

RESOLUTION NUMBER 7293

A resolution authorizing the Mayor and City Clerk to enter into an Operator's Lease and Services Agreement with Heinen Brothers Agra Service, Inc., a Kansas Corporation, for the purposes of conducting aeronautical services on the Beatrice Municipal Airport's airfield.

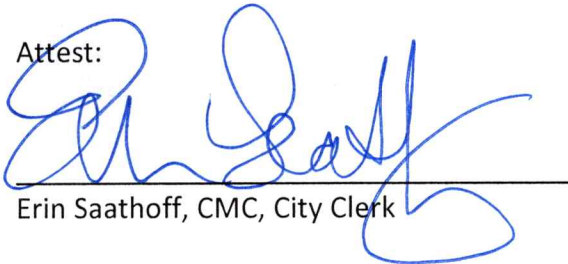
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEATRICE, NEBRASKA:

SECTION 1. That the Mayor and City Clerk are hereby authorized to execute the Operator's Lease and Services Agreement with Heinen Brothers Agra Service, Inc., for the purposes of conducting aeronautical services on the Beatrice Municipal Airport's airfield. A copy of said Agreement is attached hereto as Exhibit "A" and is incorporated herein by reference.

SECTION 2. That all resolutions or parts of resolutions in conflict herewith are hereby repealed.

RESOLUTION PASSED AND ADOPTED this 6th day of May, 2024.

Attest:


Erin Saathoff, CMC, City Clerk
Robert Morgan, Mayor

**BEATRICE MUNICIPAL AIRPORT
OPERATOR'S LEASE
AND
SERVICES AGREEMENT**

This Agreement made and entered into by and between the City of Beatrice, Nebraska, hereinafter referred to as the "Lessor" and Heinen Brothers Agra Service, Inc., a Kansas Corporation, 1226 104th Road, Seneca, KS 66538-2593, and an independent contractor, hereinafter referred to as "Lessee", and witnesses that:

1. **Leased Premises.** Lessor owns and operates the Beatrice Municipal Airport is willing to lease to Lessee the premises described herein and the right do conduct aeronautical services on the said airfield upon the terms and conditions hereinafter stated. The premises herein leased consist of aerial application services.
2. **Term.** The term of this Agreement shall be for a period of seven (7) months, commencing on April 1, 2024 and terminating on October 31, 2024.
3. **Conditions.** In addition to the specific fee(s) set forth below, anyone bringing fuel onto the airfield to self-fuel their aircraft is subject to the following conditions:
 - a. **Fuel Flowage Fees; Additional Rent.** As further consideration herein and in addition to the rentals provided, Lessor shall be entitled to collect and Lessee agrees to pay a fuel flowage fee of \$0.05 for each gallon of aviation fuel (Jet A, 100LL, and any other fuel, whether currently existing or developed in the future, used to power aircraft) delivered to Lessee on said Airfield for Lessee's consumption. The aforementioned flowage fees shall be due on the first day of the month succeeding that in which the aviation fuel is received and shall be delinquent if unpaid by the tenth day of each month.
 - b. **Insurance.** Lessor shall provide and maintain the following types of insurance designating the Lessor as an additional named insured on a primary and non-contributory basis, with the understanding that the applicator is not an agent or employee of the Lessor:
 - i. Liability:
 - ii. Property damage & Bodily injury \$1,000,000 combined single limit
\$2,000,000 aggregate
 - c. **Waiver of Subrogation.** Lessee agrees to waive its right of subrogation against the Lessor, its elected officials, agents, representatives and employees. Waiver of subrogation shall be reflected on the Certificate of Insurance submitted to the Lessor.

- d. **Required Invoices.** Lessee will furnish and direct its fuel supplier to furnish Lessor a copy of all invoices for all aviation fuel delivered to Lessee for storage or for other use at the Airfield. Lessor reserves the right to audit Lessee's aviation fuel accounts at Lessor's expense, upon reasonable notice to Lessee.
- e. **Spill Prevention Containment and Countermeasures Plan.** Any Lessee storage fuel and/or oil in tanks, drums, and/or any other type of container whose storage capacity, in the aggregate, exceeds one thousand nine hundred ninety-nine (1,999) gallons agrees to develop, maintain, and follow an independence Spill Prevention, Containment, and Countermeasures (SPCC) Plan as per Environmental Protection Agency regulation 40 CFR 112; as well as to comply with all applicable codes, rules, and regulations regarding the handling and disposal of hazardous substances as per the current Beatrice Municipal Airport SPCC Plan.
4. **Lessee's Services.** Lessee, in consideration of the premises leased and rights herein granted by Lessor, agrees to provide as a minimum the following services indicated as applicable to this Agreement:

AERIAL APPLICATION

Applicable X Not Applicable

Service. Provide a commercial aerial application service conforming to Part 137 of the Federal Aviation Regulations. One person involved in the commercial aerial application service must hold a current FAA Commercial Agricultural Operator's Certificate.

Aircraft. One or more aircraft, owned or leased by the Lessee, meeting all the requirements of Part 137 of the FAA Regulations and any other applicable FAA regulations.

Storage Facilities. Lessee must provide a segregated chemical and/or fuel storage area protected from public access, as designated and/or approved by the Department.

Applicator's Apron/Pad.

IF LESSOR OWNS THE PAD:

An applicator's apron/pad is provided at said airfield for the purpose of loading, unloading and washdown of aerial spray aircraft. The apron is a raised pad with a drainage system to two-one thousand gallon tanks; one being for pesticides, the second for herbicides.

It shall be Lessee's responsibility to ensure that the proper tanks are used for the chemicals being applied and also to ensure that the storm drain is closed prior to using the apron for handling chemicals. Lessee shall also be responsible for closing the tank valves and opening the storm drain when leaving for the day. The airport manager will monitor the area periodically to ensure that the valves are properly operated.

At such time as any tanks receive chemicals from spillage or become full of chemicals, it will be Lessee's responsibility to properly remove those chemicals to an authorized disposal site. The costs involved in the removal of those chemicals will be Lessee's responsibility. The airport manager will take tank measurements at least twice a year and keep records of the amounts of chemicals contained in the storage tanks.

Lessee's failure to use the apron and tank system properly shall be in direct violation of this agreement and be subject to termination of the same. Lessee's allowance of chemicals to escape into the storm drain system shall cause Lessee to be expelled from the airport and be subject to charges for cleanup of the system and/or damages encountered.

Lessee agrees to indemnify Lessor from any and all damages, costs, or expenses, including but not limited to the cost of cleanup, disposal, inspection and/or fines imposed as a result of any hazardous substances introduced and disposed of on the Beatrice Municipal Airport during Lessee's tenancy.

IF THE LESSEE OWNS THE PAD:

Applicator's Apron. It is the responsibility of the Lessee to provide a temporary or portable aerial application pad meeting all federal and state laws, rules, and regulations. This pad shall be placed on an area of the apron designated by Lessor. It is the responsibility of Lessee to operate said pad in compliance with all applicable federal, state, and local laws, rules, and regulations.

All chemicals, fuel, and hazardous waste requiring disposal must be disposed of in compliance with all federal, state, and local laws at the sole expense of Lessee.

Lessee's failure to use its systems properly shall be in direct violation of this Agreement and be subject to termination of this agreement. Lessee's allowance of chemicals, fuel, or other hazardous waste to escape into the storm drain system shall Lessee to be expelled from the airport and be subject to charges for cleanup of the system and/or damages encountered.

Lessee agrees to indemnify the Department from any and all damages, costs, or expenses, including but not limited to the cost of cleanup, disposal, inspection and/or fines imposed as a result of any hazardous substances introduced and disposed of on the Beatrice Municipal Airport during Lessee's tenancy.

**AIRCRAFT FUELS AND OIL
DISPENSING SERVICE**

Applicable___ Not Applicable X

Services. Fuel, park and tie down aircraft as required.

Personnel. One properly trained person shall be on duty during operating hours.

Fueling Facilities. Metered, filter-equipped dispenser (fixed or mobile) for dispensing one grade (100 octane) of gasoline. Mobile dispensing truck(s) shall have a minimum capacity of 300 gallons for each grade of fuel (if applicable) and will be furnished and maintained by Lessee. All equipment shall comply with state and federal regulations. Fueling procedures shall comply with those set forth in the Fuel Facilities Procedures booklet, a copy of which has been furnished to Lessee, and considered a part of this Agreement as though herein written. Lessee also agrees to comply with all regulations promulgated by the State Fire Marshall's Office. Lessee shall complete a Fuel Contamination Test Record and Consumption Record on a daily basis.

Lessor assumes the responsibility for maintaining the electrical service, tank, and connections already in place at said Municipal Airport. Any additional tanks and associated equipment required by Lessee shall be installed by Lessee at his expense. Lessee will furnish all materials and/or equipment necessary to dispense fuel in the manner described in the Fuel Facilities Procedures, with the exception of those so noted. Upon termination of this Agreement Lessee shall remove all equipment installed by Lessee and not owned by Lessor, within thirty (30) calendar days of termination unless otherwise agreed in writing.

Aircraft Service Equipment. Adequate emergency starting equipment and fire extinguisher.

Hours of Operation. Eight hours per day, five (5) calendar days per week, except when Lessee and/or its personnel are away from the airfield on other aeronautical business related to Lessee's operations on the airfield. However, Lessee shall do his utmost to make arrangements for fueling when Lessee and/or its personnel are away from the airfield on other aeronautical business.

FLIGHT TRAINING

Applicable ☐ Not Applicable ☒

Service. Conduct a flying school and provide flight instruction.

Personnel. One or more persons certificated by the FAA as a flight instructor to cover the type of training offered.

Aircraft. Own or lease by written agreement, one or more properly certificated aircraft equipped for flight instruction.

Hours of Operation. Eight hours a day, five (5) calendar days per week, except when the Lessee and/or his personnel are away from the airport on other business. The Lessee, when away from the airport, shall have a location and/or telephone number available where current or potential students may contact or leave messages for him and/or his personnel.

5. **Rent; Fees.** Lessee, in consideration of the rights herein granted, agrees to pay to Lessor consideration to be as follows:

Plane N Nos. _____	
Aerial Applications operating fee..... (unlimited) aircraft...	\$ <u>720.00</u>
Aerial Application pad rental	\$ _____
Aircraft Fuels and Oil Dispensing Service Fee	\$ _____
Flight Training Services Fee	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ <u>720.00</u>

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

7. **Governmental Compliance.** Lessee, for itself, 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 said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall construct, maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation; 14 CFR Part 152, Subpart E; State of Nebraska LB 500 and Governor's Executive Order signed February 16, 1984, regarding Affirmative Action and Contract Compliance, which regulations and Executive Order prohibit discrimination on the grounds of race, color, sex, religion, creed, age, marital status, physical or mental disability, political affiliation, national origin or ancestry.

8. **Reservation of Rights.** Lessee understands and agrees that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended, and Lessor reserves the right to grant to others the privilege and right of conducting any or all of the aeronautical activities listed herein, or any other activity of an aeronautical nature.

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

Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent Lessee from

erecting, or permitting to be erected, any building or other structure on the airport which in the opinion of Lessor would limit the usefulness of the airport or constitute a hazard to aircraft.

9. **Condition and Maintenance.** Lessee shall not leave junk or trash upon the area from which he is permitted to operate, but shall keep such areas reasonably clean and free of debris at all times.
10. **Restrictions on Use.** Lessee agrees that no painting, welding or exposed flame will be permitted in the buildings leased hereunder.
11. **Inspection.** It is understood that Lessor may enter upon any of the leased premises at any reasonable time for the purpose of inspection or for any other purpose necessary or incidental to or connected with the performance of its obligations hereunder, or for any other purpose. It is further understood that for the purpose of inspections, etc., Lessee will furnish Lessor with a key or the combination to any lock it places on any storage space.
12. **Military Emergencies.** Lessee agrees that during the time of war or national emergency Lessor shall have the right to enter into an agreement with the United State 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 instrument, insofar as they are inconsistent with the provisions of the agreement with the United States Government, shall be suspended.
13. **Authorized Uses.** Lessee is authorized to use, in common with others, existing and future aeronautical facilities at the airport. These shall include, but not be restricted to, the landing areas, their extensions and additions, roadways, runways, aprons, taxiways, public air navigation facilities, such as radio aids, beacons, signals, floodlights, and all other conveniences now or thereafter provided for flying, landing, and taking off of aircraft.
14. **Laws and Regulations.** Lessee agrees that Lessor has the right to adopt and enforce reasonable rules, regulations, and minimum standards and that Lessee and all its employees, agents and servants will faithfully observe and comply with all rules, regulations and minimum standards as may be promulgated by Lessor, which rules, regulations and minimum standards shall be considered a part of this Agreement as though set forth herein.

Lessee agrees to conduct all flight and ground operations on, at or near the airport in accordance with proper rules and regulations of all authorities including Lessor, having jurisdiction over such operations.
15. **No Signage.** Lessee agrees that no signs or advertising material shall be placed or erected upon the premises without the prior written consent of Lessor.

- 16. Subordination.** Lessee agrees that this Agreement shall be subordinate to the provisions of any outstanding agreement between the Lessor and the United States relative to the maintenance, operation, or development of the airport.
- 17. Indemnification.** Lessee and its successors, heirs, personal representatives and assigns agree to indemnify and hold the Lessor, its employees, officers, volunteers, and agents harmless from any present or future liability for any injuries or damages in any way related to any and all activities authorized by this Agreement, and in any way related to any interruption or disruption of this Agreement pursuant to this Agreement, except, however, to the extent that such injuries or damages are proximately caused by the negligence or intentional misconduct of Lessor, and shall defend, indemnify, and hold harmless the Lessor from Lessee's claims, demands, causes of action, lawsuits, strict liability claims, or loss, except to the extent that such claims, demands, causes of action, lawsuits, strict liability claims or loss are proximately caused by the negligence or intentional misconduct of Lessor.
- 18. Transferability.** Lessee shall not assign or transfer this Agreement, or any interest therein or sublet the leased premises or any part thereof, without the written consent of Lessor, and any attempt at assignment, transfer, or subletting shall be void and, at the option of the Lessor, deemed sufficient grounds for cancellation and termination of this Agreement.
- 19. No Adverse Effect.** Lessee understands and agrees that the rights granted by this Agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport by Lessor or others.
- 20. Alterations and Improvements.** Lessee shall not make any alterations or improvements to the leased premises without the prior express written consent of Lessor. On the expiration of this Agreement Lessee shall, at its own expense, remove all alterations and other improvements and restore the leased premises to the condition it was in prior to the making or installation of the alterations and other improvements unless Lessor waives this requirement in writing.
- 21. Termination.** Lessor shall have the right to terminate this Agreement in its entirety immediately upon the happening of any of the following events:
- (a) filing of petition, voluntarily or involuntarily, for the adjudication of Lessee as bankrupt;
 - (b) the making by Lessee of any general assignment for the benefit of credits;
 - (c) the occurrence of any act which operates to deprive Lessee permanently of the ability to perform its duties under this Agreement;
 - (d) the abandonment and discontinuance of operations at the airport by Lessee for a period of thirty (30) calendar days or more;

(e) the non-payment of any rent payment due hereunder at the time(s) herein specified;

(f) failure by Lessee to perform, keep and observe any and all of the terms, covenants, and conditions herein contained on the part of Lessee to be performed, kept, or observed, and the failure of Lessee to remedy such default or breach within a period of thirty (30) calendar days after receipt from Lessor of written notice to remedy same.

22. Independent Contractor. It is understood and agreed that in entering into this Agreement and performing the agreed operations hereunder, Lessee is an independent contractor and is not an agent or employee of the Lessor in any manner or in any respect whatsoever, and that any employee of said Lessee is in no manner or any respect an agent, servant, or employee of Lessor.

23. Waiver. No forbearance to enforce the breach of any of the promises or covenants of this Agreement shall be construed as a waiver of any succeeding breach of the same or any other covenant herein.

24. Severability. If any paragraph or part thereof of this Agreement shall be determined to be invalid, illegal or inoperative for any reason by a court of competent jurisdiction then the remaining parts, so far as possible, shall be effective and fully operative.

25. Governing Law. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Nebraska.

26. Modification of Agreement. Any modification of this Lease or additional obligation assumed by either party in connection with this Lease shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

27. Special Conditions. In consideration of the rents, covenants and agreements herein contained, Lessor hereby leases items described as follows, and agrees to abide by the conditions set forth:

28. Condition of Leased Premises Post-Termination. Upon termination of this Agreement, Lessee agrees to relinquish the property on the premises and to deliver the premises in as good condition as they now are, excepting only reasonable wear and tear or damage by casualty not attributable to Lessee's negligence or misconduct.

29. Entire Agreement. This instrument contains the entire lease of the parties as of this date, and the execution hereof has not been induced by either party by any representations, promises

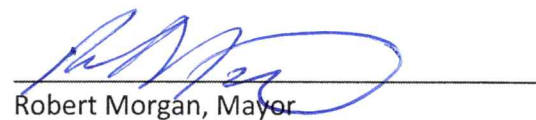
or understandings not expressed herein. There are no collateral agreements, leases, stipulations, promises or undertakings that are not expressly contained herein or incorporated herein by specific reference.

This Agreement is executed and delivered this 6th day of May, 2024, and is effective as of April 1, 2024.

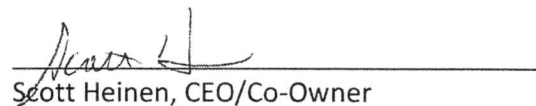
Attest:


Erin Saathoff, City Clerk

City of Beatrice, Nebraska,
A Nebraska Municipal Corporation, Lessor

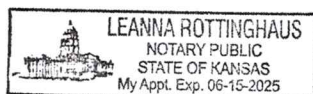

Robert Morgan, Mayor

Heinen Brothers Agra Service, Inc.,
A Kansas corporation, Lessee


Scott Heinen, CEO/Co-Owner

Kansas
STATE OF ~~NEBRASKA~~ 42)
Nemaha)ss:
COUNTY OF ~~GAGE~~ 42)

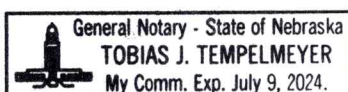
The foregoing Lease was acknowledged before me this 23RD day of APRIL, 2024 by Scott Heinen, CEO/Co-Owner, and authorized signatory of Heinen Brothers Agra Service, Inc., to be his voluntary act and deed on behalf of said company.




Notary Public

STATE OF NEBRASKA)
)ss:
COUNTY OF GAGE)

The foregoing Lease was acknowledged before me this 6th day of May, 2024, by Robert Morgan, Mayor, and authorized signatory of the City of Beatrice, Nebraska, to be his voluntary act and deed on behalf of the City of Beatrice, Nebraska.




Notary Public