

**City of Visalia  
Agenda Item Transmittal**

**Meeting Date:** February 21, 2012

**Agenda Item Number (Assigned by City Clerk):**

**Agenda Item Wording:** Authorization for the City Manager to enter into a Lease Agreement with SkyLife Helicopters for the purpose of operating an air ambulance operation at the Visalia Municipal Airport.

**Deadline for Action:** N/A

**Submitting Department:** Administration - Airport

**Contact Name and Phone Number:** Mario Cifuentez – Airport Manager, 713-4480

**Department Recommendation:**

City Staff recommends that Council authorize the City Manager to execute this lease agreement with SkyLife Helicopters. Staff has negotiated a lease, based on Council’s previous authorization, for the use of approximately 845 square feet of space in the Airport Administration Building (on Hanger Drive, west of the softball fields) for crew quarters and office space to support the air ambulance operation. The term of this Agreement is for four (4) years. The lease rate will be \$633.75 per month, adjusted annually based on the Consumer Price Index, for a total of \$7,605 in new annual revenue for the airport enterprise fund.

**Summary/background:**

SkyLife is an air ambulance service that has provided service to the Central Valley since 1991. SkyLife utilizes two helicopter air ambulances, both Bell 407’s, and one fixed-wing King Air Airplane. Currently, they base one of the helicopters and the King Air at the Fresno Airport. The remaining helicopter is based at the Kings County Fire Base. SkyLife desires to relocate one helicopter air ambulance, along with the pilot and two medical crew members, to Visalia Airport, from their current location, which is the south valley Kings County Fire base. The purpose of their move is to better serve Tulare County residents and hospitals.

Staff began discussions with SkyLife representatives in November 2011. Initial contact was made by SkyLife and at that time, they had the following operational requirements:

1. Facilities for base of operations for 3 crew members 24/7
2. Fuel — Jet A, available at base site without relocating the aircraft (can be trailer or truck)
3. Helicopter located in close proximity to the base of operations

**For action by:**  
 City Council  
 Redev. Agency Bd.  
 VPFA

**For placement on which agenda:**  
 Work Session  
 Closed Session

**Regular Session:**  
 Consent Calendar  
 Regular Item  
 Public Hearing

Est. Time (Min.): \_\_\_\_\_

**Review:**

Dept. Head LBC21312  
 (Initials & date required)

Finance \_\_\_\_\_  
 City Atty \_\_\_\_\_  
 (Initials & date required or N/A)

City Mgr \_\_\_\_\_  
 (Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

4. Vehicle access to the aircraft for delivery of patients by ground ambulance

The lease will provide three (3) small office spaces. The larger office space (approx. 485 square feet) will be used for their day to day operations and the two (2) small offices will be used for separate male and female crew quarters. The monthly lease rate equates to \$.75 per square foot, which is the same rate that the FAA pays for leased facilities on the airport and is consistent with other aviation service providers, per FAA requirements.

Based on the current level of operation, SkyLife anticipates their annual helicopter flight volume to be approximately 500 lift-offs. Over this past one-year period, they flew 350 hours with the south valley helicopter. Based on that level of activity, they anticipate their annual fuel usage at 15,750 gallons, which would provide additional revenue for the airport fund.

In addition to being a great addition to the airport in terms of operations and revenue, this air ambulance operation will be a valuable asset to the entire community. SkyLife's air ambulance operation will add to the level of public health and safety for Visalia.

**Prior Council/Board Actions:**

**Committee/Commission Review and Actions:**

**Alternatives:**

Not authorize the execution of this lease agreement or direct staff to negotiate further for the space.

**Attachments:**

Draft Lease Agreement. Aerial of the site layout.

**Recommended Motion (and Alternative Motions if expected):** I move to authorize the City Manager to execute a Lease Agreement with SkyLife Helicopters for the purpose of operating an air ambulance operation at the Visalia Municipal Airport.

***Environmental Assessment Status***

**CEQA Review:**

## Item 8. - Page 3

**NEPA Review:**

**Tracking Information:** *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:



Office Space

**AIRPORT LEASE AGREEMENT**

THIS LEASE is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, between the City of Visalia, a Municipal Corporation, hereinafter referred to as "LESSOR" and ROAM, dba SkyLife, a General Partnership, hereinafter referred to as "LESSEE."

**1. LEASE**

For and in consideration of the payment of rent, taxes, and other charges and of performances of the covenants and conditions hereinafter set forth, LESSOR hereby leases to LESSEE AND LESSEE hereby leases from LESSOR the Premises hereafter described.

**2. DEMISED PREMISES**

**A.** Definition - Except as expressly provided to the contrary in this LEASE, reference to the "Premises" is the described land plus any described appurtenance, including any improvements now or hereafter located on the Premises.

**B.** Description - The Premises consists of that portion of the Visalia Municipal Airport Administration Building as indicated in Exhibit A, attached hereto, which is approximately 845 square feet. LESSEE has the right to use the common areas of the Premises as designated by the Airport Manager. In addition, LESSEE shall have the right to utilize approximately 3,000 square feet of ramp space as indicated in Exhibit B, for the purpose of parking LESSEE's aircraft.

**3. TERM**

The term of this LEASE shall be for a period of four (4) years commencing on the 1st day of February, 2012 and ending on the 31<sup>st</sup> day of January, 2016, unless sooner extended or terminated as provided for herein.

**4. LEASE RENT**

**A. INITIAL MINIMUM RENT** - LESSEE shall pay without abatement, deduction or affect, a net minimum annual rent of Seven Thousand Six Hundred and Five dollars (\$7,605) all due and payable in equal monthly installments of Six Hundred Thirty-Three and seventy-five cents (\$633.75) beginning on the 1st day of February, 2012 and continuing thereafter throughout the entire term of this agreement.

**B. RENT ADJUSTMENTS.** The minimum annual rent shall be adjusted each and every year, beginning on the first anniversary date of the Lease term, to reflect the percentage change in the Consumer Price Index. For purposes of this agreement, the Consumer Price Index shall be the California Consumer Price Index (all urban consumers, all items) as released by the California Division of Labor Statistics and Research. Said adjustment shall be calculated as follows: The minimum annual rent in effect immediately prior to the anniversary date in question shall be multiplied by one plus the percentage increase in the Consumer Price Index for the last month released prior to such anniversary, as compared to the same month one year prior, the result of such calculation constituting the new minimum annual rent. In no event shall the minimum annual rent be decreased.

The Consumer Price Index as used herein is based on the 1982-84=100 index. Should the Division of Labor Statistics and Research change the 1982-84=100 index, the above referenced formula shall be converted to reflect said change.

C. In the event LESSEE is delinquent in remitting the rent by the tenth (10th) day of the month for which rent is due, then the rent not paid when due shall bear interest at the rate of eighteen percent (18%) per annum from the date due until paid.

**5. USE OF PREMISES**

The use of the Premises shall be for the purpose of operating a helicopter air ambulance service and those activities necessary to support the operation and for no other purpose except with the written consent of the LESSOR. LESSOR maintains the right to access the leased areas for the purpose of ingress and egress to the facility, and any other areas of the Demised Premises at any time, which are not a part of this Agreement.

**6. ABOVEGROUND REFUELING TANK**

A. LESSEE shall have the right to keep, use and maintain one (1), 500-gallon, fuel dispensing system, with said system to conform to all applicable Federal, State and local construction requirements. It is further understood and agreed that said system is the personal property of LESSEE including all piping and monitoring equipment. LESSEE agrees that no fuel shall be sold by LESSEE to the public or transitory aircraft. The Airport Manager shall be notified in writing of the identity of each aircraft to be fueled by LESSEE along with evidence of LESSEE's ownership, control or care. Fueling of aircraft by LESSEE shall be restricted to those aircraft physically located on the leased premises. Fueling procedures must ensure that fuel will be dispensed into an aircraft only while the aircraft is entirely outside of hangar facilities.

B. **FEE STRUCTURE** – For all fuel **not** purchased from LESSOR, LESSEE shall pay monthly, a fuel flowage fee equal to \$.10 per gallon for the fuel dispensed from the fueling system, with a minimum annual flowage guarantee. LESSEE shall provide the

LESSOR with duplicate copies of all delivery invoices for fuel deliveries made to said tanks, each and every month by the 5th day of each month for the entire term of this agreement. These fees will be calculated as follows:

1. Monthly fuel flowage fee = flowage fee prices times actual gallons dispensed into aircraft.
2. Minimum Annual Flowage Guarantee = flowage fee price times 50,000 gallons.
3. Within 60 days after each anniversary date of the Lease, LESSEE shall furnish the LESSOR with a report of gross fuel dispensed. If the gross fuel dispensed is less than 50,000 gallons, the LESSEE shall also submit payment for the fuel flowage equal to the difference between the actual gross fuel dispensed and 50,000 gallons.

**C.** LESSEE will not be granted the right of public sale. Described fuel dispensing shall be on aircraft wholly owned by LESSEE or those leased by LESSEE and utilized at least 90% by LESSEE in pursuit of LESSEE's business. Dispensing of fuel into other than LESSEE's own aircraft or aircraft stored on the leased premises shall cancel all rights granted by this Lease Agreement.

**D.** LESSEE shall be solely responsible for any and all maintenance, upgrading, testing and removal of any fuel dispensing equipment as required by Airport, Federal, State and Local Building, Environmental Health, Fire and Safety agencies.

**E.** In the event that tank removal is necessary, LESSEE shall restore premises to a condition satisfactory to the Airport, including removal of any required bollards, new paving and compaction of site.

**F.** LESSEE shall acquire and keep current all permits as required by Federal, State, and Local Building, Environmental health, Fire and Safety agencies.

## **Item 8. - Page 9**

**G.** LESSEE shall meet all current and future governmental requirements pertaining to hazardous substances and waste, fuel handling and storage tanks.

**H.** LESSEE shall pay for the restoration or replacement of any property damaged as a result of LESSEE's fuel operation.

### **7. ASSIGNING OR SUBLETTING**

The LESSEE may not assign or sublet this LEASE or any part of said Premises without the prior written consent of the LESSOR.

### **8. LESSEE'S MAINTENANCE**

LESSEE shall maintain the Premises to the reasonable satisfaction of the LESSOR and in such a manner as to be neat and well kept in appearance and a credit to the Visalia Municipal Airport.

### **9. LESSOR'S MAINTENANCE**

LESSOR shall perform janitorial maintenance of the common areas of the demised premises, including, but not limited to, the removal of litter and waste and/or any foreign object which may pose a hazard to the public and all other routine maintenance including major structural, and servicing and repair of all electrical and plumbing fixtures. Any question concerning responsibility of maintenance not expressly stated herein shall be directed to the Airport Manager for final determination.

### **10. INSURANCE - LIABILITY**

Throughout the term of this Lease, at LESSEE's sole cost and expense, LESSEE shall keep or cause to be kept in force, for the mutual benefit of LESSOR and LESSEE, comprehensive broad form general liability insurance against any and all claims and liability for personal injury, death, or property damage arising out of the use, occupancy, disuse or condition of the

Demised Premises, personal property thereon, improvements or adjoining areas of ways, providing combined single limit of at least One Million Dollars (\$2,000,000.00), for any one accident or occurrence, for bodily injury or death to one or more persons, and at least Five Hundred Thousand Dollars (\$500,000.00) for Property damage.

**11. INSURANCE - WORKERS' COMPENSATION**

LESSEE shall maintain Workers' Compensation insurance with statutory limits, and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) per accident or occurrence.

**12. INSURANCE - GENERAL REQUIREMENTS**

All insurance required by express provisions of this LEASE shall be carried only in responsible insurance companies licensed to do business in the State of California. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that

- A.** Any loss shall be payable notwithstanding any act or negligence of LESSOR that might otherwise result in a forfeiture of the insurance.
- B.** The insurer waives the right of subrogation against LESSOR and against LESSOR's agents and representatives.
- C.** The policies are primary and noncontributing with any insurance that may be carried by LESSOR.
- D.** They cannot be canceled or materially changed except after 30 days notice (except ten (10) days with respect to non-payment of premium) by the insurer to LESSOR or LESSOR's designated representative.
- E.** LESSEE shall furnish LESSOR with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. Before commencement of the LEASE, LESSEE shall furnish LESSOR with binders representing all insurance

## Item 8. - Page 11

requirements by this LEASE. LESSEE may effect for its own account any insurance not required under this LEASE. LESSEE may provide by blanket insurance covering the Premises and any other location or locations any insurance required or permitted under this LEASE provided it is acceptable to LESSOR. LESSEE shall deliver to LESSOR, in the manner required for notices, copies of certificates of all insurance policies required by this LEASE, together with evidence satisfactory to LESSOR of payment required for procurement and maintenance of the policy, within the following time limits:

- (1) For insurance required at the commencement of this LEASE, within 30 days after execution of this LEASE;
- (2) For insurance becoming required at a later date, at least 15 days before the requirement takes effect, or as soon thereafter as the requirement, if new, takes effect;
- (3) For any renewal or replacement of a policy already in existence, at least 30 days before expiration or other termination of the existing policy.

F. LESSOR, and LESSOR's elected and appointed officials, agents, representatives, and employees are to be named as additional insureds as respects operations of the named insured and as their interests may appear under the policy.

If LESSEE fails or refuses to procure or to maintain insurance as required by this LEASE or fails to furnish LESSOR with required proof that the insurance has been procured and is in force and paid for, LESSOR shall have the right, at LESSOR's election and on five (5) days notice to LESSEE, to procure and maintain such insurance. The premiums paid by LESSOR shall be treated as added rent due from LESSEE with interest at the rate of 18% per year, to be paid on the first day of the month following the date on which the premiums were paid. LESSOR shall

give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the date of the notice.

**13. INDEMNIFICATION**

LESSEE hereby agrees to and shall protect, indemnify, and hold harmless the LESSOR and all officers, agents, representatives, and employees thereof from any and all liability, claims, or damages of whatsoever kind or character, including attorneys' fees and costs of all types incurred in defense of any of the said parties from said claims or liability, because of or arising out of, directly or indirectly, the acts or omissions of the LESSEE, LESSEE's independent contractors, employees, representatives, agents and invitees, and the passive or active negligent acts or omissions of the LESSOR or its officers, agents, representatives, and employees while acting within the scope of their duties regarding work to be performed pursuant to this LEASE. Said indemnification and hold harmless provisions shall be in full force and effect regardless of whether or not there shall be insurance policies covering and applicable to such damages, claims, or liability. This agreement shall be binding upon the LESSEE whether or not there are any allegations of fault, negligence, or liability of the indemnities hereunder.

LESSOR hereby agrees to and shall protect, indemnify, and hold harmless the LESSEE and all officers, agents, representatives, and employees thereof from any and all liability, claims, or damages of whatsoever kind or character, including attorneys' fees and costs of all types incurred in defense of any of the said parties from said claims or liability, because of or arising out of, directly or indirectly, the acts or omissions of the LESSOR, LESSOR's independent contractors, employees, representatives, agents and invitees, and the passive or active negligent acts or omissions of the LESSEE or its officers, agents, representatives, and employees while acting within the scope of their duties regarding work to be performed pursuant to this LEASE. Said indemnification and hold harmless provisions shall be in full force and effect regardless of whether or not there shall be insurance policies covering and applicable to

such damages, claims, or liability. This agreement shall be binding upon the LESSOR whether or not there are any allegations of fault, negligence, or liability of the indemnities hereunder.

**14. TAXES AND ASSESSMENTS: "PUBLIC CHARGES"**

**A. Obligations of LESSEE:**

LESSEE understands and acknowledges that this LEASE creates a possessory interest, and LESSEE is subject to taxation by the County of Tulare and other taxing authorities. From and after the date of execution of this LEASE, LESSEE shall pay or cause to be paid all real estate taxes, assessments, and other governmental charges, general and special, ordinary and extraordinary, of any kind and nature whatsoever applicable to the possessory interest of LESSEE in the leased Premises, as created and established by this LEASE, and the building improvements thereon, including but not limited to assessments for public improvements or benefits which shall for any period subsequent to the execution of this LEASE and during the term hereof be laid, assessed, levied or imposed upon or become due and payable and a lien upon said possessory interest and building and improvements thereon (specifically excepting therefrom any and all surface rights, if any, held or used by others who may have or claim any of the same, LESSEE assuming no liability whatsoever for the taxes, general and special assessments or other charges levied or assessed thereon), all of which taxes, assessments, levies and other governmental charges to be paid by LESSEE are referred to in this LEASE as "public charges"; provided however, that if by law any such public charges are payable or may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such public charge), LESSEE may make such payments in installments as the same respectively become due and before any fine, penalty, or cost may be added thereto for the non-payment of any such installment; and provided further that any public charge relating to a fiscal period of the taxing authority expiring after the

termination or expiration of this LEASE, any part of which fiscal period is included within the time prior to termination or expiration of this LEASE, shall (whether or not during the period prior to termination or expiration of this LEASE such public charge shall be paid, assessed, levied or posed upon or become due and payable) be apportioned between the parties.

**B. Time of Payment:**

All payments to be made by LESSEE pursuant to the provisions hereof shall be made before any fine, penalty, interest or cost may be added thereto for the non-payment thereof; and the LESSEE shall furnish LESSOR within sixty (60) days after the dates when the same are payable, as herein provided, with official receipts or other evidence satisfactory to LESSOR that such public charges or excise on rents or other tax or assessments in lieu thereof as aforesaid has, to the extent of the aforesaid, been paid.

**C. Contest:**

LESSEE may contest the legal validity or amount of any public charges for which LESSEE is responsible under this LEASE and may institute such proceedings as LESSEE considers necessary. If LESSEE contests any such public charges, LESSEE may withhold or defer payment or pay under protest but shall protect LESSOR and the Premises from any lien by adequate surety bond or other appropriate security.

LESSOR appoints LESSEE as LESSOR's attorney in fact for the purposes of making all payments to any taxing authorities and for the purpose of contesting any such public charge.

**D. Exclusions:**

LESSEE's obligation to pay public charges levied or charged against said possessory estate or buildings or improvements or against specified personal property, shall not include the following whatever they may be called: business income or profit taxes levied or assessed against LESSOR by federal, state or other governmental agencies;

estate, succession, inheritance, or transfer taxes of LESSOR; or corporation, franchise, or profit taxes imposed on any owner of the fee title of the Premises.

**E. Evidence of Payment**

The certificate, advise or bill of the appropriate official designated by law to make or issue the same and to receive payment of any such public charge shall be prima-facie evidence that such public charge is due and unpaid at the time of the making or issuance of such certificate, advise, or bill; and the written receipt of such official shall be prima-facie evidence that the public charge therein described has been paid. LESSOR shall authorize and instruct the assessing authority to forward to LESSEE all bills covering such public charge.

**15. UTILITIES**

Water, electricity and natural gas are paid for by LESSOR. Any additional utilities required by LESSEE are to be paid for by LESSEE.

**16. SIGNS**

LESSEE shall not erect, maintain or display any signs on the Airport or the Premises without the prior written approval of the City. Prior to the erection, construction or placing of any such sign, LESSEE shall submit drawings, sketches, designs and dimensions of such signs to City for approval. All such signs shall be consistent with the over-all sign ordinance of the City of Visalia. Any condition, restriction or limitation with respect to the use of such signs as may be stated by the City in writing, shall become part of this LEASE. The term "signs" as used herein means any advertising signs, billboards, identification signs or symbols, posters or other similar devices.

**17. DEFAULT**



## Item 8. - Page 17

Notice to LESSEE: SkyLife of Central California  
2911 East Tulare Ave.  
Fresno, CA 93721

### 19. REGULATIONS

LESSEE shall not conduct, or allow to be conducted upon the Premises, any dangerous or hazardous activities, or any activities considered to be a nuisance to the airport or its tenants and neighbors, and LESSEE agrees to abide by all applicable F.A.A. and U.S. Government rules and regulations, including, but not limited to the following:

**A.** The LESSEE for himself, his heirs, personal representatives, successors in interest and assigns, as a part of the considerations hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the premises described herein for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted programs of the Department of Transportation and as said regulations may be amended.

**B.** The LESSEE for himself, his personal representatives, 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, sex, age or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of said facilities; and

**(2)** That in the construction of any improvements on, over or under such land and the furnishing or services hereon, no person on the grounds of race, color, sex, age or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and

**(3)** That the LESSEE shall use the demised 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, as said Regulations may be amended.

**C.** It is understood and agreed that nothing contained herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

**D.** LESSEE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided, that LESSEE may make reasonable and nondiscriminatory discount, rebates, or other similar types of price reductions to volume purchasers.

**E.** The LESSOR 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 the LESSEE in this regard.

**F.** The LESSOR reserves the right to further develop or improve the landing area and all publicly owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of the LESSEE, and without interference or hindrance.

**G.** The LESSOR reserves the right to take any action it considers necessary to protect aerial approaches of the airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other

## Item 8. - Page 19

structure on the airport which in the opinion of the LESSOR would limit the usefulness of the airport or constitute a hazard to aircraft.

**H.** During the time of war or national emergency the LESSOR shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

**I.** It is understood and agreed that the rights granted by this Lease will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.

**J.** There is hereby reserved to the LESSOR, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for passage of aircraft in the airspace above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the airport.

**K.** The Lease shall become subordinate to provisions of any existing or future agreement between the LESSOR and the United States of America, or any agency thereof relative to the operation, development, or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

**L.** LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased Premises, or in the event of any planned modification of alteration of any present or future building or structure situated on the leased

Premises. Any future construction, modification, or alteration shall be in compliance with the Airport Master Plan and will be subject to airport approval.

**M.** The LESSEE by accepting this expressly agrees for itself, its successors, and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land leased hereunder above the limits specified in Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, LESSOR reserves the right to enter upon the land leased hereunder and to remove the offending structure or object or cut the offending tree, all of which shall be at the expense of the LESSEE.

**20. ADDITIONS OR MODIFICATIONS**

**A.** LESSEE agrees that any additions or modifications structurally on the leasehold Premises by LESSEE can only be instituted by first obtaining the written approval of the LESSOR.

**B.** LESSEE agrees that LESSOR may from time to time make alterations, additions and modifications structurally to the Premises which may require LESSEE to be temporarily inconvenienced and/or relocated. LESSOR agrees to pay for actual reasonable expenses incurred by LESSEE as a result of any temporary relocation. LESSOR further agrees that it shall make every reasonable effort to minimize LESSEE'S inconvenience and shall not relocate or diminish LESSEE'S Premises in such a manner as to restrict LESSEE'S ability to operate at a reasonable level of satisfaction.

**21. TERMINATION**

In addition to any other provision in this LEASE, this LEASE may be canceled or terminated upon the following:

## Item 8. - Page 21

- A.** This LEASE and the tenancy hereby granted may be terminated or canceled, in part or whole, at any time by either party hereto by giving to the other party not less than ninety (90) days prior written notice.
- B.** This LEASE shall terminate automatically if either party hereto fails to remedy any breach or any term or condition of this LEASE within thirty (30) days after receiving written demand from the other party to do so. If however, either party is diligently proceeding in good faith to eliminate such default, then the period for correction shall be extended for such length of time as is reasonably necessary to complete such correction.
- C.** LESSEE agrees at the end of the LEASE term or in the event of an early termination, as provided for herein, to quit and deliver up said Premises in as good condition as they are now, ordinary wear and tear expected.

### **22. NON-WAIVER OF RIGHTS**

No failure by LESSOR to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rents or fees during the continuance of any such breach, shall constitute a waiver of any breach or of such covenant, agreement, term or condition.

No receipt of monies by LESSOR from LESSEE after the termination of this Lease, or after the giving of any notice of termination of this Lease (unless such receipt cures the event of default which was the basis for the notice) shall reinstate, continue or extend the term or effect any notice theretofore given to LESSEE, or operate as a waiver of the right of LESSOR to enforce the payment of rents or fees payable by LESSEE hereunder or thereafter falling due, or operate as a waiver of the right of LESSOR to recover possessions of the Premises by proper remedy.

**23. ATTORNEYS' FEES**

If either party brings any action or proceeding to enforce, protect, or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. Non-judicial, alternative dispute resolution is not an action or proceeding for the purpose of this provision.

**24. BINDING ON SUCCESSORS**

Subject to the provisions of this LEASE on assignment and subletting, each and all of the covenants and conditions of this LEASE shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

**25. SURRENDER ON TERMINATION**

At the expiration or earlier termination of the term, LESSEE shall surrender to LESSOR the possession of the Premises. Surrender or removal of improvements, fixtures, and trade fixtures shall be as directed by the airport manager at termination of all or part of this LEASE. LESSEE shall leave the surrendered Premises and any other property in good and broom-clean condition except as provided to the contrary in provisions of this LEASE on maintenance and repair of improvements. All property that LESSEE is required to surrender shall become LESSOR's property at the termination of the LEASE. All property that LESSEE is not required to surrender but that LESSEE does abandon shall, at LESSOR's election, become LESSOR's property at termination. If LESSEE fails to surrender the Premises at the expiration or sooner termination of this LEASE, LESSEE shall defend and indemnify LESSOR from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from LESSEE's failure to surrender.

**26. HOLDOVER**

This LEASE shall terminate without further notice at expiration of the LEASE term. Any holding over by LESSEE after either expiration or termination shall not constitute a renewal or extension, or give LESSEE any rights in and to the Leased Premises, unless as provided in paragraph 2B above. If LESSEE, with LESSOR's consent, remains in possession of the leased Premises after expiration or termination of the term or after the date in any notice given by LESSOR to LESSEE terminating this LEASE, such possession by LESSEE shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party. During any such month-to-month tenancy, LESSEE shall continue to pay all rent required by this LEASE. All other provisions of this LEASE, except those pertaining to term, shall apply to the month-to-month tenancy.

**27. TIME IS OF THE ESSENCE**

Time is of the essence in the performance of each and all of the terms and provisions of this LEASE.

**28. ACCEPTANCE OF PREMISES**

By signing this LEASE, LESSEE represents and warrants that LESSEE has independently inspected the Premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations and observations in making this LEASE. LESSEE further acknowledges that the Premises are in the condition called for by this LEASE, and that LESSEE does not hold LESSOR responsible for any defects in the Premises.

**29. CURRENT AND FUTURE AIRPORT REGULATIONS**

This LEASE and all rights conferred thereby shall at all times be subject to current and future regulations governing any and all activities at the Visalia Municipal Airport to the same extent that such current and future regulations govern the activities of all persons using the facilities of the Visalia Municipal Airport and occupying structures thereon.

**30. MISCELLANEOUS**

**A.** This LEASE contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this LEASE has been or is relied on by either party. Each party has relied on his own examination of this LEASE, counsel of his own advisors and the warranties, representations, and covenants in the LEASE itself. The failure or refusal of either party to inspect the Premises or improvements, to read the LEASE or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection or advice.

**B.** If any provision of this LEASE is invalid or unenforceable with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision to this LEASE shall be valid and enforceable to the fullest extent permitted by law.

**C.** This LEASE shall be governed by the laws of the State of California.

**D.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this LEASE, such party shall not unreasonably delay or withhold its approval or consent.

**E.** All Riders and Exhibits annexed hereto form material parts of this LEASE.

**F.** Implementation Clause: To carry into full force and effect each and every agreement, condition, covenant and terms contained in this LEASE, each party agrees

## Item 8. - Page 25

that he and she will execute and deliver any and all documents, assignments, releases, receipts and other documents reasonably required by the other without undue delay or expense.

**G.** Cooperation: LESSOR and LESSEE agree to provide any further documentation and to cooperate in any way necessary to carry out the basic intent of the LEASE.

**H.** Venue: The parties agree that the contract is to be performed in Tulare County, and any action arising out of the contract will be venued in Tulare County. The parties agree to submit themselves to the jurisdiction of the court in any action relating to this LEASE or the enforcement or interpretation hereof. LESSEE expressly waives any right to remove any action from Tulare County which he might have pursuant to Section 394 of the Code of Civil Procedure.

**I.** Effective Date: This LEASE shall be and become effective as of the date its execution as set forth above.

**J.** Waiver: No waiver of any breach of any term, condition or provision of this LEASE shall constitute a waiver of any other breach of any other term, condition or provision. No consent of one party to any departures by the other shall be effective unless such waiver shall be in writing and shall be signed by the non-waiving party or a duly authorized agent thereof and the same shall be effective only for a period, on the conditions and for the specific instances and purposes specified in such writing. No notice to or demand to the non-waiving party in any case shall entitle the non-waiving party to any other for further notice or demand in similar or other circumstances.

**K.** The terms of the Agreement are the product of negotiation between the parties and the parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language of the Agreement will not be construed against the party causing the uncertainty to exist.

**L.** Execution in Counterparts: This LEASE may be executed in counterparts, each of which shall be deemed an original, but all which taken together shall constitute but one and the same instrument.

**M.** Title or Captions: Titles or captions contained in this LEASE are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of the Lease or the intent of any provision hereof.

**IN WITNESS WHEREOF**, the parties have executed this Lease as of the date first above written.

SKYLIFE HELICOPTERS, LESSEE

Dated: \_\_\_\_\_, 2012 by: \_\_\_\_\_

CITY OF VISALIA, LESSOR

Dated: \_\_\_\_\_, 2012 by: \_\_\_\_\_  
Steven M. Salomon, City Manager

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2012 by: \_\_\_\_\_  
Alex Peltzer, City Attorney

Dated: \_\_\_\_\_, 2012 by: \_\_\_\_\_  
Eric Frost, Risk Management