

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: August 25, 2015		DATE SUBMITTED: August 12, 2015	
DEPARTMENT OF ORIGIN: Executive		SUBMITTED BY: Joey Dunn	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consider authorizing the Mayor to execute a Memorandum of Agreement between the City of Bryan and Texas A&M University (TAMU) regarding the City of Bryan's financial contribution to Easterwood Airport operations in the amount of \$65,400 for FY 2015 and \$70,456 for FY 2016.			
SUMMARY STATEMENT: The City of College Station operates a fire station at Easterwood Airport, which serves both the airport and surrounding areas. Signed in May 2015 and effective February 1, 2015, TAMU entered into a new three-year agreement with the City of College Station to continue to provide aircraft rescue and firefighting (ARFF) services as per Federal Aviation Administration (FAA) requirements (ARFF agreement attached for reference). In previous years, TAMU requested and received reimbursement from the City of Bryan and Brazos County on personnel related costs within the ARFF contract (25% from Bryan and 25% from Brazos County). College Station's 25 percent portion is provided in-kind, since they operate the facility and are responsible for all other non-personnel related costs for specialized equipment, apparatus, foam spray methods, etc. required by FAA to control airport related fire incidents. While the new ARFF agreement increases total personnel costs to \$281,824, which raised the 25 percent share amount to \$70,456, Bryan's approved FY2015 General Fund Budget includes the original amount of \$65,400. Brazos County's current fiscal year budget includes the same amount. Therefore, both the City of Bryan staff and Brazos County Judge Peters are recommending keeping the FY15 amount at \$65,400, and adjusting the FY16 amount to the new level of \$70,456. The City of Bryan's past 25 percent funding to Easterwood has been as follows:			
<ul style="list-style-type: none"> • FY14: \$65,400 • FY13: \$65,400 • FY12: \$58,768 • FY11: \$58,768 • FY10: \$58,768 • FY09: \$63,543 • FY08: \$61,692 			
STAFF ANALYSIS AND RECOMMENDATION: Staff recommends approval of the Memorandum of Agreement, which continues to provide Bryan's proportional share of personnel related costs related to aircraft rescue and firefighting services at Easterwood Airport. Staff has also visited with Brazos County Judge Peters, who is recommending the same funding amounts for FY15 (\$65,400) and FY16 (\$70,456) for Brazos County.			

While recurring annual expense to the City of Bryan continues, Easterwood Airport is a critical element of the City's economic development efforts to attract business to the City of Bryan. This agreement ratifies the City of Bryan's ongoing support and share of personnel costs associated with maintaining Easterwood Airport as a vital resource for the Bryan-College Station community.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve proposed agreement
2. Modify proposed agreement and then approve, which may require consideration at a future City Council meeting
3. Deny proposed agreement and provide further direction to staff

ATTACHMENTS:

1. Email from Dean Endler, Executive Director of Procurement Services & Contract Administration for Texas A&M University (pdf document)
2. Proposed Memorandum of Agreement between TAMU and City of Bryan (attached to this CAF)
3. Signed 2015-2018 Aircraft Rescue and Fire Fighting Interlocal Agreement between the City of College Station and Texas A&M University (pdf document)

FUNDING SOURCE: \$65,400 is included in adopted FY 2015 General Fund Budget. The same amount (\$65,400) is also included in the proposed FY 2016 General Fund Budget. Therefore, an additional \$5,056 would need to be appropriated in the FY 2016 General Fund Budget to make the full requested FY16 payment of \$70,456.

APPROVALS: Hugh R. Walker, 08/13/2015

APPROVED FOR SUBMITTAL: CITY MANAGER

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 08/17/2015

MEMORANDUM OF AGREEMENT
by and between
TEXAS A&M UNIVERSITY
and
CITY OF BRYAN, TEXAS

THIS Memorandum of Agreement (“Agreement”) is effective as of the first day of October, 2014, by and between **TEXAS A&M UNIVERSITY**, (hereafter “**TAMU**”), a member of The Texas A&M University System, an agency of the State of Texas, for the benefit of Easterwood Airport, and **CITY OF BRYAN, TEXAS**, (hereafter “**BRYAN**”), a political subdivision of the State of Texas.

WHEREAS, **TAMU** provides the services necessary to enable local citizens to travel by private aircraft or scheduled commercial airliner, and maintains and operates the facilities at Easterwood Airport, including but not limited to the terminal, runway and all associated safety facilities and functions, for general and commercial aviation; and

WHEREAS, **BRYAN** finds it beneficial for **BRYAN** to support **TAMU**’s furnishing of such air travel service for the citizens of Bryan, Texas through its operation of Easterwood Airport;

NOW, THEREFORE, in consideration of the mutual rights, obligations and covenants contained in this Agreement, **TAMU** and **BRYAN** agree as follows:

SECTION I
TERM OF AGREEMENT

1.01 This Agreement will commence on October 1, 2014 and will expire on September 30, 2016.

SECTION II
PAYMENT

2.01 **BRYAN**, agrees to pay to **TAMU** SIXTY-FIVE THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$65,400) for FY 2015 support, then SEVENTY THOUSAND FOUR HUNDRED AND FIFTY-SIX AND NO/100 DOLLARS (\$70,456) for FY 2016 support as **BRYAN**’s share of the total contribution of \$281,824 each fiscal year. The total contribution is shared equally by **BRYAN**, City of College Station, Texas, Brazos County, Texas and **TAMU**. This contribution is to help fund the cost of the daily airport operations as required by FAA for the safety of all aircraft and passengers landing and departing Easterwood Airport. **BRYAN** agrees to pay out of

current revenues, the full amount due within thirty (30) days of receiving an invoice from **TAMU**.

2.02 **TAMU** acknowledges the fee fairly compensates it for the services and functions it is to provide pursuant to this Agreement.

SECTION III TERMINATION

3.01 **TAMU** and **BRYAN** may unilaterally terminate this Agreement, at any time and for any reason, by giving the other sixty (60) calendar days prior written notice delivered pursuant to Section 4.01 of this Agreement.

SECTION IV NOTICES

4.01 Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. **TAMU** and **BRYAN** can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TAMU: Texas A&M University
Department of Contract Administration
1182 TAMU
College Station, Texas 77843-1182
(979) 845-0099 (Telephone)

BRYAN: **Joe Hegwood, Chief Financial Officer**
The City of Bryan
300 South Texas Avenue
Bryan, Texas 77803
(979) 209-5080 (Telephone)

**SECTION V
MISCELLANEOUS**

- 5.01** Contractual Agreement: **TAMU** and **BRYAN** expressly acknowledge this Agreement is intended and should be construed as a contract by and between **TAMU** and **BRYAN**. Nothing in this Agreement is intended to create an agency relationship, partnership, joint venture, or any other such relationship.
- 5.02** Severability: Failure by **TAMU** or **BRYAN** to insist on strict performance of any requirement of this Agreement will not be construed as a waiver or relinquishment of such requirement in future instances, but such requirement will continue and remain in full force and effect.
- 5.03** Appropriation of Funds: All obligations of **TAMU** are subject to the appropriation of sufficient funds for such obligations by the Legislature of the State of Texas. Failure by the Legislature to appropriate funds to **TAMU** sufficient to continue to perform under this Agreement, relieves **TAMU** from the obligation to perform during the period of nonappropriation.
- 5.04** Successors and Assign: This Agreement is binding upon **TAMU** and **BRYAN** and their respective successors in office or interest and assigns. This section is not to be construed as authorizing assignment by **TAMU** or **BRYAN** without the express written consent of the other party.
- 5.05** State Agency: **BRYAN** expressly understands **TAMU** is an agency of the State of Texas, and nothing in this Agreement is intended to be, or should be construed as a waiver or relinquishment by **TAMU** of its rights to claim such exemptions, privileges and immunities as provided by law to an agency of the State.
- 5.06** Governing Law: This Agreement is construed under and in accordance with the laws of the State of Texas and is performable in Brazos County, Texas. In addition, by statute, mandatory venue for all legal proceedings against **TAMU** is to be in the county in which the principal office of the governing officer is located. At execution of this Agreement, such county is Brazos County, Texas.
- 5.07** Dispute Resolution: Any dispute between **BRYAN** and **TAMU** regarding this Agreement will be governed by Alternative Dispute Resolution for Use by Governmental Bodies, Chapter 2009, *Texas Government Code*, and any applicable Model Rules promulgated by the Office of the Attorney General and/or the State Office of Administrative Hearing of the State of Texas. Any notice of dispute tendered by **BRYAN** should be addressed to the University Contracts Officer of **TAMU**.

5.08 Amendment or Modification: This Agreement may be modified or amended in writing by the mutual consent of the parties with modification being attached to and incorporated in this Agreement by this reference for all purposes.

EXECUTED in duplicate originals this ____ day of _____, 2015, by **TAMU**.

“TAMU”
TEXAS A&M UNIVERSITY

By: _____
REX E. JANNE
University Contracts Officer

EXECUTED in duplicate originals this ____ day of _____, 2015, by **BRYAN**.

ATTEST: **“BRYAN”**
CITY OF BRYAN, TEXAS

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **REX E. JANNE**, University Contracts Officer, Texas A&M University, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed it for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2015.

Notary Public, State of Texas
My Commission Expires:_____

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Jason P. Bienski, Mayor, City of Bryan, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed it for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2015.

Notary Public, State of Texas
My Commission Expires:_____