

REPORT TO CITY COUNCIL

Approved by: _____

Daniel Foss, Department Director

Arnaldo Rodriguez, City Manager

Council Meeting of: July 15, 2020

Agenda Number: D-1

SUBJECT:

Agreement with WSD, LLC, a California limited liability company for an Airport Property Lease.

RECOMMENDATION:

Adopt a Resolution approving the Agreement with WSD, LLC, a California limited liability company for an Airport Property Lease.

SUMMARY:

On July 1, 2020, Council approved an increase in rent for Non-Commercial Aeronautical Land Lease Base Rates at the Madera Municipal Airport from \$0.20 per square foot to \$0.32 on an annual basis. WSD, LLC, a California limited liability company has approached the City indicating a desire to enter into a long-term land lease where they intend to construct a hangar space for personal aircraft.

DISCUSSION:

WSD, LLC, a California limited liability company, desires to lease a land parcel at the Madera Municipal Airport to construct a non-commercial 37,000 square foot (sf) aeronautical hangar at a rate of \$.32 per sf per year. The subject lease location is highlighted in Figure 1. The monthly rent cost for the lease will be \$986.67 for the first 5 years and then the rent will be adjusted every 5 years in accordance with a Consumer Price Index (CPI). The lease term would commence on July 16, 2020 and would conclude on December 1, 2049, making this a 29-year lease. The sole purpose of the proposed hangar will be for aircraft storage, routine service, maintenance, and repair of any and all present and future aircraft owned or leased by the tenant.



Figure 1 Subject Property

FINANCIAL IMPACT:

The lease will generate \$11,840.04 revenue annually for the Airport. There will be no financial impact to the General Fund.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The proposed action is not specifically addressed as part of the Vision Plan, nor is it in conflict with the Plan.

ALTERNATIVES:

As an alternative, Council may elect not to approve the agreement with WSD, LLC, a California limited liability company for an Airport Property Lease.

ATTACHMENTS:

1. Resolution – Approving an Agreement
 - a. Exhibit 1 – Lease Agreement
 - i. Exhibit A – Legal Description
 - ii. Exhibit B – Depiction of leased property

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA,
APPROVING AN AGREEMENT WITH WSD, LLC, A CALIFORNIA LIMITED LIABILITY
COMPANY FOR AN AIRPORT PROPERTY LEASE AGREEMENT**

WHEREAS, the City is the owner of certain real property situate in the County of Madera, State of California, which is being used for airport purposes; and

WHEREAS, Sections 37389 and 50478 of the Government Code of the State of California authorize a city to lease property owned by it for purposes incidental to aircraft, including construction and maintenance of hangars, service shops and other aircraft facilities; and

WHEREAS, WSD, LLC, a California limited liability company (Tenant) is in need of hangar storage for an airplane; and

WHEREAS, the City of Madera (City) has an available land parcel at the Madera Municipal Airport; and

WHEREAS, the City adopted a Non-Commercial Aeronautical Land Lease Rate of \$0.32 per square foot on an annual basis based on a study prepared by Aviation Consulting Management Group (AMCG); and

WHEREAS, at the end of each five-year period, the annual rent shall be adjusted in accordance with the 1982-1984 based San Francisco-Oakland-Hayward All Urban Consumer Price Index (CPIU) calculated by the Federal Government; and

WHEREAS, the Tenant would like to lease 37,000 square feet to construct an airport hangar for non-commercial purposes; and

WHEREAS, the Tenant would like to enter into a 29-year land lease agreement with the City; and

WHEREAS, Hangar Lease Agreement between the City and WSD, LLC, a California limited liability company, indicates that the Tenant seeks to construct a steel hangar building on the subject site for the sole purpose of aircraft storage, routine service, maintenance and repair of any and all present (including Cessna Citation 750 (X), Raytheon King Air C90 GTX, Airbus AS 350 Helicopter) and future aircraft owned or leased by Tenant; and

WHEREAS, the City and the Tenant have agreed upon terms for the Lease Agreement.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA HEREBY finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The Hangar Lease Agreement between the City and WSD, LLC, a California limited liability company, a copy of which is attached and incorporated by reference is hereby approved.
3. This resolution is effective immediately upon adoption.

RECORDING REQUESTED BY CITY OF MADERA

AFTER RECORDING PLEASE MAIL TO:

City of Madera
Madera Municipal Airport
4020 Aviation Drive
Madera, California 93637

(Fee waived per Section 27383 of the Government Code, no fee due)

Exhibit 1

LEASE AGREEMENT - AIRPORT PROPERTY

BETWEEN THE CITY OF MADERA AND WSD, LLC

THIS LEASE AGREEMENT is made and entered into this 15th day of July 2020, by and between the CITY OF MADERA, a municipal corporation of the State of California, hereinafter called "CITY", and WSD, LLC, a California limited liability company, 652 W Cromwell, #103, Fresno, CA 93711, hereinafter called "TENANT".

WITNESSETH

WHEREAS, CITY is the owner of certain real property situate in the County of Madera, State of California, which is being used for airport purposes; and

WHEREAS, Sections 37389 and 50478 of the Government Code of the State of California authorize a city to lease property owned by it for purposes incidental to aircraft, including construction and maintenance of hangars, service shops and other aircraft facilities; and

WHEREAS, TENANT desires to lease land from the CITY to construct improvements consisting of an aircraft hangar and related improvements as approved by the CITY on such land; and

WHEREAS, it is the mutual intent and desire of CITY and TENANT to enter into this Lease Agreement for the lease of property at the Madera Municipal Airport in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants, terms, provisions and conditions hereinafter set forth, the parties hereto agree as follows:

1. Description of Property

CITY hereby leases to TENANT and TENANT hereby leases from CITY on the terms and conditions hereinafter set forth all that portion of City-owned real property situated in the County of Madera, State of California, more particularly described as Exhibits A and B attached hereto and incorporated herein by reference.

2. Term

Except as provided in Paragraph 5 hereof, the term of this lease agreement shall be for a period of **Twenty Nine (29) years and Six (6) months** commencing on **July 16, 2020** and terminating **December 1, 2049**, subject to any other provisions for termination provided for herein.

3. Rent

Except as hereinafter provided, the rent for the leased property which TENANT hereby agrees to pay to CITY without deduction or offset at City Hall, 205 W. 4th Street, Madera, California, or at such other place or places as may be designated from time to time by CITY is calculated as follows:

Commencing on July 16, 2020 rent shall be the sum of Eleven Thousand Eight Hundred Forty and 00/100 Dollars (\$11,840.00) per year (based on \$.32 per square foot per year for 37,000 square feet), payable in monthly installments of \$986.67 in advance, until the end of the first five years of this lease agreement. Rent for the first month shall be prorated based on effective date of lease. At the end of each five-year period, the annual rent shall be adjusted in accordance with the 1982-1984 based San Francisco-Oakland-Hayward All Urban Consumer Price Index (CPIU) calculated by the Federal Government. The CPIU Index was 299.69 for February 2020 and will be the base starting Index number. Said adjustments shall be in an amount equal to the percentage increase of said CPIU. Said rental payments shall not decrease regardless of the CPIU.

4. Use Purposes/Access

TENANT covenants to occupy the steel hangar building on the property for the sole purpose of aircraft storage, routine service, maintenance and repair of any and all present (including Cessna Citation 750 (X), Raytheon King Air C90 GTX, Airbus AS 350 Helicopter) and future aircraft owned or leased by TENANT. TENANT shall not use or permit said property, or any portion thereof, to be used for the purpose of selling aviation fuels to the public without prior written consent of the CITY. TENANT shall not use or permit the property or any part thereof to be used as a primary operating base/headquarters/main office etc. for a purely non-aeronautical related business or enterprise, nor allow use of such property by employees of such non-aeronautical business, or for the storage of any parts, supplies and equipment related to non-aeronautical business.

During the term of this lease agreement, TENANT shall have the right to use all taxiways, roads, and access points to the property owned or controlled by the CITY, specifically including, without limitation, the rear taxiway providing access to the north side of the property and the hangar to be built on the property along with all runways and helipads located at the airport pursuant to CITY rules and regulations.

During the term of this lease agreement, all improvements constructed on the leased property by TENANT shall be owned by TENANT until expiration of this lease agreement or until earlier termination of this lease agreement as hereinafter provided. Any improvements constructed by TENANT are subject to Section 17 of this lease agreement and construction is not permissible until the CITY has approved the building plans and specifications. TENANT shall not, however, remove any improvements from the leased property, nor waste, destroy or modify any improvements except as may be permitted by this lease agreement. Ownership and/or disposition of all such improvements upon expiration or sooner termination of the lease agreement shall be as provided for in Paragraph 5 as appropriate.

5. Termination

This lease agreement shall terminate at the end of the term hereof, and TENANT shall have no further right or interest in the leased property or the improvements thereon. The hangar building shall

thereupon become the property of the CITY at no cost to the CITY. TENANT agrees to execute a Bill of Sale transferring all rights, interests and ownership of the hangar building to CITY. Said hangar building shall be given over to CITY free of any encumbrances, liens, claims or demands of any nature whatsoever. TENANT may install (or remove) a jet fuel bulk storage tank and associated pumping equipment on the leased property at any point during the term of this agreement. Installation must comply with all applicable local, state, and federal laws and regulations. Any such tank and pumping equipment situated on the leased property at the end of term shall become the property of the CITY at no cost to CITY. TENANT agrees to execute a Bill of Sale transferring all rights, interests and ownership of the tank and pumping equipment to CITY.

If CITY elects to have all such improvements remain on the property and become the property of CITY at no cost to CITY and TENANT has not defaulted in any of the terms and conditions of this lease agreement, TENANT shall then have the right of first refusal of any such rental agreement for said property and improvements upon the terms and conditions then offered by CITY.

6. Utilities

TENANT shall pay for all water, sewer, gas, heat, light, power, telephone service, waste disposal and all other services supplied to the property, including coordination with the suppliers of said services and pay the cost of installation and maintenance thereof, if any.

7. Water/Improvements/Maintenance and Repair of Airport Property

CITY warrants that the on-site fire hydrants have sufficient available flow to meet the water demand required by TENANT's anticipated development evidenced by the building plans submitted to the CITY for processing and approval, and CITY shall provide TENANT with supporting documentation evidencing the same. TENANT agrees that it shall install at his/its sole cost and expense the improvements as approved by CITY pursuant to its standard processing procedures and guidelines. In addition, CITY shall: (a) Comply with FAA regulations in performing inspections and repairs of airport taxiway, runways and electrical systems for hazardous conditions, (b) repair and maintain required airport electrical and landing systems to assure that such airport equipment and pavement surfaces are safe for operating aircraft use, (c) replace airfield lights that are defective, (d) inspect and confirm that all pavement markings on runways, taxiways, and all paved areas are clear and vivid and repaint as needed, (e) provide, repair and maintain airport lighting including, without limitation, taxiway and helipad lights, airfield guidance signs, and runway guard lighting, (f) provide and maintain taxiways' pavement width requirements, (g) provide at least five (5) days' written notification to TENANT for maintenance or closure of any materials areas of airport, (h) clean and sweep pavement surfaces and mow airfield grass and safety areas, (i) perform weed control activities, maintain airport grounds, including landscaped areas, lawns, irrigation and irrigation systems, (j) maintain and secure airport access points, (k) routinely inspect automatic gates, entry keypads and exit loops are in good working condition and repair as necessary, and (l) routinely confirm access codes are available for tenant access.

8. Maintenance of Property and Improvements

TENANT shall, at his sole cost and expense, keep and maintain the property and improvements thereon, if any, regardless of ownership, and all portions thereof, in safe and sanitary order, in good state of repair and shall keep the property clean and free of weeds, debris and other unsightly or unsafe matter including, but not limited to, containers and paraphernalia connected with aircraft operations, maintenance and repair, and shall properly dispose of all debris and other waste matter which may accumulate. TENANT shall provide proper metal containers with proper covers for the temporary keeping of solid or liquid waste on the property. TENANT agrees to prevent any and all lubricants and cleaning and striping materials from

contacting the pavement and storm water runoff system. In connection with TENANT'S permitted use of the property, it is expressly understood and agreed that no aircraft are to be dismantled other than inside the hangar and no outside storage of disassembled aircraft or aircraft parts shall be permitted. TENANT agrees to maintain the property in an acceptable manner as may be required of all other tenants by the Airport Manager. CITY reserves the right to require the paved apron to be cleared of all aircraft for use by others during special events, without compensation to TENANT, including but not necessarily limited to an annual air show and such other special activities as may be determined by the CITY.

9. Compliance with Laws

TENANT agrees that he will not use or permit said property to be used for any unlawful purpose or for any purpose which will injure the reputation of the Madera Municipal Airport of which the property is a part. TENANT shall not commit nor suffer to be committed any waste upon the property, or any public or private nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant of the Madera Municipal Airport of which the property is a part. TENANT shall, at his sole cost and expense, promptly observe and comply with all laws, orders, regulations, rules, ordinances and requirements now in force or which may hereafter be in force of Federal, State, County and City governments or other lawful governmental bodies or any of their departments, bureaus or officers having jurisdiction over the property or any of the activities conducted thereon. TENANT agrees to observe and obey during the term of this lease agreement all laws, ordinances, rules and regulations now in effect or promulgated in the future by CITY and/or by any other proper authority having jurisdiction over the conduct of operations at the Madera Municipal Airport. TENANT shall do all things which may be required of him or be deemed necessary on account of the use by TENANT of said property, and TENANT shall and does agree to pay, at his sole cost and expense, all fines, penalties, damages, costs and expenses that may in any manner arise out of or be imposed because of the failure of TENANT to comply with this paragraph. TENANT shall defend and does hereby agree to save CITY harmless from any damage, injury or loss suffered by reason of any breach by TENANT of this Paragraph 9.

10. Environmental Indemnification by Tenant

TENANT agrees to indemnify, defend by counsel acceptable to CITY and hold CITY, its appointive and elective boards, commissions, officers, employees, volunteers and agents (hereinafter in this Paragraph 10 only referred to collectively as "City Personnel") harmless from and against and in respect of any and all claims, damages (including, without limitation, diminution deficiencies, interest, penalties, attorney's fees and all amounts paid in defense or settlement of the foregoing whether or not arising out of third-party claims, which may be imposed upon or incurred by Landlord or asserted against City Personnel by any other party or parties (including governmental entities), in connection with any environmental conditions or the remediation of any environmental conditions (hereafter discovered), or any environmental noncompliance arising out of, resulting from, or attributable to, the assets, business, or any claims, expenses, losses, liabilities, etc. resulting from the alleged exposure of any person to environmental conditions, regardless of whether such environmental conditions or exposure resulted from activities of TENANT or TENANT'S agents, representatives, employees or independent contractors, and the breach of any of CITY'S representations and warranties. TENANT'S obligations pursuant to this paragraph shall exist regardless of whether CITY is alleged or held to be strictly or jointly and severally liable.

11. Assignment

TENANT shall not assign this lease agreement or any interest therein, and shall not sublet the premises or any portion thereof or any rights or privileges appurtenant thereto or suffer any other person (agents and servants of CITY excepted) to occupy or use the said property or any portion thereof without the prior written consent of CITY. Consent to one assignment, subletting, occupation or use by another

person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such prior written consent shall be void and shall at the option of CITY terminate this lease agreement. This lease agreement shall not, nor shall any interest therein, be assignable as to TENANT'S interest by operation of law without the prior written consent of CITY. TENANT agrees that in the event all or substantially all of TENANT'S assets are placed in the hands of a receiver or trustee and such receivership or trusteeship continues for a period of thirty (30) days, or should TENANT make an assignment for the benefit of creditors, or be finally adjudicated bankrupt, or should TENANT institute any proceeding under the Bankruptcy Act as the same now exists or any amendment thereof which may hereafter be enacted, or any other act relating to the subject of bankruptcy wherein TENANT seeks to be adjudicated bankrupt, or to be discharged of his debts, or to effect a plan of liquidation, composition or reorganization, or should any involuntary proceedings be filed against TENANT under any such bankruptcy by pleading or default, then this lease agreement or any interest in and to the property shall not become an asset in any such proceedings, and in any such event and in addition to any and all rights and remedies of CITY hereunder or by law provided, it shall be lawful for CITY to declare the term hereof ended and for CITY to re-enter the property and take possession thereof and remove all persons therefrom, and TENANT shall have no claim thereon or hereunder.

12. Abandonment

TENANT shall not vacate or abandon the property described herein at any time during the term hereof. If TENANT should abandon, vacate or surrender said property or be dispossessed thereof by process of law or otherwise, any personal property belonging to TENANT and left on said property shall be deemed to be abandoned at the option of CITY.

13. Time

Time is of the essence for this lease agreement.

14. Binding on Successors

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.

15. Waiver

The waiver by CITY of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of rent hereunder by CITY shall not be deemed to be a waiver of any preceding breach by TENANT of any term, covenant, or condition of this lease agreement, other than the failure of tenant to pay the particular rental so accepted, regardless of CITY'S knowledge of such preceding breach at the time of acceptance of such rent.

16. Right of Entry/Photograph

CITY reserves the right to enter upon the property at a reasonable time for the purpose of making any inspection it may deem expedient or desirable for the proper enforcement of any terms, conditions, provisions, and covenants of this lease agreement. Unless in times of emergency, neither the CITY nor CITY's tenants at the airport will photograph or access the property or the hangar to be constructed thereon unless and until: (a) the CITY has provided TENANT with at least 48 hours' prior written notice of its

desire to photograph or access the property or hangar, and (b) the parties have agreed to a mutually convenient time for such photograph or access.

17. Alterations: Removal or Additions

TENANT shall not make or allow to be made any additions or alterations on said property or any part thereof, without approval of CITY of the plans and specifications therefor first had and obtained. Any additions to or alterations of said property except installation of movable furniture and or trade fixtures shall become at once a part of the realty and shall belong to CITY.

TENANT shall keep the property free from any liens arising out of any work performed, materials furnished or obligations incurred by TENANT. In the event that TENANT desires to make any alterations or improvements, plans and specifications thereof shall be submitted to CITY and, if authorized, completion thereof shall be made to the satisfaction of CITY.

18. Insurance

Without limiting Tenant's indemnification of City, and prior to commencement of Occupation or Construction, Tenant shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all SubTenants and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance

Tenant shall maintain limits no less than:

- \$2,000,000 **General Liability** (including operations, products and completed operations) per occurrence, \$5,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- \$2,000,000 **Aircraft Liability** insurance with a minimum limit of \$2,000,000 per accident and aggregate covering liability for bodily injury (including death), passenger liability, and property damage liability. Aircraft Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies
- \$1,000,000 **Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Tenant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and \$1,000,000 **Employer's Liability** per accident for bodily injury or disease, if applicable to Tenant's operations. Tenant shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- **Property** insurance against all risks of loss to any Tenant improvements or betterments. Policy should be for full replacement cost with no coinsurance penalty provision.

Maintenance of Coverage

Tenant shall procure and maintain, for the duration of the contract, 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 Tenant, his agents, representatives, employees, SubTenants or subconsultants as specified in this Agreement.

Proof of Insurance

Tenant shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Tenant, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Tenant hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subtenants.

Enforcement of Contract Provisions (non estoppel)

Tenant acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Tenant of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

Specifications not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Tenant maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Tenant.

Notice of Cancellation

Tenant agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

Self-insured Retentions

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

Timely Notice of Claims

Tenant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Tenant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance

Tenant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

19. Airport Appropriated by Federal Government

In the event that the Madera Municipal Airport or any portion thereof is appropriated by the Federal Government in a national emergency and as a result thereof civil aircraft are prohibited from using said airport, and as a result thereof TENANT is otherwise prohibited by Federal Law, rule or regulation from using and occupying the property, and TENANT for such reason does not use or occupy said property and TENANT is not compensated for damages caused thereby, then during the period in which all such conditions exist the rental herein required to be paid shall be suspended. Except for such suspension or rental, each and every provision, term, covenant and condition of this lease agreement shall remain in force and effect, including, but not by way of limitation, TENANT'S obligation to maintain the property. The terms of this lease agreement shall not be extended because of the occurrence of the above conditions.

20. Taxes

TENANT shall take notice the property interest created herein may be subject to taxation and the party in whom the possessory interest is vested (TENANT) may be subject to payment of property taxes on such interest. TENANT shall be responsible for and shall pay all possessory interest tax which may be assessed or levied, if any, on the property.

21. Hold Harmless Agreement

TENANT shall indemnify, defend, and hold harmless the CITY, its appointive and elective boards, officers, commissions, employees, agents, and volunteers ("City indemnities") harmless from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, , including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of TENANT'S occupation and use of said property or any one or more persons directly employed by or acting as agents for TENANT or as contractors of TENANT, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnities are made a part to any action, lawsuit, or other adversarial proceeding arising from TENANT'S occupation and use of said property, TENANT agrees to and shall defend City indemnities, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims. CITY does not and shall not waive any rights against TENANT which he may have by reason of this hold harmless agreement, by reason of acceptance by CITY or deposit with CITY by TENANT of any insurance policies or certificates of insurance described in Paragraph 18 hereof, and provided further that this hold harmless agreement shall apply to all damages and claims for damages of every kind suffered or alleged to have been suffered by reason of any of TENANT'S operations, whether or not such insurance policies have been determined to be applicable to any of such damages or claims for damages, and is deemed to include any damages or injuries to CITY, CITY'S property, officers or employees.

22. Use of Airport Facilities

Subject to the terms and conditions stated herein, it is understood and agreed that TENANT shall have the right to use wash racks and other facilities off of the property the same as other users on a first-come, first-serve basis.

23. Breach of Lease Agreement

In the event of any breach of this lease agreement by TENANT, and after the cure period as provided herein below, TENANT is still in breach and it has not been cured, CITY, besides other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the property. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of TENANT. Should CITY elect to re-enter as herein provided, or should CITY take possession pursuant to legal proceedings or pursuant to any notice provided for by law, CITY may either terminate this lease agreement or may, from time to time, without terminating this lease agreement, re-let said property or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as CITY, in its sole discretion, may deem advisable with the right to make alterations and repairs to the said property. Rentals received by CITY from such re-letting shall be applied first to payment of any indebtedness other than rent due hereunder from TENANT to CITY; second, to payment of rent due and unpaid hereunder; third, to payment of any cost of such re-letting, and fourth, to the payment of the cost of any alterations and repairs to the property. The residue, if any, shall be held by CITY and applied to payment of future rent as the same may become due and payable hereunder. Should such rent received from such re-letting during any period be less than that agreed to be paid during that period by TENANT hereunder, then TENANT shall pay such deficiency to CITY. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of said premises by CITY shall be construed as an election on its part to terminate this lease for any breach. In addition to any other remedy it may have, CITY may recover from TENANT all damages it may incur by reason of such breach, including the cost of recovering the property and including the worth at the time of such termination, of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease agreement for the remainder of the stated term over the then reasonable rental value of the stated term.

The failure or delay by TENANT to perform any term or provision of this lease agreement constitutes a default under this lease agreement. TENANT shall immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy within thirty (30) days from the date written notice of such default is sent to TENANT by CITY. During any period of cure, correction or remedy, TENANT shall not be in default.

CITY shall give written notice of default to TENANT, specifying the default alleged by the CITY. Except as required to protect against further damages, and except as otherwise expressly provided above, the CITY may not institute proceedings against the TENANT in default until thirty (30) calendar days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of the default.

Except as otherwise expressly provided in this lease agreement, any failure or delay by CITY in asserting any of its rights or remedies as to TENANT'S default shall not operate as a waiver of such right or remedies or deprive CITY of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Whenever the CITY delivers any notice or demand to the TENANT with respect to any breach or default by the TENANT under this lease agreement, the CITY shall at the same time deliver a copy of such notice or demand to each holder of record of any security interest authorized by the CITY under this lease

agreement. Each such holder shall (insofar as the rights of the CITY are concerned) have the right at its option, within forty-five (45) calendar days after receipt of the notice, to cure or remedy, or to commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing in this lease agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of any building or related improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the TENANT'S obligations to the CITY by written agreement satisfactory to the CITY. In that event, the holder must agree to complete, in the manner provided in this lease agreement, that portion of the Project or related improvements to which the lien or title of such holder relates, and must submit evidence satisfactory to the CITY that it has the qualifications and financial ability to perform such obligations.

24. Airport Restrictions

It is hereby expressly understood and agreed that this lease agreement is subject to all applicable terms and conditions of that certain instrument of release dated September 7, 1962, executed by the Administrator of the Federal Aviation Agency acting on behalf of the United States of America, recorded September 20, 1962, in Book 839, at page 540, Official Records of Madera County, California, and particularly the following reservations, covenants and conditions, to which TENANT hereby agrees to be bound:

a. "There is hereby reserved to the City of Madera, California, 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 property herein leased, 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 Madera Municipal Airport.

b. The TENANT by accepting this lease agreement 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 property leased hereunder above a mean sea level elevation of 348 feet. In the event the aforesaid covenant is breached, the City of Madera, California reserves the right to enter on the property leased hereunder and to remove the offending structure or object and to cut the offending tree, all of which shall be at the expense of TENANT.

c. The TENANT by accepting this lease agreement expressly agrees for itself, its successors and assigns, that it will not make use of the property in any manner which might interfere with the landing and taking off of aircraft from said Madera Municipal Airport or otherwise constitute an airport hazard. In the event the aforesaid covenant is breached, the City of Madera, California, reserves the right to enter on the property leased hereunder and cause the abatement of such interference at the expense of the TENANT.

25. Condemnation Clause

If any part of the property shall be taken or condemned for a public or quasi-public use, and a part thereof remains which is susceptible of occupation hereunder, this lease agreement shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, and the rent payable hereunder shall be adjusted so that TENANT shall be required to pay for the remainder of the term only such portion of such rent as the value of the part remaining after the condemnation bears to the value of the entire property at the date of condemnation; provided, however, in such event CITY shall have the option to terminate this lease agreement as of the date when title to the part so condemned vest in the condemnor. If all the property or such part thereof be taken or condemned so that there does not remain a portion susceptible of occupation hereunder, this lease agreement shall thereupon terminate. If a part or all of the

property should be taken or condemned, all compensation awarded upon such condemnation or taking shall go to the CITY and TENANT shall have no claim thereto and TENANT hereby irrevocably assigns and transfers to CITY any right to compensation or damages to which TENANT may become entitled during the term hereof by reason of the condemnation of all or a part of the property.

26. Litigation Involving Lease Agreement

In the event that CITY is made a party to any litigation concerning this lease agreement or the property by reason of any act of omission by TENANT, TENANT promises to hold CITY harmless and indemnify CITY from all loss or liability, including reasonable attorney's fees necessarily incurred by CITY in such litigation. In case suit shall be brought for unlawful detainer of said property, for the recovery of any rental due under the provisions hereof, or because of the breach of any other covenant, term, condition or provision herein contained on the part of TENANT to be kept or performed, and CITY prevails therein, TENANT shall pay to CITY a reasonable attorney's fee which shall be fixed by the Court; provided, however, in the event either party finds it necessary to institute suit for any other purpose in connection with the terms of or the enforcement of this lease agreement, it is agreed that the prevailing party shall collect from the losing party reasonable attorney's fees which shall be fixed by the Court, plus actual costs of suits incurred.

27. Non-Discrimination

TENANT for himself, his personal representatives, successors in interest, and assigns, as part of the consideration hereof does hereby covenant and agree as a covenant running with the property, that:

a. No person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;

b. 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 benefit of, or otherwise be subjected to discrimination;

c. TENANT shall use the property in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended;

d. Notwithstanding any other provisions of this lease agreement, in the event of breach of any of the above non-discrimination covenants, the City of Madera shall have the right to terminate this lease agreement and to re-enter and repossess said property and the facilities thereon, and hold the same as if said lease agreement had never been made or issued.

28. Self-Fueling of Aircraft and On-Site Fuel Storage

TENANT is authorized to self-fuel aircraft that he may own or lease and are stored on the leased premises. TENANT is authorized to install one above-ground aircraft jet fuel bulk storage tank on the leased premises the capacity of which shall not exceed 12,500 gallons. TENANT must provide sufficient fuel tank specifications and a tank installation site plan to the City of Madera Building Division to verify that all building and fire code, safety and environmental requirements are met prior to issuance of a tank installation permit. This agreement does not permit aviation gasoline bulk storage on the leased premises. Aviation gasoline bulk storage on the premises would require additional written consent of the CITY.

29. Fuel Flowage Fee

In the conduct of self-fueling his aircraft, TENANT shall pay a Fuel Flowage Fee for all aircraft fuel brought onto the Madera Municipal Airport in bulk quantities. The flowage fee shall be in accordance with the current City Council Resolution..."Establishing rates and charges for use of facilities and maintenance of activities at Madera Airport " City Council Resolution #05-63 effective March 16, 2005, establishes the starting fuel flowage fee of \$.06 per gallon for this agreement. TENANT shall provide the Airport Operations Manager with copies of all bulk fuel delivery invoices within five days of TENANT's receipt of such invoices from the fuel provider. Flowage fees will be verified by the City of Madera Finance Department and added to TENANT's next monthly ground rent billing.

Effective the day and year first above written.

CITY OF MADERA,
a Municipal Corporation of
the State of California

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

TENANT:

**WSD, LLC, a California
limited liability company**

By: _____
David E. Wood,
Managing Member

EXHIBIT A

LEGAL DESCRIPTION OF LEASED PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MADERA, COUNTY OF MADERA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A PORTION OF SECTION 9, TOWNSHIP 11 SOUTH, RANGE 17 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO OFFICIAL PLAT THEREOF AND BEING A PORTION OF LOT 2 MADERA AIRPORT PARK SUBDIVISION AS PER MAP RECORDED SEPTEMBER 7, 1982 IN BOOK 29, AT PAGE 49 OF RECORD MAPS IN THE COUNTY RECORDERS OFFICE OF MADERA COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 9, TOWNSHIP 11 SOUTH, RANGE 17 EAST, MOUNT DIABLO BASE AND MERIDIAN, THENCE, ALONG SAID SOUTH LINE OF SAID SECTION 9, SOUTH 89°47' 53" EAST, A DISTANCE OF 2646.89 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 9, THENCE, NORTH 00° 00'00" EAST, A DISTANCE OF 2899.32 FEET; THENCE, NORTH 45°07'36" WEST, A DISTANCE OF 1290.79 FEET TO THE **TRUE POINT OF BEGINNING:**

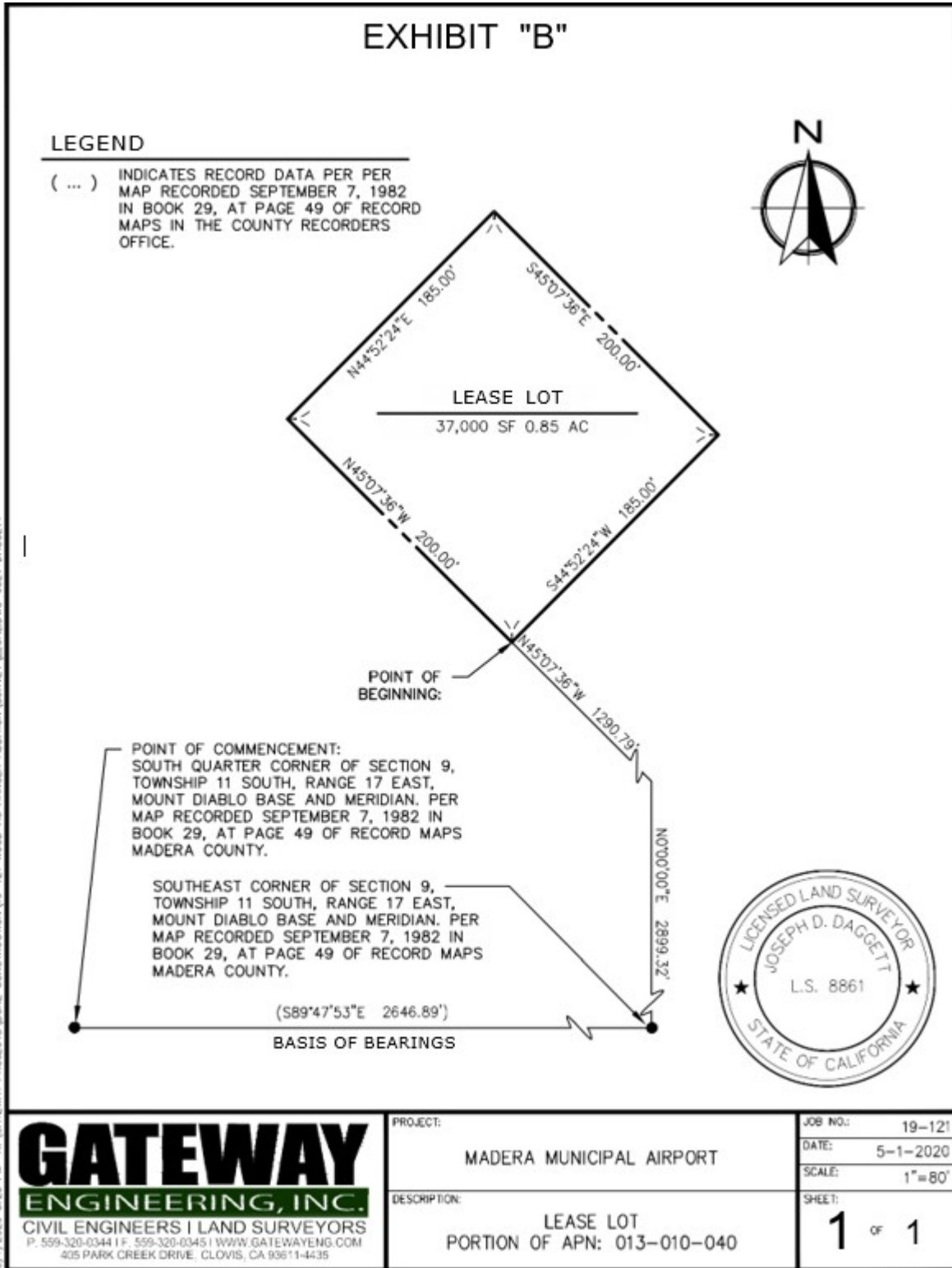
THENCE, NORTH 45°07'36" WEST, A DISTANCE OF 200.00 FEET; THENCE, NORTH 44°52'24" EAST, A DISTANCE OF 185.00 FEET; THENCE, SOUTH 45°07'36" EAST, A DISTANCE OF 200.00 FEET; THENCE, SOUTH 44°52'24" WEST, A DISTANCE OF 185.00 FEET TO THE **TRUE POINT OF BEGINNING**

CONTAINING AN AREA OF ±37,000 SQUARE FEET



EXHIBIT B

DEPICTION OF LEASED PROPERTY



5/7/2020 3:23 PM K:\GATEWAY PROJECTS\BONE CONSTRUCTION\19-121 WOOD AG HANGER ADDITION\SURVEY\LEGAL\DWG--JOEY DAGGETT