

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: October 13, 2015		DATE SUBMITTED: September 28, 2015	
DEPARTMENT OF ORIGIN: Coulter Field		SUBMITTED BY: James Brown	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input checked="" type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Authorize the Mayor to execute a commercial ground lease agreement between the City of Bryan and the Bryan Business Council (BBC) for the purpose of constructing an aircraft hangar at Coulter Field.			
SUMMARY STATEMENT: On June 15, 2015, the BBC approved a professional services contract with Klotz Associates for hangar development of a 12,349 square foot, 10-unit nested T-hangar building. The President of the BBC was also given the authority to enter into a commercial ground lease with the City of Bryan for said T-hangar development.			
On July 28, 2015, the City Council adopted Resolution No. 3620, which in part, enhanced Coulter's ability to generate revenue. The proposed commercial ground lease between the City of Bryan and the BBC follows the policies and requirements as adopted.			
The hangar development will consist of 0.283 acres, or 12,349 square feet, at a rate of \$0.10 per square foot per year equating to \$1,234.90 annually for the first 5 years. An escalation equal to the consumer price index will be assessed per Section 4b of the commercial ground lease for each additional 5-year period.			
This hangar development will bring a total of ten (10) aircraft to Coulter and increase the overall infrastructure and amenities of the Airfield. The initial term of this commercial ground lease is 25 years; at which time an extension may be negotiated between the City of Bryan and the Bryan Business Council. The improvement will revert and become the property of the City of Bryan upon expiration of the commercial ground lease. Consequently, the reversion will increase the annual revenue generated by Coulter.			
Additional positive impacts of this development are:			
<ul style="list-style-type: none"> • The inclusion of this future revenue stream is integral to the goal of sustainability and self-sufficiency of Coulter Field. • The additional based aircraft this development will provide directly translates to higher fuel sales. • The subsequent increase in operations (the number of take-offs and landings) will directly correlate to the potential increase of federal funding for Coulter Field. 			
STAFF ANALYSIS AND RECOMMENDATION: While this proposed ground lease leaves less property for development at Coulter Field, staff recommends approval to execute the commercial ground lease with the Bryan Business Council. This hangar development opportunity falls in line with the recommendations made in the City Council-adopted business plan to foster growth at Coulter Field.			

Benefits of this hangar development opportunity include securing a future source of revenue for Coulter, higher fuel sales, and access to a potentially greater amount of federal grant funding for improvements at the Airfield.

This lease will benefit the tenants utilizing the T-hangar spaces, the BBC, and the City of Bryan.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve the commercial ground lease with the BBC
2. Approve the commercial ground lease with the BBC with modifications, which may require consideration at a future City Council meeting
3. Deny the commercial ground lease with the BBC

ATTACHMENTS:

1. Signed commercial ground lease between the City of Bryan and the BBC
2. Resolution No. 3620
3. June 15, 2015, BBC Regular Meeting minutes (excerpt)

FUNDING SOURCE:

APPROVALS: Kevin Russell, 9-28-15; Joey Dunn, 9-28-15; Hugh R. Walker, 09/29/2015

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 10-01-2015

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 10-01-2015

**COMMERCIAL AVIATION GROUND LEASE BETWEEN
THE
CITY OF BRYAN
AND
THE BRYAN BUSINESS COUNCIL**

EFFECTIVE _____

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AVIATION LEASE BETWEEN
THE
CITY OF BRYAN AND THE BRYAN BUSINESS COUNCIL

The City of Bryan, Texas, as owner of Coulter Airfield Airport and The Bryan Business Council, as Lessee of the Premises described in the Lease, agree as follows:

RECITALS

The City of Bryan has agreed to lease approximately 0.283 acres of land at Coulter Airfield Airport to The Bryan Business Council, the Lessee for the purpose of constructing a hangar and associated improvements on the premises.

SECTION 1. DEFINITIONS AND EXHIBITS

A. Definitions. The following words in this Lease have the following meanings unless the context clearly indicates otherwise:

Airport means the Coulter Airfield Airport.

Airport Director means the City employee designated by the City Manager to oversee the operations of the Airport.

City means the City of Bryan, Texas.

City Council or *Council* means the City Council of the City.

City Manager means the City's City Manager.

Encumbrance means:

(1) any pledge, mortgage, or contract lien, of or on all or part of Lessee's Lease interest in the Premises; or

(2) any transfer of more than 51% of Lessee's total ownership interest in Lessee's business.

F.A.A. means the United States Federal Aviation Administration or its successor agency.

Improvement means the Lessee's construction, erection, placement, removal, expansion, or modification of any building, structure, or fixture on the Premises, including any parking lot, driveway, walkway, landscaping feature, water well, water supply system, septic system, utility line, or outdoor sign.

Lease means this lease agreement.

Lessee means The Bryan Business Council (BBC).

Mortgagee means the beneficial holder of a mortgage on any Improvement.

Premises means the 0.283 acres of real property subject to this Lease identified as Tract 1 on Exhibit A.

B. Exhibits. This Lease includes the following exhibits, attached to and incorporated into this Lease by reference.

Exhibit A is a survey of the Premises, dated September 2nd, 2015.

Exhibit B shows the adjusted annual aviation lease rental payments as they are established for each subsequent five-year term, or portion thereof, of this Lease.

Exhibit C is the City's insurance requirements applicable to Lessee under this Lease.

Exhibit D is the City's Aviation Lease Policy.

SECTION 2. LEASED PREMISES

The City leases to Lessee and Lessee leases from the City the Premises described as Tract 1 on Exhibit A.

SECTION 3. EFFECTIVE DATE, TERM, AND TERMINATION OF EXISTING LEASE

A. The effective date of this Lease is _____.

B. The term of this Lease is for 25 years from the effective date, unless earlier terminated under the provisions of this Lease. The Lessee may extend the term of this Lease for two (2) guaranteed five-year terms and one (1) optional five-year term. Guaranteed additional five-year terms shall be obtained by giving the City written notice of each five-year extension at least 120 days prior to the date the Lease would otherwise terminate. Optional additional five-year terms shall require a written request given to the City at least 120 days prior to the date the lease would otherwise terminate, and approval of the request by the City Manager or his designee. The total term of the lease shall not exceed 40 years.

C. If Lessee is unable to secure a financing commitment acceptable to Lessee for construction of the Improvements within 90 days following City approval of this Lease,

Lessee will have the right to terminate this Lease by written notice to the City within 15 days from the end of the 90 day period.

D. If Lessee is unable to secure a financing commitment for construction of the Improvements within 120 days following City approval of this Lease, the City will have the right to terminate this Lease by written notice to Lessee within 15 days from the end of the 120 day period.

SECTION 4. RENTALS AND PAYMENTS

A. For the first year of the Lease, Lessee will pay to the City \$1,234.90 each year in rent for the Lease. Rent is based on a lease rate of \$.10 per square foot per year for 12,349 square feet of leased Premises.

B. Beginning on the fifth anniversary date of this Lease and at the beginning of each subsequent five-year anniversary date, the amount of the rent automatically increases by the percentage of change, if any, between the most recently published CPI and the CPI in effect on the anniversary date of the last rate change. (For example, for a Lease effective on September 1, 2009, the first adjustment in rent would go into effect on September 1, 2014. The adjustment would increase by the percentage that the CPI changed between September 1, 2009 and September 1, 2014. If there were a 10% increase in the CPI during that five-year period, the rent would also increase by 10%.) The adjusted rent established for each subsequent five-year term, or portion thereof, of this Lease will be reduced to writing, signed by each party's representative, and attached to this Lease as Exhibit B.

C. Lessee will pay the City each rent payment by the first City business day of _____ without City notice or billing at the City's Fiscal Services Department, P.O. Box 1000 Bryan, Texas 77805-1000, or to the department and address that the City specifies in writing from time-to-time.

D. Any rent payment not paid by the 15th day of _____ is delinquent and will include an additional monetary amount, as a penalty, equal to 5% of the rent due. All rent payments more than 30 days past due accrue simple interest of 18.0% annually on the overdue amount, or the maximum amount allowed by law, whichever is greater.

SECTION 5. USE OF PREMISES AND AIRPORT

A. Lessee may only use the Premises for conducting aviation-related operations that comply with the Aviation Lease Policy applicable to a commercial ground lease. Lessee will comply with all Federal and State laws and regulations and City ordinances that apply to the Lessee's use of the Premises.

B. The Lessee may only use those areas of the Premises improved with asphalt and concrete paving for Lessee's activities, unless the Airport Director gives his prior written consent.

C. Lessee is granted the non-exclusive use of all portions of the Airport that are open for use by the public, including taxiways, runways, aprons, navigational aids and facilities for the purpose of landings, takeoffs and taxiing of aircraft, on the same terms and conditions applicable to the public.

D. Lessee is solely responsible for providing security to protect the Premises and property located thereon against the negligence or criminal acts of third parties. Lessee will not make a claim or bring any action against the City for any loss, damage, or injury to persons or property arising from any negligent or criminal act committed on the Premises by a third party. Lessee will design and construct at Lessee's expense, all gates, fences or barriers on the Premises that Lessee determines are required to prevent unauthorized access to the Premises. Lessee must design, construct and maintain fences, barriers or gates on the Premises so as to preclude casual or inadvertent entry by persons or vehicles onto an aircraft-parking apron, or taxiway, according to plans approved in advance by the Airport Director. The City may at its cost construct and maintain any fences, gates, walls or barriers on the Premises as may be required for compliance with FAA and Homeland Security regulations in a manner designed, in the Airport Director's judgment, to prevent unauthorized access to the Airport operating area, taxiways and runways.

SECTION 6. IMPROVEMENTS TO PREMISES

A. Prior to making or constructing any Improvements on the Premises, Lessee must submit general drawings and information to the Airport Director sufficient to show the dimensions, elevations, and layout of Improvements and the construction materials to be used. The Lessee may not receive City permits for the construction of any Improvements unless and until the Lessee's general drawings and information are approved by the Airport Director in writing. If the Airport Director refuses to approve Lessee's general drawings and information for the Improvements within six months following the Effective Date of this Lease or within 30 days of the date the general drawings and information for the Improvements are submitted to the Airport Director for approval, the Lessee may terminate this Lease by giving written notice to the City.

B. Lessee will comply with all of the City's ordinances applicable to the construction of Improvements, including the requirement to apply for permits, pay permit fees, receive permits, and construct the Improvements in compliance with the City's building codes and ordinances. Any required plans for Improvements submitted by Lessee to the City for the purpose of receiving construction permits must substantially conform to the general drawings and information for Improvements as approved by the Airport Director.

C. Lessee must begin construction of the Improvements within 180 days of the effective date of this Lease and after having begun construction continuously pursue to complete construction with due diligence. Lessee shall construct Improvements in a manner as not to interfere with the normal operation and use of the Airport by others. If requested by the Airport Director, Lessee will file with the Airport Director a complete set of as-built drawings and documents showing the actual construction costs of the Improvements within 30 days of completion of any Improvements.

D. Connection to Taxiways. Lessee will install and maintain any connections between the City's taxiway pavement and the Premises as needed by Lessee for the enjoyment or use of the Premises. Lessee must construct the taxiway connections in accordance with the requirements of this Lease applicable to the approval of Improvements. Lessee may use taxiway connections only for aircraft maneuvering and not aircraft parking unless otherwise approved by the Airport Director in writing.

SECTION 7. MAINTENANCE

A. Lessee will, to the Airport Director's satisfaction, maintain the Premises and all Improvements on the Premises in good condition and repair and in a safe, clean and sanitary condition.

B. If Lessee fails to make repairs to any Improvement, correct any unsafe or unsanitary condition, or remove any litter or waste as required by this Section, the City will give Lessee written notice of the defect. If Lessee fails to correct the condition within 30 days following the date of the City's written notice, the City may either terminate this Lease or may enter upon the Premises and correct the condition at Lessee's expense. Lessee will pay the City the City's cost incurred in correcting the condition and an administrative fee of 20% of that cost within ten days of receipt of an itemized bill from the City.

C. The City may, at its sole option and cost, do any filling, grading, slope protection, retaining wall construction or replace or repair any City-owned or City-constructed facilities within or without the Premises to protect the Premises or any part of the Airport. The City will give Lessee advance written notice of the work, will consult with the Lessee on the time and manner of performing the work, and will conduct the work in a manner that will not substantially interfere with Lessee's use of the Premises.

SECTION 8. INSURANCE

Lessee will obtain and maintain during this Lease, at Lessee's expense, insurance for Commercial Operators as set forth in Exhibit C to this Lease.

SECTION 9. TAXES, ASSESSMENTS AND FEES

A. Lessee assumes all responsibility and liability for the payment of any real property, possessory interest, personal property or other taxes or assessments, including fines, penalties and interest (collectively "Taxes and Assessments") imposed or levied against the Leased Premises by any taxing jurisdiction as a result of Lessee's use and occupancy thereof.

B. If the City receives any notice, claim, demand, bill or invoice from or on behalf of any taxing jurisdiction, proposing to impose or levy or imposing or levying a charge for Taxes and Assessments against the leased Premises, the City will forward the notice, claim, bill, demand or invoice to Lessee. Within thirty days of receiving the notice, claim, demand, bill or invoice from the City, but in no event later than the delinquency date stated therein if less than thirty days from the date of receipt, Lessee will pay the full amount due as stated therein to the applicable taxing jurisdiction. Lessee, in its discretion, may contest any *proposed* Taxes and Assessments through any lawful methods, but will not be relieved of any responsibility to pay when due any charges under any notice, claim, demand, bill or invoice forwarded by the City as provided herein.

C. If any Taxes or Assessments are imposed or levied against the leased Premises by any taxing jurisdiction as a result of Lessee's use and occupancy of the leased Premises, Lessee, hereby acknowledges and agrees that it will hold harmless the City from and pay in full when due on behalf of the City any and all Taxes and Assessments as provided in paragraph 9.B. Lessee further defends and indemnifies the City (including the payment of attorney's fees and costs of litigation) against any lawsuits, demands, claims or other collection efforts by any taxing jurisdiction seeking the payment of Taxes and Assessments imposed or levied against the leased Premises as a result of Lessee's use and occupancy of the leased Premises.

D. Lessee's failure to comply with this Section will be considered a condition of default, entitling the City to any of the remedies provided for default under this lease, including, but not limited to, termination of this lease.

SECTION 10. UTILITIES

A. Water facilities sufficient in capacity to serve the Premises are available within approximately 300 feet of the Premises. Lessee will pay all tap fees in effect at the time of connection. The City grants Lessee an easement over Airport property and outside of the boundary of the leased Premises as may be necessary for Lessee to connect to and maintain its water service lines. Lessee is responsible for all costs associated with platting the easement. Lessee must place all service lines underground.

B. Wastewater is not currently provided to the Premises. If the City extends wastewater facilities to within 150 feet of the Premises, Lessee will be required to connect to and maintain wastewater service lines for the Premises in accordance with State law. Lessee will have 1 year from the date of the City's extension to connect to the wastewater line and will pay all tap fees in effect at the time of connection.

C. Electricity, telephone, and cable television facilities and services are available to serve the Premises. Lessee must separately contract with the providers of those utility services and pay all costs charged by the providers for those services.

D. The City may, without charge by Lessee, connect to and make use of water, wastewater, electric, gas, or telecommunication lines, equipment, or facilities located upon the Premises if the connections and use do not interfere with the Lessee's use and do not result in Lessee incurring any additional charges or costs.

SECTION 11. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

A. Damage or destruction of the Improvements on the Premises does not terminate this Lease. Within 90 days following the date of the damage or destruction, Lessee will commence and diligently pursue to complete the repair, replacement, or reconstruction of Improvements necessary to permit full use and occupancy of the Premises for the purposes permitted by this Lease.

B. If Lessee wishes to repair or reconstruct the damaged or destroyed Improvements so that the repaired or rebuilt Improvements would not comply with the plans previously approved by the City for the Improvements, Lessee will submit the revised plans to the City and comply with the requirements of this Lease that apply to the approval of plans for new Improvements. If Lessee submits revised plans to the City under this paragraph, the City may extend the time to begin construction as provided for in paragraph A of this Section.

SECTION 12. ASSIGNING, SUBLETTING AND ENCUMBERING

A. Assignments. The Lessee may, without the prior consent of the City, assign this Lease to any other party:

- (1) that has a controlling interest in Lessee,
- (2) that is a wholly owned subsidiary of Lessee, or
- (3) in which the Lessee has a controlling interest.

Lessee must provide the City with written notice of the assignment within 30 days of the assignment. All other assignments of this Lease must have the prior written consent of the City's City Manager before they are effective.

B. Subleases. Lessee may, with the Airport Director's written approval, enter into a sublease for a portion of the Premises for activities allowed under this Lease. The sublease is subject to termination on notice by Lessee. The failure of Lessee to prohibit an unauthorized activity on the Premises by a sublessee constitutes a breach of this Lease and is grounds for termination. Any sublease for all or a portion of the Premises must be

approved by the City's City Manager or designee. Any sublease must incorporate the provisions of this Lease, including insurance requirements.

C. General Encumbrances. Any proposed Encumbrance by Lessee must be first approved in writing by the City's City Manager or designee. Any Encumbrance not approved by the City is void. Any document used to encumber the Premises must incorporate the provisions of this Lease. The City may withhold consent to an Encumbrance for any of the following reasons:

1. Lessee is in default of this Lease, whether notice of default has been given by the City.
2. The entity requiring the prospective Encumbrance has not agreed in writing to be bound by this Lease.
3. The Encumbrance documents have not been provided to the City.
4. Improvements previously undertaken by Lessee have not been completed to the City's satisfaction.
5. Lessee has not paid the processing fee for approval of an Encumbrance.

D. Encumbrance for Financing Improvements. An Encumbrance to finance construction of Improvements is subject to the following additional requirements and covenants:

1. Any deed of trust must require that any notice of default and any notice of sale be given in writing to the City concurrently with the filing of a notice of default and sale. Lessee must furnish the City a complete copy of the deed of trust and note secured thereby prior to recording.
2. The City may not terminate this Lease because of Lessee's breach if, within 60 days after the City gives written notice of the breach, the Mortgagee:
 - (a) Cures the breach if it can be cured by the payment or expenditure of money required to be paid under the terms of this Lease; and
 - (b) Agrees in writing to keep and perform all of the covenants and conditions of this Lease requiring the payment or expenditure of money by Lessee until the time as the leasehold is sold upon foreclosure pursuant to the deed of trust or released or reconveyed under the deed of trust.
3. If the default is not curable, the Mortgagee will cause the trustee to exercise the power of sale under the deed of trust as provided by law. Before exercising the power of sale, the trustee will first offer to the City the right to purchase all

right, title, and interest in the leasehold encumbered under the deed of trust directly from trustee and without public sale for the then outstanding balance due on the note or notes secured by the deed of trust, plus trustee's fees and costs of sale. The trustee's offer to the City must be made no later than ten days following the filing of Notice of Default, and the City may exercise the option to purchase within three months following the filing.

4. If the City does not purchase the Mortgagee's interest, the Mortgagee may upon prior approval of the City's City Manager or his designee, which approval shall not be unreasonably withheld, cause Lessee's interest in this Lease:
 - (a) To be transferred at foreclosure sale pursuant to a deed of trust, by judicial foreclosure, or by an assignment in lieu of foreclosure; or
 - (b) To be transferred or assigned to an established bank, savings and loan association, or insurance company.
5. The Mortgagee must give the City written notice of any such transfer, setting forth the name and address of the transferee, the effective date of such transfer and the express agreement of the transferee assuming and agreeing to perform all of the obligations under this Lease, and submits to the City a copy of the document by which such transfer was made.
6. The City may terminate this Lease if the Mortgagee fails or refuses to comply with any condition of this Section.

E. Processing Fee. The Lessee must pay a \$500.00 non-refundable fee to the City for processing each of Lessee's requests for the City's consent to an Assignment, Encumbrance, or approval of a Sublease.

SECTION 13. DEFAULT BY LESSEE

A. If Lessee defaults in the performance of this Lease, the City will give written notice to Lessee and any Mortgagee approved by the City of the default and what must be done to correct the default. The City may terminate this Lease by written notice to Lessee if Lessee:

- (1) Fails to correct the default within 30 days of receiving the City's notice of default, or
- (2) Where because of the nature of the default Lessee cannot reasonably cure the default within 30 days, Lessee fails to act in good faith and with due diligence to cure the default as soon as practical after the 30 day period.

correct the condition within 90 days of receiving the Lessee's notice. Upon termination, Lessee is entitled to payment for the Improvements made, in accordance with Section 14.

SECTION 16. DISPOSITION OF IMPROVEMENTS

A. All Improvements installed by Lessee are and remain the property of Lessee during the term of this Lease. Upon termination of this Lease, the Improvements become the City's property, except as otherwise provided in this Section.

B. Upon termination or expiration of this Lease, the City may require Lessee to remove all or any part of any Improvement from the Premises at Lessee's expense by giving Lessee written notice specifying what Improvements, or parts thereof, should be removed. Lessee must commence the removal within 30 days after receipt of the City's notice and must diligently pursue the removal to completion, which removal must not exceed 120 days after the date of the City's notice. Any damage to the City's remaining Improvements or part of any Improvement caused by Lessee's work must be repaired in a good and workmanlike manner. If Lessee does not remove any Improvement as required by the City, the City may remove, sell, or destroy them at Lessee's expense, and Lessee will pay to the City the cost of any such removal, sale, or destruction and an administrative fee of 20% of the costs of removal within 30 days after receiving a billing from the City.

SECTION 17. EMINENT DOMAIN

A. If all of the Premises is condemned by a public entity other than the City, in the lawful exercise of the power of eminent domain, this Lease terminates upon the date possession is taken by the public entity. If only a part is condemned and the taking of that part does not substantially impair the capacity of the remainder to be used for the purposes allowed by this Lease in the opinion of the Airport Director, Lessee continues to be bound by the terms, covenants and conditions of this Lease, except the annual rental will be reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the Premises condemned bears to the value of the whole of the Premises as of the date possession of the part is taken by the public entity.

B. If only a part is condemned and the taking of the part substantially impairs the capacity of the remainder to be used for the purposes allowed by this Lease in the opinion of the Airport Director, Lessee may give notice to the City within 30 days of the date possession of the part is taken by the public entity that Lessee will:

1. Terminate this Lease and have no further obligations under this Lease which have not accrued on the date the public entity takes possession; or
2. Continue to occupy the remainder of the Premises and remain bound by this Lease. If Lessee elects to continue to occupy the remainder, the monthly rental is reduced in proportion to the relationship that the compensation paid by the

B. The Lessee's right to cure provided for in this section applies only to Lessee's first and second failure in any 2 consecutive year period to pay annual rental payments when due.

C. Upon termination, all Lessee's rights and those who claim under or through Lessee expire and are of no further force and effect and Lessee will execute, acknowledge and deliver to the City within 30 days after receipt of written demand therefore, a sufficient document quitclaiming all Lessee's title and interest in the Premises to the City.

D. If the City re-enters the Premises after termination of this Lease, and the manner or method employed by the City in re-entering or taking possession of the Premises gives Lessee a cause of action for damages or in forcible entry and detainer, the total amount of damages to which Lessee is entitled in any such action is \$1.00.

SECTION 14. LEASE TERMINATION FOR EXPANSION AND COMPENSATION BY CITY

A. If the City needs the Premises during the term of this Lease for future expansion or operation of the Airport, the City may terminate this Lease by giving Lessee 180 days prior written notice. Upon termination, all Improvements become the City's sole property.

B. Within 60 days after the date the City gives Lessee notice of the termination, the City and Lessee will each submit a list of three appraisers to the other party who have a MAI (Member Appraisal Institute) designation. Within 30 days after receiving the list, each party will pick one appraiser from the other party's list of appraisers and contract with that appraiser to complete a written appraisal of the market value of the Improvements as of the date of termination of the Lease. The contracts will specify that the appraisals be completed within 30 days following the dates of the contracts. When each appraisal is completed, each party will provide to the other a copy of the appraisal provided by their respective appraisers. The market value of the Improvements will be the amount determined by adding together the market value of the Improvements as established by the two appraisals and dividing that amount by two. The City will pay Lessee the market value of the Improvements within 30 days following the date of termination of the Lease.

SECTION 15. LESSEE'S TERMINATION

If during this Lease the City, in the opinion of the F.A.A., fails to maintain the landing areas in a safe condition for aircraft operations, or any ordinance or law becomes effective, the terms of which so restrict the uses to which the Premises may be put that Lessee is unable to continue the use and occupy the Premises substantially in the manner allowed by this Lease, Lessee will give written notice to the City of the condition. Lessee may terminate this Lease by written notice to the City if the City fails or is unable to

public entity for the portion of the Premises condemned bears to the value of the whole of the Premises as of the date possession of the part is taken by the public entity.

- C. Lessee and Lessee's Mortgagee, if any, are entitled to share in any condemnation award for the value of its leasehold interest, if any, as determined by law in the condemnation proceeding.

SECTION 18. RESERVATIONS TO THE CITY

A. Lessee accepts the Premises subject to existing easements and encumbrances on the Premises. The City may install, lay, construct, maintain, repair and operate water, oil, gas, sanitary sewer, storm water, telephone, communication lines, electrical lines, conduits, and equipment and appurtenances in, over, across and along the Premises. The City may grant franchises, easements, rights of way and permits in, over, upon, through, across and along any and all portions of the Premises that is not occupied by a building. Any right reserved by the City in this Section will not be exercised as to interfere unreasonably with Lessee's operations or impair the security of the Mortgagee. Rights granted to third parties will require that the surface of the land be restored as nearly as practicable to its original condition upon the completion of any construction. The City further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Premises by Lessee, the rental will be reduced in proportion to the interference with Lessee's use of the Premises.

B. The Airport Director or his designee may enter the Premises during normal business hours and conduct inspections of the Premises for compliance with the provisions of this Lease.

SECTION 19. FEDERAL AVIATION ADMINISTRATION REQUIREMENTS

If there is any conflict between the provisions in this Section and the other provisions in this Lease, the provisions in this Section take precedence.

A. Lessee for itself, its heirs, personal representatives, successors in interest, and assigns agrees as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a United States Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate the facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.

B. Lessee for itself, its personal representatives, successors in interest, and assigns, agrees as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Lessee's facilities; (2) that in the construction of any Improvements on, over, or under such Premises and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; (3) that Lessee will use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.

C. That in the event of breach of any of the above nondiscrimination covenants, the City has the right to terminate this Lease and to re-enter and repossess Lessee's land and facilities, and hold them as if this Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

D. Lessee will furnish its accommodations and services on a fair, equal and not unjustly discriminatory basis to all users and will charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

E. Non-compliance with Provision "D" above constitutes a material breach of this Lease and in the event of such noncompliance the City has the right to terminate this Lease and the estate hereby created without liability or at the election of the City or the United States; either or both Governments have the right to judicially enforce these Provisions.

F. Lessee agrees that it will insert the above five provisions in any sublease, contract or agreement by which Lessee grants a right or privilege to any person, firm or corporation to render accommodations or services to the public on the leased Premises.

G. Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person will on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person will be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered suborganizations provide assurances to Lessee that they similarly will undertake affirmative action programs and that they will require the same assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.

H. The City 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 interference or hindrance.

I. The City reserves the right, but is not obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard.

J. This Lease is subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation or maintenance of the Airport.

K. The City, its successors and assigns, reserve for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased Premises, including the leased Premises. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation on the Airport.

L. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased Premises.

M. Lessee, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the leased Premises that conflicts with Part 77 of the Federal Aviation Regulations. In the event this covenant is breached, the City reserves the right to enter upon the land leased and to remove the offending structure or object and cut the offending tree at Lessee's expense.

N. Lessee, by accepting this Lease, agrees for itself, its successors and assigns that it will not use the leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. If Lessee breaches this covenant, the City may enter the leased Premises and abate the interference at Lessee's expense.

O. This Lease does not grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

P. This Lease is subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

SECTION 20. HAZARDOUS MATERIALS

A. Definitions.

(1) *Hazardous Materials Laws* means any Federal, State or local law, ordinance, rule, order, regulation or court decision relating to Hazardous Materials.

(2) *Hazardous Materials* means any substance or other material that:

(a) is defined as a hazardous substance, hazardous material, hazardous waste or toxic substance under any Hazardous Materials Law or is a flammable or explosive material (including gasoline, diesel, aviation fuels, lubricating oils, and solvents), asbestos, radioactive material, nuclear medicine material, drug, vaccine, bacterial, virus, or injurious or potentially injurious matter; or

(b) is controlled or governed by any Hazardous Materials Law.

B. Hazardous Material Handling, Spills, and Cleanup. Lessee must comply with any Hazardous Materials Law in the storage, distribution, processing, handling or disposal of any Hazardous Materials. If any Hazardous Material spills, leaks, or is discharged on or from the Premises, Lessee must, at Lessee's cost, immediately make all repairs necessary to prevent further spills, leaks or discharges and immediately clean up the spill, remove any contaminated soil and promptly dispose of the spilled Hazardous Material and soil as required by Hazardous Materials Laws. If Lessee fails to immediately clean up the spill or properly dispose of any contaminated soil the City may, upon 24 hours written notice to Lessee, clean up the spill and dispose of any contaminated soil. Lessee must reimburse the City for the cost of all such work by the City within 30 days from receipt of a bill from the City. The Lessee must pay, or indemnify the City for the City's payment of, any fines or penalties levied by any federal or state agency as a result of Lessee's release or discharge of any Hazardous Materials from the Premises.

C. Termination. Upon termination of this Lease, Lessee must at Lessee's cost, remove any equipment utilized in connection with any Hazardous Materials and clean up, detoxify, repair and restore the Premises to a condition free of Hazardous Materials, to the extent the Lessee or Lessee's sublessee or their respective agents, contractors, employees, licensee or invitees caused the condition.

D. Default. Lessee is in default of this Lease if Lessee or Lessee's sublessee releases or discharges any Hazardous Materials or violates any Hazardous Materials Law. In addition to or in lieu of the remedies available under the Lease as a result of the default, the City may, without terminating the Lease, require Lessee to suspend its operations and activities on the Premises until the City is satisfied that appropriate remedial work has been or is being adequately performed. The City's election to suspend Lessee's operations is not a waiver of the City's right to later declare a default and pursue other remedies set forth in the Lease.

SECTION 21. MISCELLANEOUS PROVISIONS

A. **Holding Over.** If Lessee holds over after the term herein granted, the holding over will be deemed to be a tenancy from month-to-month governed by the provisions of this Lease. Such holding over may not extend any lease past forty years.

B. **Amendments.** This Lease sets forth all of the agreements and understandings of the parties and any modification of this Lease must be written.

C. **Force Majeure.** If Lessee cannot perform any obligation of this Lease by reason of force majeure, it will give notice of the force majeure to the City in writing within ten days of the occurrence relied upon. The obligation of Lessee, to the extent and for the period of time affected by the force majeure, is suspended. Lessee will endeavor to remove or overcome the inability with all reasonable effort. In this paragraph, "force majeure" means acts of God, lightning, hurricanes, storms, floods, or other natural occurrences; strikes, lockouts, insurrections, riots, wars, or other civil or industrial disturbances; orders of any kind of the Federal or State government or of any civil or military authority; explosions, fires, breakage or accidents to machinery, lines, or equipment, or the failure of the system or water supply system; or any other cause not reasonably within the control of Lessee. Force Majeure does not include financial inability and does not excuse Lessee from paying any annual rental or other charge as required by this Lease.

D. **Partial Invalidity.** If a court of competent jurisdiction holds any provision of this Lease invalid, the remainder of the Lease remains in effect.

E. **Time.** Time is of the essence for this Lease.

F. **Americans With Disabilities Act.** Lessee warrants that it is in compliance with the Americans with Disabilities Act (Public Law 101-336) and that it will, in carrying out the requirements of this Lease, comply in all respects with the provisions of the Act and its implementing regulations.

G. **Unlawful Use.** Lessee and its employees and agents will not use or knowingly allow any other person to use the Premises in violation of any federal, state, county, or local regulation, order, law, or ordinance applicable to the Premises.

H. **Notices.** All notices required to be given under this Lease must be in writing and be sent by United States mail, private mail or courier service, by facsimile or be delivered in person. All notices must be sent or delivered to the following addresses or as the City or Lessee may hereafter designate by written notice:

To the City: Airport Director
 City of Bryan
 P.O. Box 1000

Bryan, TX 77805

With a copy to: City Manager
City of Bryan
P. O. Box 1000
Bryan, TX 77805

To Lessee: _____

I. Successors in Interest. Unless otherwise provided in this Lease, this Lease applies to and binds the successors and assigns of Lessee and the City.

J. Lessee may not place any signs, flags, posters, or other advertising or promotional materials on the Premises, the exterior of the Improvements, or in the windows of the Improvements without having obtained City's prior written consent.

K. Lessee will indemnify and hold harmless the City from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with Lessee's use of the Premises. To the extent permitted by law, the City will indemnify and hold harmless Lessee from and against any and all claims losses, damages, causes of action, suits, and liability of every kind, including expenses of litigation, court costs, and attorney's fees, for injury to or death of any person arising out of or in connection with the City's use of the Premises.

L. Texas law governs this Lease and any lawsuit on this Lease must be filed in a court that has jurisdiction in Brazos County, Texas.

M. Recordation of Lease. Within ten days of the effective date of this Lease, Lessee must record a copy of this Lease or memorandum thereof in the Real Property Records of Brazos County and provide the City with a copy of the recorded Lease or memorandum.

IN WITNESS WHEREOF, the parties have executed this Lease on the dates shown below.

Ben Hardeman, President - Bryan Business Council
Lessee

Date: 9/14/15

CITY OF BRYAN, TEXAS

Jason Bienski, Mayor

Date: _____

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis Hampton, City Attorney

EXHIBIT A

(Survey dated September 2nd, 2015)

**FIELD NOTES
COULTER FIELD AIRPORT
HANGER PARCEL
0.283 OF ONE ACRE
OUT OF THE
CITY OF BRYAN
CALLED 119.25 ACRE TRACT
VOLUME 97, PAGE 207
S. F. AUSTIN LEAGUE NO. 10, A - 63
BRYAN, BRAZOS COUNTY, TEXAS
SEPTEMBER 2, 2015**

All that certain lot, tract or parcel of land being 0.283 of one acre situated in the S. F. Austin League No. 10, Abstract No. 63, Brazos County, Texas and being out of that certain Called 119.25 acre tract as described in deed from W. J. Coulter to The City of Bryan, of record in Volume 97, Page 207, Deed Records of Brazos County, Texas, said 0.283 of one acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" Iron Rod with Cap set for the most westerly corner, the calculated most westerly corner of said Called 119.25 acre tract bears N 73° 49' 40" W a distance of 487.85 feet, a TX-DOT Concrete R.O.W. Monument found at an angle point in the existing southeast right-of-way line of STATE HIGHWAY No. 21 bears N 23° 55' 21" W a distance of 457.77 feet;

THENCE N 41° 04' 46" E, a distance of 53.00 feet to a 1/2" Iron Rod with Cap set for the most northerly corner;

THENCE S 46° 55' 14" E, a distance of 233.00 feet to a 1/2" Iron Rod with Cap set for the most easterly corner, an existing TX-DOT R.O.W. monument found at an angle point in the existing southeast right-of-way line of said STATE HIGHWAY 21 bears N 14° 09' 06" E a distance of 1818.00 feet;

THENCE S 41° 04' 46" W, a distance of 53.00 feet to a 1/2" Iron Rod with Cap set for the most southerly corner;

THENCE N 46° 55' 14" W, a distance of 233.00 feet to the PLACE OF BEGINNING AND CONTAINING AN AREA OF 12,349 square feet or 0.283 OF ONE ACRE OF LAND MORE OR LESS, according to a survey performed on August 12, 2015 under the supervision of H. Curtis Strong, Registered Professional Land Surveyor No. 4561. North Orientation is based on rotating the southwest line of the Called 119.25 acre tract to Grid North by utilizing GPS Methods.



EXHIBIT B

Adjusted Annual Rental Payment

Years 1-5	\$1,234.90
Years 6-10	TBD
Years 11-15	TBD
Years 16-20	TBD
Years 21-25	TBD
Years 26-30	TBD

Additional Terms

Term 1	TBD
Term 2	TBD
Term 3	TBD

Exhibit C

**CITY OF BRYAN
FORM PU-111F-6**

MINIMUM INSURANCE POLICY LIMITS FOR AIRPORT LEASE AGREEMENTS

Non-Commercial Operators	Minimum Limits
Aircraft Storage Only	Commercial general aviation liability coverage for premises - \$1,000,000 CSL Aircraft Liability with coverage for bodily injury and property damage, including passengers - \$1,000,000 CSL
Builder's Risk Insurance	Coverage equal to 100% of the insurable value of the completed project.
Commercial Operators	Minimum Limits
Aircraft Sales-engaging in the sale of new or used aircraft	Commercial general aviation liability coverage for premises and operation - \$1,000,000 CSL; Aircraft Liability - \$1,000,000 CSL The above coverage must include aircraft held for sale and demonstration by the Operator but owned by others
Aircraft Rental-engaging in aircraft rental to the public using owned or leased aircraft	Commercial general aviation liability coverage for premises and operation - \$1,000,000 CSL; Aircraft Liability with coverage for bodily injury and property damage, including passengers - \$1,000,000 CSL
Flight Training-engaging in flight training to the public using owned or leased aircraft	Commercial general aviation liability coverage for premises and operation - \$1,000,000 CSL, Aircraft Liability with coverage for bodily injury and property damage, including passengers - \$1,000,000 CSL
Air Commerce Service-providing air taxi service	Commercial general aviation liability coverage for premises and operation - \$1,000,000 CSL; Aircraft Liability with coverage for bodily injury and property damage, including passengers - \$1,000,000 CSL
Radio, Instrument or Propeller Repair Service-engaged in any of these services	Commercial general aviation liability coverage for premises and operation - \$1,000,000 CSL; Product Liability/Completed Operations - \$1,000,000 CSL Hangar Keeper's Liability - Value of aircraft in care, custody, or control
Airframe and/or Powerplant Repair-engaged in repair of engines and/or frames	Commercial general aviation liability coverage for premises and operation - \$1,000,000 CSL, Products Liability/Completed Operations - \$1,000,000 CSL Hangar Keeper's Liability - Value of aircraft in care, custody, or control
Large Aircraft Operations or Other Specialized Commercial Aviation Services	Commercial general aviation liability coverage for premises and operation - \$1,000,000 CSL; Aircraft Liability with coverage for bodily injury and property damage, including passengers - \$1,000,000 CSL
Terminal Building Retail Businesses & Other Businesses Not Otherwise Listed	Commercial general liability coverage for bodily injury and property damage - \$1,000,000 CSL (This category is for businesses WITH OUT any aircraft in care, custody or control)
Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$500,000 each-occurrence each accident/\$500,000 by disease each-occurrence/\$500,000 by disease aggregate for commercial operators.	
Automobile Liability: Movement Areas \$5,000,000 (Combined Single Limit / Each Occurrence) Owned/ Non-Owned and Hired Vehicles	
Automobile Liability: Landside and Non Movement Areas Combined single limit must total \$500,000 minimum for all owned, non-owned and hired vehicles	
Waiver of Subrogation - Waiver of Transfer of Rights of Recovery Against Others in favor of the City of Bryan is required for all coverages	
City of Bryan must be included as an additional insured on all coverages except Worker's Compensation and Employers' Liability. All policies must be written on per "occurrence basis".	
Thirty (30) day Notice of Cancellation in favor of the City of Bryan; such certificates shall provide for unequivocal thirty (30) day notice of cancellation or material change of any policy limits or conditions	
Insurance must be purchased from insurers having a minimum Ambest rating of A 7. The tenant shall furnish Certificate Of Insurances evidencing the required coverage cited herein prior to engaging in any airport operator's activities.	
In addition to the types and amounts of insurance required above, each commercial airport operator shall at all times maintain such other insurance as the City's Risk Management may reasonably determine to be necessary for such airport operator's activities.	

Note: CSL - Combined Single Limit

PU-111F-6

EXHIBIT D
Aviation Lease Policy

RESOLUTION NO. 3620

A RESOLUTION ADOPTING AN AVIATION LEASE POLICY ESTABLISHING THE APPROVED REQUIREMENTS FOR LEASES AT COULTER AIRFIELD; REPEALING AND REPLACING THE LEASE POLICY CURRENTLY IN PLACE AS RESOLUTION NUMBER 3243; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bryan through the adoption of Ordinance No. 1568 on January 23, 2006 established Chapter 3 of the Bryan City Code, entitled "Airport," providing rules and regulations for the efficient and safe use, operation, and conduct at the Coulter Airfield Airport; and

WHEREAS, Section 3-102 and 3-103 of the Bryan City Code provide that the City may lease property for aeronautical activities; and

WHEREAS, Resolution No. 3243, adopted on September 15, 2009, adopted a lease policy which now needs to be repealed and replaced;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS THAT:

1.

The Aviation Lease Policy and attached standard leases for use at the Coulter Airfield Airport for property owned by the City on that property is attached hereto as Exhibit "A".

2.

Resolution No. 3243 is repealed in its entirety and replaced by this resolution.

3.

This resolution shall become effective immediately upon adoption.

Approved and adopted this 28th day of July, 2015.

ATTEST:

CITY OF BRYAN:


Mary Lyne Stratta, City Secretary


for Jason P. Bieski, Mayor

APPROVED AS TO FORM:

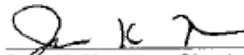

Janis K. Hampton, City Attorney

EXHIBIT A

COULTER AIRFIELD LEASE POLICY

Policy for Aviation Leases at Coulter Airfield

Commercial Lease

All new commercial leases shall use the standard form set out in **Exhibit B** of this resolution.

Private Lease

All new private leases shall use the standard form set out in **Exhibit C** of this resolution.

City-Owned T-Hangar

1. Fee set by Resolution No. 3401, adopted on January 24, 2012, or its successor.
2. Lease term is month-to-month.
3. All City-owned T-hangar leases shall use the standard form attached as **Exhibit D**.

Legacy Leases (Formerly "Class Z")

1. Any ground leases entered into before January 1, 2009.

EXHIBIT B

Adjusted Annual Rental Payment

Years 1-5
Years 6-10
Years 11-15
Years 16-20
Years 21-25
Years 26-30

Additional Terms

Term 1

Term 2

Term 3

- Commercial ground lease at Coulter Airfield.

Russell Bradley moved to authorize the President of the BBC to enter in to a ground lease with the City of Bryan – Coulter Airfield for hangar development. Ron Schmidt seconded with all present voting aye.