

# **MCCOOK CITY COUNCIL**

## **REGULAR MEETING**

**Wednesday, September 10, 2025  
12:30 PM - City Council Chambers**

Roll Call.

Open Meetings Act Announcement.

Call to Order.

Items.

1. Approve the Memorandum of Understanding (MOU) between the City of McCook and the McCook Economic Development Corporation for the purchase of airport assets and establishing an airport manager position at McCook Ben Nelson Regional Airport and authorize the Mayor to sign.
2. Approve a Memorandum of Understanding between the City of McCook and the McCook Economic Development Corporation, outlining the initial land lease between the two entities for the former Red Willow Aviation hangar assets.

Adjournment.

**CITY MANAGER'S REPORT  
SEPTEMBER 10, 2025 CITY COUNCIL MEETING**

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**ITEM:** 1

**RECOMMENDATION:**

**APPROVE THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF McCook AND THE McCook Economic Development Corporation for the purchase of airport assets and establishing an airport manager position at McCook Ben Nelson Regional Airport and authorize the Mayor to sign.**

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**BACKGROUND:**

The McCook Economic Development Corporation plans to purchase hangar assets which were previously owned by the former Fixed Base Operator. These assets have been controlled by the bankruptcy attorney since the former FBO filed for bankruptcy in late 2024. The MEDC also will be seeking to hire and fund an airport manager position.

The purpose of this MOU is to define the roles and responsibilities regarding hangar assets, establishment of the Airport Manager position and the hiring of an Airport Manager, and formation of the Supporting Organization.

MEDC and City Staff are currently working on completing the MOU. The final document will be presented to the City Council as soon as it is completed. A formal contract will be established once all items are finalized.

**FISCAL**

**IMPACT:** None.

**APPROVALS:**

  
\_\_\_\_\_  
Kyle Potthoff, Public Works Director

September 8, 2025

  
\_\_\_\_\_  
Nate Schneider, City Manager

September 8, 2025

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “**MOU**”) is effective August \_\_, 2025 (the “**Effective Date**”), and sets forth the general intent of the City of McCook, Nebraska (the “**City**”), and the McCook Economic Development Corporation (“**MEDC**”) to memorialize the terms of the collaborative framework between the parties herein to restore the McCook Ben Nelson Regional Airport (the “**Airport**”) to its previous operational level and ensure its long-term viability. The City and MEDC are each referred to individually as a “**Party**” and collectively as the “**Parties.**”

**AGREEMENT**

**1. Background.** Following several challenging years of unsatisfactory ownership and operation by the Airport’s previous Fixed Base Operator (“**FBO**”) who owned and operated the airplane hangars and associated assets located at the Airport (the “**Hangar Assets**”)—resulting in a temporary suspension of flights, a steep decline in fuel sales, damage to the Airport’s reputation, and ending up with the Hangar Assets in current bankruptcy proceedings—the City and MEDC agree that a locally-driven approach is necessary to restore the Airport to its previous operational level and to ensure its long-term viability. At present, the Airport operates with minimal staffing and limited funding. In addition to their regular responsibilities, the City Manager and the Public Works Director of the City are currently serving as interim Airport Managers, which is not a viable long-term arrangement. The City and MEDC also agree that ownership and control of the Hangar Assets is best kept at the local level.

**2. Airport Project.** The Parties have determined that the current urgent situation with the Airport can best be addressed and remedied by: (i) having MEDC acquire the Hangar Assets that are currently in bankruptcy, (ii) establishing and funding an Airport Manager position to manage the day-to-day operations of the Airport (the “**Airport Manager Position**”) and having MEDC hire and supervise a person to fill that position (the “**Airport Manager**”), and (iii) forming a nonprofit corporation, which will apply to the Internal Revenue Service (“**IRS**”) for a determination of tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the “**Code**”), and as a “supporting organization,” as defined in Code Section 509(a)(3), to support MEDC in raising funds from the general public, area businesses, and governmental grants for this project (together, the “**Airport Project**”) and other exempt public or charitable projects of MEDC (the “**Supporting Organization**”). This collaboration between the City and MEDC is designed to ease the operational and financial burdens on the City in operating the Airport and ensure that the Hangar Assets are properly maintained, repaired, and improved on a consistent basis.

**3. Purpose of MOU.** The Parties hereby enter into this MOU to define their roles and responsibilities regarding the acquisition of the Hangar Assets, establishment of the Airport Manager Position and hiring of an Airport Manager, and formation of the Supporting Organization. The Parties agree to cooperate in good faith to achieve these goals and, to the extent that either Party has any questions or concerns about the collaboration, both Parties agree that they will communicate directly with each other to

address these concerns. The Parties desire to memorialize the initial terms of their cooperation through this non-binding MOU.

**4. Roles and Responsibilities of the City.** The Parties intend that the City has the following roles and responsibilities in accomplishing the purposes described in Section 3 of this MOU:

**4.1 Establishment of the Airport Project Fund.** MEDC and the City have been approached by anonymous donors (the “**Donors**”) who wish to provide funding (the “**Donor Funds**”) to assist the Parties in undertaking the Airport Project. The City will establish a segregated fund that is separate from its general fund (the “**Airport Project Fund**”) to receive and hold the Donor Funds for use by MEDC in: (1) acquiring the Hangar Assets; (2) establishing the Airport Manager Position and hiring and temporarily funding the salary of an Airport Manager; and (3) paying expenses associated with forming the Supporting Organization and its application for a determination of tax-exempt status under Code Section 501(c)(3) from the IRS. The City shall notify MEDC within a reasonable time period upon establishment and funding of the Airport Project Fund. The City and MEDC will maintain accurate records of all transactions involving the Airport Project Fund and make them available to one another as needed to support project oversight. Any funds remaining in the Airport Project Fund at the time the Supporting Organization receives a favorable determination of tax-exempt status under Code Section 501(c)(3) from the IRS shall be transferred to the Supporting Organization.

**4.2 Support for Acquisition of Hangar Assets.** The City will assist MEDC and the Supporting Organization, as needed, in coordinating with the Donors, the bankruptcy court, the sellers, and any other relevant parties to facilitate the acquisition of the Hangar Assets by MEDC. The City will provide reasonably necessary approvals, consents, or other documentation required by the bankruptcy court or seller to complete the acquisition, including modification of any existing lease agreements, on terms that are reasonably agreeable to both Parties.

**4.3 Coordination with MEDC, Compliance with Title 49 Requirements.** Recognizing the interconnected nature of their roles, the City will collaborate with MEDC to ensure that the project progresses in a timely manner, particularly in areas influenced by the City’s ownership of the Airport land and its regulatory oversight. The City will collaborate with MEDC to ensure that the Airport will continue to be operated and maintained in compliance with the provisions in Title 49 of the U.S. Code and the corresponding Code of Federal Regulations (CFR) applicable to airports of the same class as the Airport.

**4.4 City to Assume Expenses Associated with Fueling and other FBO Related Operations Until New FBO is Contracted.** Starting in December of 2024, the City assumed responsibility for the expenses associated with operating essential FBO related services and ancillary overhead costs typically assigned by the City to the FBO per a negotiated lease agreement. The City agrees to continue assuming responsibility for the expenses customarily paid for by the

FBO, said expenses including: 1) costs associated with three Independent Subcontractor Agreements approved by the McCook City Council on December 2, 2024; 2) a Lease Agreement with John Stalnaker, Chapter 7 Bankruptcy Trustee for the Bankruptcy Estate of Red Willow Aviation & Spraying, Inc. ratified by the McCook City Council on December 2, 2024; and 3) all other expenses incurred related to FBO services until a new FBO services agreement is executed. Upon the execution of a new FBO services agreement, these expenses outlined above will become the responsibility of the FBO.

**5. Roles and Responsibilities of MEDC.** The Parties intend that MEDC has the following roles and responsibilities in accomplishing the purposes described in Section 3 of this MOU:

**5.1 Use of the Airport Project Fund.** MEDC will restrict its use of the funds in the Airport Project Fund to those purposes described in Section 4.1 of this MOU.

**5.2 5.2 Acquisition and Ownership of the Hangar Assets.** MEDC will coordinate with the City regarding the acquisition of the Hangar Assets. MEDC will work with the City to secure all necessary approvals, permits, or lease agreements in order to complete the acquisition of the Hangar Assets. MEDC will also provide the City with copies of all necessary relevant documentation to secure the necessary approvals, including bankruptcy court approval and purchase agreements, prior to closing the transaction. MEDC will be responsible for property taxes and insurance on the Hangar Assets. MEDC will be responsible for assigning all leases for the airplane hangars, subject to approval from the City.

**5.3 Establishment of the Airport Manager Position, Management of the Airport.** MEDC will coordinate with the City in establishing an Airport Manager Position, determining a reasonable salary for such position, and hiring a qualified individual to serve as Airport Manager. The Parties will work together to formulate requirements and qualifications for such position. MEDC will be responsible for recruiting and hiring an individual who meets those requirements and qualifications. After the Airport Manager Position has been established, MEDC will consult with the City from time to time to ensure that the Airport Manager's duties and performance align with the City's municipal goals for the Airport. MEDC will collaborate with the City to ensure that the Airport will continue to be operated and maintained in compliance with the provisions in Title 49 of the U.S. Code and the corresponding Code of Federal Regulations (CFR) applicable to airports of the same class as the Airport.

**5.4 Formation of the Supporting Organization.** MEDC has overseen the formation of the Supporting Organization, including engaging counsel to prepare and file all necessary documentation to establish the Supporting Organization as a Nebraska Nonprofit Corporation. MEDC will take all reasonable measures to ensure that the Supporting Organization applies for a determination of tax-exempt status under Code Section 501(c)(3). MEDC will notify the City of the IRS's determination upon receipt of the determination letter.

## **6. Covenants of the Parties.**

**6.1 Areas of Coordination.** While the responsibilities above are assigned to each Party, the Parties agree that several areas require coordination and mutual effort from both Parties. The Parties agree to share timely updates with one another regarding project developments, challenges, and resource needs to enable the other to offer support where appropriate. Both Parties will take all reasonable steps to ensure that the acquisition of the Hangar Assets, establishment of the Airport Manager Position, and receipt of a favorable Code Section 501(c)(3) determination letter from the IRS by the Supporting Organization adheres to applicable laws and regulations. This may involve joint consultations on zoning, permits, or land use issues. The Parties further agree that proper management of the Airport Project Fund and Donor Funds requires collaboration between the Parties to align disbursements with project timelines. Accordingly, the Parties will work together to ensure that necessary records are maintained regarding fund expenditures.

**6.2 Fuel Inventory Cost.** MEDC and the City will each be responsible for 50% of the cost of the remaining fuel inventory, as specified in Provision #4 of the Real Estate Purchase Agreement with Adam Marshall Land & Auction, LLC.

**6.3 Redesignation of Donor Funds.** If any element of the Airport Project changes, stalls beyond one year from the Effective Date of this Agreement, or is discontinued, or if there are unused Donor Funds after the accomplishment of the Airport Project, or if this MOU is terminated, the Parties agree that the use of any remaining Donor Funds may be redesignated to an alternative exempt public or charitable use within the meaning of Section 501(c)(3) of the Code, with input from NCF and the Donors.

**6.4 Continued Ownership of Hanger Assets.** MEDC will remain the owner of the Hangar Assets unless and until: (1) MEDC's Board of Directors resolves to convey the Hangar Assets to the City; (2) the Parties mutually agree that MEDC will transfer the Hangar Assets to the City; (3) MEDC ceases to exist, in which case the Hangar Assets will be transferred to the City; or (4) federal or state law mandates MEDC to transfer the Hangar Assets.

**7. Anonymity of Donors.** The Parties agree to take all reasonable steps to ensure that the Donors remain anonymous regarding their contributions to and involvement in the acquisition of the Hangar Assets, establishment of the Airport Manager Position, and formation of the Supporting Organization. The Parties will restrict all references to the Donors in public communications to "anonymous donors" or other similar designation which maintains Donors' anonymity.

**8. Notice.** Any notice, consent, claim, demand, waiver, and other such communication required or permitted to be given under this MOU (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or e-mail (with

confirmation of transmission), or certified or registered mail. Except as otherwise provided in this MOU, a Notice is effective only: (a) upon receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this section. Either Party may change its contact details by providing Notice to the other Party in accordance with this section. All Notices shall be delivered to the following addresses with a copy to counsel for the Parties:

If to MEDC:                McCook Economic Development Corporation  
                                  Attn: Charlie McPherson  
                                  402 Norris Ave., Suite 301  
                                  McCook, NE 69001  
                                  Email address: charlie@mccookne.org

If to City:                 City of McCook  
                                  Attn: Nate Schneider, City Manager  
                                  PO Box 1059  
                                  McCook, NE 69001-1059  
                                  Email address: nschneider@cityofmccook.com

**9. Term and Termination.** This MOU shall be effective on the Effective Date and, unless sooner terminated by the Parties in accordance with the terms and conditions of this MOU, shall continue thereafter indefinitely (the "Term"). The Parties may terminate this MOU at any time by mutual written agreement. Termination may be either for cause or without cause, and notice of termination may be given at any time during the term of this MOU. Either Party may terminate this MOU without any obligation or liability to the other Party.

**10. Amendment and Modification; Waiver.** No amendment or modification of this MOU is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this MOU, (a) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this MOU will operate or be construed as a waiver thereof, and (b) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**11. Relationship of the Parties.** Nothing contained in this MOU shall be construed as creating an employment relationship between the Parties.

**12. Governing Law.** This MOU is governed by and to be construed in accordance with the laws of the State of Nebraska without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Nebraska.

**13. Assignment.** Neither Party shall assign any of its rights or delegate any of its obligations under this MOU without the prior written consent of the other Party, which shall not be unreasonably withheld. Any purported assignment or delegation in violation of this section is null and void.

**14. No Third-Party Beneficiaries.** Nothing herein shall be construed to confer upon any person or entity other than the Parties any rights or remedies under or by reason of this MOU.

**15. Counterparts.** This MOU may be executed in counterparts, each of which shall be an original, and which together shall constitute a single document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned authorized representatives of the Parties have executed this MOU on the dates indicated below, effective on the Effective Date.

**THE CITY OF MCCOOK, NEBRASKA**

**MCCOOK ECONOMIC DEVELOPMENT CORPORATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

4930-9981-0144, v. 4

**CITY MANAGER'S REPORT**  
**SEPTEMBER 10, 2025 MCCOOK CITY COUNCIL SPECIAL MEETING**

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ITEM NO. 2 Approve a Memorandum of Understanding between the City of McCook and the McCook Economic Development Corporation, outlining the initial land lease between the two entities for the former Red Willow Aviation hangar assets.

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**BACKGROUND:**

On the condition that the City Council approves the MOU between the City of McCook and MEDC to establish the framework of each respective party as it relates to the hangar assets located at the McCook Ben Nelson Regional Airport, the City and MEDC are in need of establishing a land lease. The land lease would permit the MEDC to continue using the City's airport property for locating its hangar assets. Attached to the MOU is a land map showing the hangar assets that are located on City property. The MOU is necessary to satisfy the title commitment requirements.

Following closing on the hangar assets, the City of McCook and MEDC will enter into a formal land lease.

The City of McCook and the MEDC are currently finalizing the terms of the MOU regarding the initial terms of the land lease. When the MOU is finalized for the City Council's consideration, the MOU will be forwarded by staff to the City Council and media.

**APPROVALS:**

  
\_\_\_\_\_  
Nathan A. Schneider, City Manager

September 8, 2025

  
\_\_\_\_\_  
Lea Ann Doak, City Clerk

September 8, 2025

  
\_\_\_\_\_  
Tera Koetter, Assistant City Manager

September 8, 2025

  
\_\_\_\_\_  
Kyle Potthoff, Public Works Director

September 8, 2025

**MEMORANDUM OF UNDERSTANDING FOR A LAND LEASE**

THIS MEMORANDUM OF UNDERSTANDING (this “**MOU**”) is effective September \_\_, 2025 (the “**Effective Date**”), and sets forth the general intent of the City of McCook, Nebraska (the “**City**”), and the McCook Economic Development Corporation (“**MEDC**”) to memorialize the terms of the collaborative framework between the parties herein for the lease of real property, with the City serving as Lessor and MEDC serving as Lessee.

**AGREEMENT**

Upon MEDC’s purchase of the Hangar Assets at the McCook Ben Nelson Regional Airport, the City and MEDC agree to cooperate in good faith to enter into a real estate lease, with the objective of permitting the MEDC to occupy the City’s Airport property for the purpose of locating buildings formerly owned by Red Willow Aviation and Spraying, Inc. Attached to this Memorandum of Understanding for a Land Lease is a “Leased Description Map”, marked as Exhibit A and incorporated into this document by reference. The terms of the real estate lease will be formulated following good faith negotiations and efforts. For purposes of providing guidance to structure the collaborative framework needed to successfully restore the Airport to its previous operational level and ensure its long-term viability, the City and MEDC entered into a Memorandum of Understanding outlining the responsibilities of the City and MEDC. The intent of the Memorandum of Understanding is conditioned on an executed real estate lease agreeable to both parties. Attached to Memorandum of Understanding for a Land Lease is the “Memorandum of Understanding”, marked as Exhibit B and incorporated into this document by reference.

IN WITNESS WHEREOF, the undersigned authorized representatives of the Parties have executed this MOU for a Land Lease on the dates indicated below, effective on the Effective Date.

**THE CITY OF MCCOOK, NEBRASKA**

**MCCOOK ECONOMIC DEVELOPMENT CORPORATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Description**

**TRACT 1**

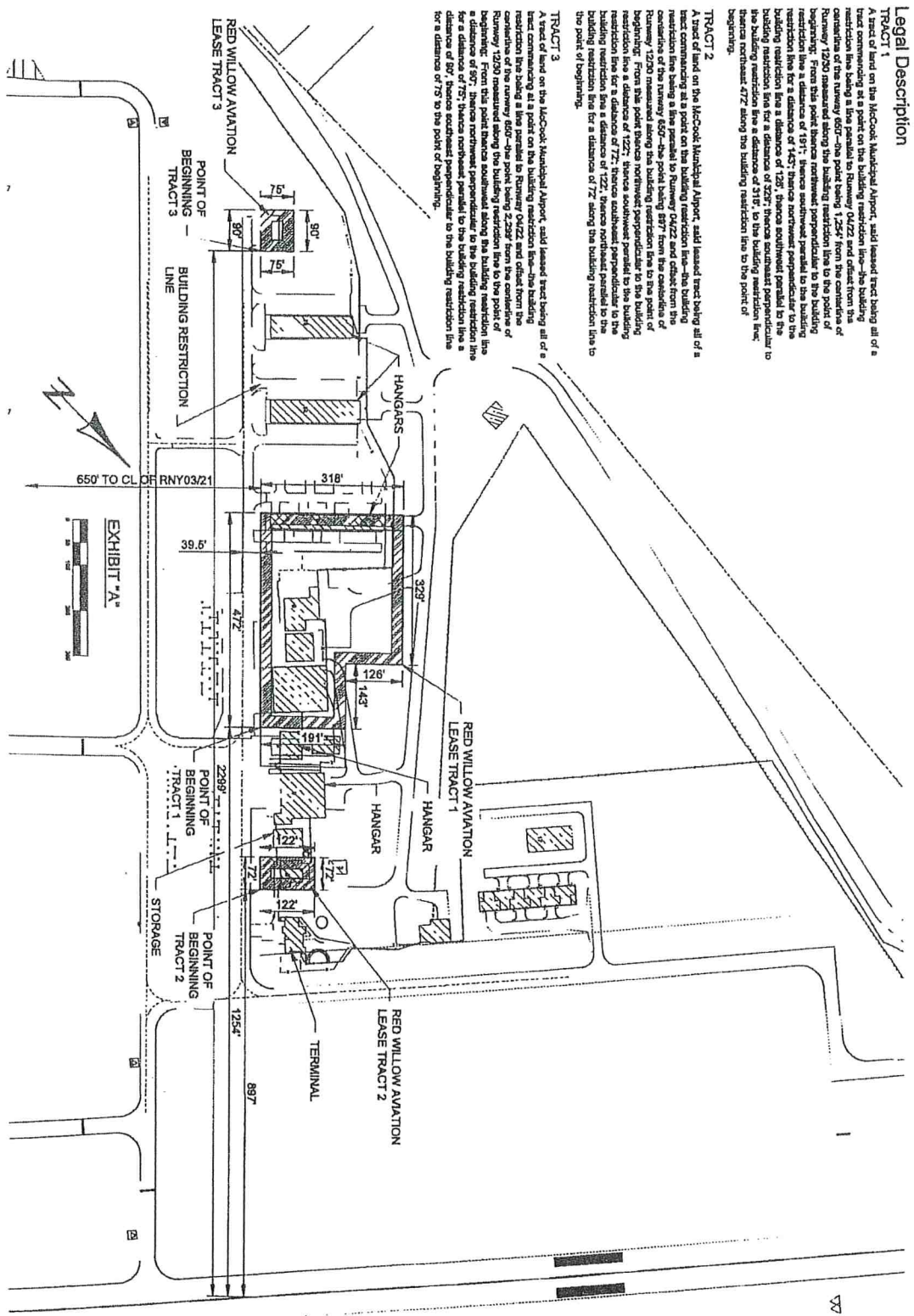
A tract of land on the McCook Municipal Airport, said leased tract being all of a tract commencing at a point on the building restriction line—the building restriction line being a line parallel to Runway 04/22 and offset from the centerline of the runway 650'—the point being 1,254' from the centerline of Runway 12/30 measured along the building restriction line to the point of beginning. From that point thence southeast parallel to the building restriction line for a distance of 191'; thence southwest perpendicular to the building restriction line for a distance of 143'; thence southwest perpendicular to the building restriction line for a distance of 125'; thence southwest perpendicular to the building restriction line for a distance of 329'; thence southwest perpendicular to the building restriction line for a distance of 72'; thence northeast perpendicular to the building restriction line for a distance of 72'; thence northeast perpendicular to the building restriction line for a distance of 122'; thence northeast perpendicular to the building restriction line for a distance of 72' along the building restriction line to the point of beginning.

**TRACT 2**

A tract of land on the McCook Municipal Airport, said leased tract being all of a tract commencing at a point on the building restriction line—the building restriction line being a line parallel to Runway 04/22 and offset from the centerline of the runway 650'—the point being 897' from the centerline of Runway 12/30 measured along the building restriction line to the point of beginning. From that point thence southeast parallel to the building restriction line for a distance of 122'; thence southwest perpendicular to the building restriction line for a distance of 72'; thence southwest perpendicular to the building restriction line for a distance of 72' along the building restriction line to the point of beginning.

**TRACT 3**

A tract of land on the McCook Municipal Airport, said leased tract being all of a tract commencing at a point on the building restriction line—the building restriction line being a line parallel to Runway 04/22 and offset from the centerline of the runway 650'—the point being 2,299' from the centerline of Runway 12/30 measured along the building restriction line to the point of beginning. From that point thence southeast parallel to the building restriction line for a distance of 122'; thence southwest perpendicular to the building restriction line for a distance of 72'; thence southwest perpendicular to the building restriction line for a distance of 72' along the building restriction line to the point of beginning.



DATE: 04/20/11

DWG: 011-01 LEAS  
 DRAWN: A M PETERSON  
 CHECKED:  
 REVISIONS:



**WDA W DESIGN ASSOCIATES**  
 Consulting Engineers and Architects  
 McCook, Nebraska 68001  
 Hastings, Nebraska 68001

**LEASE DESCRIPTION**  
 RED WILLOW AVIATION  
 McCOOK MUNICIPAL AIRPORT

Exhibit "A"

**MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING (this “**MOU**”) is effective August \_\_, 2025 (the “**Effective Date**”), and sets forth the general intent of the City of McCook, Nebraska (the “**City**”), and the McCook Economic Development Corporation (“**MEDC**”) to memorialize the terms of the collaborative framework between the parties herein to restore the McCook Ben Nelson Regional Airport (the “**Airport**”) to its previous operational level and ensure its long-term viability. The City and MEDC are each referred to individually as a “**Party**” and collectively as the “**Parties.**”

**AGREEMENT**

**1. Background.** Following several challenging years of unsatisfactory ownership and operation by the Airport’s previous Fixed Base Operator (“**FBO**”) who owned and operated the airplane hangars and associated assets located at the Airport (the “**Hangar Assets**”)—resulting in a temporary suspension of flights, a steep decline in fuel sales, damage to the Airport’s reputation, and ending up with the Hangar Assets in current bankruptcy proceedings—the City and MEDC agree that a locally-driven approach is necessary to restore the Airport to its previous operational level and to ensure its long-term viability. At present, the Airport operates with minimal staffing and limited funding. In addition to their regular responsibilities, the City Manager and the Public Works Director of the City are currently serving as interim Airport Managers, which is not a viable long-term arrangement. The City and MEDC also agree that ownership and control of the Hangar Assets is best kept at the local level.

**2. Airport Project.** The Parties have determined that the current urgent situation with the Airport can best be addressed and remedied by: (i) having MEDC acquire the Hangar Assets that are currently in bankruptcy, (ii) establishing and funding an Airport Manager position to manage the day-to-day operations of the Airport (the “**Airport Manager Position**”) and having MEDC hire and supervise a person to fill that position (the “**Airport Manager**”), and (iii) forming a nonprofit corporation, which will apply to the Internal Revenue Service (“**IRS**”) for a determination of tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the “**Code**”), and as a “supporting organization,” as defined in Code Section 509(a)(3), to support MEDC in raising funds from the general public, area businesses, and governmental grants for this project (together, the “**Airport Project**”) and other exempt public or charitable projects of MEDC (the “**Supporting Organization**”). This collaboration between the City and MEDC is designed to ease the operational and financial burdens on the City in operating the Airport and ensure that the Hangar Assets are properly maintained, repaired, and improved on a consistent basis.

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Exhibit B

address these concerns. The Parties desire to memorialize the initial terms of their cooperation through this non-binding MOU.

**4. Roles and Responsibilities of the City.** The Parties intend that the City has the following roles and responsibilities in accomplishing the purposes described in Section 3 of this MOU:

**4.1 Establishment of the Airport Project Fund.** MEDC and the City have been approached by anonymous donors (the “**Donors**”) who wish to provide funding (the “**Donor Funds**”) to assist the Parties in undertaking the Airport Project. The City will establish a segregated fund that is separate from its general fund (the “**Airport Project Fund**”) to receive and hold the Donor Funds for use by MEDC in: (1) acquiring the Hangar Assets; (2) establishing the Airport Manager Position and hiring and temporarily funding the salary of an Airport Manager; and (3) paying expenses associated with forming the Supporting Organization and its application for a determination of tax-exempt status under Code Section 501(c)(3) from the IRS. The City shall notify MEDC within a reasonable time period upon establishment and funding of the Airport Project Fund. The City and MEDC will maintain accurate records of all transactions involving the Airport Project Fund and make them available to one another as needed to support project oversight. Any funds remaining in the Airport Project Fund at the time the Supporting Organization receives a favorable determination of tax-exempt status under Code Section 501(c)(3) from the IRS shall be transferred to the Supporting Organization.

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**4.3 Coordination with MEDC, Compliance with Title 49 Requirements.** Recognizing the interconnected nature of their roles, the City will collaborate with MEDC to ensure that the project progresses in a timely manner, particularly in areas influenced by the City’s ownership of the Airport land and its regulatory oversight. The City will collaborate with MEDC to ensure that the Airport will continue to be operated and maintained in compliance with the provisions in Title 49 of the U.S. Code and the corresponding Code of Federal Regulations (CFR) applicable to airports of the same class as the Airport.

**4.4 City to Assume Expenses Associated with Fueling and other FBO Related Operations Until New FBO is Contracted.** Starting in December of 2024, the City assumed responsibility for the expenses associated with operating essential FBO related services and ancillary overhead costs typically assigned by the City to the FBO per a negotiated lease agreement. The City agrees to continue assuming responsibility for the expenses customarily paid for by the

FBO, said expenses including: 1) costs associated with three Independent Subcontractor Agreements approved by the McCook City Council on December 2, 2024; 2) a Lease Agreement with John Stalnaker, Chapter 7 Bankruptcy Trustee for the Bankruptcy Estate of Red Willow Aviation & Spraying, Inc. ratified by the McCook City Council on December 2, 2024; and 3) all other expenses incurred related to FBO services until a new FBO services agreement is executed. Upon the execution of a new FBO services agreement, these expenses outlined above will become the responsibility of the FBO.

**5. Roles and Responsibilities of MEDC.** The Parties intend that MEDC has the following roles and responsibilities in accomplishing the purposes described in Section 3 of this MOU:

**5.1 Use of the Airport Project Fund.** MEDC will restrict its use of the funds in the Airport Project Fund to those purposes described in Section 4.1 of this MOU.

**5.2 5.2 Acquisition and Ownership of the Hangar Assets.** MEDC will coordinate with the City regarding the acquisition of the Hangar Assets. MEDC will work with the City to secure all necessary approvals, permits, or lease agreements in order to complete the acquisition of the Hangar Assets. MEDC will also provide the City with copies of all necessary relevant documentation to secure the necessary approvals, including bankruptcy court approval and purchase agreements, prior to closing the transaction. MEDC will be responsible for property taxes and insurance on the Hangar Assets. MEDC will be responsible for assigning all leases for the airplane hangars, subject to approval from the City.

**5.3 Establishment of the Airport Manager Position, Management of the Airport.** MEDC will coordinate with the City in establishing an Airport Manager Position, determining a reasonable salary for such position, and hiring a qualified individual to serve as Airport Manager. The Parties will work together to formulate requirements and qualifications for such position. MEDC will be responsible for recruiting and hiring an individual who meets those requirements and qualifications. After the Airport Manager Position has been established, MEDC will consult with the City from time to time to ensure that the Airport Manager's duties and performance align with the City's municipal goals for the Airport. MEDC will collaborate with the City to ensure that the Airport will continue to be operated and maintained in compliance with the provisions in Title 49 of the U.S. Code and the corresponding Code of Federal Regulations (CFR) applicable to airports of the same class as the Airport.

**5.4 Formation of the Supporting Organization.** MEDC has overseen the formation of the Supporting Organization, including engaging counsel to prepare and file all necessary documentation to establish the Supporting Organization as a Nebraska Nonprofit Corporation. MEDC will take all reasonable measures to ensure that the Supporting Organization applies for a determination of tax-exempt status under Code Section 501(c)(3). MEDC will notify the City of the IRS's determination upon receipt of the determination letter.

**6. Covenants of the Parties.**

**6.1 Areas of Coordination.** While the responsibilities above are assigned to each Party, the Parties agree that several areas require coordination and mutual effort from both Parties. The Parties agree to share timely updates with one another regarding project developments, challenges, and resource needs to enable the other to offer support where appropriate. Both Parties will take all reasonable steps to ensure that the acquisition of the Hangar Assets, establishment of the Airport Manager Position, and receipt of a favorable Code Section 501(c)(3) determination letter from the IRS by the Supporting Organization adheres to applicable laws and regulations. This may involve joint consultations on zoning, permits, or land use issues. The Parties further agree that proper management of the Airport Project Fund and Donor Funds requires collaboration between the Parties to align disbursements with project timelines. Accordingly, the Parties will work together to ensure that necessary records are maintained regarding fund expenditures.

**6.2 Fuel Inventory Cost.** MEDC and the City will each be responsible for 50% of the cost of the remaining fuel inventory, as specified in Provision #4 of the Real Estate Purchase Agreement with Adam Marshall Land & Auction, LLC.

**6.3 Redesignation of Donor Funds.** If any element of the Airport Project changes, stalls beyond one year from the Effective Date of this Agreement, or is discontinued, or if there are unused Donor Funds after the accomplishment of the Airport Project, or if this MOU is terminated, the Parties agree that the use of any remaining Donor Funds may be redesignated to an alternative exempt public or charitable use within the meaning of Section 501(c)(3) of the Code, with input from NCF and the Donors.

**6.4 Continued Ownership of Hanger Assets.** MEDC will remain the owner of the Hangar Assets unless and until: (1) MEDC's Board of Directors resolves to convey the Hangar Assets to the City; (2) the Parties mutually agree that MEDC will transfer the Hangar Assets to the City; (3) MEDC ceases to exist, in which case the Hanger Assets will be transferred to the City; or (4) federal or state law mandates MEDC to transfer the Hangar Assets.

**7. Anonymity of Donors.** The Parties agree to take all reasonable steps to ensure that the Donors remain anonymous regarding their contributions to and involvement in the acquisition of the Hangar Assets, establishment of the Airport Manager Position, and formation of the Supporting Organization. The Parties will restrict all references to the Donors in public communications to "anonymous donors" or other similar designation which maintains Donors' anonymity.

**8. Notice.** Any notice, consent, claim, demand, waiver, and other such communication required or permitted to be given under this MOU (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or e-mail (with

confirmation of transmission), or certified or registered mail. Except as otherwise provided in this MOU, a Notice is effective only: (a) upon receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this section. Either Party may change its contact details by providing Notice to the other Party in accordance with this section. All Notices shall be delivered to the following addresses with a copy to counsel for the Parties:

If to MEDC:                McCook Economic Development Corporation  
                                  Attn: Charlie McPherson  
                                  402 Norris Ave., Suite 301  
                                  McCook, NE 69001  
                                  Email address: charlie@mccookne.org

If to City:                 City of McCook  
                                  Attn: Nate Schneider, City Manager  
                                  PO Box 1059  
                                  McCook, NE 69001-1059  
                                  Email address: nschneider@cityofmccook.com

**9. Term and Termination.** This MOU shall be effective on the Effective Date and, unless sooner terminated by the Parties in accordance with the terms and conditions of this MOU, shall continue thereafter indefinitely (the "Term"). The Parties may terminate this MOU at any time by mutual written agreement. Termination may be either for cause or without cause, and notice of termination may be given at any time during the term of this MOU. Either Party may terminate this MOU without any obligation or liability to the other Party.

**10. Amendment and Modification; Waiver.** No amendment or modification of this MOU is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this MOU, (a) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this MOU will operate or be construed as a waiver thereof, and (b) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**11. Relationship of the Parties.** Nothing contained in this MOU shall be construed as creating an employment relationship between the Parties.

**12. Governing Law.** This MOU is governed by and to be construed in accordance with the laws of the State of Nebraska without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Nebraska.

**13. Assignment.** Neither Party shall assign any of its rights or delegate any of its obligations under this MOU without the prior written consent of the other Party, which shall not be unreasonably withheld. Any purported assignment or delegation in violation of this section is null and void.

**14. No Third-Party Beneficiaries.** Nothing herein shall be construed to confer upon any person or entity other than the Parties any rights or remedies under or by reason of this MOU.

**15. Counterparts.** This MOU may be executed in counterparts, each of which shall be an original, and which together shall constitute a single document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned authorized representatives of the Parties have executed this MOU on the dates indicated below, effective on the Effective Date.

**THE CITY OF MCCOOK, NEBRASKA**

**MCCOOK ECONOMIC DEVELOPMENT CORPORATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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