

TO: James L. App, City Manager
FROM: Meg Williamson, Assistant City Manager
SUBJECT: Airport Lease Amendment - Andros
DATE: July 3, 2007

NEEDS: For the City Council to adopt Resolution No. 07-XX approving and consenting to an assignment of the master lease between Matthew J. Andros and Susan B. Andros, Trustees, and Paso Robles Aviation, LLC, and consent to and approval of the form of the sublease agreement for Parcel 51 in the Airport Industrial Park.

FACTS:

1. The master lease on Parcel 51 of the Airport Industrial Park has been in effect for many years.
2. On July 6, 2004 the City Council approved an assignment of that long-standing lease to Matthew and Susan Andros, Trustees of the Andros Family Trust.
3. Lessee remains in full compliance with all terms and conditions of the agreement.
4. The Lessee requests assignment of the lease from the Andros Family Trust to Paso Robles Aviation, LLC, a new entity formed by the Trust to act as Lessee under the Master Lease.
5. As part of this development, Lessee desires to enter in to sublease agreements with various sub-tenants for private hangar occupancies on the lease site. The proposed consent document approves the requested form and allows the City Manager to execute sublease approvals that are substantially consistent with the approved format.

**ANALYSIS
AND**

CONCLUSION: The Lessee is currently in full compliance with the terms of the agreement. The Lessee remains responsible for any and all performance as the new entity under the lease agreement. The requested change allows the Lessee to facilitate a development project which has potential to further enhance aviation services and activity on the Airport.

POLICY

REFERENCE: Adopted Lease Agreement and Airport Lease Policy

FISCAL

IMPACT: None

OPTIONS:

- A. Adopt Resolution No. 07-XXX, approving the requested agreements.
- B. Amend, modify, or reject the above option.

Attachments (3):

1. Resolution 07-XX
2. Master Lease Assignment
3. Form Sublease Consent

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING AND CONSENTING TO AN ASSIGNMENT OF THE MASTER
LEASE BETWEEN MATTHEW J. ANDROS AND SUSAN B. ANDROS, TRUSTEES,
AND PASO ROBLES AVIATION, LLC, AND CONSENT TO AND APPROVAL OF
FORM SUBLEASE AGREEMENT FOR PARCEL 51 (PRAL 80-53)
(4282 Second Wind Way, Paso Robles, California)

WHEREAS, the City of El Paso de Robles (the "City"), as Lessor, and Well Products West, Inc. ("Well"), as Lessee, entered into a long-term Lease, dated August 1, 1980 ("Master Lease"), wherein Well leased from the City Parcel 51 of Parcel Map PRAL 80-53, commonly referred to as 4282 Second Wind Way, Paso Robles, California ("Premises"); and

WHEREAS, the Master Lease, and all Well's rights thereunder, were subsequently repossessed by Santa Lucia Bank, and on or about March 15, 1999, Santa Lucia Bank assigned the Master Lease to Matthew James Andros & Susan Berry Andros (collectively, "Andros") pursuant to that certain Consent to Assignment of Lease and Amendment to Lease; and

WHEREAS, on July 6, 2004, Andros assigned the Master Lease to Matthew J. Andros and Susan B. Andros, as Trustees of the Matt and Sue Andros Family Trust dated March 4, 2004 ("Andros Trust") pursuant to that certain Assignment of Lease and Memorandum of Assignment of Lease, dated as of July 6, 2004; and

WHEREAS, Paso Robles Aviation, LLC, a California limited liability company ("PR Aviation"), is a new entity formed by Andros Trust to act as Lessee under the Master Lease, and Andros Trust has requested the City approve an assignment of the Master Lease from Andros Trust to PR Aviation; and

WHEREAS, City, Andros Trust and PR Aviation have cooperated in the preparation of an Assignment and Assumption Agreement (the "Assignment Agreement") providing for the assignment by Andros Trust and assumption by PR Aviation of all of the rights, title and interest as Lessee under the Master Lease; and

WHEREAS, PR Aviation desires to sublease portions of the Premises to sublessees for uses allowed under the Master Lease and the established Airport Rules and Regulations currently in effect, or as may hereafter be adopted; and

WHEREAS, pursuant to Article XV of the Master Lease, PR Aviation has requested that City consent to and approve such subleasing of portions of the Premises, and has cooperated with the City to prepare a form of Ground Sublease (the "Sublease"), and a Consent to Sublease Agreement ("Consent to Sublease"), to be used for such purposes;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby approves the Assignment Agreement in substantially the form currently on file with the City Clerk and incorporated herein by reference, and consents to the assignment by Andros and assumption by PR Aviation of all of the rights, title and interest as Lessee under the Master Lease. The City Manager is authorized and directed to execute the Assignment Agreement on behalf of the City, and to take such other actions and execute such documents as may be necessary to effectuate the purposes of this Resolution.

Section 2. The City Council hereby approves the form of Sublease, currently on file with the City Clerk and incorporated herein by reference. The City Council further approves and consents to the sublease of portions of the Premises by PR Aviation to other sublessees, pursuant to the terms and conditions set forth in the form of the Sublease approved hereby. The City Manager is authorized and directed to execute on behalf of the City a Consent to Sublease for any such Sublease entered into by PR Aviation with a sublessee for a portion of the Premises.

PASSED AND ADOPTED this _____ day of _____, 2007, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

Attest:

Deputy City Clerk

Recorded at the Request of,
and Recorded, Return to:

**ASSIGNMENT AND ASSUMPTION OF MASTER LEASE
(Parcel 51, PRAL 80-53)
4282 Second Wind Way, Paso Robles, California**

This Assignment and Assumption of Master Lease ("Assignment") is made as of _____, 2007, by and between MATTHEW J. ANDROS AND SUSAN B. ANDROS, as Trustees of the Matt and Sue Andros Family Trust dated March 4, 2004 ("Assignor"), and PASO ROBLES AVIATION, LLC, a California limited liability company ("Assignee"), and is consented and agreed to by CITY OF EL PASO DE ROBLES, a municipal corporation and political subdivision and the State of California ("City" or "Lessor").

RECITALS

- A. The City, as Lessor, and Well Products West, Inc. ("Well"), as Lessee, entered into a long-term Lease, dated August 1, 1980 ("Master Lease"), wherein Well leased from the City Parcel 51 of Parcel Map PRAL 80-53, commonly referred to as 4282 Second Wind Way, Paso Robles, California, and more particularly described on Exhibit A, attached hereto and incorporated herein by reference ("Premises"), which Master Lease was recorded in the Official Records of San Luis Obispo County, California ("Official Records"), on July 2, 1981, as Document No. 30122 (commencing at volume 2337, page 669).
- B. The Master Lease, and all Well's rights thereunder, were subsequently repossessed by Santa Lucia Bank, and on or about March 15, 1999, Santa Lucia Bank assigned the Master Lease to Matthew James Andros & Susan Berry Andros (collectively, "Andros") pursuant to that certain Consent to Assignment of Lease and Amendment to Lease, which was recorded in the Official Records on March 17, 1999, as Document No. 1999-019090.
- C. On July 6, 2004, Andros assigned the Master Lease to Assignor pursuant to that certain Assignment of Lease and Memorandum of Assignment of Lease, dated as of July 6, 2004, and recorded in the Official Records on September 2, 2004, as Document No. 2004078123.
- D. Assignee is a new entity formed by Assignor to act as Lessee under the Master Lease. Assignor desires to assign the Master Lease to Assignee and be released from the obligations of the Master Lease, and Assignee desires to accept the assignment of the Master Lease from Assignor and assume all responsibilities and obligations of and be substituted as Lessee under the terms and conditions of the Master Lease.
- E. As used hereinafter, the term "Master Lease" shall mean and refer to the Master Lease, as assigned and amended as set forth in the Recitals, above.

Therefore, for good and valuable consideration, the receipt and adequacy of which are acknowledged, Assignor and Assignee agree as follows:

ASSIGNMENT

1. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, and interest in the Master Lease and Assignee hereby accepts from Assignor all of Assignor's right, title, and interest in the Master Lease, subject to the terms and conditions set forth in this Assignment.
2. Assignee assumes and agrees to perform and fulfill all the terms, covenants, conditions, and obligations required to be performed and fulfilled by Assignor as Lessee under the Master Lease, including the making of all rent and other payments due to or payable on behalf of Lessor under the Master Lease as they become due and payable.
3. Any notice to be given or other document to be delivered by either party to the other party shall be addressed as follows:

Lessor: City of Paso Robles
 Department of Public Works
 1000 Spring Street
 Paso Robles, CA 93446

Lessee: Paso Robles Aviation

4. The Master Lease, as amended and assigned as set forth herein, shall remain in full force and effect pursuant to its terms.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be fully executed as of this ____ day of _____, 2007.

ASSIGNOR:
 MATTHEW J. ANDROS AND
 SUSAN B. ANDROS, as Trustees of the
 Matt and Sue Andros Family Trust

ASSIGNEE:
 PASO ROBLES AVIATION, LLC

 Matthew J. Andros, Trustee

 Matthew J. Andros, President

 Susan B. Andros, Trustee

 Susan B. Andros, Secretary/Treasurer

Consent of Lessor

The undersigned, as Lessor under the Master Lease, hereby approves and gives consent to this Assignment and Assumption of Master Lease, and the assignment of all rights, title and interest under the Master Lease to Assignee, PASO ROBLES AVIATION, LLC, as indicated, and hereby releases Assignor, MATTHEW J. ANDROS AND SUSAN B. ANDROS, as Trustees of the Matt and Sue Andros Family Trust dated March 4, 2004, as Lessee, from any and all responsibilities and obligations under the terms of the subject agreement.

By this Consent, Lessor hereby accepts Assignee as Lessee under the terms of the Master Lease and agrees to Assignee's assumption of all rights, responsibilities and obligations of the Lessee, as specified under the terms and conditions contained therein.

Lessor covenants that the Master Lease is in full effect and no default exists under the Master Lease, nor any act or events which, with the passage of time or the giving of notice or both, could become defaults.

Executed this ____ day of _____ 2007, in Paso Robles, California, on behalf of the City of El Paso de Robles.

By: _____
James L. App, City Manager

ATTEST:

By: _____
Deborah Robinson, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____, personally
appeared _____, personally
known to me (or proved to me on the basis of satisfactory evidence)
to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

WITNESS my hand and official seal.

Signature _____

* * * * *

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____, personally
appeared _____, personally
known to me (or proved to me on the basis of satisfactory evidence)
to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

WITNESS my hand and official seal.

Signature _____

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____, personally
appeared _____, personally
known to me (or proved to me on the basis of satisfactory evidence)
to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

WITNESS my hand and official seal.

Signature _____

* * * * *

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____, personally
appeared _____, personally
known to me (or proved to me on the basis of satisfactory evidence)
to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

CONSENT TO SUBLEASE AGREEMENT

THIS CONSENT TO SUBLEASE AGREEMENT (this "Agreement") is made as of _____, 200__ by and among the CITY OF EL PASO DE ROBLES, a municipal corporation ("City"), PASO ROBLES AVIATION, LLC, a California limited liability company ("Lessee"), and _____, a _____ ("Sub-Lessee").

RECITALS

- A. Reference is hereby made to that certain Lease dated as of August 1, 1980, between City and Well Products West, Inc. (the "Original Lease").
- B. The Original Lease was repossessed by Santa Lucia Bank from Well Products West, Inc.
- C. Pursuant to that certain Consent to Assignment of Lease and Amendment to Lease (the "First Amendment") dated as of March 15, 1999, Santa Lucia Bank assigned the Original Lease to Matthew James Andros and Susan Berry Andros.
- D. Pursuant to that certain _____ (the "_____") dated as of _____, Matthew James Andros and Susan Berry Andros assigned the Original Lease to Matthew J. Andros and Susan B. Andros, Trustees of the Matt and Sue Andros Family Trust.
- E. Pursuant to that certain _____ (the "_____") dated as of _____, Matthew J. Andros and Susan B. Andros, Trustees of the Matt and Sue Andros Family Trust, assigned the Original Lease to Lessee.
- F. The Original Lease, as amended and assigned by the First Amendment, the _____ and the _____ is referred to hereinafter as the "Master Lease."
- G. Pursuant to the Master Lease, Lessee is leasing from City certain premises commonly known as Parcel 51 of Parcel Map 80-53 (the "Premises").
- H. Lessee has requested City's consent to that certain Ground Sublease dated as of _____, 200__, between Lessee and Sub-Lessee (the "Sublease"), with respect to a subletting by Sub-Lessee of a portion of the Premises (the "Sublease Premises"). A copy of the Sublease is attached hereto as Exhibit A. City is willing to consent to the Sublease on the terms and conditions contained herein.
- I. All defined terms not otherwise expressly defined herein shall have the respective meanings given in the Master Lease.

AGREEMENT

1. City's Consent. City hereby consents to the Sublease; provided however, notwithstanding anything contained in the Sublease to the contrary, such consent is granted by

City only upon the terms and conditions set forth in this Agreement. The Sublease is subject and subordinate to the Master Lease. City shall not be bound by any of the terms, covenants, conditions, provisions or agreements of the Sublease, except as expressly provided to the contrary in Section 3.2.

2. Non-Release of Lessee; Further Transfers. Neither the Sublease nor this consent thereto shall release or discharge Lessee from any liability, whether past, present or future, under the Master Lease or alter the primary liability of the Lessee to pay the rent and perform and comply with all of the obligations of Lessee to be performed under the Master Lease. Neither the Sublease nor this consent thereto shall be construed as a waiver of City's right to consent to any further subletting either by Lessee or by the Sub-Lessee or to any assignment by Lessee of the Master Lease or assignment by the Sub-Lessee of the Sublease, or as a consent to any portion of the Sublease Premises being used or occupied by any other party. No such action by City shall relieve such persons from any liability to City or otherwise with regard to the Sublease Premises.

3. Relationship With City. Lessee hereby assigns and transfers to City the Lessee's interest in the Sublease and all rentals and income existing therefrom, subject to the terms of this Section 3. City, by consenting to the Sublease agrees that until a default (following the expiration of any applicable notice and cure period) shall occur in the performance of Lessee's obligations under the Master Lease, Lessee may receive, collect and enjoy the rents accruing under the Sublease. In the event Lessee shall default (following the expiration of any applicable notice and cure period) in the performance of its obligations to Lessee under the Master Lease (whether or not City terminates the Master Lease except as otherwise provided in clause (i) below), City may, at its option by notice to Lessee, either (i) terminate the Sublease (provided that City has also elected to terminate the Master Lease), (ii) elect to receive and collect, directly from Sub-Lessee, all rent and any other sums owing and to be owed under the Sublease, as further set forth in Section 3.1, below, or (iii) elect to succeed to Lessee's interest in the Sublease and cause Sub-Lessee to attorn to City, as further set forth in Section 3.2, below.

3.1. City's Election to Receive Rents. City shall not, by reason of the Sublease nor by reason of the collection of rents or any other sums from the Sub-Lessee pursuant to Section 3(ii), above, be deemed liable to Sub-Lessee for any failure of Lessee to perform and comply with any obligation of Lessee, and Lessee hereby irrevocably authorizes and directs Subtenant, upon receipt of any written notice from City, a copy of which shall be delivered to Lessee, stating that a default exists in the performance of Lessee's obligations under the Master Lease, and the same has not been cured within applicable cure periods, to pay to City the rents and any other sums due and to become due under the Sublease, as and when they become due thereunder. Lessee agrees that Sub-Lessee shall have the right to rely upon any such statement and request from City, and that Sub-Lessee shall pay any such rents and any other sums to City without any obligation or right to inquire as to whether such default exists and notwithstanding any notice from or claim from Lessee to the contrary. Lessee shall not have any right or claim against Sub-Lessee for any such rents or any other sums so paid by Sub-Lessee to City. City shall credit Lessee with any rent received by City under such assignment but the acceptance of any payment on account of rent from the Sub-Lessee as the result of any such default shall in no manner whatsoever be deemed an attornment by the City to Sub-Lessee or by Sub-Lessee to City, be deemed a waiver by City of any provision of the Master Lease or serve to release Lessee

from any liability under the terms, covenants, conditions, provisions or agreements under the Master Lease. Notwithstanding the foregoing, any other payment of rent from the Sub-Lessee directly to City, regardless of the circumstances or reasons therefor, shall in no manner whatsoever be deemed an attornment by the Sub-Lessee to City in the absence of a specific written agreement signed by City to such an effect.

3.2. City's Election of Sub-Lessee's Attornment. In the event City elects, at its option, to cause Sub-Lessee to attorn to City pursuant to Section 3 (iii) above, City shall undertake the obligations of Lessee under the Sublease from the time of the exercise of the option, but City shall not (i) be liable for any prepayment of more than one month's rent or any security deposit paid by Sub-Lessee, (ii) be liable for any previous act or omission of Lessee under the Sublease or for any other defaults of Lessee under the Sublease, (iii) be subject to any defenses or offsets previously accrued which Sub-Lessee may have against Lessee, or (iv) be bound by any changes or modifications made to the Sublease without the written consent of City. Subject to the foregoing provisions of this Section 3.2, in the event any of the acts or omissions of Lessee that arose prior to such exercise of the option either (a) constitute a default on the part of Lessee pursuant to the express terms of the Sublease which will be of a continuing nature following Sub-Lessee's attornment, or (b) otherwise give Sub-Lessee the express right (pursuant to the terms of the Sublease) to terminate the Sublease as a result thereof, then Sub-Lessee must provide City with written notice containing reasonable specificity detailing the act or omission of Lessee that satisfies either clause (a) or (b) above within ten (10) days following City's notice of its election (if applicable) under Section 3 (iii), in which event City shall have the option (to be elected in City's sole discretion) to either (y) rescind its notice to cause Sub-Lessee to attorn under Section 3(iii) above (in which event City may elect either of the rights set forth in 3(i) or (ii) above), or (z) elect to cure such continuing default or other act that gives rise to Sub-Lessee's termination right under clause (b) above; provided, however, if City makes the election under clause (z), then Sub-Lessee agrees that City shall be provided with a new notice and cure period (commencing as of the date that City delivers notice of its election under clause (z)) equivalent to the notice and cure rights of Lessee under the Sublease. If Sub-Lessee fails to provide the foregoing written notice to City within such ten (10)-day period, then Sub-Lessee shall be deemed to have agreed to attorn to City without retention of any of the rights set forth in the preceding sentence.

4. General Provisions.

4.1. Consideration for Sublease. Lessee and Sub-Lessee represent and warrant that there are no additional payments of rent or any other consideration of any type payable by Sub-Lessee to Lessee with regard to the Sublease Premises other than as disclosed in the Sublease.

4.2. Brokerage Commission. Lessee and Sub-Lessee covenant and agree that under no circumstances shall City be liable for any brokerage commission or other charge or expense in connection with the Sublease and Lessee and Sub-Lessee agree to protect, defend, indemnify and hold City harmless from the same and from any cost or expense (including but not limited to attorneys' fees) incurred by City in resisting any claim for any such brokerage commission.

4.3. Controlling Law. The terms and provisions of this Agreement shall be construed in accordance with and governed by the laws of the State of California.

4.4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns. As used herein, the singular number includes the plural and the masculine gender includes the feminine and neuter.

4.5. Captions. The paragraph captions utilized herein are in no way intended to interpret or limit the terms and conditions hereof; rather, they are intended for purposes of convenience only.

4.6. Partial Invalidity. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent possible permitted by law.

4.7. Attorneys' Fees. If either party commences litigation against the other for the specific performance of this Agreement, for damages for the breach hereof or otherwise for enforcement of any remedy hereunder, the parties hereto agree to and hereby do waive any right to a trial by jury and, in the event of any such commencement of litigation, the prevailing party shall be entitled to recover from the other party such costs and reasonable attorneys' fees as may have been incurred.

4.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument.

[SIGNATURES SET FORTH ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Consent to Sublease Agreement as of the day and year first above written.

"City"

CITY OF EL PASO DE ROBLES

James L. App, City Manager

"Lessee"

PASO ROBLES AVIATION, LLC
a California limited liability company

By: _____

Its: _____

"Sub-Lessee"

_____,
a _____

By: _____

Its: _____

ATTEST:

Deborah Robinson, Deputy City Clerk

EXHIBIT A

SUBLEASE