

RESOLUTION NO. _____

A RESOLUTION APPROVING A TEMPLATE FOR LEASE AGREEMENT FOR THE LEASE OF COULTER FIELD FOR GRAZING PURPOSES; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND LEASE LAND ADJACENT TO COULTER AIRFIELD FOR GRAZING PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bryan (CITY) owns and operates Coulter Airfield in the City of Bryan; and

WHEREAS, CITY owns unimproved land east of the runway within the confines of Coulter Airfield and approximately 60 acres of land adjacent to the southeast boundary of Coulter Airfield, and the potential use of such land is limited by the operation of Coulter Airfield; and

WHEREAS, CITY finds it in the interest of the citizens of Bryan that the herein described unimproved land be used in a productive manner which is not inconsistent with operation of the adjacent airport and to generate revenue; and

WHEREAS, CITY finds that agricultural uses including livestock grazing, hay production and apiary (bee keeping) are productive activities not inconsistent with operation of Coulter Airfield; and

WHEREAS, CITY finds it advantageous to enter short term agreements for the purposes stated herein.

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

1.

The lease template attached hereto as Exhibit "A" is approved and the provisions specified therein are authorized for the lease of unimproved land upon or adjacent to Coulter Airfield, in Brazos County, Texas.

2.

The City Manager is authorized to negotiate and execute lease agreements on month to month terms for grazing, hay production and apiary (bee keeping) purposes for unimproved land upon or adjacent to Coulter Airfield, in Brazos County, Texas, within the parameters set out in the herein approved lease template.

3.

This resolution shall become effective immediately upon adoption.

APPROVED AND ADOPTED by the City Council of the City of Bryan, at a regular meeting on the ____ day of _____, 2016.

ATTEST:

Mary Lynne Stratta, City Secretary

CITY OF BRYAN:

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

Exhibit "A"
GRAZING LEASE
COULTER AIRFIELD

THIS LEASE is entered into this ____ day of _____, 20__, between the City of Bryan, P.O. Box 1000, Bryan, TX 77805, ("Lessor"), and _____, ("Lessee"), of _____.

A. PROPERTY RIGHTS

The Lessor hereby leases to the Lessee, to occupy and use for grazing purposes, the following described property, hereinafter referred to as "Coulter Field" located in Brazos County, State of Texas, and consisting of 60 acres, more or less, adjacent to the City of Bryan Coulter Airfield, as shown on attached Exhibit "A", together with all improvements thereon and all rights thereto except as specified below.

- (1) Right of Entry – The Lessor reserves the right to enter Coulter Field at any reasonable time for purposes (a) of consultation with the Lessee; (b) of making repairs, improvements, and inspections; (c) of developing mineral resources; and, (d) this right is also reserved to the Lessor's agents, employees, and assigns.
- (2) Indemnification – Lessee shall be solely responsible for the conduct of its operators, agents, employees and representatives, and agrees to indemnify, defend, hold and save the Lessor, its authorized agents, officers, representatives and employees, harmless from each and every claim and demand of whatever nature, and against any and all penalties, liability and annoyance or loss, resulting from claims or court action of any nature claimed to have arisen directly or indirectly out of acts of Lessee or agents, servants, guest, employees or business visitors under this agreement or by reason of any act, omission or conduct of such person.
- (3) Assignment – This Lease may not be assigned, transferred, assumed, or inherited without prior written approval of the Lessor.

B. IMPROVEMENTS TO THE LAND FOR GRAZING PURPOSES

- (1) The Lessee shall erect a fence or fences of such nature and quality of construction so as to keep and maintain the said Lessee's livestock on the leased property.
 - i. The minimum requirements is a five strand barbwire fence with concreted corner and pull posts plus line posts at 20 foot intervals for a total distance of 3000 feet more or less. The Lessee may install more or a better quality fence at his discretion.
- (2) The Lessee may plow, disk, fertilize and seed the leased land so as to improve the quality of grass for grazing and/or hay purposes. This will be accomplished using currently accepted methods so as to reduce erosion to minimum practical levels. Grazing levels will be controlled to retain sufficient grass to retard wind and water erosion. Grass heights will be controlled so as not to exceed 36 inches.
- (3) Operations within Lease Area – Lessee agrees that except as may be otherwise provided in other contracts entered into between less and Lessor, it will not engage nor permit the engagement by any persons on premises leased in any business other than that which is expressly authorized herein.
- (4) Approved uses for a grazing lease are:
 1. Cattle/livestock grazing
 2. Apiary (bee keeping)
 3. Hay production

C. RENTAL PAYMENT

The monthly rental due shall be paid as follows:

\$_____ on _____ and \$_____ Monthly thereafter, and the payments, in the form of check or money order, shall be made to the City of Bryan in care of Coulter Airfield, City of Bryan, 6120 E SH 21, Bryan, Texas, 77808.

D. TERM OF LEASE

- (1) Term – The term of this lease shall be month to month beginning on the effective date. This lease automatically renews for additional one month terms unless terminated as provided below.
- (2) Continuous Occupancy – The land will be possessed and occupied continuously during the term of the lease by the Lessee or the Lessee's agent.
- (3) Surrender of Possession – The Lessee agrees to surrender possession and occupancy of the premises peaceably at the termination of the lease.
- (4) Review of Lease – A request for general review of the lease may be made at least 30 days prior to the expiration date for giving notice to terminate this lease. Amendments and alterations to the lease shall be made in writing.

E. MISCELLANEOUS PROVISIONS

- (1) No Partnership Created – This lease shall not be deemed to give rise to a partnership relation and neither party shall have authority to obligate the other without written consent, except as specifically provided in this lease.
- (2) Insurance – Lessee shall secure commercial general liability insurance, in which the City of Bryan, Texas shall be named an additional insured. Such policies of insurance shall protect Lessor and Lessee against any and all liability for death, injury, loss or damage against which Lessee has elsewhere in this agreement undertaken to save and hold the Lessor and its authorized agents, officers, representatives and employees harmless from and against any and all penalties, liability and annoyance and loss resulting from claims or court action of any nature and arising directly or indirectly out of the acts of Lessee, its agents, servants, guests, employees, business visitors or others under this agreement or by result of any act or omission of such persons. Such policies shall be placed with a company authorized to do business in the State of Texas and shall have not less than the following limits:
Commercial General Liability for limits of not less than \$ 1,000,000 each occurrence/\$2,000,000 aggregate.
The amounts of said insurance shall not be deemed a limitation of Lessee's agreement to save and hold the Lessor harmless, and if Lessee's agreement to save and hold the Lessor harmless, and if Lessee becomes liable for an amount in excess of insurance, Lessee will save and hold the Lessor harmless as the holder thereof. Copies of all such policies of insurance shall be delivered to Lessor.
- (3) Lessor's Agent – Lessor hereby designates its City Manager or his designee as its official representative, with the full power to represent Lessor in all dealings with Lessee in connection with the premises herein leased.
- (4) Zoning against obstructions – Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the leased property, that would, in the opinion of Lessor, limit the usefulness of the airport or constitute a hazard to aircraft.
- (5) Severability. If any provision of this agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this agreement is in effect, such provision shall be automatically deleted from this agreement and the legality, validity and enforceability of the remaining provisions of this agreement shall not be affected thereby, and in lieu of such deleted

provision, there shall be added as part of this agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

- (6) Texas law to apply. This agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
- (7) Sole Agreement. This agreement constitutes the sole and only agreement of the parties hereto respecting the subject matter covered by this agreement, and supersedes any prior understandings or written or oral agreements between the parties.
- (8) Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
- (9) Rights and Remedies Cumulative. The rights and remedies provided by this agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

F. SUSPENSION/TERMINATION

- (1) Lessee understands and agrees that all rights, privileges and interests acquired herein, following 30 days' written notice, may be altered or finally terminated, if such suspension or termination is found by Lessor, acting in good faith, to be necessary for the development of the airport.
- (2) Should Lessee fail to pay the rent due hereunder within 15 days after same shall become due, or permit any insurance coverage required under this agreement to elapse, Lessor shall have the option, without any legal proceedings or notice, to declare this lease terminated, cancel the same and re-enter and take possession of the premises, and in such event, Lessee agrees to deliver possession of the same peaceably and relinquish all rights incident thereto.
- (3) Lessor shall have the right, but not the obligation, to terminate this agreement in its entirety immediately upon the happening of any of the following events:
 - a. The making by Lessee of, or an attempt to make, any assignment transfer, assumption, release, or conveyance of any kind of the rights and privileges conferred by this Lease or of Coulter Field.
 - b. The failure by Lessee to perform, keep and observe any and all of the terms, covenants and conditions herein contained on the part of the Lessee to be performed, kept or observed after the expiration of 15 days from the date written notice has been given to Lessee by Lessor to correct such default or breach (except, however, failure of Lessee to provide insurance as required herein will give city the right to terminate this lease immediately without the necessity of giving Lessee 15 days written notice).
- (4) No waiver of any of the terms, conditions or covenants of this agreement shall be deemed or taken as a waiver at any time thereafter of the same, or of any other terms, conditions or covenants herein contained.
- (5) Lessee may cancel this agreement and terminate all or any of its obligations hereunder at any time that it is not in default to Lessor hereunder by giving Lessor 30 days advance written notice to be served as hereinafter provided, but such right of Lessee to terminate is allowed only in the event of default by Lessor in the performance of any covenant of agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of 60 days after receipt of written notice to remedy same.

Executed and effective on this ____ day of _____, 20__.

LESSOR – CITY OF BRYAN

LESSEE - _____
