

AGENDA
CITY OF AUGUSTA
Special City Council Meeting
February 23, 2017
6:00 P.M.

“Augusta – Where the metro’s edge meets the prairie’s serenity offering the perfect blend of opportunity and proximity for living, commerce and culture.”

A. CALL TO ORDER

B. BUSINESS

1. AGREEMENT BETWEEN THE CITY OF AUGUSTA AND PRAY AVIATION, INC. FOR THE SALE OF IDENTIFIED IMPROVEMENTS AND A LONG-TERM GROUND LEASE AT THE MIDFIELD COMPLEX AT AUGUSTA MUNICIPAL AIRPORT

Consider approval of a land lease agreement between the City of Augusta and Pray Aviation, Inc., authorizing city staff to proceed with the sale of identified improvements at the Midfield Complex and establishing a long-term ground lease for the ground located under the improvements for an initial term of 30 years.

- a) Staff Report
- b) **Council Motion/Vote**

C. ADJOURNMENT



**CITY OF AUGUSTA
CITY COUNCIL AGENDA REPORT**

Meeting Date: February 23, 2017
Department: Community Development
Submitted By: Cody Sims, Assistant City Manager
Prepared By: Cody Sims, Assistant City Manager
Agenda Title: **Agreement between the City of Augusta and Pray Aviation, Inc. for the sale of identified improvements and a long-term ground lease at the Midfield Complex at Augusta Municipal Airport**

RECOMMENDED ACTION:

Approval of a land lease agreement between the City of Augusta and Pray Aviation, Inc., authorizing city staff to proceed with the sale of identified improvements at the Midfield Complex and establishing a long-term ground lease for the ground located under the improvements for an initial term of 30 years.

BACKGROUND:

For the past several months, city staff has been working with officials from Pray Aviation, Inc. regarding a sales transaction that will transfer ownership of selected improvements at the Midfield Complex from the City of Augusta to Pray Aviation, Inc in support of their commercial aviation and flight/ground training operations. Closing was originally scheduled to be completed on December 22, 2016; however, discrepancies in closing documents and project licensing and permitting forced a delay. Since then, the parties have worked to identify a mutually beneficial solution that meets the intent of City Code, as well as FAA rules and regulations.

ANALYSIS:

The Land Lease Agreement is similar in nature to the Agreement previously approved by the Governing body at the December 5, 2016 City Council meeting, with some changes to meet FAA requirements. Since the Augusta Municipal Airport receives funding from the FAA, the City of Augusta is prohibited from selling land at the airport. As a result, the Land Lease Agreement contains provisions to sell identified improvements and provisions to lease the ground on which the improvements are located. The following is an overview of the Agreement:

1. Sales transaction is for improvements identified in Section 13 of the Land Lease Agreement in the 'as-is' condition for \$325,000.
2. Ground lease is for 103,700 square feet of land at a rate of \$0.08/sq ft. The annual ground lease is valued at \$8,296 per year for the first five (5) years. Afterwards, the ground lease rate will adjust every five years, based on the *Consumer Price Index (CPI) – All Urban Consumers, US, All Items, Not Seasonally Adjusted* for the five (5) preceding years.
3. The initial term of the Land Lease Agreement is 30 years, with two (2) 10-year option periods. The Land Lease Agreement shall not take effect until full payment due under Section 13 of the Agreement is made and closing is completed on the purchase of the improvements denoted in Section 13a of the Agreement.
4. Lessee shall use and occupy the Leased Premises for aviation purposes including commercial aviation, flight and ground training and instruction, and related activities.
5. Pursuant to FAA Compliance Manual 5190.6B, use of any portion of the Leased Premises or any improvements thereon as residential development or living quarters is strictly prohibited.
6. Pursuant to FAA Compliance Manual 5190.6B, Pray Aviation, Inc. is allowed to self-fuel aircraft owned by the Lessee; however, Lessee is strictly prohibited from selling or providing fuel to any aircraft not owned by Lessee. All self-fueling infrastructure and/or equipment shall comply with local fire codes and NFPA regulations.
7. In addition to monthly ground lease payments, Lessee shall pay Lessor a monthly fuel flowage fee in the amount of \$0.08/gallon for fuel purchased since the prior month's ground lease payment. Lessee is required to provide copies of all invoices reflecting the fuel purchased and shall be paid in the same manner as the monthly ground lease payment.
8. Any fuel infrastructure constructed or placed by Lessee on the Leased Premises shall be in accordance with EPA spill prevention regulations. Lessee shall have a Spill Prevention, Control, and Countermeasures (SPCC) Plan prepared by a professional engineer licensed to practice engineering in the State of Kansas. Lessee shall provide Lessor three (3) copies of said SPCC plan, as well as copies of Lessee's SPCC training documents and inspection reports for the Leased Premises.
9. The Land Lease Agreement is the entire agreement between the parties and no earlier statements or prior written matter have any force and effect. Upon full execution, the Land Lease Agreement terminates the Temporary Commercial Lease Agreement currently in place

until March 30, 2017. No amendment, waiver or modification of the Land Lease Agreement shall be effective unless reduced to writing and signed by the authorized officers of each of the parties.

FISCAL IMPACT/FUNDING SOURCE:

The sale of the improvements identified in Section 13 of the Land Lease Agreement will add \$325,000 to the Airport Enterprise Fund (Fund 70), which may help eliminate the need for ongoing General Fund subsidies to the Airport Enterprise. As a result, this could provide the Governing Body with the leverage to allocate ad valorem tax funds to other dependent areas of the annual budget. Additionally, the annual revenue of \$8,296 received from the ground lease will further strengthen the financial health of the Airport Enterprise and achieve financial sustainability without ongoing subsidies from the General Fund.

Department Head Approval Date: 02-22-17

City Manager Approval Date:

City Attorney Approval Date:

Attachments (*list in packet assembly order*):

1.

LAND LEASE AGREEMENT
BETWEEN
THE CITY OF AUGUSTA, KANSAS
AND
PRAY AVIATION, INC.

THIS AGREEMENT is entered into this 23rd day of February, 2017, by and between the City of Augusta, Kansas, a municipal corporation, (hereinafter referred to as "**Lessor**") and Pray Aviation, Inc., a Kansas for profit corporation, its successors and assigns (hereinafter referred to as "**Lessee**").

WHEREAS, Lessor owns, controls and operates the Augusta Municipal Airport in Augusta, Kansas and Lessor desires to lease to Lessee and Lessee desires to lease from Lessor certain premises hereinafter more fully described and located on and at said Airport (the "**Leased Premises**") upon the terms and conditions stated herein; and

WHEREAS, the Lessee (and/or Lessee's principals, members and affiliates) will operate a business related to commercial aviation, flight and ground training and instruction, and related activities, and desires to lease said Leased Premises and rights from the City of Augusta, Kansas on and at said Airport.

NOW, THEREFORE the parties agree to the following:

1. **LEASED PREMISES.** In consideration of the rents, covenants and agreements herein contained, Lessor hereby leases to Lessee the Leased Premises illustrated in Exhibit A, attached hereto and made part of this Agreement. The Leased Premises consists of approximately 103,700 square feet.
2. **USE OF LEASED PREMISES.** Lessee shall use and occupy the Leased Premises for aviation purposes including commercial aviation, flight and ground training and instruction, and related activities, and Lessee shall have the right to:
 - a. The non-exclusive use, in common with others, of the Airport, parking areas, appurtenances, and improvements thereon;
 - b. The right to install, operate, maintain, repair, store, subject to approval of Lessor in the interests of safety and convenience of all concerned (which approval shall not be unreasonably delayed or withheld), all equipment, oil, solvents, parts and inventory necessary for the conduct of Lessee's business;

- c. The right of ingress and egress from the Leased Premises, which right shall extend to Lessee's employees, passengers, guests, invitees, and patrons; and
 - d. The right in common with others authorized so to do, to use common areas of the Airport, including runways, taxiways, aprons, roadways, floodlights, landing lights, signals, and other conveniences for the takeoff, flying and landing of aircraft of Lessee.
 - e. Use of any portion of the Leased Premises or any improvements thereon as residential development or living quarters is strictly prohibited, pursuant to FAA Compliance Manual 5190.6B.
3. **TERM.** The term of this land lease shall be for thirty (30) years commencing on the date first written above (the "**Commencement Date**"), and ending on the last day of the final month thirty (30) years following the Commencement Date. However, this Agreement shall not take effect until full payment due under Section 13 of this Lease Agreement is made and closing is completed on the purchase of the improvements denoted in Section 13a of this Agreement.
4. **OPTION TERMS.** Lessee may extend the term of this Agreement for two (2) additional successive ten (10) year option periods (individually, an "**Option Period**" and collectively, "**Option Periods**") upon the express condition that Lessee shall be in material compliance with all the terms, conditions and covenants of this Agreement at the time it elects to renew and extend the term of this Agreement. If Lessee elects to exercise any one of said Option Periods, Lessee shall do so by giving written notice of such election to Lessor at any time and from time to time during the term (including any Option Periods) on or before the date which is sixty (60) days before the beginning of the Option Period for which the term hereof is to be renewed by the exercise of such option. If Lessee elects to exercise any one of said Option Periods, the term shall be automatically extended for the Option Period covered by the option so exercised without execution of an extension or renewal agreement. The term of any Option Period shall be upon the same terms and conditions as are in effect hereunder immediately preceding the commencement of such Option Period. Lessee shall only be permitted to exercise one option at a time. Except as expressly provided herein, holding over by Lessee after the termination of the initial term or any Option Periods, with or without the assent of Lessor, shall not serve to extend this Agreement, and Lessee shall be a tenant at sufferance during such hold over period.
5. **RENT.** In consideration of the leasing of said Leased Premises, Lessee agrees to pay to Lessor the annual amount of Eight Thousand Two Hundred Ninety-Six Dollars and 00/100 (\$8,296.00), payable in equal monthly installments of Six Hundred Ninety-One Dollars and 33/100 (\$691.33). Beginning on the first day of the first full month of the sixth year of this Agreement, and continuing on the anniversary date of each additional five-year period thereafter, the monthly rent shall increase or decrease by the average rate of inflation as identified by and based upon the Consumer Price Index (CPI) - All Urban Consumer, US, All items, Not Seasonally Adjusted, for the five (5) preceding years. Accordingly, rent shall be adjusted on January 1st of the following years: 2022, 2027, 2032, 2037, and 2042. If

the Option Periods are exercised, rent shall be adjusted on January 1st of the following years: 2046, 2051, 2056 and 2061.

- a. Monthly lease payments shall be paid to the City Clerk of the City of Augusta on or before the fifteenth (15th) day of each month, commencing on the Commencement Date. If the due date falls on a weekend or recognized holiday, the due date shall fall on the next business day. Lessee shall have a grace period of five (5) days past the due date to remit the monthly lease payment to the City Clerk with no additional penalty. For this Agreement, business days are Monday – Friday, 8:00am to 5:00pm. If payment is received after 5:00pm on the fifth day, the monthly lease payment shall be subject to a 1.5% late payment fee
- b. Monthly lease payments shall be paid via personal service or by mailing to the following address:

City of Augusta
City Clerk's Office
113 East 6th Avenue
P.O. Box 489
Augusta, KS 67010

Monthly lease payments made to departments or divisions of the City of Augusta other than the City Clerk, including the Augusta Municipal Airport FBO Office, will not be accepted.

6. **SELF-FUELING & FUEL FLOWAGE FEE.** Lessee shall be permitted to conduct self-fueling operations pursuant to FAA Compliance Manual 5190.6B. Self-fueling means the fueling or servicing of an aircraft by the owner of the aircraft with his or her employees and using his or her own equipment. Self-fueling cannot be contracted out to another party. Lessee is strictly prohibited from selling or providing fuel to any aircraft not owned by Lessee. All self-fueling infrastructure and/or equipment shall comply with local fire codes and NFPA regulations.

In addition to monthly ground lease payments, Lessee shall pay Lessor a monthly fuel flowage fee in the amount of eight cents (\$0.08) per gallon for fuel purchased by Lessee since the prior month's ground lease payment. Such amount and a copy of all invoices reflecting the fuel purchased shall be due and payable in accordance with Section 5a and 5b above. Failure to pay such fuel flowage fees shall constitute a default of this land lease.

7. **SPILL PREVENTION.** Any fuel infrastructure constructed or placed by Lessee on the Leased Premises shall be in accordance with EPA spill prevention regulations. Lessee shall have a Spill Prevention, Control, and Countermeasures (SPCC) Plan prepared by a professional engineer licensed to practice engineering in the State of Kansas. Lessee shall provide to Lessor three (3) copies of said SPCC Plan. Lessee shall also provide Lessor copies of Lessee's SPCC training documents and inspection reports for the Leased Premises.

8. **LESSEE'S RIGHT TO CONDUCT BUSINESS.** Notwithstanding any other provisions in this Agreement restricting or prohibiting any assignment or subletting, Lessee shall have the right, without Lessor's consent, to conduct Lessee's business activities and to enter into supply contracts, service contracts, maintenance contracts, storage agreements and sublease agreements with Lessee's vendors, customers, the members and affiliates of Lessee, and with other aircraft owners, operators and vendors, consistent with Lessee's permitted use and occupancy of the Leased Premises for aviation purposes including commercial aviation, flight and ground training and instruction, and related activities. The term or terms of any such agreements shall not exceed the term of this Agreement, and any extensions and renewals thereof, shall not occur without Lessor's written consent. Upon termination of this Agreement, the Lessee's agreements impacting the Leased Premises shall immediately terminate.

9. **PROPERTY TAXES.** During the term of this Agreement, in addition to the rent, Lessee shall pay all ad valorem property taxes and assessments upon the Leased Premises, and upon the Hangar and any improvements thereon, which are not otherwise exempted. If the term of this Agreement expires on a date other than the last day of a calendar year (the tax fiscal year), then Lessee and Lessor shall each pay its pro rata share of the taxes, if any, on a pro rata basis, for the initial and final partial tax years of the term hereof based on the number of days of the partial tax year falling within the term. Lessee shall not be obligated to pay any portion of taxes which become actually due and payable during any period prior to or subsequent to the term of this Agreement.

On or before the Commencement Date of this Agreement, Lessor shall request the applicable taxing authority to classify the Leased Premises as a separate ad valorem property tax parcel, and Lessor shall cause the tax statements to be mailed by the taxing authority directly to Lessee. Otherwise, Lessor shall promptly forward to Lessee the tax statements received by Lessor so that Lessee may pay such taxes to the taxing authority on a timely basis.

During the term of this Agreement, Lessee shall have the right, at Lessee's sole cost and expense, to (i) contest the amount or validity of any taxes, (ii) seek a reduction in the valuation of the Leased Premises, (iii) seek an exemption of any taxes, and/or (iv) prosecute any proceedings to that end, and shall give written notice thereof to Lessor. Lessee may postpone or defer payment of the taxes pending the outcome of such proceedings if the Leased Premises would not be in danger of being forfeited. Lessor shall not be required to join in any proceedings unless the provisions of any law, rule or regulation shall require such proceedings to be brought by or in the name of Lessor, in which event Lessor shall join in such proceedings or permit the same to be brought in its name. Lessor hereby appoints Lessee as its attorney-in-fact for the purpose of, and agrees to reasonably cooperate in, any such contest or application for the reduction of valuation and the reduction of taxes, which may be undertaken by Lessee. Lessee shall be entitled to the refund or recovery of any taxes, penalties or interest thereon received by Lessor that were paid by Lessee, or that were paid by Lessor but previously reimbursed in full by Lessee. Any such refund or recovery shall be the exclusive property of Lessee. Lessor shall not, without the prior approval of Lessee, make, enter into, or agree to any settlement, compromise or other disposition of any contest, or discontinue or withdraw from any

contest, or accept any refund, adjustment or credit with respect to any taxes which Lessee shall have contested.

10. **UTILITIES.** Lessee shall pay for all electricity, gas – natural or propane, water and other utilities used upon the Leased Premises through direct payment to the appropriate utility companies. Notwithstanding anything herein to the contrary, Lessee shall pay for the extension of any necessary utility services to improvements on the Leased Premises. Lessee shall pay for solid waste removal provided by the City of Augusta Public Works Department – Solid Waste Division from the Leased Premises throughout the term of this Agreement.

11. **MAINTENANCE.** Lessee shall, at Lessee's expense, maintain the Leased Premises and any improvements, landscaping, mowing, and snow removal thereon as provided herein. Maintenance shall be of a quality consistent with the rules and regulations of the Airport. Lessee shall keep the Leased Premises clean and shall dispose of all debris and other waste matter which may accumulate, and shall provide containers for waste within the current buildings. Furthermore, Lessee shall at Lessee's expense, construct (an) approved enclosure(s) for the containment of refuse containers that is aesthetically appealing and protects the environs of the airport from foreign object debris (FOD) that could result in a potential health and safety concern on the airport. Said enclosure(s) shall not be obstructed and shall be reasonably located in a manner that provides ease of accessibility for solid waste collection crews. Construction plans for refuse enclosure(s) shall be submitted to Community Development Department – Inspection Division for review and approval. Prior to construction, the designated agent of the Lessee shall obtain all required building permits from Lessor.

Lessor shall, at Lessor's expense, maintain and keep in good repair, including removing snow, all city-owned runways, taxiways and tie-down areas and other Lessor maintained facilities. Lessor agrees to install, maintain, and operate proper lights as required by the FAA.

12. **FIRE AND POLICE PROTECTION.** Lessor agrees to extend to Lessee the same fire and police protection extended to other tenants and facilities at the Airport. Lessee agrees to provide portable fire extinguishers approved for the appropriate categories and class of fires that could be a result of Lessee's activities. The number and location of fire extinguishers shall be consistent with applicable codes, rules and regulations.

13. **HANGAR PURCHASE AND ANY SUBSEQUENT ALTERATIONS OR IMPROVEMENTS SUBJECT TO LESSOR APPROVAL.**

- a. Lessee shall purchase from the Lessor and occupy the building commonly referred to as the "**Guernsey Hangar**" at the midfield complex of the Augusta Municipal Airport, which consists of approximately 9,600 square feet and has the physical address of 10506 SW Indianola Road; the building commonly referred to as the "**Quonset Hut**" at the midfield complex of the Augusta Municipal Airport, which consists of approximately 5,203 square feet and has the physical address of 10504 SW Indianola Road; the building commonly referred to as the "**Pole Barn**" at the Midfield Complex of the Augusta Municipal Airport, which consists of approximately

2,400 square feet and also has the physical address of 10504 SW Indianola Road, and the concrete tarmac and ramp space totaling approximately 25,000 square feet on the east side of the Guernsey Hangar building. Refer to Exhibit B attached hereto and made part of this Agreement.

- b. The Lessor agrees to sell to Lessee and the Lessee agrees to purchase from Lessor the improvements denoted in Section 13a in the current as-is condition for Three Hundred Twenty-Five Thousand Dollars and 00/100 (\$325,000.00). Full purchase payment is due from the Lessee to the Lessor at the time of closing.
- c. Lessee's alterations or improvements to the Guernsey Hangar, Quonset Hut, and/or the Pole Barn must be approved in advance by Lessor, both as landlord and land use regulator and shall comply with the City of Augusta's adopted building and trade codes and the Airport's approved minimum standards, as may be adopted and amended from time to time. In addition, before any construction can begin both parties must follow the FAA guidance for construction on the airport and get airspace approval. Lessee shall submit the plans and specifications for proposed construction, reconstruction or alteration to Lessor for review and approval and shall obtain all necessary land use approvals, building permits and other permits. Following Lessor's approval of Lessee's plans and specifications for any proposed construction, reconstruction or alteration to the Guernsey Hangar, Quonset Hut, and/or the Pole Barn, Lessor shall grant Lessee and Lessee's contractors, subcontractors, engineers, agents and employees reasonable access to the Leased Premises for the purpose of constructing alterations or improvements to the Guernsey Hangar, Quonset Hut, and/or the Pole Barn. Lessor, in its capacity as landlord, shall not unreasonably deny or withhold approval of Lessee's plans and specifications for proposed construction, reconstruction or alteration of the Guernsey Hangar, Quonset Hut and/or the Pole Barn.
- d. The structures and improvements – including fixtures – purchased, constructed and installed by Lessee on the Leased Premises shall remain the property of the Lessee until the termination of this Agreement. Upon termination of this Agreement, whether at the expiration of the term, including any agreed upon option term, or earlier in the event of default, Lessor may require the Lessee to either: (i) remove the structures, including all fixtures and the like attached thereto, and any other improvements installed by Lessee, within 90 days after termination, at Lessee's expense; or (ii) leave the structures on the Leased Premises. If the Lessor directs Lessee to remove the structures, then Lessee shall, in addition to removing the structures perform whatever repairs or restoration that are necessary to leave the Leased Premises, including but not limited to paving and improvements other than the structures, in good condition satisfactory to Lessor. If Lessor directs Lessee to leave the structures, then the structures and improvements shall become the property of Lessor.
- e. Upon expiration of the lease term, including any agreed upon option term, or earlier termination on account of default, Lessee shall return the Leased Premises to Lessor in good condition.

14. **DEFAULT.** Upon Lessee's failure to pay rent when due or to perform any of the other terms and conditions of this Agreement, Lessor shall deliver written notice of default to Lessee. If Lessee shall cure the notice within 30 days of its receipt, the default shall be deemed cured, otherwise Lessor shall have those remedies available under the law, including termination of this Agreement and reentering and repossessing the Leased Premises.

If Lessee grants a leasehold mortgage encumbering its interest in this Lease to its lender, any notice of default given by Lessor pursuant to the preceding paragraph shall also be given to Lessee's lender, provided that such lender has previously notified Lessor of its interest in this Lease and furnished Lessor the address to which such notice should be sent. In such event, Lessee's lender shall have the right to cure Lessee's default with the same effect as if Lessee had cured the default. The Lessee's lender shall only have the right to claim the improvements which are included in the leasehold mortgage, excluding all land leased pursuant to this Agreement, which shall remain the sole property of the Lessor.

In the event Lessor defaults in the performance of any of its obligations, covenants, and warranties hereunder and if such default continues for a period of 30 days after written notice to Lessor specifying the nature of such default, or if Lessor fails to initiate a cure within such 30-day period and pursue the same to completion with diligence, Lessee may deduct the reasonable cost to cure such default from the rents due hereunder. The foregoing shall not limit or preclude Lessee from any other rights and remedies available at law or in equity.

15. **AUGUSTA MUNICIPAL AIRPORT PROVISIONS**

- a. It is hereby agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right prohibited by 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 one or all of the aeronautical activities listed herein, or any other activity of an aeronautical nature.
- b. Lessor reserves the right to develop, improve, or maintain the landing area and all publicly owned air navigation facilities of the Airport as it sees fit, regardless of the desires or view of Lessee, and without interference or hindrance, except as shall be hereinafter provided.
- c. Lessee agrees that Lessor has the right to adopt and enforce reasonable rules and regulations regarding the use and operation of said Airport and that Lessee and all its employees, agents, and servants will faithfully observe and comply with all rules and regulations as may be promulgated by Lessor, the United States of America, or any Department or Agency thereof, and the State of Kansas. Lessee shall monitor the enforcement of said rules and regulations and will cooperate with Lessor in such enforcement.

- d. 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.

Addendum: The Lessor expressly agrees for itself, the Lessee and assigns, to restrict the height of signs, lighting, structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Federal Aviation Administration Regulations, Part 77.

- e. During time of war or national emergency, Lessor 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 instrument insofar as they are inconsistent with the provisions of the agreement with the government, shall be suspended. In the event that an agreement between Lessor and the United States relative to the maintenance, operation or development of the Airport materially affects the Agreement between Lessor and Lessee, Lessee may at its option, terminate this Agreement on thirty (30) days written notice.
- f. This Agreement shall be subordinate to the provisions of any agreement between Lessor and the United States relative to the maintenance, operation, or development of the Airport.
- g. Lessee will not, on the grounds of race, color, sex, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited pursuant to 49 CFR, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. Lessor reserves the right to take such action as the United States government may direct to enforce this covenant.
- h. This Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States and/or the State of Kansas relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.

16. **NON-DISCRIMINATION.** Lessee, its representatives, successors in interest, and assigns, covenant and agree as a covenant running with the land that (a) 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, (b) 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; and (c) that Lessee shall use the Leased Premises in compliance with all other applicable requirements imposed by or pursuant to 40 CFR, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

Lessee assures that it will affirmatively act as applicable under 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR, Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered sub-organizations provide assurances to Lessee that they similarly will affirmatively act and that they will require assurances from their sub-organizations, as applicable under 14 CFR, Part 152, Subpart E, to the same effect.

17. **PARTIES REPRESENTATIVES / NOTICES.** Lessor hereby designates its City Manager as its official representative, with full power to represent Lessor in all dealings with Lessee in connection with the Leased Premises herein leased. Lessor may designate by notice in writing, addressed to Lessee, other representatives from time to time and such notice shall have the same effect as if included in the terms of this Agreement. Notice to Lessor as herein provided shall be sufficient if sent by registered mail, postage prepaid, to the City Manager of the City of Augusta, at City of Augusta, 113 E. 6th, P.O. Box 489, Augusta, Kansas 67010.

Lessee hereby designates Lessee's Owner as its official representative(s), with full power to represent Lessee in all dealings with Lessor in connection with the Leased Premises herein leased. Lessee may designate by notice in writing, addressed to Lessor, other representatives from time to time and such notice shall have the same effect as if included in the terms of this Agreement. Notice to Lessee shall be sufficient if addressed to Lessee at the Leased Premises, or such other addresses as may be designated by Lessee in writing from time to time.

18. **INDEMNIFICATION AND INSURANCE.** Lessee agrees to indemnify and hold Lessor free and harmless from loss from each and every claim and demand of whatever nature, made on behalf of or by any person or persons, for any wrongful act or omission on the part of Lessee, its agents, servants, and employees. Lessee shall not be obligated to pay damages on any claim or demand of whatever nature, made on behalf of or by any person or persons resulting from neglect by Lessor in the maintenance by Lessor of runways, or in the maintenance of buildings on said Leased Premises not erected by Lessee.

- a. During the term of this Agreement or any renewal, Lessee shall procure and maintain, at all times, insurance of the type and amount required by Airport approved minimum standards as may be adopted and amended from time to time. Said policies shall name Lessor as an additional insured on a non-contributory basis. Lessee shall keep all improvements on the Leased Premises insured against loss from fire and other hazards covered by extended coverage. Lessee shall maintain, at its expense, at all times, a comprehensive general public liability

insurance policy to protect against any liability which may arise from accident or injury on or about the Leased Premises, and/or growing out of the conduct of Lessee in its operation, pursuant to this Agreement. Such policy shall include personal injury coverage and broad form property damage coverage, product liability coverage, airport liability coverage including hangar-keeper's coverage, and necessary worker's compensation coverage. Lessee shall procure insurance coverage required by this Agreement through companies licensed to write insurance in Kansas. Lessee shall deliver to Lessor a certificate of such insurance within ten (10) days after this Agreement is executed by Lessor and Lessee. The following minimum insurance amounts shall be required until adoption and/or amendment of the Airport's minimum standards:

Each Occurrence	\$1,000,000
Damage to Leased Premises (Each Occurrence)	\$100,000
Medical Expenses (Any one person)	\$5,000
General Aggregate	\$2,000,000

- 19. **SIGNS.** Lessee is hereby authorized and empowered to erect and install signs identifying its corporate identity, commodities and services which it affords the public at the Airport, provided, however, that the type, quality, location, and construction of said signs shall be subject to approval by Lessor. Said signs shall not be erected until written approval from Lessor shall have been procured. Prior to construction, Lessee shall submit the design documents to Lessor for approval and obtain a sign permit from Lessor. All signage on site must comply with the Sign Regulations of the City of Augusta and the Federal Aviation Administration.
- 20. **AIRPORT MANAGER.** The City Manager may appoint an Airport Manager. The Airport Manager shall be responsible for enforcing all rules and regulations established by the governing body of the City of Augusta, Kansas, the State of Kansas, and all entities of the federal government, including, but not limited to, the Federal Aviation Administration (FAA).
- 21. **LIENS.** Lessee shall not allow any mechanics or materialman's liens to be placed on the Leased Premises as a result of its activity on the Leased Premises.
- 22. **LESSOR'S RIGHT TO INSPECT.** Lessor reserves the right to enter upon the Leased Premises at any reasonable time for the purpose of making any inspection it deems expedient. Except in the event of an emergency involving the safety of persons or threat to property, Lessor's inspections shall be conducted during Lessee's normal hours of business operation, and Lessee's representative shall be notified prior to any such inspections and shall have the right to accompany Lessor during the inspections. Lessor shall not unreasonably interfere with Lessee's business operations or Lessee's security in the making of said inspections.

23. **ASSIGNMENT AND SUBLETTINGS.** Except as otherwise expressly provided in this Agreement, Lessee shall not transfer, assign, sublet or pledge this Agreement without the prior written consent of Lessor. Lessor's consent of such transactions shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Lessor consents to Lessee's granting of a mortgage encumbering its interest under this Lease ("the Leasehold Mortgage"). Lessor agrees that, in the event of foreclosure of the Leasehold Mortgage, the purchaser of Lessee's interest hereunder shall be substituted as the Lessee under this Lease in place of Lessee. In the event Lessee's lender is the purchaser at foreclosure sale, it shall be entitled to transfer its interest in and under this Lease to a third party subject to Lessor's consent, which shall not be unreasonably withheld or delayed. Any such substitute Lessee or transferee shall be bound to comply with Lessee's responsibilities hereunder and all other terms of this Lease, including any amendments, supplements or extensions thereof, as well as all applicable federal, state and local laws, rules and regulations. Noncompliance with any such responsibility, term, law, rule or regulation shall constitute a Lessee default under Section 12 of this Lease.
24. **FORUM.** The laws of the State of Kansas shall govern the validity, performance and enforcement of this Agreement.
25. **ENTIRE AGREEMENT.** The parties agree that this Agreement is the entire agreement between the parties and no earlier statements or prior written matter have any force and effect. Neither party is relying on any representations or agreements other than those contained in this Agreement. The Temporary Commercial Lease Agreement effective October 1, 2016 – March 30, 2017 shall terminate upon full execution of this Agreement. No amendment, waiver or modification of this Agreement shall be effective unless reduced to writing and signed by the authorized officers of each of the parties hereto.
26. **PORTION INVALID.** In the event that any portion of this Agreement shall be declared invalid by a court of competent jurisdiction, the parties agree that the remaining terms and provisions of this Agreement shall remain in full force and effect.
27. **QUIET ENJOYMENT.** If Lessee shall perform its obligations under this Agreement, Lessor and Lessor's successors, grantees and assigns shall warrant and defend Lessee in the quiet enjoyment and peaceful possession of the Leased Premises during the entire term of this Agreement.
28. **HOLDOVER TENANCY.** Except as otherwise expressly provided in this Agreement, in the event Lessee shall remain in possession of the Leased Premises, or any part thereof, after the expiration of the term of this Agreement, or any Option Period, such occupancy shall be deemed a month-to-month tenancy at a rental in the amount of one-twelfth of the annual rent paid by Lessee upon the expiration of the term, plus all other charges payable by Lessee hereunder, and upon all of the terms hereof, unless inapplicable to a month-to-month tenancy. However, nothing herein shall be construed as Lessor's consent to such a month-to-month tenancy.
29. **LESSOR'S TITLE AND AUTHORITY.** Lessor hereby represents and warrants to Lessee that Lessor is the owner of the Leased Premises, and has the power and authority to execute and deliver this Agreement and to carry out and perform all covenants to be

performed by Lessor under this Agreement. Lessor further represents and warrants to Lessee that the Leased Premises are adjacent to a public street or roadway providing non-exclusive access to the public right-of-way, and that the Leased Premises are free from all encumbrances, except as expressly disclosed to Lessee in this Agreement.

30. **UTILITY EASEMENTS.** Lessor shall at the request of Lessee grant such non-exclusive easements as may be necessary to enable the Leased Premises to be adequately served by gas, electricity, water, sewer, telephone and other utility services.

31. **PERSONS BOUND.** This Agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of Lessor and Lessee.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 23rd day of February, 2017.

CITY OF AUGUSTA, KANSAS

Matt C. Childers, Mayor
Lessor

[SEAL]

ATTEST:

Erica L. Jones, City Clerk

PRAY AVIATION, INC.

Matthew Pray, Owner
Lessee

STATE OF KANSAS)
COUNTY OF BUTLER)

BE IT REMEMBERED, that on this _____ day of _____, 2017, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Matt C. Childers, Mayor, on behalf of the City of Augusta, a municipal corporation, who is personally known to me to be the same person who executed the within and foregoing instrument of writing and duly acknowledged the execution of the same on behalf of said limited liability Lessee.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Seal:

Notary Public

STATE OF KANSAS)
COUNTY OF BUTLER)

BE IT REMEMBERED, that on this _____ day of _____, 2017, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Matthew Pray, Owner, on behalf of Pray Aviation, Inc., a Kansas for profit corporation, who is personally known to me to be the same person who executed the within and foregoing instrument of writing and duly acknowledged the execution of the same on behalf of said for profit corporation.

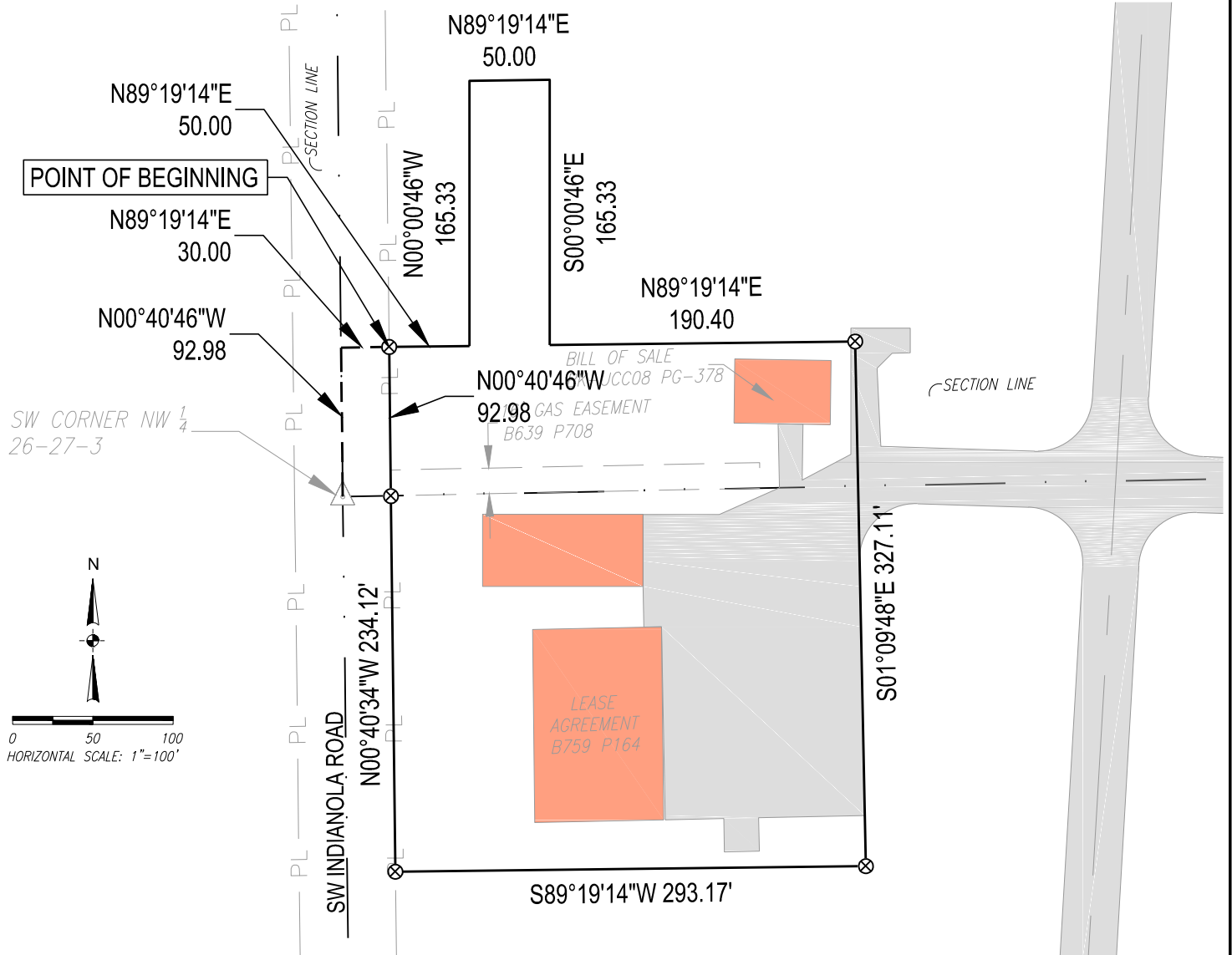
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Seal:

Notary Public

EXHIBIT A - LEGAL DESCRIPTION

(This does not constitute a boundary survey)



LEGEND

⊕ Corner Calculated (Not Set)

UTILITIES

No Utilities were marked with this survey.

OWNER'S CERTIFICATE

No Certificate Requested.

DATE

Field survey conducted on January, 2014

ADDRESS:

Augusta Municipal Airport

DESCRIPTION

A lease tract of land in the West Half of Section 26, Township 27 South, Range 3 East of the 6th PM, in Butler County, Kansas described as follows:

Commencing from the Southwest Corner of the Northwest Quarter of Section 26, Township 27 South, Range 3 East, thence N00°40'46"W, 92.98 Feet along the section line to a point; Thence N89°19'14"E, 30.00 Feet to a point on the eastern Right of Way of SW Indionala Road to the TRUE POINT OF BEGINNING.

Thence N89°19'14"E, 50.00 Feet;
 Thence N00°00'46"W, 165.33 Feet;
 Thence N89°19'14"E, 50.00 Feet;
 Thence S00°00'46"E, 165.33 Feet;
 Thence N89°19'14"E, 190.40 Feet;
 Thence S01°09'48"E, 327.11 Feet;
 Thence S89°19'14"W, 293.17 Feet to the eastern Right of Way of SW Indionala Road;
 Thence N00°40'34"W, 234.12 Feet along said Right of Way to a point being the intersection of said Right of Way and Quarter Section Line;
 Thence N00°40'46"W, 92.98 Feet along said Right of way to TRUE POINT OF BEGINNING.

Property containing 2.381 Acres (103,700 Square Feet), more or less. Subject to easements, right of ways, and restrictions.

EASEMENTS

Easements of public record were researched on January 2014 and listed in Title Commitment No 2093486c by Security 1st Title. No survey or research has been conducted or warranted since that date.

Alfred Benesch & Company
 3226 Kimball Avenue
 Manhattan, Kansas 66503
 785-539-2202 Job No. - 00130191.00