

ITEM#: 32
DATE: 08-23-22

COUNCIL ACTION FORM

SUBJECT: NEW LONG-TERM LAND LEASE AT THE AMES MUNICIPAL AIRPORT

BACKGROUND:

A new private hangar development has been proposed by Summit Agricultural Group, LLC (Summit). To facilitate this new development, the City staff worked with Summit to draft a long-term land lease. This new lease reflects the City's standard format for land lease at the Airport as approved for the other private hangars on July 1, 2022.

There are two adjustments to the standard hangar lease format in response to Summit's specific development needs. First, because there will be a mortgage on the improvements, the City's standard language under Section 3, "Lessor's Right to Terminate." has been modified to identify the scope of termination to only per FAA regulatory requirements for the first 20 years (while a lender is involved). After that period, when the improvements are expected to be paid off, the lease reverts to the standard language used in all other land leases, which allows termination if reasonable and necessary for Airport purposes. The second adjustment is that rather than a standard twenty-five-year lease term, this lease calls for a twenty-five-year initial term with the possibility to extend for another twenty-five years by mutual agreement. This longer term is in consideration for Summit investing approximately \$4.5 million at the Airport.

The proposed hangar is 17,300 square feet. The City's current land rental rate at the airport for FY 2022/23 is \$0.35 per square foot. Therefore, the annual lease amount for the first year will be \$6,055. All land leases at the Airport increase annually based on the 5-year Consumer Price Index (CPI-U), which is currently at approximately 2.7%. This would mean the first five-year lease period for this hangar is as follows:

Fiscal Year	Annual Rental Rate*
FY 22/23	\$6,055
FY 23/24	\$6,220
FY 24/25	\$6,389
FY 25/26	\$6,563
FY 26/27	\$6,742

*Because Summit has upfronted the cost of demolition and asbestos removal for the Ramp Service Building, the previously approved Development Agreement calls for a \$6,000 reduction in the annual rental fee up to the actual cost, not to exceed fifteen years (\$90,000 maximum).

Summit will also be required to make a lease payment for the fuel tank area which in the first year will be \$687. In addition, Summit estimates its annual fuel flowage to be up to 45,000 gallons, which at \$0.08/gal would provide \$3,600 in flowage fee revenue to the Airport the year. Summit also has plans to eventually base a third jet in the hangar.

ALTERNATIVES:

1. Approve the long-term land lease with Summit Agricultural Group, LLC for a new private hangar at the Ames Municipal Airport.
2. Reject the proposed lease.

MANAGER'S RECOMMENDED ACTION:

By approving the land lease, the Airport will see its first new private hangar development in several decades. It also marks the beginning of those private investment-driven improvements anticipated by the Airport Master Plan, which are critical for the long-term financial viability of the Airport. **Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as noted above.**

CITY OF AMES AND SUMMIT AVIATION, LLC

AIRPORT LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into effective the 1st day of July 2022, by and between the City of Ames, Iowa, a municipal corporation, hereinafter referred to as Lessor, and Summit Aviation, LLC, hereinafter referred to as Lessee.

Lessor owns and operates an airport within its corporate limits which is known as the Ames Municipal Airport, which includes certain aeronautical facilities, and is desirous of leasing to Lessee certain premises on that airport to be more fully described hereinafter, together with the right to use and enjoy individually and in common with others, the airport facilities.

Lessor and Lessee acknowledge that there is an existing hangar, known as the old ramp service hangar building, located at 2475 Airport Drive, that the parties contemplate will be demolished by the Lessee at Lessee's sole expense, pending an affirmative FAA airspace study. After demolition of the old ramp service hangar building, Lessor plans to build a new hangar based on an approved Minor Site Development Plan (Case No. SDP-001424). The parties enter into this lease agreement understanding that the new facility has not yet been constructed; however, the parties intend to start the leasing period upon approval of this document and subject the Lessee to all of the same terms and conditions required by the City of every party leasing hangar space at the municipal airport and have the initial term retroactive to July 1, 2022.

In consideration of the rents and agreements herein contained, Lessor does hereby lease to Lessee and Lessee does lease from Lessor the airport hangar area (approximately 17,300 square feet more or less, hereinafter the "Leased Area") shown on the graphic description attached as Exhibit 'A' upon the following terms and conditions:

1. Initial Term. The initial term of this Lease shall be for a period of five years commencing on July 1, 2022, and expiring at midnight on June 30, 2027.

2. Extended Terms. The initial term of this Lease may be extended at the option of the Lessee for nine successive periods of five years upon the same terms and conditions as provided in this Lease for the initial term, subject, however, to payment of additional rental as hereinafter provided. The option for each such extended term, shall be exercised by Lessee, if at all, by giving written notice thereof to Lessor not less than three (3) months prior to the expiration of the then current term.

3. Lessor's Right to Terminate. Notwithstanding any other rights of Lessor to terminate this Lease, Lessor shall have the right to terminate this lease and retake possession of the premises on not less than 180 days written notice to Lessee when necessary for Lessor's airport purposes, as may be required by the Federal Aviation Administration (FAA), or any successor thereof, in the first twenty (20) years of this Agreement.

After twenty (20) years from the date of this Agreement, the Lessor shall have the right to terminate this Lease and retake possession of the premises on not less than 180 days written notice to Lessee when reasonable and necessary for any reason related to Lessor's airport purposes, in the sole

judgment of the Lessor.

Any termination of this Lease during the initial term or during any extended term shall terminate all rights of extension hereunder. In the event of termination under this section, Lessee is not entitled to any payment, refund, or other compensation by Lessor.

4. Rent (Initial Term). The Lessee agrees to pay to the Lessor for the use of said premises herein mentioned, and for the nonexclusive use of other public airport facilities, including but not limited to taxiways and runways, an annual rental fee payable in full. The first annual payment is to be made on the date of the execution of this Agreement, and on each July 1st anniversary date of this Agreement so long as it shall remain in force. The Lessor agrees that all such yearly rental payments shall be used in total to support the operating budget of the Ames Municipal Airport during the year subsequent to each payment. For the Initial Term, the annual rental fee is established according to the following schedule:

Fiscal Year	Annual Rental Rate
FY 22/23	\$6,055
FY 23/24	\$6,220
FY 24/25	\$6,389
FY 25/26	\$6,563
FY 26/27	\$6,742

5. Rent (Extended Term). If the Lessee exercises an option to extend the term of this Lease, the five-year fee schedule shall be adjusted based upon the 60-month change of the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items (1982-84=100) as published by the United States Bureau of Labor Statistics (the "Index"). The Adjustment Factor will be not less than 1.00 percent. The annual rental rate for each year of the extended term shall be the amount of the preceding term multiplied by the Adjustment Factor rounded to the nearest dollar.

The Index value published for the month of September (eleven months prior to the beginning of the extended term) will be the Current Index Value. The Index value for September published 60 months prior will be the Original Index Value. The Adjustment Factor will be the sum of 1.0 and the Current Index Value less the Original Index Value divided by the Original Index Value divided by 5. The Annual Rental Rate for each of the five years preceding the extended term shall be multiplied by the Adjustment Factor and rounded to determine the fee schedule for each of the successive five years of the extended term.

For example, if the last previous Index value were 274.310 and the Index value 60 months preceding were 241.428, the formula would be: $1 + (((274.310 - 241.428)/241.428)/5) = 1.027$. Therefore, rounding to the nearest whole dollar, Year 1 of the extended term would be $\$2,335 \times 1.027 = \$2,398$. Year 2 of the extended term would be $\$2,398 \times 1.027 = \$2,463$.

6. Utilities. Lessee agrees to furnish and pay for their own heat and all public utilities including but not limited to gas, water, electricity, and sewage disposal service, if any; and to pay any and all taxes and/or assessments that may be levied against said premises.

7. Use Limitation. Lessee shall use the leased premises, and the building located thereon, for the following specified purposes only:

- a. flight training school,
- b. aircraft maintenance and repair, with lubricating oil sales,
- c. aircraft rental,
- d. aircraft hangar space rental,
- e. aircraft insurance,
- f. aircraft sales and service, and
- g. aircraft charter service,

provided that those activities are conducted in accordance with the Operation Standards for Ames Municipal Airport adopted by Ames City Council Resolution 97-590, November 13, 1997, as the same may be amended from time to time. Storage of items that are not enumerated above, or of a non-aviation related nature in the sole judgment of the Lessor, shall be prohibited and shall be grounds for termination of this Lease by Lessor.

It is further provided that Lessee shall not engage in the storage, sale, or dispensing of any form of fuel on the leased premises without first entering into an addendum to this Agreement to establish relevant standards for methods of fuel storage, flowage fees, and other relevant terms and conditions to protect the public safety, preserve the public property at the airport, and foster adequate levels of service to aviators using the airport. Violations by Lessee of the fuel storage prohibition without entering into an addendum to this Agreement with the City regarding the storage, sale and dispensing of the same, shall be grounds for immediate termination of this Agreement by Lessor. Lessee may store and dispense fuel on the leased premises only in accordance with both a valid City Self-Fueling Permit authorizing such activity and a signed Fuel Addendum to this Agreement in a form approved by Lessor that sets the terms of such activity.

8. Removal of Improvements. Lessee shall retain title to all structures and buildings placed upon said premises and shall have the right to remove the same upon the termination or cancellation of this lease. Lessee shall bear the cost of repairing any physical injury caused to the Leased Area by such removal and shall restore the Leased Area to the condition it existed prior to making any additions or alterations. All improvements shall be deemed abandoned and shall become the property of the Lessor if Lessee fails to remove said improvements within 180 days of termination of this Lease.

9. Lessee/Lessor Obligations. The parties hereto for themselves, their legal representatives, successors and assigns, further covenant and agree as follows:

- a. Lessee agrees to observe and obey during the term of this lease all laws, ordinances, rules, and regulations promulgated and enforced by Lessor, and by any other proper authority having jurisdiction over the conduct of operations at the airport. This includes the Airport Operations Standards which may be amended from time to time by the City Manager. Lessee shall apply to the City Building Official for such permits and certificate of occupancy as may be required for the proposed use of the building on the leased premises under applicable building code and for prevention code provisions.
- b. So long as Lessee conducts its operations in a fair, reasonable and a

workmanlike manner, Lessee shall peaceably have and enjoy the leased premises, and all the rights and privileges herein granted.

- c. Lessee agrees that no signs or advertising matter may be erected without the consent of Lessor
- d. Lessor hereby designates the City Manager as its official representative, with the full power to represent Lessor in all dealings with Lessee in connection with the 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.
- e. Notice to Lessor as herein provided shall be sufficient if sent by certified mail, postage prepaid, to the City Manager of the City of Ames at Ames, Iowa, and notice to Lessee in the same manner, shall likewise be sufficient if addressed to Lessee at Ames, Iowa, or such other address as may be designated by Lessee from time to time.
- f. Lessee shall keep the premises, as particularly described herein, clean and shall dispose of all debris and other waste matter which may accumulate, and shall provide metal containers, with property covers, for waste within the building or buildings now erected on said premises.

10. Insurance. Lessee shall procure and maintain for the entire duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the Lessee's operation and use of the leased premises. The Lessee shall pay the entire cost of such insurance.

Coverage shall, in every case, be in the following form and amounts:

General Liability: ISO Commercial General Liability coverage "occurrence" form CG 00 01, in the amount of \$1,000,000 combined single limit per occurrence of bodily injury, personal or property damage.

Automobile Liability: ISO form number CA00 01-87 covering automobile liability, Code 1 "Any Auto" in the amount of \$500,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.

Workers' Compensation: Statutory as required by the State of Iowa.

To the fullest extent permitted by law, the Lessee shall indemnify and hold harmless the City of Ames, its agents, servants, and employees against all claims, demands, and judgments made or recovered against the City for damages to real or tangible personal property, or for bodily injury or death to any person arising out of, or in connection with, this Lease Agreement, provided that the damage was due to the recklessness or negligence (in whole or in part) of the Lessee, sublessee, or

anyone directly or indirectly employed by or acting on behalf of any one of them. The foregoing indemnity shall survive the expiration or earlier termination of this Lease Agreement.

Lessee shall furnish the City with certificates of insurance effecting coverage required by this clause. The certification shall provide for 30 days' notice of any material change or cancellation of the policies.

11. Emergency Services. Lessor agrees to extend to Lessee the same fire and police protection extended to the other tenants and facilities on the airport.

12. Grounds Maintenance. The Lessor agrees to provide mowing of public grounds, during the growing season as appropriate and to provide snow removal for taxi ways, runways, and public driveways as required. Any maintenance not assumed by Lessor shall be the responsibility of Lessee.

13. Termination for Nonpayment. Failure on the part of Lessee to pay the rent hereunder within thirty (30) days after the same shall become due and Lessee has been advised of said nonpayment shall authorize Lessor, at its option and without any legal proceedings, to declare this lease void, cancel the same, and re-enter and take possession of the premises, or, at Lessor's option, the entire amount of rent, payable hereunder may be declared due and payable at once and action brought for the recovery of the same.

14. Liens. Lessee shall do all things necessary to prevent the filing of any mechanics' or other liens against the Leased Area or any party thereof by reason of work, labor, services, or material supplied or claimed to have been supplied to Lessee. Lessee shall have no right to mortgage the real property upon which the Site is located.

15. Surrender of Premises. If Lessee shall violate any of the terms in this lease, or shall fail to keep any of its covenants after written notice to cease such violation and a reasonable time thereafter to correct same, Lessor may at once, if it so elects, terminate the same and take possession of the premises. Upon the termination of this Lease, Lessee shall surrender, yield up and deliver the Leased Area in good and clean condition, except for the effects of ordinary wear and tear and depreciation arising from Lapse of time, or damage without fault or liability of Lessee.

16. Lessor's Right of Entry. Lessor reserves the right to enter upon the premises at any reasonable time for the purpose of making any inspection it may deem expedient to the property enforcement of any of the covenants or conditions of this Agreement.

17. Landing Area. Lessor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of Lessee, without any interference or hindrance. Lessor reserves the right to direct and control all activities of Lessee in connection with the use of the landing area.

18. Maintenance of Public Areas. Lessor shall maintain all the public-owned facilities of the airport that are not the subject of this Lease Agreement. Lessor further agrees to perform all normal maintenance and upkeep on the landing area, and to maintain all publicly owned facilities.

19. Obstructions. 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.

20. Outside Storage. Leased land used for the purpose of parking aircraft must be on paved surfaces as approved by the Lessor. Outside storage of damaged or salvaged aircraft shall not be permitted.

21. National Emergencies. During time of war or national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use, and, if any such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provision of the lease to the Government, shall be suspended.

22. Federal Obligations. This lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States, 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.

23. Anti-discrimination. The Lessee, in the operation and use of the leased premises, and the Ames Municipal Airport will not, on the grounds of race, color, or national origin, discriminate or permit discrimination against any persons or group of persons in any manner prohibited by Part 15 of the Federal Aviation regulations, and Lessor and the United States Government shall have the right to take such action as the government may direct to enforce this paragraph.

24. Prohibition on Sublease. This lease shall not be assigned, transferred, or subleased--either in whole or in any part--in any form without the prior written approval of the Lessor. Failure to seek approval of any sublease shall be grounds for termination of this lease by Lessor. Lessee shall not enter into any agreement to sublease space at a rate higher than the rate Lessee owes Lessor under this agreement or any extension thereof. Any proposed sublease shall be in writing and shall be provided to Lessor for consideration at the time Lessor's consent is sought.

25. Notices. Unless otherwise required by law, any notice or demand required or permitted by the terms of this Lease shall be sufficient and deemed complete when expressed in writing and either (a) personally delivered to the person entitled thereto, or (b) deposited at any office of the United States Postal Service in the form of certified mail addressed to the last known mailing address of the person entitled thereto, or (c) served on the person entitled thereto in the manner of an original notice under the Iowa Rules of Civil Procedure.

26. Rights Cumulative. The various rights, powers, options, elections and remedies of either party provided in this Lease, shall be construed as cumulative and no one of them as exclusive of the others, or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled so long as any default remains in any way unremedied, unsatisfied or undischarged.

27. Entire Agreement. This instrument constitutes the entire agreement between the parties

with respect to the subject matter thereof and supersedes all prior statements, representations, promises and agreements, oral or written. No addition to or change in the terms of this agreement shall be binding upon the parties unless it is expressed in a writing signed by the parties.

28. Successors Bound. This Lease shall be binding upon and inure to the benefit of the respective successors and assigns of all parties executing this Lease.

29. Severability. If any part of this Lease shall be adjudged invalid or unenforceable, such adjudication shall not affect the validity or enforceability of this Lease as a whole or any part thereof not adjudged invalid or unenforceable.

30. Interpretation. Words and phrases used in this Lease shall be construed as in the single or plural number, and as masculine, feminine or neuter gender, according to the context. This agreement shall be governed exclusively by and construed in accordance with the laws of the State of Iowa. The paragraph headings in this agreement are for convenience only and in no way define or limit the scope or intent of any provisions of this agreement.

31. Multiple Copies. This Lease may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands and signatures the day and year first above written.

SUMMIT AVIATION, LLC

Dated _____, 2022.

By: _____

Printed Name and Title

Attachment: Exhibit 'A' – Plat/Drawing of Leased Area

Passed and approved on _____, 2022, by Resolution No. 22-_____
adopted by the City Council of the City of Ames, Iowa.

CITY OF AMES, IOWA

By: _____

John A. Haila, Mayor

Attest: _____

Renee Hall, City Clerk

Land Lease: Exhibit A

