

BILL NO. 24-18

ORDINANCE NO. 24-18

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF FREDERICKTOWN, MISSOURI, TO EXECUTE AN AGREEMENT BY AND BETWEEN THE CITY OF FREDERICKTOWN AND SWINFORD PROPERTIES, LLC RELATIVE TO PURCHASE OF REAL ESTATE BY THE AIRPORT; FURTHER SAID ORDINANCE SHALL AUTHORIZE AND DIRECT THE CITY CLERK TO ATTEST THE SIGNATURE OF THE MAYOR.

WHEREAS, real estate abutting the airport is available for purchase and the airport operations are in need of additional space for hangars and other expansion; and

WHEREAS, the Mayor and Board of Aldermen of the City of Fredericktown, Missouri, have heretofore reviewed the agreement marked Exhibit "A", attached hereto, and incorporated herein as if fully set forth; and

WHEREAS, the Mayor and Board of Aldermen of the City of Fredericktown, Missouri, deem it advisable to enter into said agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FREDERICKTOWN, MISSOURI, AS FOLLOWS:

Section 1. That the Mayor and Board of Aldermen for the City of Fredericktown, Missouri, approve the agreement marked Exhibit "A", which is attached hereto and incorporated herein as if fully set forth, between the City of Fredericktown and Swinford Properties, LLC for the purposes set forth hereinabove together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. It is the belief of the Mayor and Board of Aldermen that it is in the best interest of the citizens of the City of Fredericktown, Missouri, that the City enter into said agreement.

Section 2. That the Mayor, and other appropriate City officials, are hereby authorized to execute the agreement in substantially the form as Exhibit A for and on behalf of the City of Fredericktown, Missouri and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

Section 3. That the City Clerk of the City of Fredericktown is hereby authorized and directed to attest to the signature of the Mayor on the said agreement.

Section 4. If any section, subsection, sentence, clause or phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 5. This Ordinance shall take effect and be in force from and after its passage and approval by the Board of Aldermen and after its approval and execution by the Mayor.

THIS ORDINANCE having been read by title only this 13<sup>th</sup> day of May, the Board of Aldermen voted as follows:

Long	<u>aye</u>	Brown	<u>aye</u>
Polete	<u>aye</u>	<del>Miller</del> Reese	<u>aye</u>
Jones	<u>aye</u>	Shankle	<u>aye</u>

THIS ORDINANCE having been read by title only the second time on this 13<sup>th</sup> day of May, the Board of Aldermen voted as follows:

Long	<u>aye</u>	Brown	<u>aye</u>
Polete	<u>aye</u>	<del>Miller</del> Reese	<u>aye</u>
Jones	<u>aye</u>	Shankle	<u>aye</u>

PASSED AND APPROVED this 13<sup>th</sup> day of May, by 6 ayes, 0 nays,  
0 abstentions and 0 absentees.

CITY OF FREDERICKTOWN, MISSOURI

By: Would not sign  
Travis Parker, Mayor

ATTEST:

Theresa Harbison  
Theresa Harbison, City Clerk

## REAL ESTATE SALE CONTRACT

THIS REAL ESTATE SALE CONTRACT (the "Contract") is made this 28 day of May 2024, by and between Swinford Properties, LLC, a Missouri limited liability company, or its assigns ("Seller"), and City of Fredericktown, Missouri, a municipal corporation, or its assigns ("Buyer").

1. **Purchase.** Subject to the terms and provisions of this Contract, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of the following described property (collectively the "Property"):
  - (a) The land described on Exhibit A, located on Route OO north of Fredericktown in the County of Madison State of Missouri ("Land");
  - (b) All right, title and interest of Seller in and to all public and private streets, roads, avenues, alleys and passageways, opened or proposed, in front of or abutting the Land; and
  - (c) All and singular the estates, rights, privileges, easements and appurtenances belonging or in anywise appertaining to the Land.
  
2. **Purchase Price.** The purchase price is Two Hundred and Sixty-five Thousand and 00/100 Dollars (\$265,000.00) (the "Purchase Price"). On the Closing Date, Buyer shall pay the Seller the Purchase Price by cash, certified check or wire transfer, for the purchase of the Property. Seller shall deliver to Buyer on the Closing Date a General Warranty Deed conveying the Property to Buyer.
  
3. **Closing.** The sale and purchase of the Property shall be closed on or before July 10, 2024, or such other date as Buyer and Seller shall mutually agree in writing (the "Closing Date"). The Closing shall be at the offices of Madison County Title ("Title Company") and possession shall be delivered to Buyer on the Closing date.
  
4. **Sign Easement.** Subject to the terms stated herein, Seller shall retain a sign easement:
  - (a) Within sixty days of the Effective Date, Seller shall obtain a survey, at Seller's expense, of a tract no larger than 500 sq. ft. in the southwest corner of Tract #6 of the Land described in Exhibit A. Said easement tract shall follow the southwest boundary lines of the Land leaving no uneconomic remnant; the location and dimensions of the tract are subject to Buyer's approval. Seller shall provide Buyer with a copy of the survey upon receipt.
  
  - (b) At Closing Seller's General Warranty Deed shall retain an easement over said surveyed tract substantially as follows: "Grantor hereby retains a perpetual easement for construction, maintenance, repair, dismantling, replacement, alteration, improvement, operation, illumination and use of one (1) outdoor sign structure no larger than 12' x 8', appurtenances and related property and equipment (the "Sign") over, under, upon and across that portion of the Property (the "Sign Easement") legally described and depicted on Exhibit "B" attached hereto and by this reference incorporated herein (the "Sign Easement Area"). Provided, however, no use of the Sign Easement Area may obstruct, hinder or otherwise interfere with the use by Grantee, its agents and assigns, of Grantee's

property as an airport or for other aviation related uses and activities. All signs are required to transfer a twenty-five (25) pound per square foot wind load safely to the ground.”

**5. Commitment and Policy of Title Insurance.**

- (a) Within five (5) days after the date of this Contract, Buyer will order a commitment (“Commitment”) for an ALTA standard form Owner’s Title Insurance Policy, issued through an agent of the Title Company, describing the Property, listing Buyer as the prospective named insured and showing as the policy amount the Purchase Price for the Property.
- (b) Buyer shall have twenty (20) days after receipt of the Commitment in which to notify Seller in writing of any objections Buyer have to any matters which are shown in the Commitment (“Title Review Period”). Those items to which Buyer do not object within the Title Review Period shall be deemed to be permitted exceptions to the status of Seller’ title (“Permitted Exceptions”). Should Buyer deliver to Seller their written objections to any title matters on the Commitment prior to expiration of the Title Review Period, Seller will notify Buyer within ten (10) days of receipt of Buyer’ title objection notice as to which objections, if any, Seller will remove or cure, and Seller shall have until Closing to remove or cure all such defects or objections. If Seller are unwilling to cure such objections, it being understood that Seller are not required to cure any such objections, Buyer may, at Buyer’ option, (1) terminate this Contract by written notice to Seller or (2) waive the objections not cured (in which event the same shall become “Permitted Exceptions”) and proceed to Closing.

- 6. Environmental Site Assessment.** Buyer will be entitled to a period commencing on the Effective Date and expiring on the sixtieth (60th) day following the Effective Date (the “Investigation Period”), during which time Buyer may investigate and inspect the Property for its physical condition, including environmental hazards, to determine the availability of adequate utility service, and to determine the current zoning of the Property and its suitability for Buyer’s intended use. The investigation may include a Phase I and/or Phase II, including testing of the soil, groundwater, surface water and any improvements on the Property and may include the drilling of one or more core test holes and soil samples. If, on or before the expiration of the Investigation Period, Buyer shall, for any reason whatsoever, in Buyer’s sole and absolute discretion, disapprove or shall be dissatisfied with any aspect of the Property, then Buyer shall be entitled to terminate this Contract by giving written notice thereof to Seller whereupon this Contract shall be of no further force and effect.

**7. Conditions Precedent the Parties’ Obligations to Close.**

- (a) Buyer’s obligation to consummate the transaction contemplated hereunder is conditioned upon satisfaction of each of the following conditions at or before the Closing:
  - (1) Seller will have performed and complied with all of their obligations within the periods provided herein;

- (2) A commitment from the Title Company that the policy of insurance previously referred to herein will insure indefeasible fee simple title with Permitted Exceptions to Buyer;
- (3) Satisfactory completion, in Buyer's sole discretion, of an Environmental Site Assessment; and
- (4) Receipt of a survey for the Sign Easement Area in a location and dimensions approved by Buyer.

If all of the above conditions are not satisfied at the earlier of Closing or the date made specifically applicable to a particular condition, Buyer may cancel this Contract by written notice to Seller.

- (b) Seller's obligation to consummate the transaction contemplated hereunder is conditioned upon satisfaction of each of the following conditions at or before the Closing:
  - (1) Buyer will have performed, or complied with all of their obligations within the periods provided herein.

If all of the above conditions are not satisfied at or before the Closing, Seller may cancel this Contract by written notice to Buyer.

8. **Prorations.** All property taxes and all installments of special assessments against the Property which are due and payable for the year of Closing shall be prorated between Seller and Buyer as of the date of Closing.
9. **Closing Costs.** Seller agrees to pay the fee for the title search needed for issuance of the title commitment. Seller shall pay for the cost of preparing the General Warranty Deed and any other documents necessary to transfer title as stated herein to Buyer. Buyer agrees to pay all recording fees with respect to the transfer of the Property. Buyer further agree to pay the cost for the Buyer' Owner's Title Policy. The parties agree to share equally any escrow charges of the Title Company and any other Closing costs.
10. **Casualty or Condemnation.** If before the Closing, any of the improvements on the Property are destroyed or substantially damaged by fire or any other casualty or any substantial part of the Property shall be taken by condemnation (including a deed given in lieu thereof), Buyer shall have the option of enforcing this Contract (and in such event the insurance proceeds or condemnation award shall belong to Buyer) or canceling the Contract by written notice given within ten (10) days thereafter. If canceled, this Contract shall be null and void, and the parties' obligations hereunder shall be of no further force and effect and the earnest money shall be returned to Buyer.
11. **Default.** If there has been performance of this Contract on the part of Seller, and Buyer default hereunder, then Seller shall be entitled to pursue all remedies available at law and equity, including, without limitation, specific performance. If there has been performance of this Contract on the part of Buyer, and Seller default hereunder, then Buyer shall be entitled to pursue all remedies available at law and equity, including, without limitation, specific performance.
12. **Attorneys' Fees.** In the event either party fails to perform any of its obligations under this Contract or in the event a dispute arises concerning the meaning or interpretation of any

provisions of this Contract, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees.

13. **Real Estate Commission.** Seller and Buyer represent each to the other that neither has dealt with a realtor or broker and each party agrees to indemnify and hold the other harmless from and against any and all claims, liabilities, and expense (including attorney's fees) arising from a breach of this representation and for any claim for commission through such party, which indemnity shall survive the closing or earlier termination of this transaction. The parties acknowledge that Gabriel Swinford, a member of Swinford Properties, LLC, is a licensed real estate agent; however, he was not serving as a realtor or broker for either party in this transaction.
14. **Entire Agreement.** The terms and conditions of this Contract shall constitute the complete agreement between Seller and Buyer and there are no other agreements, undertakings, guarantees or warranties whatsoever, express or implied, except as contained herein. All amendments to this Contract shall be in writing and executed by the parties.
15. **Notices.** All notices, demands, requests and other communications required or permitted hereunder will be in writing, and will be deemed delivered on the earlier of (i) posting of registered or certified mail, addressed to the addressee at its address set forth below or at such other address as such party may have specified theretofore by notice delivered in accordance with this Paragraph or (ii) actual receipt by the addressee:
  - If to Seller:    Gabriel Swinford  
P O Box 597  
Fredericktown, MO 63645
  
  - If to Buyer:    James Settle, City Administrator  
City of Fredericktown  
124 West Main Street  
P. O. Box 549  
Fredericktown, MO 63645
  
  - With a copy to:    Mary Eftink Boner, Esq.  
608 West Main  
P. O. Box 310  
Jackson, Missouri 63755
16. **Governing Law and Venue.** This Contract shall be governed by and construed in accordance with the laws of the State of Missouri. The exclusive venue for any legal action arising out of this Contract shall lie in Madison County, Missouri.
17. **Counterpart Execution.** This Contract may be executed in several counterparts, each of which will be fully effective as an original and all of which together will form the same instrument.
18. **Invalid Provisions.** If any one or more of the provisions of this Contract, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and

enforceable, and the validity and enforceability of all other provisions of this Contract and all other applications of any such provision shall not be affected by such modification.

19. **Binding Effect.** This Contract shall be binding upon and inure to the benefit of Seller and Buyer, and their respective heirs, personal representatives, successors and assigns. Except as expressly provided herein, nothing in this Contract is intended to confer on any person, other than the Parties hereto and their respective heirs, personal representatives, successors and assigns, any rights or remedies under or by reason of this Contract.
20. **Further Acts.** In addition to the acts recited in this Contract performed by Seller and Buyer, Seller and Buyer agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.
21. **Date of Contract.** The date of this Contract shall be, for all purposes, the date of the signature of the last party to sign this Contract.
22. **Time of the Essence.** Time is of the essence with this transaction.
23. **Assignment.** Buyer shall not assign this Contract or any interest hereunder or in the property herein described, prior to full execution of the Contract, unless Seller first consent to such assignment, in writing, which consent shall not be unreasonably withheld. Any attempted assignment in violation of this provision shall be void and of no effect with respect to Seller.

IN WITNESS WHEREOF, said parties hereby execute this Contract effective the date first above written.

**SELLER:**

Swinford Properties, LLC

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

Gabriel Swinford, Member

**BUYER:**

City of Fredericktown, Missouri

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

Travis Parker, Mayor



EXHIBIT A  
Legal Description

TRACT #3

A PARCEL OF LAND BEING PART OF U.S.P. SURVEY #2963, TOWNSHIP 34 NORTH, RANGE 7 EAST OF THE FIFTH PRINCIPAL MERIDIAN, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCE at a 12" X 12" Granite Monument on the Common Line between U.S.P. Survey #3086, and said U.S.P. Survey #2963; thence N.06°42'45"E., a distance of 737.51 feet to a Point on the Easterly Right-of-Way Line of Missouri State Route "OO"; thence N.09°19'34"E., along said Right-of-Way, a distance of 755.76 feet to a 1/2" Iron Rod and the POINT OF BEGINNING; thence continue, N.09°19'34"E., a distance of 237.64 feet to a 1/2" Iron Rod; thence departing from said Right-of-Way, S.75°43'32"E., a distance of 416.86 feet to a 1/2" Iron Rod; thence N.09°15'28"E., a distance of 208.84 feet to a 1/2" Iron Rod; thence N.03°53'04"E., a distance of 285.24 feet to a 1/2" Iron Rod; thence N.19°17'09"E., a distance of 153.40 feet to a 1/2" Iron Rod; thence N.84°25'40"E., a distance of 596.17 feet to a 1/2" Iron Rod; thence S.14°25'46"W., a distance of 1,080.58 feet to a 1/2" Iron Rod; thence N.75°43'32"W., a distance of 897.90 feet to the POINT OF BEGINNING. Containing 14.194 acres, more or less, in Madison County, Missouri, dated September of 2023. Along with and Subject to existing Easements of Record if any.

TRACT #4

A PARCEL OF LAND BEING PART OF U.S.P. SURVEY #2963, TOWNSHIP 34 NORTH, RANGE 7 EAST OF THE FIFTH PRINCIPAL MERIDIAN, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCE at a 12" x 12" Granite Monument on the Common Line between U.S.P. Survey #3086, and said U.S.P. Survey #2963; thence N.06°42'45"E., a distance of 737.51 feet to a Point on the Easterly Right-of-Way Line of Missouri State Route "OO"; thence N.09°19'34"E., along said Right-of-Way, a distance of 377.88 feet to a 1/2" Iron Rod and the POINT OF BEGINNING; thence continue, N.09°19'34"E., a distance of 377.88 feet to a 1/2" Iron Rod; thence departing from said Right-of-Way, S.75°43'32"E., a distance of 383.26 feet to a 1/2" Iron Rod; thence S.09°19'34"W., a distance of 306.62 feet to a 1/2" Iron Rod; thence N.86°23'09"W., a distance of 383.73 feet to the POINT OF BEGINNING. Containing 3.000 acres, more or less, in Madison County, Missouri, dated September of 2023. Along with and Subject to existing Easements of Record if any.

TRACT #5

A PARCEL OF LAND BEING PART OF U.S.P. SURVEY #2963, TOWNSHIP 34 NORTH, RANGE 7 EAST OF THE FIFTH PRINCIPAL MERIDIAN, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCE at a 12" x 12" Granite Monument on the Common Line between U.S.P. Survey #3086, and said U.S.P. Survey #2963; thence N.06°42'45"E., a distance of 737.51 feet to a Point on the Easterly Right-of-Way Line of Missouri State Route "OO"; thence departing from said Right-of-Way, N.86°46'39"E., a distance of 231.64 feet to a 1/2" Iron Rod; thence N.89°59'58"E., a distance of 26.83 feet to a 1/2" Iron Rod; thence N.80°51'43"E., a distance of 110.03 feet to a 1/2" Iron Rod; thence N.13°41'00"E., a distance of 327.49 feet to a 1/2" Iron Rod to the POINT OF BEGINNING; thence N.09°19'34"E., a distance of 306.62 feet to a 1/2"



Iron Rod; thence S.75°43'32"E., a distance of 514.64 feet to a 1/2" Iron Rod; thence S.14°25'46"W., a distance of 213.70 feet to a 1/2" Iron Rod; thence N.86°23'09"W., a distance of 496.17 feet to the POINT OF BEGINNING. Containing 3.000 acres, more or less, in Madison County, Missouri, dated September of 2023. Along with and Subject to existing Easements of Record if any.

**TRACT #6**

A PARCEL OF LAND BEING PART OF U.S.P. SURVEY #2963, TOWNSHIP 34 NORTH, RANGE 7 EAST OF THE FIFTH PRINCIPAL MERIDIAN, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCE at a 12" x 12" Granite Monument on the Common Line between U.S.P. Survey #3086, and said U.S.P. Survey #2963; thence N.06°42'45"E., a distance of 737.51 feet to a Point to the Easterly Right-of-Way Line of Missouri State Route "OO" and the POINT OF BEGINNING; thence N.09°19'34"E., along said Right-of-Way, a distance of 377.88 feet to a 1/2" Iron Rod; thence departing from said Right-of-Way, S.86°23'09"E., a distance of 383.73 feet to a 1/2" Iron Rod; thence S.13°41'00"W., a distance of 327.49 feet to a 1/2" Iron Rod; thence S.80°51'43"W., a distance of 110.03 feet to a 1/2" Iron Rod; thence S.89°59'58"W., a distance of 26.83 feet to a 1/2" Iron Rod; thence S.86°46'39"W., a distance of 231.64 feet to the POINT OF BEGINNING. Containing 3.000 acres, more or less, in Madison County, Missouri, dated September of 2023. Along with and Subject to existing Easements of Record if any.

**TRACT #7**

A PARCEL OF LAND BEING PART OF U.S.P. SURVEY #2963, TOWNSHIP 34 NORTH, RANGE 7 EAST OF THE FIFTH PRINCIPAL MERIDIAN, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCE at a 12" x 12" Granite Monument on the Common Line between U.S.P. Survey #3086, and said U.S.P. Survey #2963; thence N.06°42'45"E., a distance of 737.51 feet to a Point on the Easterly Right-of-Way Line of Missouri State Route "OO"; thence departing from said Right-of-Way, N.86°46'39"E., a distance of 231.64 feet to a 1/2" Iron Rod; thence N.89°59'58"E., a distance of 26.83 feet to a 1/2" Iron Rod; thence N.80°51'43"E., a distance of 110.03 feet to a 1/2" Iron Rod and the POINT OF BEGINNING; thence N.13°41'00"E., a distance of 327.49 feet to a 1/2" Iron Rod; thence S.86°23'09"E., a distance of 496.17 feet to a 1/2" Iron Rod; thence S.14°25'46"W., a distance of 209.83 feet to a 1/2" Iron Rod; thence S.80°51'43"W., a distance of 527.06 feet to the POINT OF BEGINNING. Containing 3.000 acres, more or less, in Madison County, Missouri, dated September of 2023. Along with and Subject to existing Easements of Record if any.

Objections to "Ordinance authorizing the Mayor to execute an agreement between the City and Swinford Properties, LLC. to purchase real estate by Airport."

- Spending \$268,000 on the airport which currently operates at a deficit is not a great use of funding. Over the last 9 years, the airport has lost \$364,852.57, for an average of -\$40,539.17 per year of operation.
- There is no written plan on what the land would be used for or how it could make the airport profitable or shrink the deficit. Buying land without a purpose does not give a reasonable expectation or outcome for a return on investment.
- Any plans to lease land and allow privately owned buildings to be erected will never pay for the investment. A leased space for a private hanger at Farmington Airport generates \$1,044 a year and the contracts are complicated.
- Airport hangers cost anywhere between \$60-\$120 per square foot. If a hanger was built to match the size of one of our current hangers with 12 rentable units at \$250 per month, they would not generate enough money to pay the monthly loan payment even with fuel sales after considering the fuel sales narrow profit margins. This does not include the cost to acquire the land, add additional plane parking, engineering fees, architecture fees, but just to build the hangers.
- This land purchase does not address the items that cause Farmington to be the preferred airport over Fredericktown. City fuel prices may be cheaper, but pilots and owners will tell you that the lack of plane parking, not having a fuel truck to deliver fuel to the plane, and a shorter and narrower runway puts Farmington ahead of the game when it comes to attracting private flights.
- Using the funding available for needs would be a much greater choice. Steets/bridges and sewers are areas where we could put those funds to immediate use. There may not be a "return on investment" but those areas need money already, so applying the funds there would be a wiser choice at this current time. If the board would like to see a return on investment with the available funds, use the money for grants to help draw business and/or industry to the city. The sales tax generated from their businesses would return the money back over time and bring more people to the community, which means a potential for more sales volume meaning more sales taxes from the already established businesses and the news one that a grant would bring.

In closing, adding any additional costs, property, or buildings at the airport without first addressing the glaring unbalanced department budget, does not provide a good position to establish a return on the investment or use of taxpayer funding.