clerk

By: _____

Title: _____

Date: _____

Approved as to form

By: _____

City Attorney

EXHIBIT A
Description of Premises

<p><i>EXHIBIT B</i></p> <p><i>Description of Rental Rates</i></p>

2020

<u>AR Type</u>	<u>Size</u>	<u>Current Lease \$</u>	<u>Cost/Sq. Ft.</u>	<u>New Lease \$</u>
AP 31 (11)	1724 ft ²	\$84.92	0.055	\$94.82
AP 32 (6)	1530 ft ²	\$74.52	0.055	\$84.15
AP 33 (8)	984 ft ²	\$54.19	0.055	\$54.19

2021

<u>AR Type</u>	<u>Size</u>	<u>Current Lease \$</u>	<u>Cost/Sq. Ft.</u>	<u>New Lease \$</u>
AP 31 (11)	1724 ft ²	\$94.82	0.06	\$103.44
AP 32 (6)	1530 ft ²	\$84.15	0.06	\$91.80
AP 33 (8)	984 ft ²	\$54.19	0.06	\$59.04

2022

<u>AR Type</u>	<u>Size</u>	<u>Current Lease \$</u>	<u>Cost/Sq. Ft.</u>	<u>New Lease \$</u>
AP 31 (11)	1724 ft ²	\$103.44	0.065	\$112.06
AP 32 (6)	1530 ft ²	\$91.80	0.065	\$99.45
AP 33 (8)	984 ft ²	\$59.04	0.065	\$63.96

2023

<u>AR Type</u>	<u>Size</u>	<u>Current Lease \$</u>	<u>Cost/Sq. Ft.</u>	<u>New Lease \$</u>
AP 31 (11)	1724 ft ²	\$112.06	0.07	\$120.68
AP 32 (6)	1530 ft ²	\$99.45	0.07	\$107.10
AP 33 (8)	984 ft ²	\$63.96	0.07	\$68.88

2025

<u>AR Type</u>	<u>Current Lease \$</u>		
AP 31 (11)	\$120.68	CPI index	New Base rent
AP 32 (6)	\$107.10	CPI index	New Base rent
AP 33 (8)	\$68.88	CPI index	New Base rent

2027 and all subsequent odd years

<u>AR Type</u>	<u>Current Lease \$</u>		
AP 31 (11)	New base rent	CPI Index	New base rent
AP 32 (6)	New base rent	CPI Index	New base rent
AP 33 (8)	New base rent	CPI Index	New base rent

EXHIBIT " _____ "

REQUIRED SUBLEASE PROVISIONS

The Sub lessor may draft its own Sublease form. The material provisions of the following paragraphs must appear in the Sublease. Paragraphs marked with an asterisk (*) must be used verbatim. The Sublease must be submitted to the Lessor prior to occupancy by Sublessee.

1. Parties. This Sublease is entered into by and between _____ ("Sublessor") and _____ ("Sublessee") as a Sublease under the master lease ("Master Lease") dated _____, 20____, also known as City of Tracy Ground Lease Agreement for Privately Owned Hangar and Aircraft Storage. Sublessor, under this Sublease, is Lessee, and City of Tracy is Lessor, under the Master Lease.
2. Premises. Sublessor leases to Sublessee and Sublessee hires the following Premises described in Exhibit A attached hereto and incorporated herein, hereinafter referred to as the "Premises," property located at hangar space # _____.
3. Term. The term of this Sublease Agreement shall be for _____, commencing _____, 20____, and terminating _____, 20____, unless sooner terminated as provided herein. (NOTE: The term of the Sublease Agreement shall in no way exceed the term provided in the Master Lease.)
4. Rent. Subessee shall pay to Sublessor, as rent, the sum of \$ _____ per month on the first day of each month for which it is due, beginning on the date term commences and continuing during the term. The rent is calculated as _____ per square foot with the square footage of hangar being _____. Rent for any partial month shall be prorated at the rate of 1/30th of the monthly rate for each day. All rent shall be paid to Sublessor at the address to which notices to Subessor are given. Lease rates are set by resolution of the City of Tracy City Council. The rental rates are set forth in Exhibit "B" attached to the Master Lease.

* Fair Market Value: In accordance with federal grant assurance requirements, sublease rental rates are not to exceed established City-owned Airport hangar rental rates for similar sized hangars. The established rental rates are referenced on the Airports webpage on the City of Tracy website.

5. * Use of Premises.
 - 5.1. Sublessee shall use the Premises solely for construction, installation, maintenance and repair of a hangar, storage of aircraft and related parts and equipment. Sublessee further agrees any activity, including, but not limited to, repair and maintenance of aircraft in the storage area which violates any laws, rules or regulations, including, but not limited to, any Building or Fire Codes, causes structural or other damage to any

property of the City of Tracy, including on, above and below surfaces, or detracts from a clean and orderly appearance of the Airport or storage space is prohibited.

5.2. Any and all commercial activities on the premises are strictly prohibited.

5.3. Sublessee agrees to limit all repairs, maintenance, installation or other activity service performed on the aircraft to the extent permitted by the Federal Aviation Administration ("FAA") rules, regulations and requirements.

5.4. Only within the hangar, Sublessee shall store and keep airworthy aircraft (those that have a current annual inspection certificate or deemed airworthy by the Airport Manager) or aircraft undergoing repair or construction (as determined so by the Airport Manager) (collectively, the "Aircraft") and parts and equipment directly related to the Aircraft, all of which must be owned or leased by Sublessee while located on the Premises.

6. * Construction of Improvements.

Any alteration or construction of improvements on the Premises shall be subject to approval by the City of Tracy. The plans and specifications and location of the improvements must be approved in writing by the Director of Parks and Recreation before construction begins. Minimum standards for construction of portable hangars are on file at the Tracy Municipal Airport and Development Services located at City Hall. All permits related to the construction of the improvements must be acquired from the City of Tracy prior to the start of any construction. Sublessee shall pay for all labor done or materials furnished in the construction, repair, replacement, development, or improvement of the hangar by Sublessee, and shall keep Premises and Sublessee's possessory interest free and clear of any lien or encumbrance of any kind whatsoever created by Sublessee's act or omission. All contractors and/or construction personnel must comply with all rules and regulations of every agency having jurisdiction over the Airport. The Contractor, in addition to and not by way of limitation of any other provision in this Sublease, shall indemnify, defend, and hold harmless the City of Tracy (including its elected officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorneys' fees) resulting from or arising out of Sublessee's performance of the activities granted by way of this agreement. If Sublessee commences construction without City of Tracy's written consent, then Sublessee shall be in violation of this Sublease.

7. * Indemnification.

Sublessee shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the City of Tracy from and against any claims arising out of this Sublease or caused in any way by Sublessee's use of the Premises or failure to comply with obligations under this Sublease, except to the extent caused by the sole, active negligence or willful misconduct of the City of Tracy.

In this section, the "City of Tracy" means, the City of Tracy, its officials, officers, agents, employees and volunteers; "Sublessee" means the Sublessee, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

The provisions of this section survive the termination of this Sublease, and are not limited because of the acceptance by the City of Tracy, or the deposit with the City of Tracy by Sublessee, of any of the insurance policies required by this Sublease.

8. Insurance.

Sublessee agrees to provide Sublessor with a Certificate of Public Liability and Property Damage Insurance meeting the insurance requirements of the Master Lease.

9. *Provisions Constituting Sublease.

This Sublease is subject to all of the terms and conditions of the Master Lease. Sublessee shall not commit or permit to be committed on the Premises any act or omission which shall violate any term or condition of the Master Lease. If Lessee defaults under the Master Lease and if Sublessee is notified of Lessee's default, and if Lessor shall so demand, Sublessee shall atton to Lessor. Sublessee shall make Sublessee's rental payments to Lessor. Notwithstanding the foregoing, Lessor shall have no obligation to recognize the Sublessee or to allow any Sublessee to remain in possession upon the default of Lessee under the Master Lease. In the event of termination of Sublessor's interest as Lessee under the Master Lease for any reason, then this Sublease shall terminate coincidentally therewith without any liability of Sublessor or City of Tracy to Sublessee.

10. *Subordination.

This Sublease shall be subordinate to the provisions of any existing or future agreement between the City of Tracy and the United States or the State of California relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the development of the Airport. Furthermore, this Sublease may be amended to include provisions required by those agreements with the United States or the State of California.

11. *No Exclusive Right Granted.

It is understood and agreed that nothing in this Sublease shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 USC § 1349a).

12. *Non-Discrimination.

Sublessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration thereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from the participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Sublessee will use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.

13. *Interference with Operations.

The Sublessee, by accepting this Sublease, agrees for itself, its successors, and its assigns that it will not make use of the Premises in any manner that might interfere with the landing and taking off of aircraft or otherwise constitute a physical, electronic, or otherwise, including wildlife attractants. If this covenant is breached, the City of Tracy and/or Sublessor reserves the right to enter the Premises and cause the abatement of such interference at Sublessee's expense.

14. *Right of Entry.

Sublessee shall permit City of Tracy's authorized agents the right and privilege of entering the Premises for the purposes of inspection, determining whether the terms of the Master Lease are being kept and performed, and posting notices of nonresponsibility. Sublessee shall be given twenty-four (24) hours' notice by City of Tracy of any entry or inspection, except in an emergency.