

**RESOLUTION NUMBER 7765**

A resolution authorizing the Mayor and City Clerk to enter into a Fixed-Based Aerial Applicator's Agreement with Heinen Brothers Agra Service, Inc., a Kansas Corporation, for the purposes of conducting aerial applicator or crop spraying services on the Beatrice Municipal Airport's airfield.

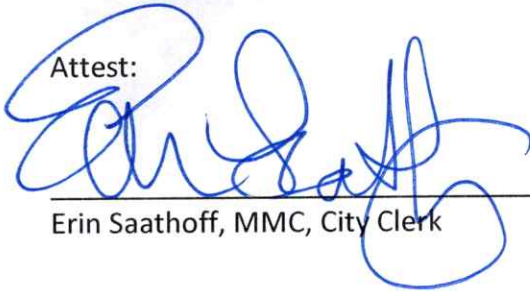
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEATRICE, NEBRASKA:

**SECTION 1.** That the Mayor and City Clerk are hereby authorized to execute the Fixed-Based Aerial Applicator's Agreement with Heinen Brothers Agra Service, Inc., for the purposes of conducting aerial applicator or crop spraying services on the Beatrice Municipal Airport's airfield. A copy of said Lease 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**SECTION 2.** That all resolutions or parts of resolutions in conflict herewith are hereby repealed.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 20<sup>th</sup> day of April, 2026.

Attest:



Erin Saathoff, MMC, City Clerk



Robert Morgan, Mayor

Exhibit "A"

## FIXED-BASE AERIAL APPLICATOR'S AGREEMENT

This Agreement made and entered into by and between the City of Beatrice, Nebraska, 400 Ella Street, Beatrice, NE 68310, hereinafter called "Lessor", as now established and existing under and by virtue of the laws of the State of Nebraska, and Heinen Brothers Agra Service, Inc., a Kansas Corporation, 1226 104<sup>th</sup> Road, Seneca, KS 66538-2593, and an independent contractor, hereinafter called "Lessee".

**WHEREAS**, the Lessee desires to conduct an aerial applicator or crop spraying service from the Beatrice Municipal Airport; and,

**WHEREAS**, the Lessor is willing to provide a fixed-base on Airport property for the conduct of such a service by the Lessee pursuant to the terms and conditions hereinafter set out.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set out, the Lessor and the Lessee hereby agree as follows:

1. **Term.** The term of this agreement shall be for a period of seven (7) months commencing on April 1, 2026, through October 31, 2026.

2. **Rent.** The Lessee in consideration for the rights herein granted agrees to pay the Lessor in advance the sum of Eight Hundred Dollars (\$800.00).

3. **Lessee's Services.** The Lessor grants to the Lessee the right to conduct an aerial application or crop spraying service from the Beatrice Municipal Airport; such right shall include the right to store chemicals for aerial application on airport property, provided the Lessor shall have the exclusive right to make reasonable regulations governing the storage, loading and unloading of such chemicals, including but not limited to location of storage tanks and quantities of chemicals to be stored. Such regulations include those set out below and may include such additional regulations as may be posted at the Beatrice Municipal Airport office building:

- (a) All aerial applicators shall utilize an apron or similar device when loading chemicals to be used in spraying operations on aircraft or when unloading such chemicals from aircraft, if available.
- (b) Upon execution of this Agreement, aerial applicators shall provide the Beatrice Municipal Airport a list of chemicals along with a copy of the corresponding label and Material Safety Data Sheets (MSDS) associated with each chemical scheduled to be used during the term of this Agreement. Aerial applicators shall notify Beatrice Municipal Airport of any additional chemical not previously disclosed at least seven (7) calendar days prior to its intended use and provide the Beatrice Municipal Airport with a copy of the label and MSDS for each at that same time.

(c) Each aerial applicator operating from the Beatrice Municipal Airport shall be required to furnish a deposit of Ten Thousand Dollars (\$10,000) or a Ten Thousand Dollar (\$10,000) bond to the Lessor as security that harmful chemicals will not be discharged directly on the ground. In the event that any such discharge or spillage should occur, the Lessor shall determine whether it was caused by negligence or circumstances beyond the control of the applicator. Lessor shall then determine what part of the deposit or bond shall be forfeited. Any unused portion of the deposit or bond shall be returned to the appropriate applicator at the end of the lease.

(d) Such aerial applicator 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:

Liability:

Property damage & Bodily injury .....\$1,000,000 combined single limit  
\$2,000,000 aggregate

(e) Applicator 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.

(f) The Lessee shall file Certificates of Insurance with Lessor for such insurance. It is understood and agreed by the parties that no specific provisions are made herein for hangaring aircraft or providing fixed-base premises for aircraft other than those provisions which may be made from time to time by the Lessor; the reason for not providing specific hangaring or fixed-base premises is that this agreement is limited in nature and is not intended to be a permanent operator's agreement.

**4. Nondiscrimination.** The Lessee shall not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. The Lessor reserves the right to take such action as the United States Government may direct to enforce this covenant.

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

**5. Governmental Compliance.** The Lessee, for himself, his 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 said property described in this lease, for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall 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 grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

**6. Reservation of Rights.** The 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 the 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 aeronautical activity of an aeronautical nature.

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 the Lessor would limit the usefulness of the airport or constitute a hazard to aircraft.

**7. Condition and Maintenance.** The 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.

**8. Leased Premises.** The 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.

**9. 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.

**10. Laws and Regulations.** 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 the Lessor, having jurisdiction over such operations.

The Lessee agrees that the Lessor has the right to adopt and enforce reasonable rules, regulations, and minimum standards and that Lessee and all his employees, agents and servants will faithfully observe and comply with all rules, regulations and minimum standards as may be promulgated by the Lessor, which rules, regulations and minimum standards shall be considered a part of this lease as though set forth herein.

**11. No Signage.** The Lessee agrees that no signs or advertising material shall be placed or erected upon the premises without the prior written consent of the Lessor.

**12. 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.

**13. Transferability.** The Lessee shall not assign or transfer this lease or any interest therein or sublet the leased premises or any part thereof, without the prior written consent of the Lessor, and any attempt at assignment, transfer or subletting shall be void and at the option of the Lessor, deemed sufficient grounds for the cancellation and termination of this lease.

**14. No Adverse Effect.** The 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 the Lessor or others.

**15. 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.

**16. Termination.** The Lessor shall have the right to terminate this lease in its entirety immediately upon the happening of any of the following events:

- (a) Filing of petition, voluntarily or involuntarily, for the adjudication of the Lessee as a bankrupt;
- (b) The making by Lessee of any general assignment for the benefit of creditors;
- (c) The occurrence of any act which operates to deprive Lessee permanently of the ability to perform his 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 herein specified;
- (f) The failure by the Lessee to perform, keep and observe any and all of the terms, covenants, and conditions herein contained on the part of the Lessee to be performed, kept, or observed, and the failure of the Lessee to remedy such default or breach within a period of fifteen (15) calendar days after receipt from the Lessor or written notice to remedy same.

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

**18. Subordination.** It is mutually understood by the parties that the Beatrice Municipal Airport has been developed in part with Federal and State funds, by reason of which such governmental agencies have rights superior to the terms of this lease, and it is therefore agreed that this lease shall be subordinate as to the provisions of any existing or future agreement between the Lessor and the Government of the United States of America and/or the State Department of Aeronautics of the State of Nebraska, relative to the operation or maintenance of said airport.

**19. 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.

**20. 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.

**21. 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.

**22. 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.

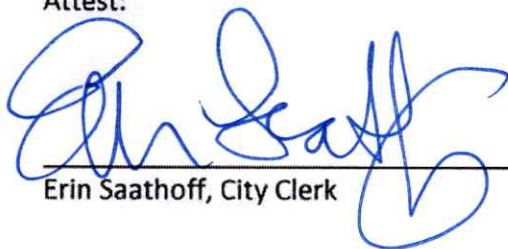
**23. Required Approval.** It is further understood and agreed that this agreement is subject to the approval of the State Department of Aeronautics of the State of Nebraska.

**24. 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.

**25. 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 20<sup>th</sup> day of April, 2026, and is effective as of April 1, 2026.

Attest:

  
Erin Saathoff, City Clerk

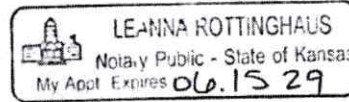
City of Beatrice, Nebraska,  
A Nebraska Municipal Corporation, Lessor

  
Robert Morgan, Mayor

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

  
Scott Heinen, CEO/Co-Owner

STATE OF KANSAS )  
 )ss:  
COUNTY OF NEMAHA )




The foregoing Lease was acknowledged before me this 10<sup>th</sup> day of APRIL, 2026 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 20 day of April, 2026, 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

