

LEASE AGREEMENT

STATE OF TEXAS

COUNTY OF BRAZOS

This Lease Agreement (Lease) is made and entered into on this _____ day of _____, 2015, by and between the Bryan/College Station Model Railroad Society (Society), an association situated in Brazos County, Texas, and the City of Bryan (City), a Texas home-rule municipal corporation located in Brazos County, Texas, acting by and through their duly authorized officers.

WHEREAS, Society desires to lease a portion of Bonham Park, the clubhouse described in **Exhibit A** (Leased Area), for model railroad activities; and

WHEREAS, the City determines that the proposed use of the Leased Area for model railroad activities by Society constitutes a park or recreational use; and

WHEREAS, the group discussions and displays of model railroads and of the periods of history during which they were in operation will provide an educational and recreational activity that will enhance the use of the park; and

WHEREAS, it is deemed in the best interest of the parties and the general public to enter into a mutually satisfactory lease agreement by means of which the City will lease space to the Society; and

NOW THEREFORE, that for and in consideration of the execution and performance of the mutual covenants herein set forth, the City and the Society do hereby covenant and agree as follows:

1. Description of Leased Area The Leased Area is the area described as the clubhouse on the attached **Exhibit A**. In addition, Society shall have a right of access to the Leased Area over adjacent parkland during the term of this Lease.
2. Additional Rights and Restrictions The parties agree to the following rights and restrictions:
 - 2.1 Society shall have the right to control access and use of the Leased Area during the term of this Lease.
 - 2.2 The parking areas serving Bonham Park are not for the exclusive use of Society. Society shall have the same rights, and be subject to the same restrictions, as the general public in regards to parking.
 - 2.3 City shall have a right of entry for the purpose of inspection of the Leased Area when accompanied by a member of the Society during the normal business hours of the City.
 - 2.4 Subject to the City's sign ordinance, Society shall have the right to construct signs or displays outside of the Leased Area, with prior written approval of the City Manager.
 - 2.5 City shall be responsible for the maintenance of all grounds near the Leased Area in the same manner and to the same extent as other parks in the city.
 - 2.6 Society will not litter or use space outside of Leased Area for storage.
3. Term The term of this Lease is five (5) years from the effective date of this Lease, being the date executed by all parties.

4. Purpose of Lease The following conditions shall apply regarding the purposes of the Lease:
 - 4.1 The Leased Area is leased solely for activities related to model railroad interest.
 - 4.2 Society shall offer its membership to the general public subject to reasonable rules and regulations. Society agrees not to discriminate against membership or access to the Leased Area on the basis of race, gender, national origin, or religious affiliation.
 - 4.3 Society shall make reasonable arrangements to enable the general public to see the model train displays on the Leased Area without charge.
 - 4.4 No concession rights are granted to Society by means of this Lease.

5. Termination The following conditions shall apply regarding termination:
 - 5.1. The Lease shall terminate under the following conditions:
 - a. when the term has expired,
 - b. Society has breached a term of this Lease,
 - c. the Lease is found by court of law to be invalid,
 - d. Society has failed to use the Leased Area for a period of six (6) months,
 - e. Society reorganizes by incorporation or by some other means changes its legal status,
 - f. City sells the park, or
 - g. City Council determines that the Leased Area is required for the public benefit to be utilized for other purposes.
 - 5.2. In the event of termination, Society shall remove all personal property and surrender possession of the premises within sixty (60) days after receiving written notice from the City. Society waives any right or claim against City by reason of any property of Society or any property of the members of Society remaining on the premises sixty (60) days after receiving notice of termination. Society has the option of curing any breach of the Lease within the sixty (60) days, and if successful, the Lease shall not terminate.

6. Hold Harmless Provisions The Society hereby releases the City for any and all damages from any cause to persons or property during its use of the leased area. The Society agrees to indemnify and pay to the City of any damages to its property resulting from its use of the leased area. The Society also agrees to indemnify and hold harmless the City against any and all claims which may be made against the City for property damage and personal injuries sustained by any person including the Society and the general public, which may result from the use of the leased area by the Society, including any allegedly negligent acts of the City or any of its agents, servants or employees.

7. Utilities Society will be responsible for all utility costs for the Leased Area. Failure to pay utilities in a timely manner constitutes a breach of this Lease.

8. Assignment Society shall not assign this Lease or sublease the Leased Area without the prior written consent of the City Manager.

9. Representatives Society will provide City with written notice of the names, addresses and phone numbers of at least two (2) members of Society that will be available to assist City to enter onto the Leased Area to make arrangements for the public to view the model railroad displays or in case of emergency. Such representatives shall also have a power of attorney from all members of the Society to receive any notice from City or service of process.

10. Members A copy of this Lease shall be posted inside the building leased herein for the purpose of placing all members of Society on notice of the conditions contained herein. As long as this

Lease is in effect each individual member shall by his continued membership in Society and enjoyment of the Leased Area agree and be a party to the conditions set forth in this Lease.

11. Insurance The Society agrees to carry the minimum insurance coverage and comply with each condition set forth below during the duration of this Lease. All parties agree that the Society's insurance will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance. Society must deliver to the City a certificate of insurance evidencing such policies are in full force and effect prior to approval by the City Council. The Lease shall not be effective until the required certificate is received and approved. Failure to meet the insurance requirements and provide the required certificate and any necessary endorsements may cause the Lease to be terminated. The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.
- a. Commercial General Liability Insurance – Society shall maintain a CGL policy with a limit of not less than \$1,000,000.00 per occurrence and an annual aggregate of at least \$2,000,000.00. CGL shall be written on a standard ISO “occurrence” form (or substitute providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City. The City shall be listed as an additional insured.
 - b. Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Society agrees to endorse City as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure “True Follow Form” basis.
 - c. Society may maintain reasonable and customary deductibles, subject to approval by the City. Society shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.
 - d. Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-:VI or better by AM Best Insurance Rating. Endorsements must be submitted with the certificate. Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration. Upon request, Society shall furnish the City with certified copies of all insurance policies. The certificate of insurance and all notices shall be sent to:

City of Bryan, Parks and Recreation Dept.
P.O. Box 1000
Bryan, Texas 77805
 - e. Society must provide minimum 30 days prior written notice to the City of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City is notified a required insurance coverage will cancel or non-renew during the contract period, the Society shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right to withhold payment to Society until coverage is reinstated. If the Society fails to maintain the required insurance, the City shall have the right, but not the obligation, to withhold payment to Society until coverage is reinstated or to terminate the Lease.
12. Miscellaneous Society shall not undertake any actions that will place any kind of lien on the property in question. Society shall have the duty of repair to insure the safety of all users of the Leased Area and to protect and maintain same.

IN TESTIMONY WHEREOF, after proper action of the parties hereto, we have caused this Lease to be executed in duplicate copies, each of which is considered to be an original.

CITY OF BRYAN TEXAS

BRYAN/COLLEGE STATION
MODEL RAILROAD SOCIETY

Jason P. Bienski, Mayor

David Martin, President

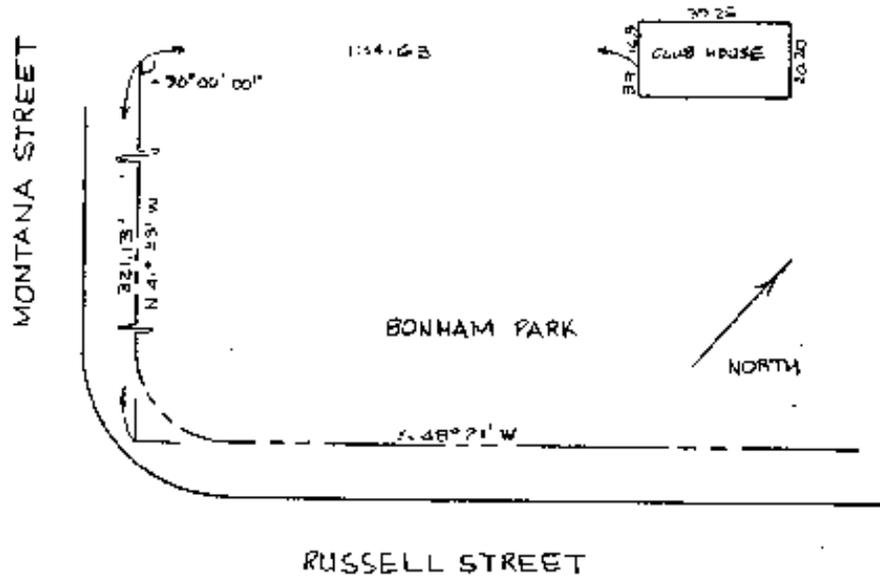
ATTEST

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

Janis K. Hampton, City Attorney

EXHIBIT A



Being a 0.0182 acre tract (792.85 s.f.) or parcel of land lying and being situated in the Stephen F. Austin #10 League, Abstract No. 63, Brazos County, Texas, and being part of the Bonham Park tract as conveyed to the City of Bryan by Lyndale Acres, Inc., and recorded in Volume 256, Page 531, Deed Records of Brazos County, Texas, said 0.0182 acre tract being more particularly described as follows:

BEGINNING at a point in the east right-of-way line of Montana Street, said point being in the north right-of-way line of Russell Street;

THENCE N 41° 39' W along the east right-of-way line of Montana Street for a distance of 321.13 feet to a point;

THENCE N 48° 21' E, with the City of Bryan tract, for a distance of 134.63 feet to a Point of Beginning;

THENCE N 41° 39' W for a distance of 16.90 feet to a point and corner;

THENCE N 48° 21' E for a distance of 39.25 feet to a point and corner;

THENCE S 41° 39' E for a distance of 20.20 feet to a point and corner;

THENCE S 48° 21' W for a distance of 39.25 feet to a point and corner;

THENCE N 41° 39' W for a distance of 3.30 feet to the POINT OF BEGINNING, containing a 0.0182 acre tract, more or less.