

**FARM AND GRAZING LEASE AGREEMENT
BETWEEN THE
CITY OF CORPUS CHRISTI
AND
JAMES P. KELLY**

WHEREAS, the City of Corpus Christi (“**City**”) owns the Corpus Christi Inter-national Airport (“**Airport**”), located in Corpus Christi, Nueces County, Texas;

WHEREAS, James P. Kelly, an individual residing in the State of Texas, (“**Lessee**”) desires to lease a certain parcel of land at the Airport for crop farming and cattle grazing purposes; and

WHEREAS, the parties desire to enter into a written lease for approximately 28.28 acres of land to permit Lessee to engage in crop farming and cattle grazing (“**Lease**”).

NOW, THEREFORE, in consideration of the mutual covenants contained in this Lease, the parties agree as follows:

Section 1. Parties. This Lease is made by and between the City, acting through its duly authorized City Manager, or designee (“**City Manager**”), and James P. Kelly, as Lessee.

Section 2. Premises. The City leases to Lessee the land located on the Airport property, as more particularly described in the attached Exhibit A (“**Premises**”), which exhibit is incorporated into this Lease as if fully set out herein. The Premises consists of approximately 25.39 acres of land, excluding a fifteen (15) foot easement along any perimeter fence abutting the Premises, and a fifteen (15) foot easement along any light pole used by Airport located on the Premises.

Section 3. Term. Subject to the remaining terms and conditions of this Lease, the term (“**Term**”) of this Lease is five (5) years, beginning October 1, 2012, (“**Effective Date**”), and ending on the last day of the fifth (5th) full fiscal year thereafter (“**Termination Date.**”)

Section 4. Lease Payments.

A. **Calculation.** Lessee agrees to pay the City Fifteen Dollars (\$15) per acre annually (“**Lease Payment**”). Lessee shall remit the initial Lease Payment not later than 5:00 p.m. Central Standard Time on the Wednesday immediately following the date this Lease is finally approved by the City’s City Council (“**City Council**”). All subsequent Lease Payments are due on every calendar year anniversary of the Effective Date of this Lease.

B. **Paying Rent.** The Lease Payment must be delivered to the following address:

Corpus Christi International Airport
1000 International Drive
Corpus Christi, Texas 78406

Section 5. Lease Agent. The City's Director of Aviation, or his designee ("Aviation Director"), shall administer this Lease and serve as the City's agent to receive all Lease Payments, notices, and reports due under this Lease.

Section 6. Use of Premises. Lessee must use the Premises for the purposes of crop farming and/or grazing cattle limited to the number of heads of cattle allowed per acre as established by the Texas Agricultural Extension Service, and for no other purpose without the express written consent of the City Manager. In compliance with the FAA restriction on the types of crops grown on the Airport and pursuant to Section 16 herein, Lessee shall not plant sunflower, seeded crops or cereal grain crops on the Premises. Lessee may not construct any improvements on the Premises, with the exception of fencing as required herein for containing cattle to be grazed on the Premises. Lessee may not use the Premises for storage of equipment or supplies.

If Lessee plants crops not prohibited under this Agreement but that are not eligible for federal crop insurance, in the event such crops suffer a yield loss or marketing loss that otherwise would be insured under federal crop insurance if they were insurable crops, the City shall abate Lessee's rent by 10% for the acreage on which such affected crops are planted, in each year such crops suffer a yield loss or marketing loss, up to a maximum of 25% of the acreage included in the Premises.

Lessee may not provide grain feed for cattle upon the Premises or maintain a pond or other open body of water, either of which may be an attraction to wildlife hazards such as birds and other wildlife.

Lessee must, at his sole expense, construct if necessary and maintain a fence for the purpose of containing all cattle to be grazed on the Premises. Lessee agrees that at all times, cattle must be secured within the fenced area and not allowed to graze or wander outside the fenced area of the Premises, identified on the attached Exhibit A. Upon discovery or notification of cattle that are not within the fenced area of the Premises, Lessee must immediately re-secure all cattle within the fenced area of the Premises at Lessee's own expense. The City retains the right to timely re-secure any cattle that are not within the fenced area of the Premises, as stated herein, and Lessee agrees to reimburse the City for its associated cost thereof plus 20% of said associated cost within thirty (30) days of Lessee's receipt of written demand therefor by the City.

Section 7. Acceptance. By Lessee's execution of this Lease, Lessee acknowledges that Lessee has read this Lease and understands that this Lease is not binding on the City until properly authorized by the City's City Council and executed by the City Manager. Lessee also acknowledges that Lessee has inspected the Premises and accepts the Premises in its present physical condition, as is, including any and all defects known and unknown that may exist.

Section 8. Assignment and Sublease. Lessee may not at any time assign, transfer, convey, sublet, mortgage, pledge, or encumber Lessee's interest in this Lease or any part of the Premises to any party without the prior written consent of the City, which approval will not be unreasonably withheld. In the event that Lessee directly or indirectly assigns, transfers, conveys, sublets, mortgages, pledges, or otherwise encumbers this Lease or any portion of the Premises without the prior written consent of the City, the City may, in its sole discretion, terminate this Lease.

Section 9. Required Modification or Amendment of Lease. If the Federal Aviation Administration or its successor (“FAA”) requires modifications or amendments to this Lease as a condition precedent to granting funds for Airport improvements, Lessee agrees to consent to the modifications or amendments to this Lease as may be reasonably required for the City to obtain the funds; provided, however, that Lessee will not be required to pay increased Lease Payments, change the use of the Premises, or accept a relocation or reduction in size of the Premises until Lessee and the City have fully executed an amendment to this Lease that is mutually satisfactory to all parties regarding any terms or conditions of this Lease affected by said required actions.

Section 10. Reservation of Use.

A. The City reserves the right to sell, use, or lease for a use different from the present use all or any portion of the Premises at anytime during the term of this Lease. If the Premises are used or leased before the Expiration Date and the purchaser or new lessee is not willing to take the Premises subject to this Lease and demands immediate possession, then Lessee agrees to vacate and surrender possession within fifteen (15) days after receipt of notice to vacate.

B. If it becomes necessary for Lessee to vacate in the event of a sale or new lease, then the City shall pay Lessee for the land or portion thereof so vacated the following amounts, to-wit:

(1) If the land has been plowed and prepared for a new crop, but before the crop has been planted, the actual expense of working the acreage vacated plus \$5.00 per acre.

(2) If there is a growing crop, then the average return on an acreage basis that the same crops bring on other land covered by this Lease or, if there is no other land covered by this Lease, then on similar land in the immediate vicinity.

C. Any payments made to Lessee under this section shall be based on the Lessee’s share of the crop land actually cultivated and farmed under this Lease, less harvesting costs.

Section 11. Subordination to U.S. and FAA Requirements. This Lease is subordinate to the provisions of any existing or future agreement between the City and the government of the United States relating to the operation or maintenance of the Airport, where the execution of said agreement(s) is required as a condition to the expenditure of federal funds for the development of the Airport. If the effect of said agreement(s) with the United States, either under this Section 11 or under Section 9 above, is to take any of the Premises under this Lease out from the control of City, then City shall make every effort to provide Lessee with land substantially similar to the Premises used by Lessee for the remainder of the Term if similar premises are available for the type of use granted within this Lease.

Section 12. Maintenance; Utilities.

A. Lessee, at its own expense, shall maintain the Premises in good appearance and repair and in a safe condition. Lessee shall, except during the growing season prior to harvest, keep the Premises mowed to a height under 12 inches.

B. Within seven days of harvest, Lessee shall plow under the remains of the harvested crop. Additionally, Lessee shall spray the plowed-under areas with an approved growth inhibitor in order to prevent secondary growth of the remains.

C. Lessee must ensure that the Premises are maintained free of foreign object debris and shall control soil erosion on the Premises.

D. The Aviation Director is the sole judge of the quality of Lessee's maintenance, which must be reasonable and consistent with other City and Airport properties. The Aviation Director may at any time during City's normal business hours, without prior notice, enter upon the Premises to determine if Lessee is fulfilling the maintenance requirements of this Lease. The Aviation Director must notify Lessee in writing of any default. If the required maintenance, in Aviation Director's deficiency notice to Lessee, is not commenced by Lessee within 15 days after receipt of written notice, or is not diligently prosecuted to completion within the time stated, the Aviation Director may enter upon the Premises and perform the subject maintenance, and Lessee agrees to reimburse the City for its cost plus 20% overhead within 30 days after the Aviation Director's written demand therefor, together with copies of all bids for the repairs and maintenance.

E. Lessee must immediately remove or correct any hazardous or potentially hazardous condition on the Premises upon knowledge thereof, or after receipt of notice from the Aviation Director, whichever occurs sooner. At the Aviation Director's direction, Lessee must close the Premises, or affected portion, until the hazardous or potentially hazardous condition is removed or corrected.

F. Lessee, at its own expense, shall replace any and all utility lines and equipment located on the Premises which may be damaged or destroyed as a result of Lessee's farming or agricultural operations. Lessee, at its own expense, shall repair any and all damage caused to the Premises as a result of the willful or negligent acts or omissions of Lessee, its employees, or agents.

G. Lessee shall pay for all utilities, including water and waste disposal, Lessee uses at the Premises.

H. Crop Setbacks.

(1) Lessee shall plant crops no closer than fifteen (15) feet from any Airport perimeter fence or light pole.

(2) Lessee shall plant crops no closer than 575 feet from any runway centerline and no closer than 1,000 feet from the end of any runway.

(3) Lessee shall plant crops no closer than 130 feet from the centerline of any taxiway.

(4) Lessee shall plant crops no closer than 113 feet from the edge of any aircraft apron.

I. Lessee shall, at its sole expense, maintain the fence required herein for the purpose of containing all cattle to be grazed on the Premises. Lessee shall inspect such fencing on a regular

basis, no less than once a week, to ensure its functionality. Lessee shall, at its own expense, repair any and all damage to such fencing, regardless of causation, immediately upon discovery or notification of damage.

Section 13. Inspection and Premises Access. The Aviation Director shall have the right to inspect the Premises during the City's normal business hours, without prior notice. The City reserves the right to install wildlife control devices and to take additional wildlife control measures, as may be necessary. The City shall have the right at any and all times of ingress and egress on and over the Premises for the purposes of conducting and carrying on any business incident to activities of the City.

Section 14. Security Badges. Each of Lessee's employees needing access to a restricted area (including the area outlined in Section 15 of this Lease) must wear a security badge while in the restricted area. Lessee will pay an issuance fee for each badge and a replacement fee for each lost security badge. The Aviation Director may also require the payment of a reasonable deposit fee for each security badge issued consistent with fees charged to other tenants at the Airport. Lessee must notify the Aviation Director immediately after any employee of Lessee who was issued a security badge is terminated or loses a badge. Lessee and Lessee's employees must comply with all City and federal security regulations and requirements.

Section 15. Access to the Aircraft Operating Area.

- A. Lessee and its respective contractors, suppliers of materials, furnishers of services, employees, agents, and business invitees must comply with all present and future laws, rules, regulations, and ordinances promulgated by the City, the Airport, the federal Transportation Security Administration ("TSA"), the FAA, or other governmental agencies to protect the security and integrity of the Airport's aircraft operating area ("AOA"), as shown on the attached **Exhibit B**, which is incorporated in this Lease as if fully set out herein. Subject to the approval of the Aviation Director, Lessee must adopt procedures to control and limit access to the AOA by Lessee and its respective contractors, suppliers of materials, furnishers of services, employees, agents, business invitees, in accordance with all present and future City, Airport, TSA, and FAA laws, rules, regulations, and ordinances. Lessee specifically agrees to adopt procedures to prevent cattle from entering the AOA.
- B. Lessee must pay all FAA and TSA fines associated with security breaches or infractions committed by Lessee's employees, agents, contractors, suppliers, and business invitees in the AOA, regardless of whether the fine is assessed to the City or the Airport, as set out in the City Code of Ordinances, Sec. 9-31.
- C. *Lessee agrees to indemnify, hold harmless, and defend the City, its officers, employees, agents, and representatives against the risk of legal liability for death, injury, or damage to persons or property, direct or consequential, arising from entry of persons and/or cattle being grazed by Lessee, into the AOA where permitted, allowed, or otherwise made possible by Lessee, its employees, contractors, suppliers of materials, furnishers of services, business invitees, agents, or any other person under the direction of Lessee in violation of City, Airport, TSA, and FAA laws, rules, regulations, or ordinances or Lessee's approved procedures for controlling access to the AOA.*

- D. Lessee will have access to the Premises, subject to compliance with all applicable Airport, TSA, and FAA security procedures. Movement of all persons in the AOA and Premises must be cleared in accordance with Airport, TSA, and FAA rules and regulations. Lessee is primarily responsible for opening and closing any security gates and doors permitting access between the Premises and the AOA.
- E. No vehicles owned or operated by Lessee may operate within the movement or non-movement areas of the AOA except those in compliance with Airport, TSA, and FAA rules and regulations.

Section 16. Operation within Airport Certification. Lessee must comply with all rules that are applicable to its operations at the Airport under the Airport Certification Rules of the Federal Aviation Regulations (“FAR”), Part 139, as amended [14 CFR Part 139, as amended]. Copies of the FAR are available in the office of the Aviation Director.

Section 17. Federal Code Requirements for Equipment Use. Lessee covenants to comply with the notification and review requirements set out in the FAR, Part 77, as amended [14 CFR Part 77, as amended], if Lessee plans to use equipment in its operation that requires notification as outlined in this regulation. Copies of the FAR are available in the office of the Aviation Director.

Section 18. Control of Structures and Equipment. Lessee may not make use of or operate any structure, building, antenna, object, or equipment which has its highest point above a mean sea level elevation established by the FAA or the City as a height limitation on said structure, building, antenna, object, or equipment. City may enter the Premises and remove any such structure, building, antenna, object, or equipment and assess the removal expense against Lessee plus a 20% overhead charge.

Section 19. Aerial Approaches. The City Manager may take any action necessary to protect the Airport’s aerial approaches against obstruction, including the right to prevent Lessee from operating any object or equipment on or adjacent to the Airport, which, in the Aviation Director’s opinion, would limit the usefulness of the Airport or constitute a hazard to aircraft. Lessee will not make or permit any use of the Premises which would interfere with landing or taking off of aircraft at the Airport or otherwise constitute an Airport hazard including, but not limited to, electrical or electronic interference with communications, electrical, or electronic equipment or the creation of smoke, dust, or glaring or misleading lights.

Section 20. Right to Overflight. The City hereby reserves, for the use and benefit of the public, a right of flight for the passage of aircraft above the surface of the Premises together with the right to cause in the airspace noise as may be inherent in the operation of aircraft now known or hereafter used for navigation thereof or flight in the air, and using the airspace for landing at or taking off from, or operating on, the Airport.

Section 21. Hazardous Substances.

- A. Lessee covenants to comply with all environmental laws, rules, regulations, orders, and permits applicable to Lessee’s operation on or in the vicinity of the Airport including, but

not limited to, required National Pollutant Discharge Elimination System permits and all applicable laws relating to the use, storage, generation, treatment, transportation, or disposal of hazardous or regulated substances.

- a. Except for hazardous substances governed by and transported in full compliance with the transportation laws of the State of Texas or federal government, Lessee must not use, store, generate, treat, transport, or dispose of any hazardous or regulated substances or waste on or near the Airport without the Aviation Director's prior written approval and without first obtaining all required permits and approvals from all authorities having jurisdiction over Lessee's operation on or near the Airport.
- C. If Lessee determines that a threat to the environment including, but not limited to, a release, discharge, spill, or deposit of a hazardous or regulated substance has occurred or is occurring which affects or threatens to affect the Airport or persons, structures, equipment, or other property located thereon, Lessee must notify immediately by verbal report in person or by telephone, to be promptly confirmed in writing, (1) the Aviation Director, (2) the Airport's Public Safety Office, (3) emergency response centers, and (4) environmental or regulatory agencies, as required by law or regulation, and must follow such verbal report with all written reports required by law.
- D. Lessee agrees to cooperate fully with the Airport in promptly responding to, reporting, and remedying a threat to the environment including, without limitation, a release or threat of release of a hazardous or regulated substance into the drainage systems, soils, ground water, waters, or atmosphere, in accordance with applicable law and as authorized or approved by any federal, state, or local agency having authority over environmental matters.
- E. Lessee must keep a readily accessible file of materials safety data ("MSD") sheets for each hazardous substance on site or transported to the Premises, in accordance with federal and State transportation laws, which file must be posted and immediately available to any Airport or City employee who responds to the scene (Premises) in the event of a discharge of a hazardous substance. Lessee's employees must try to determine which hazardous substance was discharged and have that MSD sheet available for the first responders to the scene.
- F. Lessee must promptly undertake all required remediation and pay all costs associated with Lessee's action or inaction that directly or indirectly prevents the Airport from materially conforming to all then applicable environmental laws, rules, regulations, orders, or permits.
- G. Lessee agrees and acknowledges that the obligations set forth in this section survive termination of this Lease.

Section 22. Nondiscrimination and Affirmative Action.

- A. Nondiscrimination - General. Lessee, for itself, its employees, agents, and representatives, as a part of the consideration for the making of this Lease, covenants that: (1) no person on the grounds of race, creed, color, religion, sex, age, national origin,

handicap, or political belief or affiliation will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Premises; (2) Lessee will use the Premises in compliance with all requirements imposed by or pursuant to 14 CFR Part 152, Subpart E, Nondiscrimination in Airport Aid Program, Title VI of the Civil Rights Act of 1964 and 49 CFR, Subtitle A, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Title and regulations may be amended, and with other applicable State and federal laws, rules, or regulations, as amended.

- B. Nondiscrimination - Business Owner. This Lease is subject to the requirements of 49 CFR Part 23. Lessee agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award of performance or any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- C. Remedy for Breach. If Lessee breaches a nondiscrimination covenant, the City may immediately reenter the Premises, and the Premises and all Lessee's interest therein reverts to the City. This provision is not effective until the procedures of 49 CFR Part 21 are completed, including exercise or expiration of appeal rights.
- D. Affirmative Action. Lessee covenants that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person on the grounds of race, creed, color, religion, sex, age, national origin, handicap, or political belief or affiliation is excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee covenants 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 that subpart. Lessee further covenants to require its covered sub-organizations to provide similar assurances to Lessee to undertake affirmative action programs and to require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E. Lessee, at its own expense, will comply with any applicable requirements of the Americans with Disabilities (ADA) Act, as it may be amended.

Section 23. Compliance with Laws.

- A. General. Lessee must promptly observe, comply with, and execute the provisions of any and all present and future governmental laws, ordinances, rules, regulations, requirements, orders, and directives applicable to Lessee's use and occupancy of the Premises. Failure to observe or comply with any law, rule, or regulation will subject this Lease to cancellation by the City under Section 24 of the Lease.
- B. Federal. Lessee covenants to comply with all applicable federal laws, rules, and regulations including, without limitation, the Drug Free Workplace Act, the Violence in the Workplace Act, the Americans with Disabilities Act, and any other acts that the U.S. Congress passes that apply to any entity that operates at the Airport.
- C. State and Local Laws. Lessee covenants to comply with all applicable State and local laws, rules, regulations, and policies.

Section 24. Cancellation; Termination; Re-entry.

- A. Cancellation by Lessee. Without limiting any other rights and remedies to which Lessee may be entitled by common law, statutory law, or as elsewhere provided in this Lease, this Lease may be canceled by Lessee at any time after the happening, and during the existence, of one or more of the following events:
1. The permanent abandonment of the Airport;
 2. The lawful assumption by the United States government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, that substantially restricts Lessee from operating for at least 150 days;
 3. The issuance by any court of competent jurisdiction of an injunction that prevents or restrains the use of the Airport by the Lessee and that continues for at least 150 days;
or
 4. The default by the City in the performance of any covenant and the failure of the City to remedy the default within 60 days after receipt from Lessee of written notice to remedy the same.
- B. Termination by City. Without limiting any other rights and remedies to which City may be entitled by common law, statutory law, or as elsewhere provided in this Lease, this Lease may be terminated by City if Lessee;
1. Is in arrears in the payment of any portion of the Lease Payment or of any fees or charges required to be paid by Lessee under this Lease in excess of ten (10) business days (“business” days are Monday through Friday) or other time as may be provided herein;
 2. Makes a general assignment for the benefit of creditors;
 3. Abandons the Premises or any part thereof;
 4. Otherwise defaults in the performance of any of Lessee’s covenants and continues the default in excess of 30 days or other time as may be provided herein, after receipt of written notice from Aviation Director of the default. If the default cannot reasonably be cured within 30 days or within any other time set out in the notice of default, Lessee shall submit a plan to remedy the default to the Aviation Director for approval within thirty (30) days from receipt of the notice. The Aviation Director shall have sole discretion regarding the approval or rejection of Lessee’s proposed plan.
- C. City’s Right to Entry.
1. If the City terminates this Lease or if Lessee abandons the Premises, the City may enter upon the Premises.

2. In the event of termination by City or abandonment by Lessee, Lessee hereby irrevocably appoints the City Manager as its agent to remove any and all persons and property from the Premises and place any property in storage for the account of and at the expense of Lessee. **All property on the Premises is hereby subject to a contractual landlord's lien to secure payment of delinquent rent and other sums due and unpaid under this Lease, and any and all exemption laws are hereby expressly waived in favor of said landlord's lien. Furthermore, it is agreed that said landlord's lien is not a waiver of any statutory or other lien given or which may be given to City by the Lessee but is in addition thereto.**
 3. Lessee agrees, that in the case of a default, if Lessee fails to remove any property on the Premises within thirty days following the default, the City Manager may sell Lessee's property found on the Premises at a public or private sale with proceeds of the sale applied first to the cost of the sale, then to the cost of storage of the property, if any, and then to the indebtedness of Lessee, with the surplus, if any, to be mailed to Lessee at the address herein designated. If the City terminates this Lease and reenters the Premises, the City may relet the Premises and, if a sufficient sum is not realized after paying the expenses of the reletting to satisfy the rent owed and other sums agreed to be paid by Lessee, Lessee agrees to pay any deficiency within 30 days of the Aviation Director's written demand therefor.
- D. Notice of Termination. If an event of default occurs and, after due notice identifying the default, the defaulting party has failed to cure, the complaining party may at any time after the expiration of any cure period terminate this Lease by providing written notice of termination. The Lease will be terminated on the date specified in the notice but not sooner than five (5) business days after the postmarked date of the notice. Rental payments are payable only to the date of termination. This Subsection is subject to the requirements set out in Subsection B of this Section.

Section 25. Property Removal upon Expiration or Termination.

- A. Removal of Equipment. Upon termination or expiration of this Lease, Lessee must remove all equipment and/or cattle from the Premises within 30 calendar days after termination or expiration of the Lease. Any damage to the Premises caused by Lessee's removal of its property and/or cattle must be repaired by Lessee within 15 business days after termination or expiration of the Lease, at Lessee's expense, and to the satisfaction of the Aviation Director.
- B. Notwithstanding the foregoing, if Lessee fails to remove equipment and/or cattle within 30 days from the date of termination or expiration of this Lease, then the City Manager, may at his or her option, take title to the said personalty and/or cattle and sell, lease, or salvage the same, as permitted by law. Any net expense the City Manager incurs on behalf of the City in disposing of the personalty and/or cattle must be paid by Lessee within 10 days of the City Manager's written demand thereof. The City Manager will provide Lessee with a written itemized breakdown of the costs recaptured, if any, by the sale, lease, or salvage of the property and/or cattle, and the balance due, which must be paid by Lessee upon receipt of said itemized breakdown.

Section 26. Holdover. Any holding over by Lessee of the Premises after the expiration or other termination of this Lease will be on a month-to-month tenancy at sufferance, at the then current monthly rental rate, and Lessee agrees to surrender the Premises upon 30 days written notice. Failure to timely surrender Premises following notice subjects Lessee to payment of a monthly holdover fee equal to the then current monthly rent (Lease Payment) for each month of delay, in addition to the payment of rent.

Section 27. Re-delivery of Premises. Upon expiration or termination of this Lease, Lessee must deliver the Premises to City peaceably, quietly, and in as good condition as the same now are or may be hereafter improved by Lessee or City, normal use and wear thereof excepted. In addition to a landlord's lien provided by the law of the State of Texas, the City has a contractual lien on all property of Lessee on the Premises as security for nonpayment of rent.

Section 28. Indemnification.

- A. **GENERAL** – *Lessee must indemnify, hold harmless, and defend the City of Corpus Christi, its officers, employees, agents, and representatives from and against any and all claims and causes of action, administrative proceedings, judgments, penalties, fines, damages, losses, demands, liabilities, or expenses whatsoever (including reasonable attorney's fees and costs of litigation, mediation, and administrative proceedings) which may be brought, alleged, or imposed against the City, its officers, employees, agents, or representatives arising directly or indirectly from or in any way connected with (i) any property damage or loss, personal injury including death, or adverse effect on the environment arising out of Lessee's action or inaction with regard to the operations of Lessee hereunder, including the use or occupancy of the Premises, or in providing access to secured areas of the Airport as set out herein, excepting only that liability as may result from the gross negligence or the willful misconduct of the City, including its officers, employees, agents, and representatives; (ii) the failure of Lessee, its agents, or employees to comply with the terms and conditions of this Lease or to comply with any applicable federal, State, or local laws, rules, regulations, or orders including, but not limited to, any and all applicable federal, State, or local environmental laws, rules, regulations, or orders; or (iii) release of any hazardous or regulated substances or waste onto, into, or from the Premises or other Airport property, connected in any way with Lessee's operations or the action or inaction of Lessee, its agents, or employees, regardless of whether the act, omission, event, or circumstance constituted a violation of applicable law at the time of the occurrence. The rights and obligations set forth in this Paragraph shall survive the termination of this Lease.*
- B. **NOTICE** – Notwithstanding the above indemnifications, Lessee must give the Aviation Director notice of any matter covered hereby and forward to the Aviation Director copies of every demand, notice, summons, or other process received in any claim or legal proceeding covered hereby within 10 working days of Lessee's receipt of said notice, demand, summons, or other process.
- C. **INDEMNITY WAIVER** – Lessee, if a charitable association, corporation, entity, or individual enterprise having or claiming an immunity or exemption (statutory or otherwise) from and against liability for damage or injury to property or persons, hereby

expressly waives its right to plead defensively the immunity or exemption as against City, including its officers, employees, agents, or representatives, as the case may be.

Section 29. Insurance.

- A. Lessee must provide insurance in the amounts and types of coverages required by the City's Risk Manager ("Risk Manager"), a copy of which is attached and incorporated as **Exhibit C**. Lessee's insurance company must provide the Aviation Director and Risk Manager certificate(s) of insurance 30 days prior to the annual anniversary date of the Effective Date of the Lease, which shows the levels and types of insurance.
- B. The Risk Manager shall annually assess the levels and types of insurance required by the Lease. The Risk Manager may increase or decrease the levels or types of insurance by giving Lessee notice no less than 60 days prior to the annual anniversary date of the Effective Date of the Lease. Lessee has 30 days to procure the changed insurance and provide written proof of insurance to the Aviation Director.
- C. All insurance required by this Lease must be primary insurance and not in excess of or contributing with other insurance which Lessee may carry. All policies must name the City as an additional insured.

Section 30. Notice.

- A. Notices are sufficient if in writing and sent by certified mail, return receipt requested, postage prepaid, or by overnight delivery service as addressed below:

If to the City:

Corpus Christi International Airport
Attn: Aviation Director
1000 International Drive
Corpus Christi, Texas 78406

If to Lessee:

James P. Kelly
6601 Bear Lane
Corpus Christi, Texas 78406

- B. Either party may change the address to which notices are sent under this section by providing a change of address, in writing, to the other party within ten (10) business days of the change.

Section 31. General Provisions.

- A. Mineral Rights. City expressly reserves all water, gas, oil, and mineral rights in and under the soil beneath the Premises.
- B. No Waiver of Forfeiture. Any failure or neglect of the City Manager or Lessee at any time to declare a forfeiture of this Lease for any breach or default whatsoever hereunder does not waive the City's or the Lessee's right thereafter to declare a forfeiture for a similar, other, or succeeding breach or default.
- C. Force Majeure. Neither the City nor Lessee will be deemed to be in breach of this Lease

if either is prevented from performing any of its obligations hereunder by reason of force majeure. "Force majeure" means any prevention, delay, or stoppage due to strikes, lockouts, labor disputes, acts of God, including inclement weather or periods of excessive rain or snow, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions or requirements, governmental regulations, governmental controls, inability to timely obtain governmental approvals, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform. All of the foregoing events excuse the performance by either party for a period equal to any prevention, delay, or stoppage, excluding the obligations imposed with regard to the payment of rental and other charges to be paid by Lessee pursuant to this Lease.

- D. Rules and Regulations. The Aviation Director may adopt and enforce rules, regulations, and policies to be uniformly applied to similar uses and users of similar space, which Lessee agrees to observe and obey with respect to the use of the Premises and the Airport, and the health, safety and welfare of those using the Premises and the Airport.
- E. Headings. The titles and headings in this Lease are used only for reference and in no way define or limit the scope or intent of any provision of this Lease.
- F. Venue. Venue of any action brought under this Lease lies in Nueces County, Texas, exclusively, where the Lease was executed and will be performed.
- G. Successors and Assigns. Subject to the limitations upon assignment and transfer contained herein, this Lease binds and inures to the benefit of the parties hereto, their respective heirs, successors, and assigns.
- H. No Third Party Benefit. No provision of this Lease creates a third party claim against the City of Corpus Christi, the Airport, or Lessee, beyond that which may legally exist in the absence of any such provision.
- I. Taxes and Licenses. Lessee must pay, prior to the past due date, all taxes of whatever character, including ad valorem and intangible taxes, that may be levied or charged upon the Premises or operations hereunder and upon Lessee's rights to use the Premises, whether the taxes are assessed against Lessee or City. Additionally, Lessee must pay any and all sales taxes arising in connection with its occupancy or use of the Premises whether the taxes are assessed against Lessee or City. Lessee must obtain and pay for all licenses or permits necessary or required by law for the installation of equipment and for the conduct of its operations under this Lease. If Lessee wishes to contest any tax or charge, that contest will not be a default under the Lease so long as Lessee diligently prosecutes the contest to conclusion and promptly pays whatever tax is ultimately owed. Furthermore, Lessee must pay any taxes not being contested prior to the past due date.
- J. Trash and Refuse. Lessee must arrange for the collection and lawful disposal of all trash and other refuse resulting from its operation on the Premises. Lessee must provide and use, within Lessee's leased area, suitable sealed and fireproof receptacles approved by the Aviation Director for all trash and other refuse generated by Lessee's use of the Premises. The piling of boxes, barrels, or other similar items in or within view from a public area is

not permitted.

- K. If Lessee consists of two or more individual persons or entities, each person or entity named in this Lease is jointly and severally liable for all performances, obligations, and duties imposed by the terms, conditions, and covenants of this Lease.
- L. Publication Costs. All costs for publication of notice of this Lease required by the City Charter, if any, must be paid by Lessee.
- M. Disclosure of Interests. In compliance with Section 2-349 of the City's Code of Ordinances, the Lessee shall complete the City's *Disclosure of Interests* form, which is attached to this Agreement as **Exhibit D**, the contents of which, as a completed form, are incorporated in this document by reference as if fully set out in this Lease.

EXECUTED IN DUPLICATE ORIGINALS this _____ day of _____, 2013.

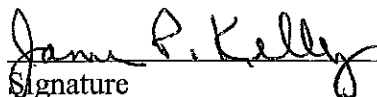
Attest:

CITY OF CORPUS CHRISTI

Armando Chapa
City Secretary

Ronald L. Olson
City Manager

LESSEE: JAMES P. KELLY



Signature
James P. Kelly

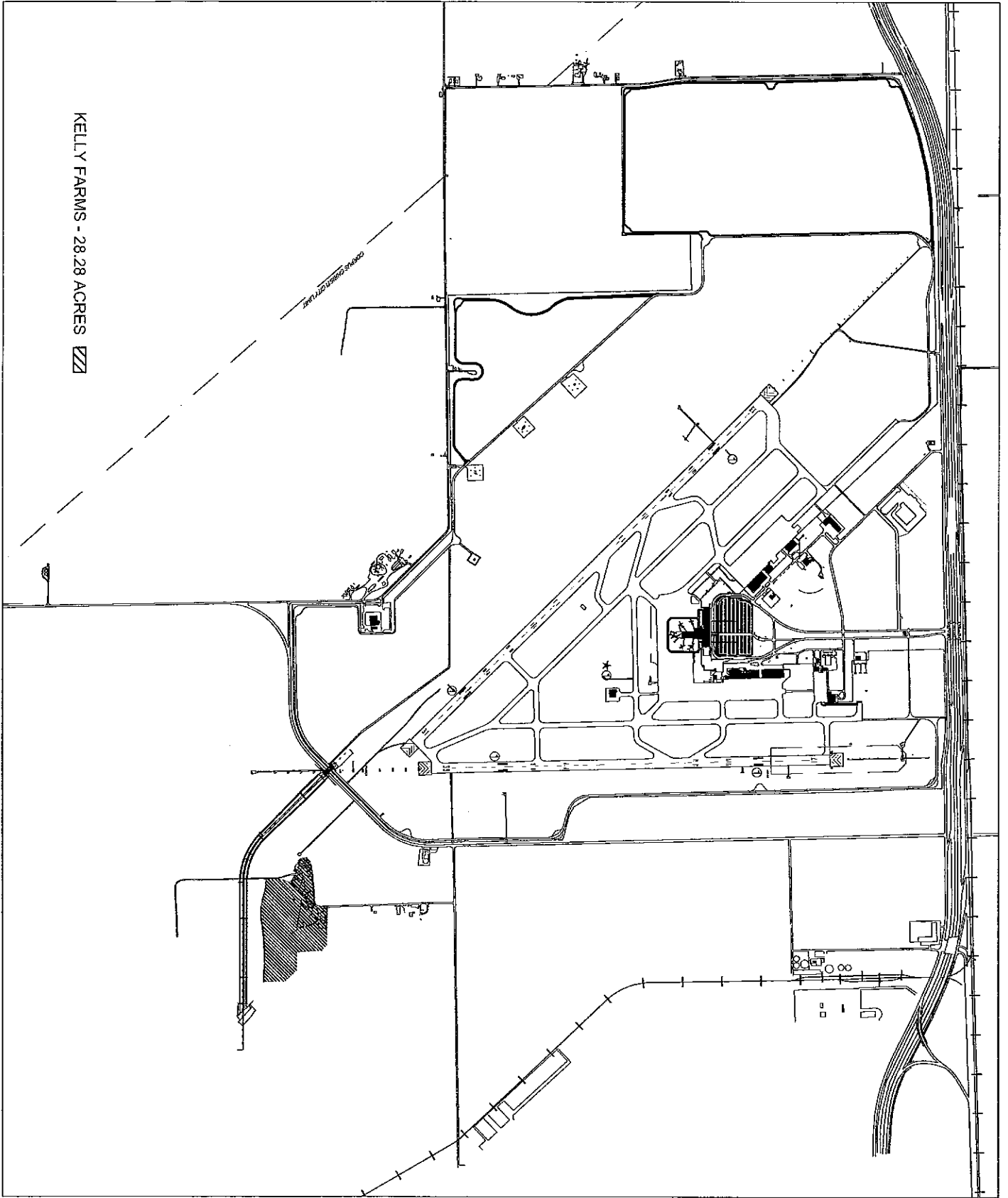
10-7-2013

Date

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on _____, 2013, by James P. Kelly, Lessee.

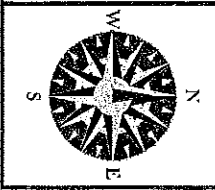
Notary Public, State of Texas



KELLY FARMS - 28.28 ACRES



OPENING DIMENSION LINE



DEPARTMENT OF AVIATION

EXHIBIT "A"
KELLY FARM LEASE

CORPUS CHRISTI
INTERNATIONAL AIRPORT 2012

SCALE:	1:2000
PREPARED BY:	CRIS BELAND
APPR BY:	CARL GROSS
DATE:	08-26-2013
PROJECT NO.	
PAGE:	1 OF 1