RESOLUTION - ACTION REQUESTED 2018-74

MEETING: February 20, 2018

TO: The Board of Supervisors

FROM: Mike Healy, Public Works Director

RE: Approve Rental Agreement Between County of Mariposa and Skydive Yosemite, LLC

RECOMMENDATION AND JUSTIFICATION:
Approve a Rental Agreement for commercial use of a portion of the Mariposa-Yosemite Airport between the County of Mariposa and Skydive Yosemite, LLC; and authorize the Chair of the Board of Supervisors to sign the Agreement.

A number of months ago a new business venture, Skydive Yosemite, LLC, approached the County regarding the viability of operating a recreational skydiving business based at the Mariposa-Yosemite Airport. Skydive Yosemite gave a detailed presentation to the Airport Advisory Committee who voted unanimously to recommended to the Board of Supervisors that this entity be allowed to operate its business which centers on offering tandem skydiving jumps to the general public and certification maintenance jumps for experienced and certified skydivers.

Upon receipt of this entity’s business plan, insurance and contract proposal staff has been working internally with County Counsel, Board liaisons for the airport and Airborn Aviation Services, LLC, the County’s contract airport operator, to insure that permitting this operation causes no operational conflicts and to reach an operating agreement and insurance requirements that satisfy the risk management thresholds of the County. Staff has had conversations with both the FAA and the CA Department of Transportation, Aviation Division, and have been assured that there is no prohibition or adverse effects to the County should the Board grant this aeronautical operation.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Staff is unaware of any previous Board Actions of this specific activity type but the Board has traditionally approved facility uses and programs that bring additional recreational opportunities both to our local residents and visitors.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
There is no adverse consequence to a negative action other than the loss of this recreational activity.

FINANCIAL IMPACT:
TheAirportAdvisoryCommitteelandstaffseenosnegativemaritonalimpacttograntingthisoperationalactivity.

ATTACHMENTS:
SkydiveYosemiteLLC--Final[DOCM]
SkydiveYosemiteLLCBusinessplan(PDF)

RESULT:ADOPTED[UNANIMOUS]
MOVER:MilesMenetrey,DistrictVSupervisor
SECONDER:MarshallLong,DistrictIIISupervisor
AYES:Smallcombe,Jones,Long,Cann, Menetrey
RENTAL AGREEMENT FOR COMMERCIAL USE OF A PORTION
OF THE MARIPOSA-YOSEMITE AIRPORT

This AGREEMENT is entered into on the most recent date last below written by and between
the County of Mariposa, a political subdivision of the State of California, hereinafter referred to
as "COUNTY," and Skydive Yosemite LLC, a California limited liability company, hereinafter
referred to as "LESSEE."

1. PREMISES: COUNTY hereby leases to LESSEE, and LESSEE hereby leases from
COUNTY, the 900 square foot awning and shed structure ("Awning") located on the northwest
side of the Mariposa-Yosemite Airport ("Airport"), and the landing area described in Exhibit A
attached hereto ("Landing Area"), hereinafter collectively referred to as the "PREMISES."

2. USE: LESSEE shall use the PREMISES solely for the purpose of providing the following
aeronautical products and/or services: The Awning will be used by LESSEE as a private
corporate area for commercial and business-related purposes. The Landing area will be used
by LESSEE for skydiving operations. LESSEE's use of the Landing Area will be non-exclusive
and shared with other aeronautical users in compliance with Federal Aviation Administration
("FAA") regulations and safety recommendations. All users of the Landing Area shall agree to
the terms in the "Landing Area Non-Exclusive User" attached as Exhibit B. LESSEE shall not
use the PREMISES for any non-aeronautical use, including without limitation, (i) the storage of
boats, automobiles, recreational vehicles, or other non-aviation items; and (ii) any residential
use. Rental payments shall be made to Airport Manager. LESSEE shall not utilize the
PREMISES for any purpose which is in conflict with the Mariposa/Yosemite Airport Policy for
Commercial/Business Usage, the Airport Rules and Regulations, the Mariposa County Code,
the Uniform Fire Code, the Uniform Building Code, FAA Rules and Regulations and any other
applicable federal, state, or local laws, rules or regulations.

3. TERM: The term of this AGREEMENT shall commence on March 1, 2018, regardless of the
date of execution, and shall expire on February 28, 2023.

4. OPTION TO RENEW: LESSEE shall have the option to extend the term of this Lease for
two (2) additional five (5) year terms upon the same terms and conditions contained herein.
LESSEE must give COUNTY written notice of LESSEE'S intent to exercise the option at least
forty-five (45) days prior to expiration of the term of this AGREEMENT.

5. RENT: LESSEE agrees to pay to the Airport Manager the sum of $326.40 per month
calculated as follows: Fifty Dollars ($50.00) per month for rental of the Awning; Twenty-Six
Dollars and 40/100 ($26.40) per month for rental of the Landing Area; and Two Hundred and
Fifty Dollars ($250.00) per month for a commercial use fee. The payment shall be made on the
first day of each calendar month during the term hereof and shall be payable in advance.
Rental payments shall be made to the Airport Manager at 5020 Macready Way, Mariposa, CA
95338.

6. RENTAL LEASE ADJUSTMENTS: The amount of the rental payment may be adjusted
annually, at the discretion of COUNTY, to reflect the Consumer Price Index (CPI) prepared by
the United States Department of Labor, Bureau of Labor Statistics, using the weighted average
of CPI (all urban consumers for the State of California). The amount of increase shall be based
on the CPI or 2%, whichever is less. The maximum increase shall not exceed 2% in any one
year.
7. **UTILITIES:** LESSEE shall pay for water, sewer, gas, heat, light, power, telephone service, and all other utility services used by LESSEE.

8. **HOURS OF OPERATION:** LESSEE agrees to maintain reasonable business hours when someone will be available to provide service to the flying public. Phone service with voice mail and posted emergency contact information shall be provided by LESSEE.

9. **REQUIRED LICENSES:** LESSEE shall provide to the Airport Manager copies of all required licenses to provide the services being rendered.

10. **ASSIGNMENT:** LESSEE shall not assign, sublet, or in any way hypothecate its interest in the PREMISES without the prior written approval of the Public Works Director, or his/her designee, which shall not be unreasonably withheld. Any such assignment, subletting or hypothecation without such consent shall be void and shall at the option of COUNTY terminate this AGREEMENT. In no event shall LESSEE be authorized to assign or sublet the PREMISES for any non-aeronautical use. In no event shall LESSEE cause any liens or other encumbrances to be placed on the PREMISES. The Public Works Director, or his/her designee, shall respond to LESSEE’S request, in writing, no later than ten (10) working days from the date the Public Works Department receives a written request from LESSEE.

11. **MAINTENANCE AND REPAIR:** LESSEE shall maintain the PREMISES in a neat and orderly condition free of any unsightly dirt, trash, or garbage, and shall keep the PREMISES clean and clear of oil, grease, and/or toxic chemicals. Hazardous or flammable materials shall be kept in its original container and shall be stored within an Environmental Protection Agency-approved or COUNTY Fire Chief-approved container or cabinet. No boxes, crates, rubbish, paper or other litter that could cause or support combustion shall be permitted to accumulate within or about the PREMISES. LESSEE shall not store fuel or any other hazardous or flammable material in excess of five (5) gallons on the PREMISES outside the confines of any stored aircraft without the prior written approval of the Public Works Director and the Mariposa County Fire Chief, or their respective designees.

LESSEE shall, at LESSEE’S sole cost and expense, maintain the PREMISES and all improvements now existing and hereafter erected thereupon, including site improvements, in good condition and repair, ordinary wear and tear excepted, in accordance with all applicable rules, laws, ordinances, orders and regulations of relevant federal, state, county, and other governmental agencies and bodies. LESSEE shall not be responsible for any damages caused by a natural disaster. LESSEE shall promptly and diligently repair, restore, and replace as required to maintain or comply as above, or to remedy all damage to or destruction of all or any part of the PREMISES caused by LESSEE. In the event that LESSEE does not promptly repair any damage to the PREMISES caused by LESSEE, COUNTY shall have the right to make such repairs, at LESSEE’S expense, which shall become due and immediately payable.

12. **ALTERATIONS:** No alterations shall be made to the PREMISES without the prior written approval of COUNTY. Prior to such approval, COUNTY and LESSEE shall agree in writing as to whether the alterations, at the end of the term of this AGREEMENT, shall become the responsibility and property of COUNTY or shall be removed by LESSEE at LESSEE’s expense.

13. **RIGHT TO INSPECT:** COUNTY or COUNTY’s duly authorized agent shall have the right to inspect the PREMISES at any reasonable time upon notice and request to LESSEE. LESSEE agrees to respond to reasonable inquiries and requests by any agent acting on behalf of COUNTY for the operation and management of the Airport.
14. **INDEMNIFICATION:** LESSEE shall indemnify, defend, and hold harmless COUNTY, its officers, agents, and employees for any claim, liability, loss, injury or damage arising out of, or in connection with the performance of this AGREEMENT by LESSEE and/or its agents, employees or sub-lessees, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by COUNTY. It is the intent of the parties to this AGREEMENT to provide the broadest possible coverage for COUNTY. LESSEE shall reimburse COUNTY for all costs, attorney’s fees, expenses and liabilities incurred with respect to any litigation in which LESSEE is obligated to indemnify, defend and hold harmless COUNTY under this AGREEMENT.

15. **INSURANCE:** LESSEE shall procure and maintain for the duration of the AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the LESSEE, its agents, representatives, or employees.

A. **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

(1) Airport Liability Insurance-on an “occurrence” basis, including products and completed operations, property damage, bodily injury with limits no less than $2,000,000 per occurrence, including owned and non-owned aircraft coverage.

(2) Commercial General Liability (CGL): Insurance Services Office (ISO)Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(3) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if LESSEE has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

(4) Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with a limit of no less than $1,000,000 per accident for bodily injury or disease.

If LESSEE maintains broader coverage and/or higher limits than the minimums shown above, the COUNTY requires and shall be entitled to the broader coverage and/or higher limits maintained by LESSEE. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to COUNTY.

Self-insured retentions must be declared to and approved by COUNTY. At the option of COUNTY, LESSEE shall provide coverage to reduce or eliminate such self-insured retentions as respects COUNTY, its officers, officials, employees, and volunteers; or LESSEE shall provide evidence satisfactory to COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide,
or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or COUNTY.

B. OTHER INSURANCE PROVISIONS

The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

(1) Additional Insured Status: The COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of LESSEE including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to LESSEE’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

(2) Primary Coverage: For any claims related to this AGREEMENT, LESSEE’s insurance coverage shall be primary insurance as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be excess of LESSEE’s insurance and shall not contribute with it.

(3) Acceptability of Insurers: Insurance is to be placed with insurers authorized to conduct business in the State of California with a current A.M. Best rating of no less than A:VII.

(4) Verification of Coverage: LESSEE shall furnish COUNTY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to COUNTY before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the LESSEE’s obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(5) Waiver of Subrogation: LESSEE hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said LESSEE may acquire against COUNTY by virtue of the payment of any loss under such insurance. LESSEE agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not COUNTY has received a waiver of subrogation endorsement from the insurer.

(6) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

16. TAXES: LESSEE shall pay prior to delinquency any taxes (including possessory interest taxes) and assessments levied or assessed on the PREMISES, or LESSEE’S possessory interest therein, and on any personal property of LESSEE’S situated in, on or about the PREMISES.

17. COMPLIANCE WITH LAWS AND REGULATIONS: LESSEE agrees to abide by and comply with all rules and regulations of the Federal Aviation Administration and laws of the
United States of America and of the State of California, ordinances and Code of the County of Mariposa and all Airport rules and regulations now or hereafter made for regulation, control and operation of the Airport and activities to be carried on by LESSEE. The following terms are required to be included in this AGREEMENT in satisfaction of COUNTY’S obligations to the Federal Aviation Administration:

a) LESSEE, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color or national origin be excluded from participation in, denied the benefits of, or be 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 shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that LESSEE shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

b) COUNTY reserves the right to further develop or improve the land area of the Airport as it sees fit, regardless of the desires or views of LESSEE and without interference or hindrance.

c) COUNTY reserves the right, but shall not be obligated to LESSEE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of LESSEE in this regard.

d) This AGREEMENT shall be subordinate to the provisions and requirements of any existing or future agreement between COUNTY and the United States Government, relative to the development, operation, or maintenance of the Airport. Failure of LESSEE or any occupant to comply with the requirements of any existing or future agreement between COUNTY and the United States Government, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of LESSEE’S rights hereunder.

e) There is reserved to COUNTY, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the PREMISES. This public right of flight shall include the right to cause in said airspace any noise and emissions inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operating on the PREMISES.

f) LESSEE agrees to comply with the notification and review requirements covered in Title 14 CFR Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the PREMISES or in the event of any planned modification or alteration of any present or future building or structure situated on the PREMISES.

g) LESSEE, by accepting this AGREEMENT, expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit any natural growth or other obstruction on the PREMISES above a height as determined by the application of the requirements of Title 14 CFR Part 77 to constitute an obstruction or hazard. In the event the aforesaid covenants are breached, COUNTY reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of LESSEE.
h) LESSEE, by accepting this AGREEMENT, agrees for itself, its successors and assigns that it will not make use of the PREMISES in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, COUNTY reserves the right to enter upon the PREMISES and cause the abatement of such interference at the expense of LESSEE.

i) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) or 49 U.S.C. § 47107(a)(4).

j) This AGREEMENT and all of the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States Government during a time of war or national emergency.

18. OPTION TO LEASE HANGAR: In partial consideration of the $250.00 commercial use fee, COUNTY agrees to provide LESSEE with the option to lease the next available hangar at the Airport, provided LESSEE’s intended use of said hangar does not cause an interruption of air operations at the Airport as determined by the Public Works Director. This option does not guarantee that any hangar will become available, nor does it bind LESSEE to lease any such hangar. A separate agreement for the lease of a hangar must be entered into by the parties when a new hangar becomes available, if LESSEE agrees to lease such hangar. Any future agreement to lease a hangar will incorporate this Agreement by reference, and all terms will be negotiated in good faith by both parties.

19. TERMINATION PRIOR TO EXPIRATION: COUNTY shall have the right to terminate this AGREEMENT, in whole or in part, on the occurrence of any of the following events: i) the failure of LESSEE to perform or observe any of the terms, covenants and conditions which it is obligated to perform, keep or observe under this AGREEMENT; or ii) the abandonment of the PREMISES. Should this occur, COUNTY shall not be responsible for the custodial protection of LESSEE’S property, fixtures or equipment abandoned. LESSEE shall have the right to terminate this AGREEMENT upon thirty (30) days written notice.

20. RIGHT OF RE-ENTRY: In the event of any breach of this AGREEMENT by LESSEE, COUNTY, besides other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and personal property from the PREMISES as permitted by law. Such personal property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of LESSEE. Should COUNTY elect to re-enter as herein provided, or should COUNTY take possession pursuant to legal proceedings or pursuant to any notice provided for by law, COUNTY may either terminate this AGREEMENT or may, from time to time, without terminating this AGREEMENT, relet the PREMISES or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as COUNTY, in its sole discretion, may deem advisable. Rentals received by COUNTY from such reletting shall be applied first to payment of any indebtedness other than rental due hereunder from LESSEE to COUNTY; second to payment of rental due and unpaid hereunder; and third, to payment of any cost of such reletting. The residue, if any, shall belong to LESSEE. Should such rental received from such reletting during any period be less than that agreed to be paid during that period by LESSEE hereunder, then LESSEE shall pay such deficiency to COUNTY. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the PREMISES by COUNTY shall be construed as an election on its part to terminate this AGREEMENT for any breach.
21. **PARTNERSHIP/AGENCY DISCLAIMER:** It is mutually understood and agreed that nothing in this AGREEMENT is intended to or shall be construed as in any way creating or establishing the relationship of partners between the parties hereto, or as constituting LESSEE as an agent or representative of COUNTY for any purpose or in any manner whatsoever.

22. **NON-WAIVER:** Any waiver of breach of any covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the other party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

23. **NOTICES:** Any notice to COUNTY shall be sufficient if sent by certified mail, postage prepaid, addressed to the Public Works Director, County of Mariposa, 4639 Ben Hur Road, Mariposa, CA 95338. Any notice to LESSEE shall be sufficient if sent by certified mail, postage prepaid, addressed to Skydive Yosemite LLC, 5020c Macready Way, Mariposa, CA 95338.

24. **ENTIRE AGREEMENT:** This AGREEMENT and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this AGREEMENT, and supersede all prior negotiations, agreements and understandings with respect thereto. This AGREEMENT may only be amended by a written document duly approved and executed by the parties hereto.

25. **INTERPRETATION:** This AGREEMENT shall be governed by the laws of the State of California.

26. **BINDING EFFECT:** The covenants, terms, and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto and all such parties shall be jointly and severally liable hereunder.

**COUNTY:**

[Signature]
Rosemarie Smallcombe, Chair
Mariposa County Board of Supervisors
Date: 2/22/2018

**LESSEE:**

[Signature]
By: Paul Wighall
Its: Owner
Date: 2/15/18

APPROVED AS TO FORM:

[Signature]
Steven W. Dahlem
County Counsel
*This overview map shows the Awning, Landing Area, and Mariposa County's proposed "New Use" site.
EXHIBIT B

Landing Area Non-exclusive User Agreement

This agreement concerns the use of a 30x40 square foot area of non-maintained land on the north side of the runway at the Mariposa-Yosemite Airport, 5020 Macready Way, Mariposa, CA 95338. This section of land was previously leased from Mariposa County by Mike Butler, and will hereinafter be referred to as the “LANDING AREA”. An aerial photograph of the LANDING AREA is attached to this agreement.

This agreement is between Skydive Yosemite LLC and __________________________ (USER) for non-exclusive use of the LANDING AREA for aeronautical activities including, but not limited to, landing parachutes, landing paragliders, and landing hanggliders.

Skydive Yosemite LLC agrees to lease the land from Mariposa county for the non-exclusive use of the landing area. Skydive Yosemite LLC will pay rent to Mariposa County annually.

For non-exclusive use of the LANDING AREA, USER agrees to abide by all applicable state and federal laws concerning use of the landing area, including any applicable FAA safety recommendations or publications. USER further agrees to promote safe use of the LANDING AREA and accommodate all other users.

Skydive Yosemite LLC agrees to maintain the LANDING AREA and keep it free from overgrowth. USER agrees to consult Skydive Yosemite LLC regarding maintenance of the LANDING AREA.

By signing below, both parties agree to the terms on this non-exclusive land use agreement and certify full understanding of this agreement. Further, both parties agree to negotiate any future agreements concerning use of the LANDING AREA in good faith.

Skydive Yosemite LLC

Signature: ____________________________________________
Printed Name: _______________________________________
Date: ______________________________________________

USER

Signature: ____________________________________________
Printed Name: _______________________________________
Date: ______________________________________________