



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**September 10, 2020**

Department Administration

Director Approval *Kelly Passauer*

**AGENDA ITEM** Consider approving the revised lease and the revised maintenance agreements with the Independence Gun Club.

**SUMMARY RECOMMENDATION** City staff recommends approval.

**BACKGROUND** On June 25, 2020 the City Commission authorized requesting FAA approval of a new building at the Independence Airport Gun Club, and approved the updated and modified lease agreement prepared by the City Attorney. At the meeting Mark Leaman representing the Gun Club asked if the amount included in the maintenance agreement could equal the amount included in the lease agreement. Prior to 2005, the lease agreement for the Gun Club was \$1 per year. The FAA reviewed the City's leases and determined that the City must charge market rent. It was at that time the lease agreement was modified as requested by the FAA.

As stated in the June 25, 2020 RCA, the original lease and maintenance agreements were approved on February 24, 2005. At that time the Independence Gun Club was to pay the City \$94.71 per month for the lease, and the City was to pay the Independence Gun Club \$69.71 per month for maintenance around the Rifle Berm. These amounts were to be adjusted every five years to reflect any increase in the Consumer Price Index, which would have increased the amounts in 2010, 2015, and 2020. It appears that this did not occur, therefore, the new lease reflected what the current amount should be based applying the cumulative CPI rate since March 2005 through March 2020 which is 28.38% for the Kansas City Region (Midwest Area). The revised amounts previously presented were \$121.59 for the lease, and \$89.49 for the maintenance agreement.

In speaking with the FAA they made two modifications to the lease, one related to ensuring the lease and any renewals do not exceed a grand total of more than 50 years; and another related to ensuring the Gun Club's activities do not affect the safety of the airport. The lease agreement that was approved on June 25, 2020 was not signed by the Independence Gun Club as they wanted an answer regarding their question regarding whether the amount of the maintenance agreement could equal the amount of the lease agreement. The lease has been updated to reflect the modifications as requested by the FAA.

As reported at the August 27, 2020 Commission meeting, the FAA indicated that the property must be formally changed from aeronautical land to non-aeronautical land, which requires written notice of the change in the Federal Register and a metes and bounds land description.

Once this is done, the ALP and Exhibit A will need to be updated along with your request to do the change for the gun range purpose. When asked if we have to get the property reclassified before approving the lease they indicated not necessarily, but urged us to get the process started as soon as possible since it will take anywhere from 45 – 60 days to complete, which includes a 30 day public comment period in the Federal Register.

As approved by the Commission at the August 27, 2020 meeting the metes and bounds land description has been ordered in the amount of \$1,500 plus reimbursables (which is \$300 less than originally proposed at \$1,800). Once this is complete, Matt Jacobs with Lochner will be assisting the City with the remainder of the process.

City staff was unable to find any reason that the maintenance agreement could not equal the lease agreement, therefore the maintenance agreement has been revised to reflect the same amount as the lease, \$121.59 per month.

**BUDGET IMPACT** The budget impact would consist of the loss of \$25 per month in revenue based on the rate that has been charged since 2005, or \$300 annually.

## **SUGGESTED MOTIONS**

I move to approve the revised Independence Gun Club lease as prepared by the City Attorney with modifications as requested by the FAA.

I move to approve the revised maintenance agreement as prepared by the City Attorney.

## **SUPPORTING DOCUMENTS**

1. Revised Lease
2. Revised Maintenance Agreement

## LEASE AGREEMENT

*This Agreement* is effective on the 1st day of July, 2020, between the City of Independence, Kansas, a municipal corporation, hereafter Lessor, and the Independence Gun Club, a Kansas non-profit corporation, hereafter Lessee.

1. **Property:** Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, certain property known as the Skeet Range located in the southeast corner of the Independence Municipal Airport, said property being rectangular in shape bounded by Third Avenue on the west and Sixth Avenue on the east, and A Street on the south and B Street on the north. A map showing the location of the property at the Independence Municipal Airport is attached hereto and incorporated herein by reference as Exhibit A.

2. **Term:** The lease shall be for a term of five (5) years, commencing July 1, 2020, and ending June 30, 2025. The lease shall automatically renew for up to eight (8) successive five (5) year terms unless either party gives the other party notice of its intent to terminate the lease at least thirty (30) days prior to the expiration of the current term of the lease. Under no circumstances shall the term of the lease exceed fifty (50) years.

3. **Early Termination:** Either party may terminate this agreement upon thirty (30) days' written notice to the other party.

4. **Use of Premises:** The property which is the subject of this lease shall be used by Lessee as a skeet range, and for related gun club activities.

5. **Lease Payment:** Lessee shall pay Lessor a monthly lease payment of \$121.59 payable in advance. The lease payment payable during any extension or renewal term shall be adjusted upward to reflect any increase in the Consumer Price Index (CPI), Kansas City Region, as published by the Department of Commerce of the United States of America. The adjustment

shall be computed as of the first day of each renewal term and shall be applicable for the entire five (5) year renewal term.

6. **Prohibited Uses:** Lessee shall not permit any use of the property in such a manner that would unreasonably interfere with the use, enjoyment or safety of the adjoining airport property and airport facilities. Specifically, Lessee shall not permit any participants or users of the property to engage in a line of fire in the direction of airport facilities, infrastructure, equipment or amenities.

7. **Compliance with Applicable Laws:** Lessee shall comply with all federal, state and local statutes, laws, ordinances, rules and regulations.

8. **Subordination of Lessee's Rights:** Lessee's rights to possession, use and enjoyment of the property shall be subject and subordinate to the following:

- a. Any existing or future federal or state statutes, or any existing or future leases or agreements between Lessor and the United States or the State of Kansas pertaining to the development, construction, operation or maintenance of Independence Municipal Airport, the execution of which may be required as a condition precedent to the receipt or expenditure of federal or state funds for the development, maintenance or construction of Independence Municipal Airport.
- b. Any existing or future agreements, leases, or deeds granted or entered into by and between Lessor and the United States with reference to the conveyance by the United States to Lessor of any real or personal property at the Independence Municipal Airport.
- c. Any existing or future agreements between Lessor and the United States for the military use of all or part of the Independence Municipal Airport.
- d. FAA approval.

9. **Indemnification:** Lessee agrees to indemnify and hold harmless Lessor, its agents and employees, from any and all liability or loss resulting from claims or liability arising directly or indirectly out of the activity of Lessee, its agents, employees, guests or business visitors by reason of any act or omission of such person or persons.

10. **Improvements:** Lessor grants Lessee permission to construct an additional building on the property so long as the building is in compliance with all terms and conditions of this agreement and does not obstruct use of the Independence Municipal Airport or violate any FAA rules or regulations. Lessee has made certain improvements to the property which are described in Exhibit B attached hereto and incorporated herein by reference. Any improvements made by Lessee may be removed by Lessee upon termination of the lease so long as removal does not damage or impair Lessor's property. Any improvements existing at time of termination of the lease which are not removed by Lessee shall become the property of Lessor and Lessor shall not be required to compensate Lessee for the same.

11. **Damage to Improvements:** In the event any improvements located on the property are destroyed or rendered unusable by fire or other casualty loss, Lessor shall be under no obligation to repair or replace such improvements. In the event of such occurrence, either party may elect to terminate the lease.

12. **Insurance:** Lessee shall at all times maintain general liability insurance in an amount not less than \$500,000.00 per occurrence and shall name Lessor as an additional insured. It shall be Lessee's sole responsibility to insure improvements located on the property.

13. **Nondiscrimination:** Lessee shall maintain and operate the property in compliance with state and federal statutes and regulations governing nondiscrimination as follows:

- a. No person shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination of the use of the property on the basis of race, color, national origin, sex, religion or disability.
- b. No person shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination as to the hiring or contracting for services furnished during the construction of any improvements on the property on the basis of race, color, national origin, sex, religion or disability.
- c. Lessee shall use the premises in compliance with all state and federal statutes and regulations specifically including those set forth in 49CFR, Part

21, dealing with nondiscrimination in federally assisted programs of the Department of Transportation.

14. **Entry by Lessor:** Lessor shall have the right to enter upon the property for purposes of inspecting the property and for any other purpose reasonably related to this agreement.

15. **Airport Maintenance and Improvements:** Maintenance and improvements to Independence Municipal Airport shall be the responsibility of Lessor and shall be undertaken as deemed appropriate in Lessor's sole discretion without obligation to Lessee and without interference or hindrance by Lessee.

16. **Non-interference by Lessee:** Lessee shall not exercise any rights granted under this lease in such a manner as to interfere or adversely affect the use, operation, maintenance and development of Independence Municipal Airport as determined in the sole discretion of Lessor.

17. **Obstructions:** Lessor shall have the right to take any action it considers necessary to protect the aerial approaches to Independence Municipal Airport against obstruction, including the right to prevent Lessee from erecting or permitting to be erected any building or structure on the property which, in the opinion of Lessor, may limit or obstruct use of Independence Municipal Airport or constitute a hazard to aircraft.

18. **Air Easement:** Lessor reserves, and Lessee hereby grants to Lessor, an easement of the air space above the surface of the property for the use and benefit of the general public for the purpose of free and unrestricted flight of aircraft together with the right to cause such noise as may be inherent in the operation of aircraft.

19. **War or National Emergency:** During the 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 diagonal or other areas or facilities of the Independence Municipal Airport. If any such

agreement is executed, the provisions of this lease, insofar as they are inconsistent with the provisions of such an agreement with the government, shall be suspended.

20. **Non-assignment:** Lessee shall not assign or sublease any rights under this lease or any portion of the property without prior written consent of Lessor.

21. **Binding Effect:** This agreement shall be binding upon the heirs, successors and assigns of the parties hereto.

*In Witness Whereof*, the parties have executed this lease agreement as of the day and year first written above.

**LESSOR**  
**CITY OF INDEPENDENCE, KANSAS**

By: \_\_\_\_\_  
LEONHARD CAFLISCH, Mayor

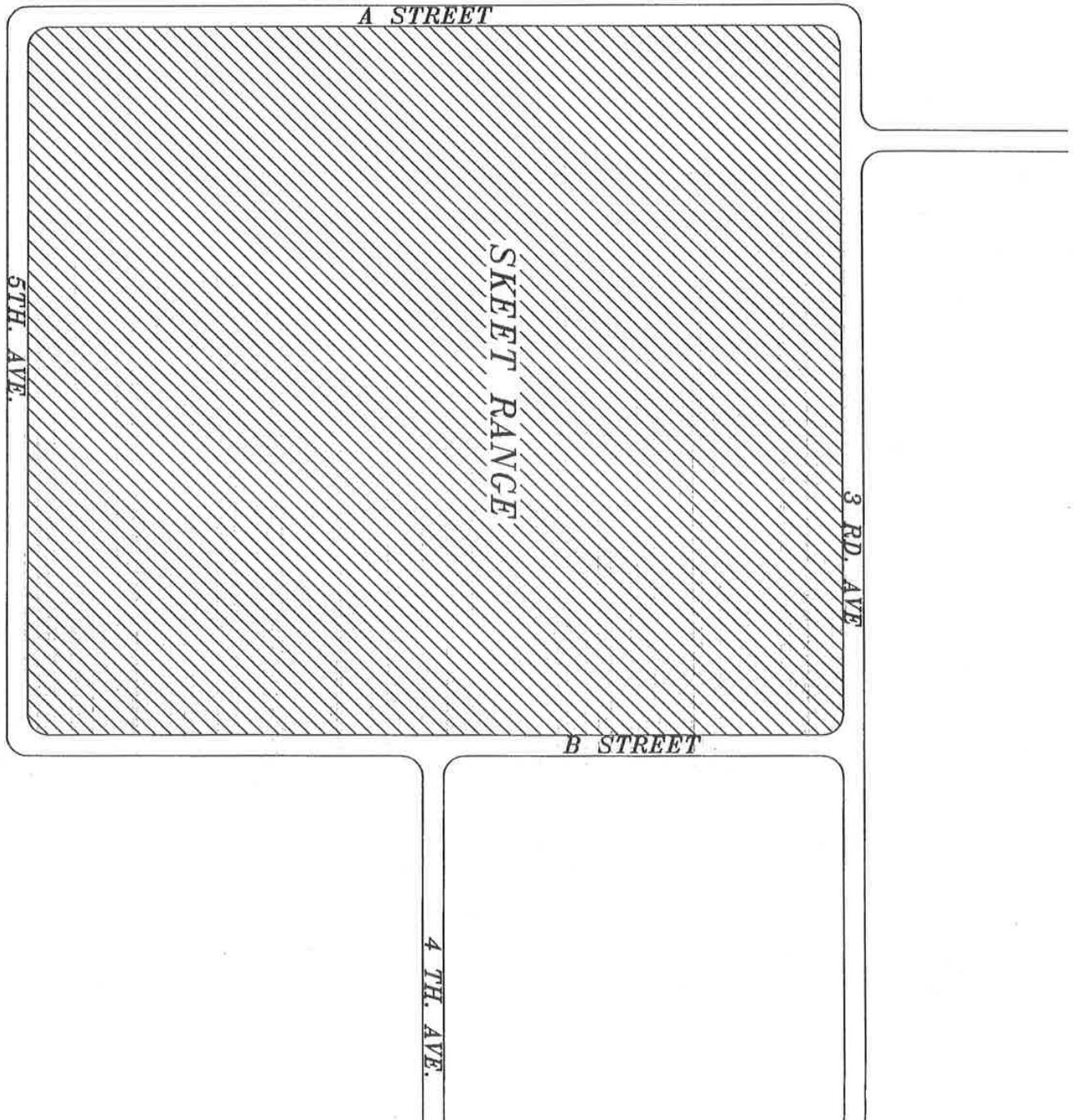
ATTEST:

\_\_\_\_\_  
DAVID W. SCHWENKER, City Clerk

**LESSEE**  
**INDEPENDENCE GUN CLUB**

By: \_\_\_\_\_  
MARK LEAMAN  
Title:

EXHIBIT "A"



## MAINTENANCE AGREEMENT

*This Agreement* is entered into effective is effective on the 1st day of July, 2020, between the City of Independence, Kansas, a municipal corporation, hereafter Owner, and the Independence Gun Club, a Kansas non-profit corporation, hereafter Contractor.

1. **Property:** Owner currently owns certain property known as the Rifle Berm located in the general southeast area of the Independence Municipal Airport. A map showing the location of the Rifle Berm at the Independence Municipal Airport is attached hereto and incorporated herein as Exhibit A.

2. **Services:** Contractor agrees to perform maintenance services for Owner at and around the Rifle Berm located at Independence Municipal Airport, including specifically: mowing, weed removal and eradication, debris and trash removal, and general cleanup responsibilities. Owner reserves the right to modify Contractor's duties.

3. **Term:** This agreement shall be for a month-to-month term beginning July 1, 2020. Either party may terminate this agreement by thirty (30) days' notice to the other party.

4. **Compensation:** Owner shall pay Contractor the monthly sum of \$121.59 for said services payable at the end of each month. The amount paid to Contractor shall be adjusted upward every five (5) years to reflect any increase in the Consumer Price Index (CPI), Kansas City region, as published by the Department of Commerce of the United States of America. The adjustment shall be computed as of the first day following each period of five (5) years and shall be effective for the following five (5) years.

5. **Compliance with Applicable Laws:** Contractor shall comply with all federal, state and local statutes, laws, ordinances, rules and regulations.

6. **Non-assignment:** Contractor shall not assign or sublease any rights under this lease or any portion of the property without prior written consent of Owner.

7. **Binding Effect:** This agreement shall be binding upon the heirs, successors and assigns of the parties hereto.

*In Witness Whereof*, the parties have executed this lease agreement as of the day and year first written above.

**OWNER  
CITY OF INDEPENDENCE, KANSAS**

By: \_\_\_\_\_  
LEONHARD CAFLISCH, Mayor

ATTEST:

\_\_\_\_\_  
DAVID W. SCHWENKER, City Clerk

**CONTRACTOR  
INDEPENDENCE GUN CLUB**

By: \_\_\_\_\_  
MARK LEAMAN  
Title:

EXHIBIT "A"

