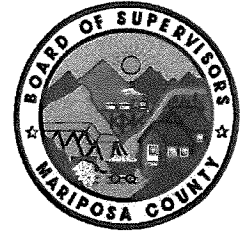


MARIPOSA COUNTY

County Counsel • (209) 966-3222



RESOLUTION - ACTION REQUESTED 2021-459

MEETING: August 3, 2021
TO: The Board of Supervisors
FROM: Steve Dahlem, County Counsel
RE: Approve a Lease Agreement for Mariposa-Yosemite Airport Ground Space

RECOMMENDATION AND JUSTIFICATION:

Approve a Lease Agreement for Mariposa-Yosemite Airport Ground Space; and Authorize the Board of Supervisors Chair to Sign the Agreement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On March 10, 2015, by Resolution 2015-109, the Board approved revisions for hangar, ground space, tie-down and commercial lease agreements at the Mariposa-Yosemite Airport.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

If the Lease Agreement is not approved, the proposed lessee will need to make alternative arrangements for the storage of his aircraft.

FINANCIAL IMPACT:

No Financial Impact

ATTACHMENTS:

Gary Friesen # 46 (PDF)

RESULT: ADOPTED [UNANIMOUS]

MOVER: Miles Menetrey, District V Supervisor

SECONDER: Wayne Forsythe, District IV Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

**LEASE AGREEMENT FOR
MARIPOSA-YOSEMITE AIRPORT GROUND SPACE**

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, through its Public Works Department, herein referred to as "COUNTY," and Gary Friesen, hereinafter referred to as "LESSEE".

1. **PREMISES:** COUNTY hereby leases to LESSEE, and LESSEE hereby leases from the COUNTY, ground space number **46**, located at the Mariposa-Yosemite Airport (Airport), consisting of approximately 912 square feet, and hereinafter referred to as the "PREMISES".
2. **TERM:** The term of this AGREEMENT shall commence on August 1, 2021 regardless of the date of execution, and shall expire on July 31, 2031.
3. **RENT:** LESSEE agrees to pay to COUNTY the sum of \$ 49.00 per month, as and for rental payment for the PREMISES. 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 mailed to Mariposa /Yosemite Airport 5020 McCready Way, Mariposa, CA 95338.
4. **RENTAL LEASE ADJUSTMENTS:** The amount for rental payments specified for this year may be adjusted annually, at the discretion of the County, for the ensuing fiscal year 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.
5. **UTILITIES:** LESSEE shall pay for water, sewer, gas, heat, light, power, telephone service, and all other utility services used by the LESSEE, including the cost of installation and maintenance thereof, if any, after prior notice to LESSEE of the costs to be incurred and LESSEE agrees to continue with said rental.
6. **HANGAR:** LESSEE shall provide or construct a hangar for the storage of aircraft owned or operated by LESSEE on the PREMISES, which must be approved in advance by the Public Works Director or his/her designee and shall be so constructed as to be removable. The hangar must be placed in accordance with the site plan approved by the Public Works Department. Any variations from the conditions contained in this paragraph shall be mutually agreed upon, in writing, between LESSEE and the Public Works Director. LESSEE shall provide COUNTY with as-built drawings of the hangar constructed on the PREMISES. Said IMPROVEMENTS must have been constructed and a Certificate of Completion issued by COUNTY or this AGREEMENT shall automatically terminate unless COUNTY and LESSEE mutually agree in writing to extend this AGREEMENT.
7. **USE:** LESSEE shall use the PREMISES solely for the storage of aircraft owned or operated by LESSEE, except as provided herein. 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. LESSEE shall not use the PREMISES for the operation of any commercial business providing aeronautical products or services to Airport tenants or users without the prior written approval of the Public Works Director, or his/her designee. LESSEE may perform any services on its own aircraft with its own employees, including without limitation maintenance, repair and fueling; provided however, that any such activity shall be performed in compliance with any applicable rules imposed by COUNTY prior to or after the effective date of this

AGREEMENT. LESSEE may obtain aeronautical products and services from any entity permitted by COUNTY to supply the particular products or services at the Airport. LESSEE shall not utilize the PREMISES for any purpose which is in conflict with the Airport Rules and Regulations, Mariposa County Code, the Uniform Fire Code, the Uniform Building Code, FAA Rules and Regulations or any other applicable federal, state, or local laws, rules or regulations.

8. **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.

9. **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. No hazardous or flammable materials in excess of a total of one gallon and in its original container will be stored within or about the PREMISES unless 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 flammable material in excess of five (5) gallons on the PREMISES outside the confines of the stored aircraft itself without 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, and in accordance with all applicable rules, laws, ordinances, orders and regulations of relevant federal, state, county, and other governmental agencies and bodies. 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 improvements. In the event that LESSEE does not promptly repair any damage to the PREMISES, COUNTY reserves the right to make such repairs, at LESSEE's expense, which shall become due and immediately payable.

10. **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.

11. **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.

12. **INDEMNIFICATION:** LESSEE hereby agrees to and shall protect, indemnify and hold COUNTY and all officers, agents, representatives and employees of COUNTY free and harmless from any and all liability or claims for injury or damages of whatsoever kind or character, including attorney's fees and costs of all types incurred in defense of any of said parties, arising out of or in any manner directly or indirectly caused, occasioned or contributed to, or claimed to be caused, occasioned or contributed to, in whole or in part, by reason of any acts or omissions of the LESSEE or of LESSEE'S independent

contractors, employees, representatives, agents, or invitees. The indemnity and hold harmless provisions shall also apply in favor of COUNTY and all officers, agents, representatives, and employees of COUNTY where LESSEE requests services of COUNTY, its officers, agents, representatives, or employees, which are not the subject of this AGREEMENT.

13. **INSURANCE:** LESSEE shall obtain a liability insurance policy, naming COUNTY as an additional insured, in the minimum amount of One Million Dollars (\$1,000,000) per occurrence in the event of damage to property or injury to persons as a result of LESSEE'S use of the PREMISES. Proof of insurance shall be provided to COUNTY upon execution of the AGREEMENT. LESSEE'S insurance shall be primary with respect to any insurance or self-insurance maintained by the COUNTY or any agent acting on behalf of COUNTY for the operation and management of the Airport. COUNTY shall be notified, in writing, thirty (30) days prior to cancellation or expiration of the policy.

14. **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.

15. **COMPLIANCE WITH LAWS AND REGULATIONS:** LESSEE agrees to abide by and comply with all rules and regulations of the FAA 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 the 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 the LESSEE and without interference or hindrance.

c) COUNTY reserves the right, but shall not be obligated to the 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 the LESSEE in this regard.

d) This AGREEMENT shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States, relative to the development, operation, or maintenance of the Airport. Failure of the LESSEE or any occupant to comply with the requirements of any existing or future agreement between the COUNTY and the United States, 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 the 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 Airport 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 land leased hereunder 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 the 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 during a time of war or national emergency.

16. **RELOCATION:** COUNTY shall have the right, upon six (6) months notice, to relocate LESSEE to another location on Airport property. COUNTY shall be responsible for the cost of moving fixed equipment including the hangar to the new location. LESSEE agrees that COUNTY will pay no penalties, relocation allowances, damages or other fees except as stipulated. COUNTY agrees that the rental fees will remain as stated in this AGREEMENT, should a relocation become necessary, for the balance of the term. In the event COUNTY exercises its right to relocate LESSEE'S hangar, COUNTY shall provide LESSEE with site improvements for LESSEE'S hangar which are equivalent to the site improvements now existing at LESSEE'S hangar location.

17. **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: a) the failure of the 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 b) 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. Upon termination for cause prior to the expiration of this AGREEMENT or any extension thereof, COUNTY may at COUNTY'S election, demand the removal from the PREMISES of the hangar. A demand for removal shall be achieved by notice given in or concurrently with notice of such termination or within thirty (30) days after such termination. LESSEE shall comply with the notice demanding removal within sixty (60) days.

18. **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 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.

19. OPTIONS AT EXPIRATION: Upon expiration of this AGREEMENT, COUNTY shall have the following options: a) require LESSEE to remove LESSEE'S hangar at LESSEE'S sole expense; b) purchase LESSEE'S hangar upon the terms and conditions as described below; or c) agree to extend this AGREEMENT for a period not to exceed ten (10) years.

If COUNTY does not elect to require LESSEE to remove LESSEE'S hangar, LESSEE shall have the option of accepting COUNTY'S offer to purchase LESSEE'S hangar, accept COUNTY'S offer to extend this AGREEMENT, or remove the hangar at LESSEE'S sole expense. If the parties agree to an extension, all of the terms and conditions of this AGREEMENT shall remain in full force and effect, except rent, which shall be in the amount then-required by COUNTY for comparable ground space at the Airport.

If COUNTY elects to require LESSEE to remove LESSEE'S hangar in accordance with this paragraph, COUNTY shall notify LESSEE and LESSEE shall comply with the notice within sixty (60) days of the notice.

20. FIRST RIGHT OF REFUSAL: At the expiration of this AGREEMENT or if extended pursuant to Paragraph above, or upon earlier termination, COUNTY will have first right of refusal for purchase of the hangar structure if and when it is offered for sale by the present owner. The COUNTY will be allowed sixty (60) days to exercise that option to allow for Board consideration and financing options. COUNTY shall have the right to purchase the hangar located on space numbers specified in Paragraph 1 from LESSEE at the then fair market value as determined by an appraisal. The value of County owned site improvements, including paving, shall not be included in the fair market value of the hangar. Each party shall select an appraiser and those two appraisers shall select a third appraiser, who shall prepare an appraisal and whose appraisal shall be binding on all parties. All costs of the appraisal shall be shared equally between LESSEE and COUNTY. If during the term of this AGREEMENT or any extensions or holding over, LESSEE desires to sell the hangar located in space number specified in Paragraph 1, and obtains a bona fide offer, LESSEE shall give COUNTY the first right of refusal to purchase the hangar at the offered price. The COUNTY will be allowed sixty (60) days to exercise that option to allow for Board consideration and financing options. If LESSEE desires to sell the hangar and has no bona fide offer, LESSEE shall offer to sell the hangar to COUNTY at the then fair market value as determined in Paragraph 1 above, before offering the hangar for sale to others.

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 the LESSEE as an agent or representative of the 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.

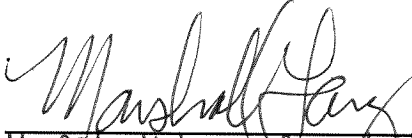
23. **NOTICES:** Any notice to the COUNTY shall be sufficient if sent by certified mail, postage prepaid, addressed to the Public Works Director, County of Mariposa, 4639 Ben Hur Road, Mariposa, CA 95338. Any notice to LESSEE shall be sufficient if sent by certified mail, postage prepaid, addressed to **5501 Carlton Rd. 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 interpreted to 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.

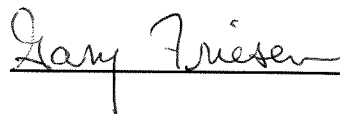
COUNTY:



Marshall Long, Board Chair

Date: 8-5-21


LESSEE:



Gary Friesen

Date: July 19, 2021

APPROVED AS TO FORM:



Steven W. Dahlem
County Counsel



PORT-A-PORT HANGAR OWNER'S INSURANCE PROGRAM
Certificate of Coverage and Participation

Insured's Name and Address: PAP250A-2
 Gary Friesen
 5501 Carleton Road,
 Mariposa, California 95338

The coverages described below are included as part of the following master policies covering the Port-a-Port Hangar Owner's Association:

PROPERTY COVERAGES:
 Policy No. MXI-98473397 written by Allianz Global Corporate
LIABILITY COVERAGES:
 Policy No. AP00432332 written by Old Republic Ins. Co.

Coverage is afforded on behalf of the Port-a-Port Hangar Owner's Association and the above named individual insured as part of the above listed master policies. Coverage is in place on the specified Port-a-Port hangar for the policy period, coverages and limits as described below. Such insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

Serial No/Space	Hangar Value	Located at
Sp. #46	\$10000	KMPI

Coverage is effective from March 5, 2021 12:01 a.m. Through Feb. 1, 2022 12:01 a.m.

Basic Coverages	Limit
AIRPORT PREMISES LIABILITY Covers Owners, Landlords and Tenants Liability	\$1,000,000 each occurrence
PHYSICAL DAMAGE ALL RISKS including limited flood coverage in the amount of \$5,000 per hangar with a \$1,000 deductible. Subject to exclusions which include Subject to \$500 deductible but are not limited to Earthquake, War, Government Confiscations, Wear and Tear. Wind & Hail Deductible of 1% insured value or min. \$5,000 per hangar.	\$10000

Optional Coverages	Limit
HANGARKEEPERS LEGAL LIABILITY For those who lease hangars or portions of hangars to others. Protects hangar owner from subrogation for damage to tenant's aircraft or other property.	Included
LOSS OF USE OR RENTS Actual Loss of Rents or Use up to \$2,000. For those who want their rents to continue if insured hangar is destroyed.	Not covered
PERSONAL PROPERTY All Risk. Covers Personal Property in your hangar if signs of FORCIBLE ENTRY. Mysterious disappearance IS NOT COVERED.	Not covered

Additional Insured (The party or parties shown, if any, are listed on the Master Policies as Additional Insureds)

Mariposa County

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER(S) NAMED ABOVE, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AGENT: Falcon Insurance Agency, Inc.
 P.O. Box 291388 Kerrville, TX 78029
 830-257-1000

AUTHORIZED REPRESENTATIVE

Ashlea Martin



PORT-A-PORT HANGAR OWNER'S INSURANCE PROGRAM
Certificate of Coverage and Participation

Page 2 of 2

Certificate of Insurance for Port-a-Port Hangar Owner's Insurance Program

Insured: Gary Friesen

Additional Insured:

Mariposa County

The above listed are included as additional insured but only insofar as the operations under the lease are concerned.

It is agreed that liability coverages provided under this policy shall be primary and non-contributory to any and all other insurance coverage which may be available to the following entity*; But only as respects all claims which result from the sole negligence of the Named Insured.

Cancellation: Coverage shall not be cancelled, non-renewed or reduced except after thirty (30) days prior written notice.

AGENT: Falcon Insurance Agency, Inc.
P.O. Box 291388 Kerrville, TX 78029
830-257-1000

AUTHORIZED REPRESENTATIVE

Ashlea Martin