

RESOLUTION 060820-1

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE SEASONAL USER AGREEMENTS PERMITTING THE USE OF THE ABILENE MUNICIPAL AIRPORT BY DESIGNATED USERS ENGAGED IN THE BUSINESS OF AERIAL CROP DUSTING AND SPRAYING.

WHEREAS, the City of Abilene, Kansas ("City") is the owner of the Abilene Municipal Airport ("Airport").

WHEREAS, the Governing Body has historically served as the final approval authority in connection with seasonal user agreements ("User Agreements") that permit the use of portions of the Airport by designated persons or entities engaged in the business of aerial crop dusting and aerial spraying ("Sprayers").

WHEREAS, the User Agreements have historically established, among other things, the terms and conditions under which Sprayers are authorized to use portions of the Airport, and related facilities, for the purpose of staging their seasonal aerial crop dusting and aerial spraying operations.

WHEREAS, the Governing Body desires to authorize the city manager to administratively approve User Agreements with Sprayers, on a designated form of User Agreement, subject to the terms and conditions of this resolution.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:

SECTION 1. Approval Authority. The city manager is authorized to approve and bind the City to User Agreements with Sprayers, in a form substantially similar to the form attached hereto as **Exhibit A**. The city manager shall not make any material change to the terms and conditions of the form of User Agreement attached hereto as **Exhibit A** without the prior approval of the Governing Body.

SECTION 2. Administration and Enforcement. The city manager is authorized to administer and enforce all aspects of User Agreements approved by the City Manager pursuant this resolution. The city manager may designate other city personnel or representatives, as needed, to assist with the administration and enforcement of any User Agreement.

SECTION 3. Repeal. Any other resolutions or policies in conflict of this resolution are hereby repealed.

SECTION 4. Effective Date. This resolution shall take effect and be in force immediately upon its adoption by the Governing Body.

Adopted by the Board of Commissioners and signed by the Mayor this 8th day of June 2020.


Chris Ostermann, Mayor


ATTEST:

Penny L. Soukup, CMC
City Clerk

ABILENE MUNICIPAL AIRPORT
AERIAL APPLICATOR SEASONAL USER AGREEMENT

This User Agreement, made this ___ day of _____, 20___, by and between the **CITY OF ABILENE** of Abilene, Dickinson County, Kansas a political subdivision (the "City"), and _____, an agricultural service company, (the "User"), WITNESSETH:

RECITALS

- A. The City is the operator of the Abilene Municipal Airport, (the "Airport") and has the right to enter into this Agreement for the use of the Airport, together with all the facilities, rights, licenses and privileges herein granted.

- B. The User is engaged in the retail and application of agricultural fertilizer, herbicide, fungicide, and seed including aerial application and crop dusting/spraying.

- C. The City desires to grant and the User desires to have the right to use certain facilities on the Airport, together with certain rights, licenses and privileges thereon.

NOW THEREFORE, the parties hereto, for and in consideration of the rents, covenants and agreements contained herein, agree as follows:

ARTICLE I - PREMISES

The City does hereby grant unto the User and the User does hereby acquire from the City, the use of the facilities, rights, licenses and privileges in connection with the Airport, as follows:

- 1. Use of Airport. The User, in common with other authorized Users, shall have use of the Airport and its appurtenances, together with all facilities, equipment, improvements and services which have been or may hereafter be provided at or in connection with the Airport from time to time, including, but not limited to, the landing field, runways, aprons, taxiways, flood lights, landing lights, control tower, signals, radio aids and all conveniences for flying, landings and takeoffs of aircraft of the User.

- 2. Premises. The City grants permission to User to use and maintain certain premises ("Premises") located at the Airport for the purpose of a seasonal staging facility for aerial application subject to the terms and conditions set forth in this Agreement.

- 3. Points of Access. The User shall have 24-hour, direct access to the Premises.

- 4. Use of Premises. User agrees to use the Premises as follows:

- 4.1. User shall utilize a mobile mixing unit for transferring liquid and dry chemicals to the aircraft and shall use the Premises for this purpose. No permanent structures will be associated with the Premises. However, temporary structures and containers will be allowed for the purpose of containing rinse water and/or unused chemical preparations until they can be used as make-up water. Such containers shall be kept clean and capped to minimize the escapement of any odors. All temporary structures and containers shall be removed from the Premises at the end of the seasonal Agreement term unless authorized by the expressed written consent of the City.
- 4.2. User shall be responsible for maintaining a clean and safe operation and shall clean up the mixing/loading area after the completion of work each day. User shall be responsible for the disposal or re-use of hazardous materials generated by User in accordance with all federal, state and local laws. No storage of pesticide barrels will be allowed at the Premises unless being used on a day-to-day basis. At the end of each operating day, all empty barrels, cans, jugs, bags and refuse shall be removed from the mixing area and shall not be allowed to accumulate on Airport property. User shall provide chemical storage containment with a minimum 10% excess capacity of the maximum storage. Containment shall be covered as to prevent the accumulation of water, dust and debris in the containment equipment. All hazardous materials must be appropriately labeled and stored.
- 4.3. All loading equipment shall be equipped in a manner which permits loading of the aircraft to occur with a minimum of exposure to open pesticide containers to the atmosphere and personnel. All operations shall be conducted with proper caution and adherence to label instructions and in a manner which minimizes the risk of accidental spills and resultant exposure of pesticides to the surrounding Airport environment. User shall also immediately notify the City of any spills, wet or dry, occurring on Airport property. All fuel handling and storage must be kept in accordance with all applicable Federal, State and local laws. All portable fuel tanks shall be removed from the Premises upon termination of this Agreement.
- 4.4. Material Safety Data Sheets (MSDS) are required to be onsite and one copy shall be provided to the Airport Fixed Base Operator of the Airport.
- 4.5. The City shall have the right, through its agents or agents of another appropriate agency, for reasonable ingress and egress to inspect Premises to ascertain that the terms of this Agreement are being adhered to and to check for site contamination.
- 4.6. The parties acknowledge that no tests have been conducted on the Premises to ascertain whether the soil may be contaminated by any hydrocarbons or other hazardous substances. If either party desires an environmental review of the Premises then the City and the User agree that they will jointly contract for an environmental review of the

Premises to ascertain whether the soil may be contaminated by any hydrocarbon or other hazardous substances. The tests shall be conducted by a reliable and competent engineering firm mutually acceptable to both parties. The cost of the environmental soil survey shall be shared equally by the parties. A copy of the report shall be attached to the Agreement and made a part of thereof by reference. Either of the parties hereto may request an environmental review of the Premises at the termination of the Agreement and the cost thereof shall be shared by the parties.

4.6.1. User shall be responsible for all costs associated with clean up of any spill in accordance with all applicable state and federal regulations and indemnify and hold the City harmless from and against all claims, expenses, loss, or liability to the extent arising from any spill.

4.6.2. User shall reimburse the City for any damage to the City's property to the extent arising from any spill.

4.6.3. User shall comply with all storm water and waste collection requirements of any federal, state or local governmental laws, rules and regulations.

4.7. User is aware of the penalties for the improper handling and disposing of wastes or submitting false information regarding the same.

4.8. User may not assign or sublet this Agreement without the prior written consent of the City.

ARTICLE II – TERM

1. This Agreement shall be seasonal, for approximately an eight (8) month period from March 1, 20__ to October 31, 20__. This agreement may, at the option of the User, be renewed from year to year at a seasonal rental rate in accordance with and acceptance of the term and conditions herein specified.
2. The User's option shall be deemed exercised and the Agreement renewed automatically each year, for an additional seasonal period unless either party gives written notice sixty (60) days in advance of the beginning of the next seasonal term period that it will not or cannot agree to the terms of the Agreement.

ARTICLE III – FACILITIES FEES

1. **Premises Base Rent.** The User shall pay to City the total sum of \$750.00 annually for the seasonal staging storage area. Payment shall be made in full by April 1st of each lease year.

2. FAA Audit. The User acknowledges that it is aware that as required by AAIA Section 511(a) (9), the City must maintain a fee and rental structure for its facilities and services which will make the airport as self-sustaining as possible under the circumstances. In the event that an FAA audit should determine that the facility's fees provided for herein are inadequate, the parties agree to renegotiate the Facilities Fees.

ARTICLE IV – INSURANCE

1. User shall maintain for the duration of this Agreement and any extension thereof, at its sole cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in conjunction with the performance of work by the User, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.
2. User agrees that its insurance policies will be amended to be primary without right of contribution from the City or its insurance policies, that User's insurance policies will be amended to state that its insurer agrees to waive its right of subrogation against the City and that the above insurances will not be invalidated for the City by any action, inaction or negligence of the insured. All amounts of claims, losses or damages resulting from deductible clauses or self-insured retentions shall be for the account of the User.
3. User shall purchase and maintain on a per location basis, commercial general liability occurrence coverage with combined single limits for bodily injury, personal injury and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by an act, omission, or negligence of the User or its officers, agents, employees, representatives, assigns or subcontractors.
4. User shall purchase and maintain comprehensive auto liability for owned, non-owned and hired vehicles with combined single limits of liability of \$1,000,000 per occurrence.
5. User shall purchase and maintain aircraft liability insurance in an amount of \$1,000,000 per occurrence and coverage for owned aircraft with combined single limits of liability of not less than \$100,000 per passenger and \$1,000,000 per occurrence.
6. User shall purchase and maintain comprehensive chemical liability as required by the Kansas Department of Agriculture (KSA 2-2448 (a)(2)(B)).
7. Use shall purchase and maintain worker's compensation insurance with statutory limits.
8. The Abilene Municipal Airport and the City of Abilene, Kansas, its subsidiaries, parent, affiliates, executive officers, directors and employees shall be covered and listed as additional insured for liabilities arising out of activities performed by or on behalf of the User.
9. Certificates of Insurance acceptable to the City shall be filed with the City prior to commencement of this Agreement. These certificates and the insurance policies required by this Section shall contain a provision that coverages afforded under the policies will not be

canceled or allowed to expire until at least 30 days' prior written notice has been given to the City. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by User with reasonable promptness in accordance with User's information and belief.

10. Property owned by User. User acknowledges that it shall be fully responsible for any loss or damage to its personal property located on or about the Premises and that it shall be solely responsible for such personal property, and User releases the Authority and its current and former officers, directors, employees, and agents from any liability therefore.

ARTICLE V - OPERATION OF AIRPORT

1. The City agrees during the term of the Agreement and any renewal thereof to maintain and operate the Airport with adequate and efficient personnel and to keep the Airport in good repair, in accordance with the requirements of the Federal Aviation Administration for the operation of general aviation owners and operators using the type of equipment employed by the User thereon.

ARTICLE VI - RULES AND REGULATIONS

1. The User agrees to adhere to the current Abilene Municipal Airport Minimum Standards and Rules and Regulations and observe and obey all reasonable rules and regulations promulgated and enforced by the City and any other appropriate authority having jurisdiction during the term hereof provided the said rules and regulations are consistent with safety and do not conflict with the rules and procedures prescribed by the Federal Aviation Administration for landing and take-off of The User's aircraft at the Airport.
2. The City reserves the right to cancel this agreement at any time upon a finding of non-compliance by the City. At such cancellation, the User shall be required to remove offending property, and if not so removed within a reasonable time designated by the City, the City shall cause the same to be removed. The User shall have the option to terminate this agreement without penalty if sixty (60) days notice is given.

ARTICLE VII – INDEMNITY FOR BENEFIT OF AUTHORITY

1. The User shall indemnify, protect, defend and save the City harmless from and against all claims, demands, liabilities and costs, including attorneys fees, arising from damage or injury, actual or claimed, of whatever kind or character to property or persons allegedly occurring on or about the Airport during this Agreement resulting from or arising out of the willful or negligent acts and omissions of officers, agents, employees, and students of the User. Upon notice from the City, the User shall defend the City in any action or proceeding brought in connection with such claims or demands.

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2. Nothing in this Article shall require the User to indemnify, protect, defend and save the City harmless against claims, demands, liabilities and costs arising from negligence of the City, its officers, employees, agents, licensees and invitees.

ARTICLE VIII – INDEMNITY FOR BENEFIT OF USER

1. The City shall indemnify, protect, defend and save the User harmless from and against all claims, demands, liabilities and costs, including attorneys fees, arising from damage or injury, actual or claimed, of whatever kind or character to property or persons allegedly occurring on or about the Airport during this Agreement resulting from or arising out of the willful or negligent acts and omissions of officers, agents, and employees of the City. Upon notice from the User, the City shall defend the User in any action or proceeding brought in connection with such claims or demands.
2. Nothing in this Article shall require the City to indemnify, protect, defend and save the User harmless against claims, demands, liabilities and costs arising from negligence of the User, its officers, employees, students, agents, licensees and invitees.

ARTICLE IX - NOTICES

1. Notice to the City provided for herein shall be sufficient if sent by registered mail, postage prepaid, addressed to the City Manager, P. O. Box 519, Abilene, Kansas 67410, and notice to the User, if sent by registered mail, postage prepaid, addressed to

or to such respective address as the parties may designate in writing from time to time.

ARTICLE X - AIRPORT PROTECTION

1. It is understood and agreed that the rights granted by this agreement will not be exercised in such a way as to interfere with, or adversely affect the use, operation or maintenance of the Airport.

**ARTICLE XI - COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY
REGULATIONS AND NONDISCRIMINATION ASSURANCES**

1. The User, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on the property described in this agreement, for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the User shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

2. The User, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over or under such land 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 subjected to discrimination; and (3) that The User shall use the Airport facilities in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
3. The User assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall 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. The User assured that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The User assures that it will require that its covered suborganizations provide assurances to The User that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
4. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 and amendments thereto.
5. The User agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all Users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that the User may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchaser.

ARTICLE XII - INVALID PROVISION

1. It is further expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either the City or the User in their respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

ARTICLE XIII SUBCONTRACTORS

1. The User agrees that any contractors or subcontractors engaged by the User relative to the utilization of the Airport and Premises as defined in this Agreement shall be bound to all of the terms and conditions contained herein.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officers on the dates shown below.

CITY OF ABILENE

COMPANY

By: _____
City Manager

By: _____,

Attest:

City Clerk

Dated: _____