

WAYNE MUNICIPAL  
AIRPORT AUTHORITY  
AGENDA  
December 8, 2025  
5:30 p.m.

1. Call to Order

Anyone desiring to view the Open Meetings Act may do so. The document is available for public inspection and is located on the east wall of the Airport Terminal Meeting Room.

The Airport Authority reserves the right to adjourn into executive session as per Section 84-1410 of the Nebraska Revised Statutes.

Public Comments - Anyone desiring to speak on an agenda item is invited to do so, and should limit themselves to three minutes after being recognized by the Chair.

2. Pledge of Allegiance

3. Approval of Minutes

4. Approval of Claims

5. New Business

- Discussion/possible action regarding 2026 Ercoupe Convention

6. Old Business

- Update/possible action regarding Heinen Bros. contract
- Discussion/update on 2 bay corporate hangar project
- Discussion/update on runway lighting & pavement rehab projects
- Discussion/update regarding Wayne Municipal Airport Minimum Standards
- Discussion/update on jet fuel truck
- Update regarding flight simulator/club

7. Airport Manager Comments

8. Adjourn

WAYNE AIRPORT AUTHORITY  
BANK SUMMARY  
CHECKING ACCOUNT  
November 30, 2025

PREVIOUS BALANCE 55,047.81

DEPOSITS:

Interest on checking account	34.66
Avgas	3,561.80
County Treasurer	1,080.88
Accounts receivable	4,008.20
State of NE	91,725.00

100,410.54

TOTAL AVAILABLE 155,458.35

CLAIMS:

Claims Paid November 26,383.62

BOOK BALANCE AS OF NOVEMBER 30, 2025 129,074.73

Plus Outstanding Checks 70.00

Less Outstanding Deposits 0.00

BANK BALANCE AS OF NOVEMBER 30, 2025 129,144.73

### Airport Money Market Account

<b>Date</b>	<b>Transaction</b>	<b>Average Rate</b>	<b>Transaction Amount</b>	<b>Balance</b>
3/18/2019	Opening Balance		\$ 1,000,000.00	\$ 1,000,000.00
3/29/2019	Interest earned	1.83	\$ 702.15	\$ 1,000,702.15
4/30/2019	Interest earned	1.83	\$ 1,506.26	\$ 1,002,208.41
5/31/2019	Interest earned	1.83	\$ 1,558.85	\$ 1,003,767.26
6/28/2019	Interest earned	1.83	\$ 1,510.87	\$ 1,005,278.13
7/31/2019	Interest earned	1.83	\$ 1,563.63	\$ 1,006,841.76
8/31/2019	Interest earned	1.73354	\$ 1,483.46	\$ 1,008,325.22
9/30/2019	Interest earned	1.68666	\$ 1,398.78	\$ 1,009,724.00
10/31/2019	Interest earned	1.60	\$ 1,373.02	\$ 1,011,097.02
11/19/2019	Transfer to checking cost of flight simulator		\$ (92,779.00)	\$ 918,318.02
11/29/2019	Interest earned	1.52	\$ 1,218.18	\$ 919,536.20
12/31/2019	Interest earned	1.50	\$ 1,172.19	\$ 920,708.39
1/31/2020	Interest earned	1.50	\$ 1,170.47	\$ 921,878.86
2/28/2020	Interest earned	1.50	\$ 1,096.30	\$ 922,975.16
3/31/2020	Interest earned	1.33225	\$ 1,042.07	\$ 924,017.23
4/30/2020	Interest earned	0.88916	\$ 673.68	\$ 924,690.91
5/31/2020	Interest earned	0.807	\$ 632.26	\$ 925,323.17
6/30/2020	Interest earned	0.807	\$ 612.27	\$ 925,935.44
7/31/2020	Interest earned	0.707	\$ 554.63	\$ 926,490.07
8/31/2020	Interest earned	0.707	\$ 554.97	\$ 927,045.04
9/28/2020	Transfer to checking cost of jet fuel truck		\$ (28,500.00)	\$ 898,545.04
9/30/2020	Interest earned	0.707	\$ 535.73	\$ 899,080.77
10/12/2020	Transfer to checking cost of loan to flying club, retro flying club employment agreement, and OGP 1st payment		\$ (183,525.00)	\$ 715,555.77
10/30/2020	Interest earned	0.62493	\$ 421.41	\$ 715,977.18
11/30/2020	Interest earned	0.548	\$ 321.67	\$ 716,298.85
12/31/2020	Interest earned	0.548	\$ 332.55	\$ 716,631.40
1/31/2021	Interest earned	0.548	\$ 333.61	\$ 716,965.01
2/28/2021	Interest earned	0.548	\$ 301.46	\$ 717,266.47
3/31/2021	Interest earned	0.50009	\$ 304.71	\$ 717,571.18
4/30/2021	Interest earned	0.449	\$ 264.86	\$ 717,836.04
5/31/2021	Interest earned	0.31696	\$ 193.27	\$ 718,029.31
6/30/2021	Interest earned	0.15	\$ 88.53	\$ 718,117.84
7/31/2021	Interest earned	0.15	\$ 91.49	\$ 718,209.33
8/31/2021	Interest earned	0.0887	\$ 54.11	\$ 718,263.44
9/30/2021	Interest earned	0.05	\$ 29.52	\$ 718,292.96
10/31/2021	Interest earned	0.05	\$ 30.50	\$ 718,323.46

11/30/2021	Interest earned	0.05	\$ 29.52	\$ 718,352.98
12/31/2021	Interest earned	0.05	\$ 30.51	\$ 718,383.49
1/31/2022	Interest earned	0.05	\$ 30.51	\$ 718,414.00
2/28/2022	Interest earned	0.05	\$ 27.56	\$ 718,441.56
3/14/2022	Transfer to checking Est #8- Final & Est #25- Final		\$ (91,137.85)	\$ 627,303.71
3/31/2022	Interest earned	0.05	\$ 28.26	\$ 627,331.97
4/30/2022	Interest earned	0.05	\$ 25.78	\$ 627,357.75
5/9/2022	Transfer to checking OGP contract costs for 2022 Mayday event		\$ (61,628.25)	\$ 565,729.50
5/31/2022	Interest earned	0.05	\$ 24.70	\$ 565,754.20
6/30/2022	Interest earned	0.05	\$ 23.25	\$ 565,777.45
7/31/2022	Interest earned	0.14677	\$ 70.53	\$ 565,847.98
8/31/2022	Interest earned	0.2	\$ 96.12	\$ 565,944.10
9/30/2022	Interest earned	0.2249	\$ 104.62	\$ 566,048.72
10/31/2022	Interest earned	0.449	\$ 215.90	\$ 566,264.62
11/1/2022	Transfer from checking- received final from State		\$ 91,137.85	\$ 657,402.47
11/30/2022	Interest earned	0.8312	\$ 449.27	\$ 657,851.74
12/31/2022	Interest earned	1.07467	\$ 600.71	\$ 658,452.45
1/31/2023	Interest earned	2.38983	\$ 1,337.79	\$ 659,790.24
2/6/2023	Transfer to checking Est #1		\$ (28,685.71)	\$ 631,104.53
2/14/2023	Moved funds to CD		\$ (500,000.00)	\$ 131,104.53
2/28/2023	Interest earned	2.57925	\$ 721.81	\$ 131,826.34
3/13/2023	Transfers costs for STOL contracts		\$ (20,000.00)	\$ 111,826.34
3/31/2023	Interest earned	2.63164	\$ 267.44	\$ 112,093.78
4/10/2023	Transfer to checking Est #2		\$ (25,061.33)	\$ 87,032.45
4/30/2023	Interest earned	2.713	\$ 211.08	\$ 87,243.53
5/15/2023	Transfer costs for Fly In event		\$ (23,282.03)	\$ 63,961.50
5/31/2023	Interest earned	2.71616	\$ 171.99	\$ 64,133.49
6/12/2023	Transfer costs for Fly In event		\$ (48,831.43)	\$ 15,302.06
6/30/2023	Interest earned	2.762	\$ 75.50	\$ 15,377.56
7/31/2023	Interest earned	2.762	\$ 36.11	\$ 15,413.67
8/14/2023	Deposit CD funds		\$ 512,248.19	\$ 527,661.86
8/31/2023	Interest earned	2.762	\$ 734.37	\$ 528,396.23
9/30/2023	Interest earned	2.762	\$ 1,200.85	\$ 529,597.08
10/31/2023	Interest earned	2.762	\$ 1,243.74	\$ 530,840.82
11/30/2023	Interest earned	2.762	\$ 1,206.40	\$ 532,047.22

12/31/2023	Interest earned	2.762	\$ 1,249.50	\$ 533,296.72
1/31/2024	Interest earned	2.762	\$ 1,249.01	\$ 534,545.73
2/29/2024	Interest earned	2.762	\$ 1,171.07	\$ 535,716.80
3/31/2024	Interest earned	2.762	\$ 1,254.67	\$ 536,971.47
4/30/2024	Interest earned	2.762	\$ 1,217.00	\$ 538,188.47
5/31/2024	Interest earned	2.762	\$ 1,260.46	\$ 539,448.93
6/11/2024	Transfer costs for est #1		\$ (110,342.39)	\$ 429,106.54
6/27/2024	Deposit costs for est #1		\$ 110,342.39	\$ 539,448.93
6/30/2024	Interest earned	2.762	\$ 1,089.27	\$ 540,538.20
7/9/2024	Transfer costs for est #2		\$ (190,231.97)	\$ 350,306.23
7/15/2024	Deposit costs for est #2		\$ 190,231.97	\$ 540,538.20
7/31/2024	Interest earned	2.762	\$ 1,179.71	\$ 541,717.91
8/12/2024	Transfer 10% cost share FAA project-Aug claims		\$ (39,977.58)	\$ 501,740.33
8/31/2024	Interest earned	2.762	\$ 1,208.35	\$ 502,948.68
9/11/2024	Transfer costs for est #4		\$ (279,664.43)	\$ 223,284.25
9/16/2024	Transfer costs for est #4		\$ 279,664.43	\$ 502,948.68
9/30/2024	Interest earned	2.762	\$ 1,034.23	\$ 503,982.91
10/31/2024	Interest earned	2.762	\$ 1,180.35	\$ 505,163.26
11/11/2024	Transfer costs for est #5		\$ (177,254.68)	\$ 327,908.58
11/22/2024	Transfer costs for est #5- auth. Share		\$ 151,131.00	\$ 479,039.58
11/29/2024	Interest earned	2.762	\$ 1,020.05	\$ 480,059.63
12/31/2024	Interest earned	2.762	\$ 1,124.32	\$ 481,183.95
1/31/2025	Interest earned	2.762	\$ 1,130.05	\$ 482,314.00
2/28/2025	Interest earned	2.762	\$ 1,022.97	\$ 483,336.97
3/10/2025	Transfer to checking		\$ (30,000.00)	\$ 453,336.97
3/31/2025	Interest earned	2.762	\$ 1,085.12	\$ 454,422.09
4/15/2025	Transfer to checking		\$ (10,000.00)	\$ 444,422.09
4/30/2025	Interest earned	2.762	\$ 1,020.62	\$ 445,442.71
5/12/2025	Transfer to checking		\$ (85,000.00)	\$ 360,442.71
5/31/2025	Interest earned	2.762	\$ 923.82	\$ 361,366.53
6/9/2025	Transfer to checking		\$ (100,000.00)	\$ 261,366.53
6/30/2025	Interest earned	2.762	\$ 662.22	\$ 262,028.75
7/15/2024	Transfer to checking		\$ (30,000.00)	\$ 232,028.75
7/31/2025	Interest earned	2.762	\$ 576.75	\$ 232,605.50
8/11/2025	Transfer to checking		\$ (5,000.00)	\$ 227,605.50

8/31/2025	Interest earned	2.762	\$	538.70	\$	228,144.20
9/30/2025	Interest earned	2.762	\$	518.49	\$	228,662.69
10/31/2025	Interest earned	2.762	\$	537.01	\$	229,199.70
11/30/2025	Interest earned	2.762	\$	520.89	\$	229,720.59

**WAYNE MUNICIPAL  
AIRPORT AUTHORITY**  
December 8, 2025

Ck # 8957	Ace Hardware- Transmission fluid, anchor kit, silicone, wrench, ext bar.....	169.19
Ck # 8958	Allo- Phone & internet.....	303.15
Ck # 8959	Appeara- Rugs & mops.....	77.60
Ck # 8960	Becker Flying Service – Managers contract .....	3,000.00
	Less FBO lease.....	(100.00)
	Less storage bldg.....	(61.00)
		2,839.00
EFT	Black Hills Energy- Natural gas .....	529.53
Ck # 8961	BozWeld- Work on fuel truck.....	7,770.23
Ck # 8962	City of Wayne	
	AWOS .....	12.75
	Apron lighting .....	33.32
	House.....	188.81
	Terminal/hangar .....	1,356.32
	Shop.....	114.95
	Office & irrigation.....	174.94
	Lift station .....	1.08
	Corporate hangar .....	117.41
	Tire/wheel assembly.....	47.93
	Postage.....	34.55
	Ads/notices .....	31.82
	Treasurer’s fee.....	500.00
		2,613.88
EFT	Department of Aeronautics – Hangar Loan H07 .....	1,391.00
	AWOS .....	383.33
		1,774.33
Ck # 8963	Kaplan Kirsch- Legal consult .....	920.00
Ck # 8964	Miller Law- Legal consult .....	540.00
Ck # 8965	Northeast Nebraska Aviators Inc.-Employment Agmt. Dec 2025.....	2,200.00
EFT	Verizon – Cell phone .....	116.47
	<b>TOTAL .....</b>	<b>\$19,853.38</b>

**LAND LEASE AGREEMENT**

**between**

**THE CITY OF WAYNE, NEBRASKA**

**and**

**HEINEN BROTHERS AG SERVICES**

**dated as of**

**December 1, 2025**

**TABLE OF CONTENTS**

	<b>Page No.</b>
<b>ARTICLE I LEASE OF LEASED PREMISES; OPTION PERIOD; TERM.....</b>	<b>1</b>
Section 1.1 <u>Lease of Leased Premises</u> .....	1
Section 1.2 <u>Lease Term</u> .....	2
Section 1.3 <u>Holding Over; Rights at Expiration</u> .....	2
Section 1.4 <u>Inspection of Leased Premises</u> .....	2
Section 1.5 <u>Ownership of Leased Premises</u> .....	3
<b>ARTICLE II RENTAL; SECURITY DEPOSIT .....</b>	<b>3</b>
Section 2.1 <u>Rent</u> .....	3
Section 2.2 <u>Late Charge</u> .....	3
Section 2.3 <u>Time and Place of Payments</u> .....	3
<b>ARTICLE III OCCUPANCY, USE AND CONDITIONS OF LEASED PREMISES.....</b>	<b>3</b>
Section 3.1 <u>Condition of Leased Premises</u> .....	3
Section 3.2 <u>Construction of Improvements and Ownership of Building and Structures</u> .....	4
Section 3.3 <u>Access</u> .....	4
Section 3.4 <u>Use of Leased Premises and Compliance with all Laws and Regulations</u> .....	4
Section 3.5 <u>No Unauthorized Use</u> .....	5
Section 3.6 <u>Permits and Licenses</u> .....	5
Section 3.7 <u>Payment of Taxes</u> .....	6
Section 3.8 <u>No Liens</u> .....	6
<b>ARTICLE IV REPRESENTATIONS AND WARRANTIES .....</b>	<b>6</b>
Section 4.1 <u>Representations by City</u> .....	6
Section 4.2 <u>Representations by the Lessee</u> .....	6
<b>ARTICLE V OBLIGATIONS OF LESSEE .....</b>	<b>7</b>
Section 5.1 <u>Plans and Specifications</u> .....	7
Section 5.2 <u>Operations and Maintenance</u> .....	7
Section 5.3 <u>Utilities</u> .....	7
Section 5.4 <u>Open Flames</u> .....	7
Section 5.5 <u>Security</u> .....	7
Section 5.6 <u>Obstruction Lights</u> .....	8
Section 5.7 <u>Environmental Laws</u> .....	8
Section 5.8 <u>Obligations upon Termination and Authorized Transfers</u> .....	9
Section 5.9 <u>Trash, Garbage and Other Refuse</u> .....	10
<b>ARTICLE VI INDEMNIFICATION AND INSURANCE .....</b>	<b>11</b>
Section 6.1 <u>Insurance</u> .....	11

Section 6.2	<u>Lessee's Indemnification and Duty to Pay Damages</u> .....	12
<b>ARTICLE VII DEFAULT AND REMEDIES .....</b>		<b>12</b>
Section 7.1	<u>Lessee's Default</u> .....	12
Section 7.2	<u>Default by City</u> .....	13
Section 7.3	<u>Remedies for Failure to Pay Rent</u> .....	13
Section 7.4	<u>Remedies for Breach of Agreement</u> .....	13
Section 7.5	<u>Survival</u> .....	14
<b>ARTICLE VIII ASSIGNMENT AND SUBLEASING .....</b>		<b>14</b>
Section 8.1	<u>Assignment by Lessee</u> .....	14
Section 8.2	<u>Subleasing by Lessee</u> .....	14
Section 8.3	<u>Assignment by City</u> .....	14
Section 8.4	<u>Encumbrances</u> .....	14
<b>ARTICLE IX MISCELLANEOUS PROVISIONS.....</b>		<b>14</b>
Section 9.1	<u>Waiver of Exemption</u> .....	14
Section 9.2	<u>Addresses</u> .....	15
Section 9.3	<u>No Waiver</u> .....	15
Section 9.4	<u>Lessee's Subordination</u> .....	15
Section 9.5	<u>Additional Charges as Rent</u> .....	15
Section 9.6	<u>Subordination to Grant Assurances</u> .....	15
Section 9.7	<u>Non-Interference With Operation of the Airport</u> .....	15
Section 9.8	<u>Emergency Closures</u> .....	16
Section 9.9	<u>Interpretation</u> .....	16
Section 9.10	<u>Force Majeure</u> .....	16
Section 9.11	<u>Governing Law and Venue</u> .....	17
Section 9.12	<u>Amendments and Waivers</u> .....	17
Section 9.13	<u>Severability</u> .....	17
Section 9.14	<u>Merger</u> .....	17
Section 9.15	<u>Relationship of Parties</u> .....	17
Section 9.16	<u>Further Assurances</u> .....	17
Section 9.17	<u>Governmental Immunity and Limitations on Liability</u> .....	17
Section 9.18	<u>Required Federal Clauses</u> .....	18
Section 9.19	<u>Casualty</u> .....	21
Section 9.20	<u>Condemnation</u> .....	22

## LAND LEASE AGREEMENT

THIS LAND LEASE AGREEMENT (this "Agreement") effective as of this first (1<sup>st</sup>) day of December, 2025, by and between the CITY OF WAYNE, NEBRASKA (the "City"), and Heinen Brothers Ag Services, Inc., a Kansas corporation (the "Lessee" and, together with the City, the "Parties" and each a "Party").

### RECITALS

WHEREAS, the City is the owner and operator of the Wayne Municipal Airport in the City of Wayne, Nebraska (the "Airport");

WHEREAS, the City has the right, title and interest in and to the real property on the Airport, together with the facilities, easements, rights, licenses, and privileges hereinafter granted, and has full power and authority to enter into this Agreement in respect thereof;

WHEREAS, the City owns that certain real property located within the Airport and shown on **Exhibit A** attached hereto and made part hereof which consists of approximately 12,300 square feet, more or less, (such real property, together with all rights, privileges, easements and appurtenances benefiting such real property, are collectively referred to herein as the "Leased Premises");

WHEREAS, the City desires to lease the Leased Premises to Lessee for commercial aeronautical purposes beneficial to the City, the aviation community, and the general public, specifically the operation of commercial aeronautical agricultural spraying and construction of aeronautical improvements; and

WHEREAS, the Parties hereto wish to memorialize their agreement herein and they agree as follows:

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which by this reference are hereby incorporated into this Agreement, and the mutual covenants contained in this Agreement, the Parties hereto hereby agree as follows:

#### ARTICLE I

##### LEASE OF LEASED PREMISES; OPTION PERIOD; TERM

###### Section 1.1 Lease of Leased Premises.

A. City hereby leases to Lessee, and Lessee hereby rents from City for its exclusive use the Leased Premises, all herein described rights incident thereto, for and during the Lease Term and upon and subject to the terms, provisions and conditions herein set forth.

B. The Parties acknowledge and agree that as of the Commencement Date, a survey has not been performed on the Leased Premises, and that the square footages and boundaries shown on Exhibit A are approximate. Within nine (9) months of the Commencement Date, the City shall

cause a survey to be performed on the Leased Premises and subsequent creation of a legal description (the "Survey"). Upon its completion, the Survey shall be added to or replace Exhibit A this Agreement without necessity of amendment. If the surveyed square footage of the Leased Premises differs by more than 10% from the approximate size stated herein, a Rent credit shall be issued to Lessee for any prior overpayment or additional payment shall be made by Lessee to account for any prior underpayment. In addition, Lessee shall reimburse the City for the cost of the Survey. Lessee shall pay the reimbursement within 30 days of an invoice by the City accompanied with reasonable documentation evidencing the City's expenditure.

Section 1.2 Lease Term. The term of this Agreement (the "Lease Term") shall be for a period of five (5) years commencing on January 1, 2026 (the "Commencement Date"), and unless sooner terminated pursuant to the provisions of this Agreement, shall expire on January 1, 2031 (the "Initial Term"). The Lease Term may be extended by two (2) optional renewals, each for an additional two (2) years (each, an "Extension Term"). Lessee may exercise an Extension Term by providing a written request to City not more than one (1) year and not less than ninety (90) days prior to the scheduled expiration of the Initial Term or the then-effective Extension Term, as applicable.

Section 1.3 Holding Over; Rights at Expiration.

A. If Lessee retains all or any portion of the Leased Premises after the termination of the Lease Term by lapse of time or otherwise, such holding over shall constitute the creation of a tenancy at will with respect to such retained portion, terminable by City at any time upon thirty (30) days prior written notice to Lessee. Under such tenancy at will, Lessee agrees to pay to City as liquidated damages, and not as a penalty, One Hundred Fifty Percent (150%) of the amount otherwise payable hereunder (at the level applicable for the immediately preceding Rent Adjustment Date) that would have been due during the period of time Lessee remains in possession of the Leased Property if this Agreement had not terminated. All provisions of this Agreement shall remain in full force and effect during such holdover period.

B. Upon the expiration of the Lease Term, any hangars, buildings, or other improvements on the Leased Premises shall immediately become property of the City. Lessee agrees that neither it nor any heir, successor, or assignee of the Lessee will pursue or file any claim against the City claiming compensation for the cost of any improvements under a theory of condemnation inverse or otherwise or for any taking or damaging.

C. As set forth elsewhere herein, upon termination or expiration of this Lease, Lessee shall have no rights with respect to any improvements made to the Leased Premises during the Lease Term and remaining on the Leased Premises after such termination or expiration.

Section 1.4 Inspection of Leased Premises. City, through its duly authorized agents, shall have at any reasonable time the full and unrestricted right to enter the Leased Premises for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with the terms of this Agreement; provided, however, that except in the case of emergency, such right shall be exercised upon reasonable prior notice to Lessee and with an opportunity for Lessee to have an employee or agent present, and will not interfere with Lessee's construction or

operations. Lessee agrees to provide any documents reasonably requested by City to determine compliance with this Agreement within thirty (30) days of such request.

Section 1.5 Ownership of Leased Premises. City and Lessee intend and hereby agree that the Leased Premises shall be and remain the property of City during the entire term of this Agreement and thereafter.

## ARTICLE II

### RENTAL; SECURITY DEPOSIT

Section 2.1 Rent. In consideration for the use of the Leased Premises herein granted, Lessee shall pay to City the following rental amounts (the "Rent").

Beginning on the Commencement Date, Lessee shall pay to City Rent at the rate of \$0.08 per square foot ("Rental Rate") per year on 12,300 square feet within the Leased Premises, for the total sum of **NINE HUNDRED AND EIGHTY FOUR DOLLARS (\$984.00)**, payable in equal monthly installments of **EIGHTY TWO DOLLARS (\$82.00)**. The Rent shall be automatically adjusted to account any the changes in the Leased Premises pursuant to the Survey.

Thereafter, the Rental Rate shall be adjusted every year during the Lease Term on the anniversary of the Commencement Date (each such date referred to herein as a "Rent Adjustment Date"). On each Rent Adjustment Date, the then-effective Rental Rate shall be increased by the greater of (i) three percent (3%) or (ii) the percentage change in the Consumer Price Index – All Urban Consumers (CPI-U), based upon the most recent calendar month for which data is available as compared against the same calendar month in the preceding calendar year. The resulting value shall become the new effective Rental Rate.

All subsequent rental payment will be due in advance on the first of each calendar month thereafter. City will mail a courtesy statement on or about the first of each month. Failure to receive the statement in a timely manner does not absolve Lessee from making rental payment on the first of each month.

Section 2.2 Late Charge. Any rental payment not received within thirty (30) days of its due date shall carry an additional charge of one and one-half percent (1.5%) as a late penalty fee.

Section 2.3 Time and Place of Payments. The Rent, as well as all other charges hereunder, shall be payable in equal monthly installments in advance on or before the first business day of each calendar month of the Lease Term at City's principal place of business at the address set forth in Section 9.3.

## ARTICLE III

### OCCUPANCY, USE AND CONDITIONS OF LEASED PREMISES

Section 3.1 Condition of Leased Premises. Lessee accepts the Leased Premises in their present "as is" condition. Lessee releases City and holds it and its officers, directors, employees

and agents harmless for any claims arising out of any presently existing condition of the Leased Premises.

Section 3.2 Construction of Improvements and Ownership of Building and Structures.

A. Any and all buildings, structures, fixtures, appurtenances, site work, site utilities, or other improvements, including the Horizontal Construction and any other tenant improvements, to be located or constructed on the Leased Premises shall be known as "Improvements."

B. Lessee agrees to commence paving of portions of the Leased Premises (Areas A, B, and C as set forth in Exhibit B) (the "Horizontal Construction"), within twelve (12) months from the Commencement Date and to complete the Horizontal Construction at its sole cost and expense in accordance with all governmental requirements and the Plans and Specifications within eighteen (18) months from the Commencement Date.

C. Subject to written approval from the City of applicable Plans and Specifications, and on a reasonable timeline established by the City, the Lessee may, at its option and its sole cost and expense, remove and relocate the existing Airport access road and access gate immediately south of the Leased Premises (the "Road Relocation"). Any road and access gate constructed outside the Leased Premises shall become property of the City upon its completion.

D. The Parties agree that the Improvements shall become the property of City upon expiration or earlier termination of this Agreement and no compensation will be paid by City for any Improvements. All personal property of Lessee which can be removed by Lessee without material damage to the Leased Premises shall remain the personal property of Lessee and may be removed by Lessee at any time during and at the end of the Lease Term. Lessee shall, in removing any such property, repair all damage to the Leased Premises caused by such removal.

Section 3.3 Access. City agrees that if Lessee is not in breach of this Agreement, Lessee and Lessee's employees, officers, directors, sublessees (that are approved by City pursuant to this Agreement), contractors, subcontractors, suppliers, agents, invitees, and other representatives ("Lessee's Associates") are authorized to ingress and egress across the common areas of the Airport (in the areas designated by City, for the purposes for which they were designed, and as permitted by applicable Laws and Regulations as defined in Section 3.4) on a non-exclusive basis and to the extent reasonably necessary for Lessee's use, occupancy, and operations at the Leased Premises and the Authorized Use. City will notify Lessee in writing of any special events or closures that will impede Lessee's use of the Leased Premises, and Lessee shall reasonably cooperate with the City in any altered procedures for the Airport occasioned by such special events or closures.

Section 3.4 Use of Leased Premises and Compliance with all Laws and Regulations. As more specifically set forth in this Section 3.4, Lessee shall use the Leased Premises only for the operation of a commercial aeronautical agricultural spraying operating ("Authorized Use") and Lessee and Lessee's Associates shall comply at all times, at Lessee's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Lessee's business and Lessee's construction of the Improvements, including those pertaining to the construction of buildings on public property, and Lessee's use, occupancy, or operations at the

Leased Premises or the Airport (the “Laws and Regulations”), which include, but are not limited to, all laws, statutes, ordinances, regulations, rules, orders, writs, judgments, decrees, injunctions, directives, rulings, guidelines, standards, codes, policies, common law, and other pronouncements of any kind having the effect of law that may be applicable at any time during the term of this Agreement including, but not limited to, the Airport Rules and Regulations, master plans and zoning codes, stormwater management plans, and all Laws and Regulations pertaining to the environment (the “Environmental Laws”); any and all plans and programs developed in compliance with such requirements (including, but not limited to, any Airport Security Plan); and all Airport policies and other requirements. Lessee shall provide all required notices under the Laws and Regulations. Upon a written request by City, Lessee will verify, within a reasonable time frame, compliance with any Laws and Regulations.

A. Lessee’s conduct of the Authorized Use is further conditioned upon the execution of a valid annual operating permit with the City. Lessee shall conduct the Authorized Use only in accordance with the Minimum Standards, as they may be amended from time to time.

B. Routine aircraft maintenance of Lessee’s aircraft is permitted on the Leased Premises. Lessee shall not provide any aircraft maintenance services to the public from the Leased Premises.

C. Agricultural chemicals may be stored on the Leased Premises only in accordance with applicable fire code and Environmental Law.

D. Unless the City specifically approves otherwise in writing, Lessee shall use Area D (as shown on Exhibit B) only for the parking and staging of motor vehicles and water tanks. No aircraft or Hazardous Materials shall be stored, operated, or used on Area D.

Section 3.5 No Unauthorized Use. Lessee and Lessee’s Associates shall use the Leased Premises and the Airport only for the Authorized Use and other purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, restricting access on any road or other area that Lessee does not lease; placing waste materials on the Airport or disposing of such materials in violation of any Laws and Regulations; non-aeronautical uses that impede the aeronautical utility of the Leased Premises or the Improvements; any use that would constitute a public or private nuisance or a disturbance or annoyance to other Airport users; driving a motor vehicle in a prohibited Airport location; the use of automobile parking areas in a manner not authorized by City; any use that would interfere with any operation at the Airport or decrease the Airport’s effectiveness (as determined by City in its sole discretion); and any use that would be prohibited by or would impair coverage under either Party’s insurance policies or would cause an increase in the existing rate of insurance upon the Leased Premises. Lessee is strictly prohibited from the sale of aviation fuel from or on the Leased Premises.

Section 3.6 Permits and Licenses. Lessee shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with Lessee’s construction of Improvements and the use, occupancy, or operations at the Leased Premises or the Airport. Those permits and licenses include, but are not limited to, (i) all contractors doing work on the Leased Premises must be licensed by the State of Nebraska, and (ii) prior to commencement

of any Improvements, a building permit must be obtained from the City and a copy of the permit must be furnished to the Airport Manager. In the event that Lessee receives notice from any governmental entity that Lessee lacks, or is in violation of, any such permit or license, Lessee shall provide City with timely written notice of the same.

Section 3.7 Payment of Taxes. Lessee shall pay (before their respective due dates) all taxes, fees, assessments, and levies that relate to Lessee's use, occupancy, or operations at the Leased Premises or the Airport and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for any Improvements).

Section 3.8 No Liens. No liens may be placed upon the City's interest in the Leased Premises. Within thirty (30) days, Lessee shall pay all lawful claims made against City and discharge all liens filed or which exist against the Leased Premises or any other portion of the Airport (other than Lessee's trade fixtures or trade equipment) to the extent such claims arise out of or in connection with, whether directly or indirectly, the failure to make payment for work done or materials provided by Lessee its contractors, subcontractors or materialmen. However, Lessee shall have the right to contest the amount or validity of any such claim or lien without being in default under this Agreement upon furnishing security in form acceptable to City, in an amount equal to one hundred percent (100%) of such claim or lien, which insures that such claim or lien will be properly and fully discharged forthwith in the event that such contest is finally determined against Lessee or City. City shall give timely notice to Lessee of all such claims and liens of which it becomes aware. When contracting for any work in connection with the Leased Premises, Lessee shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein. Lessee is solely responsible for ensuring that all requirements are met such that such lien waivers are effective and enforceable (such as filing such contracts, if necessary). Furthermore, when completed, the Improvements on the Leased Premises shall be free from all construction liens.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations by City. City represents and warrants that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement, has duly executed and delivered this Agreement, and that this Agreement constitutes a legal, valid, and binding obligation of City.

Section 4.2 Representations by the Lessee. Lessee represents and warrants that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement, has duly executed and delivered this Agreement, and that this Agreement constitutes a legal, valid, and binding obligation of Lessee.

## ARTICLE V

### OBLIGATIONS OF LESSEE

Section 5.1 Plans and Specifications. With respect to any Improvements, Lessee shall select qualified architects and engineers to prepare, prior to construction or on a phased basis during construction, the architectural, site, structural, mechanical and/or electrical drawings and specifications for the Improvements in the form and content required by the appropriate local planning and zoning authorities and pursuant to all applicable Laws and Regulations and this Agreement, which shall be approved in writing by City (collectively, the "Plans and Specifications").

Section 5.2 Operations and Maintenance. Lessee shall maintain the Leased Premises and all Improvements in a condition that is clean, free of debris, safe, sanitary, and in good repair (including, without limitation, the foundation, roof, windows, doors, pavement, HVAC system, plumbing, and electrical) and shall not accumulate or permit the accumulation of any trash, refuse, or debris or of anything that is unsightly or which creates a fire hazard or nuisance or causes inconvenience to adjoining properties. Failure to maintain the Improvements in a state of good repair shall be an event of default under Section 7.1. Lessee shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner. Lessee shall promptly remedy any condition that fails to meet this standard. Without limiting the foregoing obligations, Lessee shall not store on the Leased Premises any inoperable equipment, discarded or unsightly materials, or materials likely to create a hazard; shall not use areas outside of enclosed buildings for storage; and shall store trash in covered metal receptacles. Any substance or material that is regulated by any Environmental Law ("Hazardous Materials") shall be governed by Section 5.8. In addition, Lessee agrees to comply with all applicable provisions of City's stormwater management plan, including in the construction of any Improvements.

Section 5.3 Utilities. Lessee shall pay for telephone, gas, light bulbs, electricity, water, sewer, and garbage and trash removal used by Lessee and shall make such deposits as are required to secure service. Lessee shall be responsible for any water or sewer impact fees incurred by their use of the Leased Premises. Any repairs of the utility lines other than those which are not the responsibility of the utility service are the responsibility of Lessee. If utilities are billed to a common meter, Lessee shall pay to City the pro-rated amount based on square footage leased.

Section 5.4 Open Flames. Lessee shall not cause, create, or allow any open flames include fires, patio or flame torches, grilling or any other activity which may use or cause an open flame on the Leased Premises.

Section 5.5 Security. Lessee is responsible to comply (at Lessee's sole cost) with all security measures that City, the United States Transportation Security Administration, the United States Department of Homeland Security ("Homeland Security"), FAA, or any other governmental entity having jurisdiction may require in connection with the Airport, including, but not limited to, any access credential requirements, any decision to remove Lessee's access credentials, and any civil penalty obligations and other costs arising from a breach of security requirements caused or permitted by Lessee or Lessee's Associates. Lessee shall protect and preserve security at the Airport. Lessee acknowledges that FAA, Homeland Security, or a subdivision of either may enact

laws or regulations regarding security at general aviation airports such that City may not be able to comply fully with its obligations under this Agreement, and Lessee agrees that City will not be liable for any damages to Lessee or Lessee's personal property that may result from said noncompliance. If the City is held liable for any violation of Homeland Security or FAA security regulations due in whole or in part to the acts or omission of Lessee, shall reimburse the City for the full amount of any penalty paid by the City.

Section 5.6 Obstruction Lights. Lessee shall, at its expense, provide and maintain obstruction lights on any structure on the Leased Premises if required by City or FAA regulations. Any obstruction lights so required shall comply with the specifications and standards established for such installations by City or FAA.

Section 5.7 Environmental Laws.

A. Environmental Representations. Notwithstanding any other provisions of this Agreement, and in addition to any and all other Agreement requirements, and any other covenants and warranties of Lessee, Lessee hereby expressly warrants, guarantees, and represents to City, upon which City expressly relies that:

(a) Lessee will comply, and cause all Lessee Associates to comply, with all applicable Environmental Laws in connection with its use and occupancy of the Leased Premises and any Airport facilities and property. In the event of any noncompliance with Environmental Laws, Lessee shall take prompt and appropriate action to address the conditions causing the noncompliance and return to full compliance.

(b) Lessee is knowledgeable of any and all Environmental Laws without limitation which govern or which in any way apply to the direct or indirect results and impacts to the environmental and natural resources due to, or in any way resulting from, the conduct by Lessee of its operations pursuant to or upon the Leased Premises and the Airport. Lessee agrees to keep informed of future changes in Environmental Laws.

(c) Lessee agrees to comply with all Environmental Laws applicable to its operations on the Leased Premises and accepts full responsibility and liability for such compliance.

(d) Lessee, and all Lessee Associates, have been fully and properly trained in the handling and storage of all such Hazardous Materials and other pollutants and contaminants regularly used by Lessee or Lessee's Associates on the Leased Premises; and such training complies with any and all Applicable Laws.

(e) Lessee agrees that it will neither handle nor store any Hazardous Materials on the Leased Premises in excess of those required to carry out the Authorized Use and operation of the Airport and that all Hazardous Materials will be stored, used and disposed of in accordance with Applicable Law.

(f) Lessee shall provide City satisfactory documentary evidence of all such requisite legal permits and notifications required under any Environmental Law.

(g) Lessee agrees to cooperate with any investigation, audit or inquiry by City or any governmental authority regarding possible violation of any Environmental Law.

B. Generator of Hazardous Waste. If Lessee is deemed to be a generator of hazardous waste, as defined by Applicable Law, Lessee shall obtain an EPA identification number and the appropriate generator permit and shall comply with all Environmental Laws imposed upon a generator of hazardous waste including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in full compliance with Environmental Law.

C. Inventory List. Lessee shall maintain an accurate inventory list (including quantities) of all such Hazardous Materials, whether stored, disposed of or recycled, available at all times for inspection at any time on the Leased Premises by City officials and also by Fire Department officials or regulatory personnel having jurisdiction over the Leased Premises, for implementation of proper storage, handling and disposal procedures.

D. Notification and Copies. Notification of all activities relating to Hazardous Materials by Lessee shall be provided on a timely basis to City or such other agencies as required by Applicable Law. Lessee shall provide the name of Lessee's twenty-four (24)-hour emergency coordinator and his or her phone number to City in case of any spill, leak or other emergency situation involving Hazardous Materials at the Leased Premises. Lessee agrees to provide City copies of all permit application materials, permits, monitoring reports, environmental response plan, and regulated materials storage and disposal plans relating to the Leased Premises.

E. Violations. If City receives a notice from any Governmental City asserting a violation by Lessee of Lessee's covenants and agreements contained herein, or if City otherwise has reasonable grounds upon which to believe that such a violation has occurred, City or its duly appointed consultants shall have the right, but not the obligation, to enter the Leased Premises, and perform environmental site assessments for the purpose of determining whether there exists any environmental condition that could result in any liability, cost or expense to City. City shall perform such tests on the Leased Premises as may be necessary, in the opinion of the City or its duly appointed consultants, acting reasonably, to conduct a prudent environmental site assessment; provided, however, such environmental site assessment shall not unreasonably interfere with Lessee's operations or use and enjoyment of the Leased Premises. Lessee shall supply such information as is reasonably requested by the City. If Lessee receives a Notice of Violation or similar enforcement action or notice of noncompliance, Lessee shall provide a copy of same to City within three (3) days of receipt by Lessee or Lessee's agent.

#### Section 5.8 Obligations upon Termination and Authorized Transfers.

A. Upon any expiration or termination of this Agreement or any change in possession of the Leased Premises authorized by City, Lessee shall demonstrate to City's reasonable satisfaction that Lessee has removed any Hazardous Materials and is in compliance with applicable Environmental Laws. Such demonstration may include, but is not limited to, independent analysis and testing to the extent that facts and circumstances warrant analysis and testing, such as evidence of past violations or specific uses of the Leased Premises. If the site is contaminated during

Lessee's possession, Lessee shall bear all costs and responsibility for the required clean up, and shall hold City harmless therefrom.

B. In addition to any indemnification set forth elsewhere in this Agreement, Lessee hereby indemnifies and agrees to defend and hold harmless the City from all costs, claims, demands, actions, liabilities, complaints, fines, citations, violations, or notices of violation arising from or attributable to: (i) a presence or release of Hazardous Materials into the environment caused by Lessee or any of Lessee's Associates at the Leased Premises or any Airport facility or property, or the subsurface, waters, air, or ground thereof, in excess of levels allowable by Environmental Laws or the violation of any Environmental Laws due to Lessee's or any Lessee Party's management, control, authorization, handling, possession, or use of Hazardous Materials at the Airport; (ii) any breach by Lessee of any of its warranties, representations, or covenants in Articles 15 or 16; (iii) Lessee's remediation or failure to remediate Hazardous Materials as required by this Agreement. Lessee's obligations hereunder will survive the termination or expiration of this Agreement, and will not be affected in any way by the amount of or the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting Airport or any part thereof, except that, in the event that City recovers funds from insurance carriers in connection with claims associated with (i), (ii), or (iii) above, City may not recover the same funds from Lessee. Notwithstanding the foregoing, the Lessee shall have no indemnification obligation under this Section 16.2 for any costs, claims, demands, actions, liabilities, complaints, fines, citations, violations or notices of violation arising from or attributable to any release of Hazardous Materials in, on or under the Leased Premises prior to the date of Lessee's first occupancy of the Leased Premises (which may pre-date the Effective Date), except to the extent materially exacerbated by the Lessee or any Lessee Associate or invitee, or otherwise if Lessee's use, operation or occupancy of the Leased Premises fails to comply with Environmental Laws.

C. To the extent any environmental condition occurs on the Leased Premises during the Term, Lessee shall promptly take such action as is required by applicable Environmental Laws to clean up and remediate the Leased Premises at its own expense in accordance with Environmental Laws. The remediation must continue until the Governmental Authorities with jurisdiction determine that no further action is necessary in compliance with applicable Environmental Laws; it being understood and agreed that Lessee shall be obligated to clean-up and remediate the Leased Premises to achieve such standards or clean-up levels as are reasonably required by the City for properties at the Airport. If the City is unable, after commercially reasonable efforts, to lease the Leased Premises during the period of cleanup and remediation due to the environmental condition or cleanup work being performed, in addition to any other damages, Lessee shall be responsible for payment of lost rent or lost use to the City.

D. Notwithstanding anything to the contrary, the obligations of this Section 5.9 shall survive any termination or expiration of this Agreement.

Section 5.9 Trash, Garbage and Other Refuse. Lessee shall pick up, and provide for a complete and proper arrangement for the adequate sanitary handling and disposal, of all trash, garbage, and other refuse caused as a result of its operation on the Leased Premises. Lessee is responsible for disposal and payment of such services. Lessee shall provide and use suitable covered metal receptacles for all such garbage, trash and other refuse on the Leased Premises.

Lessee shall not pile boxes, cartons, barrels, pallets, debris or similar items in an unattractive or unsafe manner, on or about the Leased Premises.

## ARTICLE VI

### INDEMNIFICATION AND INSURANCE

Section 6.1 Insurance. Prior to the Commencement Date and throughout the term of this Agreement, Lessee shall obtain, maintain and provide proof to the City of premises liability insurance, including fire legal coverage, for both property damage and bodily injury, and shall list as additional insured the City and its officers, agents and employees shall be named as an additional insured on the Lessee's insurance policy, all as more specifically set forth in this Section 6.1. The City shall be named as additional insured for any claims arising out of this Lease.

A. Lessee agrees to obtain, maintain, and provide proof to the City of Liability Insurance in the following types and amounts: (i) commercial general liability (including premises liability) with a minimum limit of \$1,000,000 per occurrence, (ii) environmental/pollution Liability with a minimum combined single limit of \$1,000,000, (iii) fire damage liability with a minimum combined single limit of \$250,000, and (iv) commercial automobile liability for any automobiles owned or operated by Lessee on the Leased Premises, with a minimum limit of \$1,000,000 per accident.

B. All insurance coverage required under this Agreement shall include the City and the City of Wayne, Nebraska as additional named insured, providing 30 days' written notice of cancellation or intent not to renew the insurance, a waiver of subrogation and list any and all exclusions. Lessee shall submit a Certificate of Insurance to the City within 30 working days after the effective date of this Agreement, and yearly thereafter.

C. The City reserves the right to modify any or all insurance requirements from time to time and in such a manner and to such extent as it deems reasonable, appropriate or necessary. The City shall provide Lessee with reasonable notice of any such changes and a reasonable time to comply with any new requirements.

D. The Lessee shall provide the City with a Certificate of Insurance naming the City as an additional insured using ISO for CG 2010 1185 (or a substitute form providing equivalent coverage) or on the combination of ISO forms CG 20 10 07 04 or CG 20 33 07 04 and CG 20 37 07 04 (or a substitute or ISO form providing equivalent coverage) naming the City as an additional insured. The coverage available to the City as an additional insured shall not be less than the minimum coverage for Each Occurrence, General Aggregate, Products/completed Operations Aggregate, and Personal and Advertising injury limits as set forth herein. Additional insured coverage shall apply as primary, non-contributory, insurance with any other insurance afforded to the City and the Lessee.

E. Lessee shall insure any property or improvements owned by the City and leased to Lessee (e.g., hangars or related facilities) for no less than the replacement value of such property and shall make the City the loss payee on any such policy of insurance.

F. The insurance provisions herein shall likewise apply to any Sub-Lessee or assign of the Lessee. Any Sub-Lessee must comply with the provisions as set forth in Article 8 herein.

G. Lessee shall additionally purchase and maintain insurance in the types and amounts and on the conditions set forth in the Airport Minimum Standards, as they may be amended by the City from time to time. Lessee's failure to comply with the insurance requirements of the Minimum Standards shall be a breach of this Agreement.

**Section 6.2 Lessee's Indemnification and Duty to Pay Damages.**

A. To the fullest extent permitted by law, the Lessee shall defend, indemnify and hold harmless the City, the City of Wayne, Nebraska, city employees and agents from and against any and all liabilities, breach, claims, demands, losses, obligations, fines, liens, penalties, actions, judgements, damages (of any kind or nature-including, but not limited to, direct damages, consequential damages, liquidated damages, and/or special damages), costs, charges and expenses (including, but not limited to, attorneys' fees and litigation expenses) for any claim or cause of action of any nature arising out of, in connection with, or as a consequence of the performance or nonperformance of this agreement (including, but not limited to, bodily injury, sickness, disease or death), or injury to or destruction of tangible property (including loss of use, personal and advertising injury), or violation of any statutory duty, regulation, ordinance rule, or obligation by Lessee or its subcontractors.

B. The Lessee and any Sub-Lessee further voluntarily agree to indemnify and hold harmless the City of Wayne, Nebraska, and its successors and assigns, and any of its officers, agents, or employees, from any and all manner of damages the undersigned may cause in conducting the activities associated with Lessee or sub-lessee not proximately caused by the negligence of the City, its officers, contractors, agents or employees.

C. City shall not be liable to Lessee for any damage by or from any act or negligence of any co-tenant or other occupant of the same building, or by any owner or occupant of adjoining or contiguous property.

D. Lessee agrees to pay for all damages of Leased Premises caused by Lessee's misuse or neglect thereof, its apparatus or appurtenances.

E. Lessee shall be responsible and liable for the conduct of Lessee's Associates in and around the Leased Premises.

**ARTICLE VII**

**DEFAULT AND REMEDIES**

Section 7.1 Lessee's Default. The occurrence of any of the following events shall constitute a default by Lessee under this Agreement unless cured within thirty (30) days following written notice of such violation from City: (i) Lessee fails to timely pay any Rent (ii) Lessee or Lessee's Associates violate any requirement under this Agreement (including, but not limited to, abandonment of the Leased Premises or failure to maintain the Improvements located on the Leased Premises); (iii) Lessee assigns or encumbers any right in this Agreement, delegates any

performance hereunder, or subleases any part of the Leased Premises (except as expressly permitted in this Agreement); (iv) Lessee files a petition in bankruptcy or has a petition filed against Lessee in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (v) Lessee petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; (vi) Lessee defaults in constructing any Improvements that are required to be constructed under this Agreement; or (vii) Lessee dissolves or dies. The rest of this Section 7.1 notwithstanding, and except for a default for nonpayment of Rent, the Lessee shall not be in default if the Lessee (i) provides notice to the City that its cure of an alleged violation is reasonably expected to take more than 30 days, (ii) it commences diligent performance of such a cure within 30 days of receiving notice from the City and continues such performance without unreasonable delay, and (iii) completes such cure within 120 days of the City's notice of violation, unless the City grants prior written consent for a longer period of time.

Section 7.2 Default by City. City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within forty-five (45) days after written notice by Lessee to City. If the nature of City's obligation is such that more than forty-five (45) days are reasonably required for performance or cure, City shall not be in default if City (i) provided notice to the Lessee that its cure of an alleged violation is reasonably expected to take more than 45 days, (ii) it commences performance within such 45 day period and thereafter diligently prosecutes the same to completion, and (iii) completes such cure within 150 days of the Lessee's notice of violation, unless the Lessee grants prior written consent for a longer period of time, which Lessee shall not unreasonably withhold.

Section 7.3 Remedies for Failure to Pay Rent. Subject to Section 7.1, if any Rent or Option Payment required by this Agreement shall not be paid when due, City shall have the option to:

A. Declare the entire balance of the Rent for the then current term immediately due and payable, together with all other charges, payments, costs and expenses payable by Lessee as though such amounts were payable in advance on the date of the event of default occurred.

B. Resume possession and re-lease the Leased Premises for the remainder of the term for the account of Lessee, and recover from Lessee, at the end of the term or at the time each payment of Rent comes due under this Agreement as City may choose, the difference between the Rent and the rent received on the re-leasing or renting.

In either event, City shall also recover all expenses incurred by reason of breach, including reasonable attorney's fees.

Section 7.4 Remedies for Breach of Agreement. Subject to the notice requirements and opportunity to cure in Sections 7.1, 7.2, and 7.3 above, if either Party shall be in default of any provision of this Agreement, other than the agreement of Lessee to pay Rent, the non-defaulting Party may terminate this Agreement or take any such action it is legally entitled to take, including instituting litigation to compel performance of this Agreement.

Section 7.5 Survival. The provisions of this Article VII and the remedies and rights provided in this Article VII shall survive any expiration or termination of this Agreement.

## ARTICLE VIII

### ASSIGNMENT AND SUBLEASING

#### Section 8.1 Assignment by Lessee.

A. Lessee shall not assign any of its rights under this Agreement, including, but not limited to, rights in any Improvements, (whether such assignment is voluntarily or involuntarily, by merger, consolidation, dissolution, change in control, or any other manner), and shall not delegate any performance under this Agreement, except with the prior written consent of City to any of the same, in City's sole discretion. As a condition of obtaining such consent, the transferee receiving any such right shall be required to execute a new lease agreement provided by City. Regardless of City's consent, Lessee shall not be released from any obligations for matters arising during the time when this Agreement was in effect. Any purported assignment or delegation of rights or delegation of performance in violation of this section is void.

Section 8.2 Subleasing by Lessee. Lessee shall not sublease any portion of the Leased Premises or Improvements without prior written permission from the City, which may be granted or withheld in the City's sole discretion. Any sublease or sublease form approved by the City must, at a minimum, be subordinate to this Agreement and provide the City with the right of attornment in the event of Lessee's default under this Agreement or the expiration or termination of this Agreement. Any Sub-Lessee must comply with the provisions as set forth in Article 6 herein.

Section 8.3 Assignment by City. City shall have the right, in City's sole discretion, to assign any of its rights under this Agreement (and in connection therewith, shall be deemed to have delegate its duties), and upon any such assignment, Lessee agrees that Lessee shall perform its obligations under this Agreement in favor of such assignee.

Section 8.4 Encumbrances. Lessee shall not encumber or permit the encumbrance of any real property at the Airport. Lessee shall not encumber or permit the encumbrance of any of Lessee's rights under this Agreement, including through any leasehold mortgage, without City's prior written consent, in City's sole discretion. Lessee shall not record this Agreement or any document or interest relating thereto. Any purported encumbrance of rights in violation of this Section 8.4 is void *ab initio*.

## ARTICLE IX

### MISCELLANEOUS PROVISIONS

Section 9.1 Waiver of Exemption. Any constitutional or statutory exemption of Lessee of any property usually kept on the Leased Premises, from distress or forced sale, is waived.

Section 9.2 Addresses. All rent payable and notice given under this Agreement to City shall be paid and given at 513 Main Street, Wayne, NE 68787, or such other place as City shall specify in writing. All notices given under this Agreement to Lessee shall be sent to:

Name Heinen Bros Agra Services

Address: 1226 104<sup>th</sup> Road\_

City, State, ZIP: Seneca, Kansas 66538

Telephone Number: 785.336.3788 \_\_\_\_\_

E-mail address: [john@heinenbrosag.com](mailto:john@heinenbrosag.com) and [scott@heinenbrosag.com](mailto:scott@heinenbrosag.com)

Any notice properly mailed by registered mail, postage and fee prepaid, shall be deemed delivered when mailed, whether received or not. Any notice of change of address of either of the above shall be sent to the above address of the other party and shall contain the effective date of any such change.

Section 9.3 No 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 Lessee of any term, covenant or condition of this Agreement, other than the failure of Lessee to pay the particular rental so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent.

Section 9.4 Lessee's Subordination. Lessee hereby subordinates and makes this Agreement inferior to all existing and future mortgages, trust indentures or other security interest of City or City's successor in interest. Lessee shall execute and deliver any documents required to evidence and perfect such subordination.

Section 9.5 Additional Charges as Rent. Any charges against Lessee by City for services or for work done on the Leased Premises by order of Lessee or otherwise accruing under this Agreement shall be considered as Rent due.

Section 9.6 Subordination to Grant Assurances. This Agreement shall be subordinate to the provisions of any existing or future agreements between City and the United States of America, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to City of federal funds for the development of the Airport ("Grant Assurances"). In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates any such Grant Assurances, City has the right to amend, alter or otherwise modify the terms of this Agreement in order to resolve such conflict or violation.

Section 9.7 Non-Interference With Operation of the Airport. Lessee expressly agrees for itself, its successors and assigns that Lessee will not conduct operations in or on the Leased

Premises in a manner that in the reasonable judgment of City, (i) interferes or might interfere with the reasonable use by others of common facilities at the Airport, (ii) hinders or might hinder police, fire fighting or other emergency personnel in the discharge of their duties, (iii) would or would be likely to constitute a hazardous condition at the Airport, (iv) would or would be likely to increase the premiums for insurance policies maintained by City unless such operations are not otherwise prohibited hereunder and Lessee pays the increase in insurance premiums occasioned by such operations, (v) is contrary to any applicable Grant Assurance; (vi) is in contradiction to any rule, regulation, directive or similar restriction issued by agencies having jurisdiction over the Airport including FAA, Homeland Security, Transportation Security Administration and Customs and Border Patrol, or (vii) would involve any illegal purposes. In the event this covenant is breached, City reserves the right, after prior written notice to Lessee, to enter upon the Leased Premises and cause the abatement of such interference at the expense of Lessee. In the event of a breach in Airport security caused by Lessee, resulting in fine or penalty to City of which Lessee has received prior written notice, such fine or penalty will be charged to Lessee.

Section 9.8 Emergency Closures. During time of war or national emergency, City 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 Agreement, insofar as they are inconsistent with provisions of the agreement with the Government, will be suspended.

Section 9.9 Interpretation.

A. References in the text of this Agreement to articles, sections or exhibits pertain to articles, sections or exhibits of this Agreement, unless otherwise specified.

B. The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder” and any similar terms used in this Agreement refer to this Agreement. The term “including” shall not be construed in a limiting nature, but shall be construed to mean “including, without limitation.”

C. Words importing persons shall include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

D. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.

E. Words importing the singular shall include the plural and vice versa. Words of the masculine gender shall be deemed to include correlative words of the feminine and neuter genders.

Section 9.10 Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Lessee from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Lessee in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume

thereafter at the expense of the Party so delayed or hindered. A “force majeure event” is an act or event, whether foreseen or unforeseen, that prevents a Party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such Party, and that such Party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, pandemic, war, riots, strikes, accidents, fire, and changes in law. Lessee hereby releases City from any and all liability, whether in contract or tort (including strict liability and negligence) for any loss, damage or injury of any nature whatsoever sustained by Lessee, its employees, agents or invitees during the Lease Term, including, but not limited to, loss, damage or injury to the aircraft or other personal property of Lessee that may be located or stored in the Leased Premises due to a force majeure event.

Section 9.11 Governing Law and Venue. This Agreement has been made in and will be construed in accordance with the laws of the State of Nebraska. In any action initiated by one Party against the other, exclusive venue and jurisdiction will be in the appropriate state courts in and for Wayne County, Nebraska or in the United States District Court for the District of Nebraska.

Section 9.12 Amendments and Waivers. No amendment to this Agreement shall be binding on City or Lessee unless reduced to writing and signed by both Parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the Party against whom the waiver is sought to be enforced.

Section 9.13 Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any Party. If any provision of this Agreement is held invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

Section 9.14 Merger. This Agreement constitutes the final, complete, and exclusive agreement between the Parties on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither Party has relied on any statement, representation, warranty, nor agreement of the other Party except for those expressly contained in this Agreement.

Section 9.15 Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the Parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

Section 9.16 Further Assurances. Each Party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

Section 9.17 Governmental Immunity and Limitations on Liability. Nothing in this Agreement shall be construed to waive or limit any governmental or sovereign immunity the City may have, from any claim whatsoever, under statute or judicial precedent.

Section 9.18 Required Federal Clauses. Lessee and Lessee's Associates shall comply with all Laws and Regulations, including all of the required federal clauses in this Section 9.18.

A. During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter collectively referred to as the "Lessee") agrees as follows:

1. **Compliance with Regulations:** The Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Non-discrimination:** Lessee, with regard to the work performed by it during the term of this Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of contractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Information and Reports:** The Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, Lessee will so certify to City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
4. **Sanctions for Noncompliance:** In the event of Lessee's noncompliance with the Non-discrimination provisions of this contract, City will impose such sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending the Lease, in whole or in part.
5. **Incorporation of Provisions:** The Lessee will include the provisions of paragraphs one through six of this Section 9.18(A) in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Lessee will take action with respect to any contract or procurement as City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, the Lessee may request City to enter into any litigation to protect the interests of

City. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

B. Lessee for itself, its heirs, 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 in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

C. Lessee for itself, its heirs, 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 ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the Lessee will use the Leased Premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

D. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- ii. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- iii. 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- iv. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- v. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- vi. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

- vii. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- viii. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- ix. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- x. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- xi. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- xii. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- xiii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

E. In all its activities within the scope of its airport program, the Lessee agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee. The above provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration.

F. In the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

G. This Lease incorporates by reference the provisions of 29 C.F.R. Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Lessee has full responsibility to monitor compliance to the referenced statute or regulation. The Lessee must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

H. This Lease incorporates by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if given in full text. Lessee must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Lessee retains full responsibility to monitor its compliance and any sublessee's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 C.F.R. Part 1910). Lessee must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

I. Lessee agrees that it shall insert the above eight provisions (Section 9.18(A) through Section 9.18(H)) in any agreement by which said Lessee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Leased Premises herein leased or owned.

J. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by the Grant Assurances, and City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature.

K. City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Lessee, and without interference or hindrance.

L. City reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard.

M. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

N. It is clearly understood by Lessee that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including but not limited to, maintenance and repair) that it may choose to perform.

Section 9.19 Casualty. In the event of a casualty to the Improvements on the Leased Premises, all proceeds of any insurance policy of Lessee covering the casualty shall be applied

first to the repair and restoration of the Improvements, and any insurance proceeds in excess of the amounts required to repair and/or restore the Improvements shall be apportioned freely to Lessee. If the casualty is such that Lessee cannot reasonably conduct its business, then at Lessee's option, the Lease may be terminated. If the casualty occurs during the last two years of the then current Term, Lessee shall not be required to rebuild or repair any Improvements located on the Premises but may do so at its option.

Section 9.20 Condemnation. In the event of a condemnation or a taking by the use of eminent domain of all or any part of the Leased Premises, all proceeds of such condemnation or taking shall be apportioned to Lessee and the City as follows:

- (a) the amount awarded for the taking of the land shall belong to the City.
- (b) Lessee shall have the right to recover such compensation as may be awarded on account of the value of the Improvements owned and/or made by Lessee for the remainder of the Term, for moving and relocating expenses, for the value of its property interest and business conducted on the property including but not limited to the loss, if any, sustained by Lessee as a result of the termination of this Lease for loss of business, fixtures, goodwill, moving expenses and attorneys' fees and costs, and for any other damages sustained by Lessee as a result of such condemnation, provided that Lessee may not pursue the City for any such costs unless the City is the entity condemning or taking the Improvements.

If the condemnation or taking by eminent domain is such that Lessee cannot reasonably conduct its business, then at Lessee's option, the Lease may be terminated. In the event of a partial condemnation of the Leased Premises, this Lease shall not be terminated, provided there should be an equitable reduction in the amount of rent payable under this Lease.

[SIGNATURE PAGES FOLLOW]



**Exhibit A**

Leased Premises (boundaries approximate)



Exhibit B



Approximate Square Footages

Area A: 3,200 square feet

Area B: 2,600 square feet

Area C: 900 square feet

Area D: 2,500 square feet

Existing Pavement within Leased Premises: 3,100 square feet