

CAUSE NO. CV2246534

RANGER AIRFIELD MAINTENANCE FOUNDATION,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
v.	§	91 st JUDICIAL DISTRICT
	§	
CITY OF RANGER, a Texas Municipal Corporation,	§	
	§	
Defendant.	§	EASTLAND COUNTY, TEXAS

DEFENDANT’S PLEA TO THE JURISDICITON

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant City of Ranger, Texas (“Ranger”) in the above-entitled and numbered cause, and files this Plea to the Jurisdiction in response to Plaintiff Ranger Airfield Maintenance Foundation’s (“Foundation”) Original Petition and would respectfully show unto the Court as follows.

I. SUMMARY OF MOTION

Ranger enjoys governmental immunity from the Foundation’s suit unless Ranger’s immunity is expressly waived. If governmental immunity applies, it encompasses immunity from liability *and* immunity from suit altogether. Immunity from suit deprives a trial court of jurisdiction and completely bars a plaintiff’s claim. It is always the plaintiff’s burden to assert a *valid* waiver of immunity under the facts particular to the plaintiff’s claim.

The Foundation asserts two statutory grounds supporting waiver of Ranger’s governmental immunity – Local Government Code Section 271.152, which waives governmental immunity for certain contracts, and the Texas Uniform Declaratory Judgment Act (“UDJA”), which provides a limited immunity waiver for certain declarations against

cities. These waivers are inapplicable for several reasons and the Foundation fails to invoke this Court's subject matter jurisdiction.

First, Section 271.152 only waives immunity for contracts for goods and services and even then only under other limited circumstances. Not only is the contract in question conclusively proven to be a contract for the conveyance of real property by the Foundation's judicial admission, it also fails to meet other requirements for this limited waiver to be effective, including failing to contain essential terms and failing to be properly executed.

Second, there is no waiver-by-conduct exception and the UDJA does not waive Ranger's governmental immunity for declarations related to contracts and performance thereunder. The UDJA only waives a city's immunity to declare an ordinance invalid. That is not the relief the Foundation seeks; therefore, its reliance on the UDJA is misplaced and does not constitute a valid immunity waiver.

Third, the contract in question violates the Texas Constitution's prohibition on granting public funds (or value) to private parties.

Fourth, the contract is void for failure to comply with Chapters 253 and 272 of the Local Government Code, which governs the sale or lease of real property by cities and is unenforceable as a matter of law.

Finally, the Foundation's claims for attorney's fees must be dismissed because Ranger's immunity is not properly waived under any theory pled.

For these reasons, the Foundation's claims must be dismissed with prejudice because no amount of repleading can salvage its claims and waive Ranger's immunity.

II. JURISDICTIONAL EVIDENCE

- Exhibit 1 – Eastland C.A.D. Property Information – Property ID 55996

- Exhibit 2 – Texas Secretary of State Information Sheet – Plaintiff
- Exhibit 3 – 2018 Lease
- Exhibit 4 – 1/31/2022 Ranger Minutes
- Exhibit 5 – 2022 Amendment
- Exhibit 6 – City Secretary Affidavit (Bidding, 1295 Form)

III. BACKGROUND AND FACTS

A. Ranger and the Foundation enter the 2018 Lease.

Ranger owns a historic municipal airport and airfield (Exhibit 1 – Eastland C.A.D. Property Information - Property ID 55996). Ranger and the Foundation¹ entered a 30-year lease (“2018 Lease”) on December 4, 2018, for one-dollar a year. The 2018 Lease, which the Foundation references but does not attach to its pleading, is attached hereto as Exhibit 3. The purpose of the lease is for the Foundation to maintain and operate Ranger’s historic municipal airport (Ex. 3, § 1.04).

The 2018 Lease provides that the Foundation’s failure to use the leased premises as an airport for general aviation shall constitute a default and may result in cancellation of the lease if the Foundation fails to cure such a default within 30-days following notice by Ranger (Ex. 3, § 6.04). The Foundation’ remedies for cancellation are limited to recovery of costs of improvements prorated over the term of the lease (Ex. 3, §§ 6.04 and 3.03). The 2018 Lease also provides that the leased premises may not be used as a permanent residence (Ex. 3, § 4.01). The 2018 Lease also permits the Foundation to erect “historical” aviation-related buildings on the premises, which remain the Foundation’s personal property, but which must be removed upon termination of the lease term (Ex. 3, § 7.01). Finally, and most

¹ The Texas Secretary of State identifies the Foundation as a domestic nonprofit corporation. Exhibit 2.

notably, the 2018 Lease not only permits the Foundation to build new operating hangars, it also permits the Foundation to “restore” the original 1928 Airport Hangar at the Foundation’s expense (Ex. 3, § 7.02).

B. The 2022 Amendment purports to convey real property to a private party.

On January 31, 2022, as part of its regular open meeting, the Ranger City Council convened in executive session to discuss and consider the Ranger Municipal Airport (Exhibit 4 – 1/31/22 Minutes):

<p>Agenda Item 13: Discuss/Consider: Convene in Executive Session Pursuant to Texas Government Code § Section 551.072. Deliberations about Real Property: A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.</p> <p>1. Ranger Municipal Airport</p> <p>Agenda Item 14: Discuss/Consider: Reconvene into Open Session at 7:23pm and take action from Executive Session – John Casey, Mayor</p>
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Upon reconvening into open session, a motion was made and seconded and unanimously approved to approve a first amendment to the lease (Exhibit 5 – “2022 Amendment”). To be clear, the Foundation’s lawsuit is entirely premised on Ranger’s alleged breach of the 2022 Amendment. The 2018 Lease, while relevant jurisdictional evidence, is not in dispute.

The 2022 Amendment is not a lease. Instead of simply amending the terms of the 2018 *lease* of Ranger’s real property, the 2022 Amendment purports to **convey** Ranger’s real property – namely, almost all of the Ranger Municipal Airport and Airfield – to the Foundation in exchange for the Foundation causing at least three new “vintage-style appearance aircraft hangars” to be constructed on the Airport property (Ex. 5). The

Foundation judicially admits that the purpose of the 2022 Amendment was to convey ownership of the Airfield to the Foundation (See Original Petition, ¶11).²

Once the Foundation causes those “vintage-style” hangers to be built, the new hangers **and** the land on which they sit (i.e., most of the Airport and Airfield)³ would belong to the Foundation. In return, the Foundation would “restore” the historical hanger to its 1928 size and appearance and allow Ranger to keep the historic hangar and a small plot of land (60’x60’) around it (Ex. 5, ¶ 2).

The Eastland CAD Property Information for the city-owned Airfield reflects that it is an 81.160 acre tract of property (Ex. 1). Eastland CAD estimates the total current market value of the property is \$512,980, comprised of a land value of over \$297,000 and an improvement value of over \$215,000 (Ex. 1). In its Original Petition, the Foundation agrees that the property is at least 81 acres (See Original Petition, ¶7). To put in perspective the scope of the purported conveyance, the amount of land the City would retain is about 0.08 acres, plus the historic hangar on that small plot, while the remainder of the land is purportedly conveyed to the Foundation (over 81 acres). Notably, the 2022 Amendment contains no additional terms explaining what it means to “restore” the historic hangar to its 1928 “size and appearance” (Ex. 5, ¶2). That is, there are no specific, objective criteria in the 2022 Amendment setting forth, for example materials to be used, amount of money to be

² The Foundation’s statement that the 2022 Amendment is a contract for the conveyance of real property is a clear and unequivocal judicial admission. The Foundation is now permanently estopped from later challenging the truth of this judicial admission. *H2O Sols., Ltd. v. PM Realty Group, LP*, 438 S.W.3d 606, 617 (Tex. App.—Houston [1st Dist.] 2014, pet. denied) (clear and unequivocal admissions in pleadings have conclusive effect and bar admitting party from later disputing admitted fact); *Dutton v. Dutton*, 18 S.W.3d 849, 853 (Tex. App.—Eastland 2000, pet. denied).

³ The 2022 Amendment contemplates that Ranger would convey the “Airport Property,” which would include Airport land, rights, fixtures, appurtenances, but would not include an 80’x80’ lot of land upon which the City’s 1928 60’x60’ historical hangar is located (Ex. 4).

spent, or how the 1928 hangar “appeared” when it was first built, both from an interior and exterior standpoint.

C. The Foundation sues Ranger, seeking specific performance, a declaration and attorney’s fees.

After the 2022 Amendment was signed by the parties, the Foundation filed a lawsuit against Ranger on December 30, 2022, alleging that the City has refused to allow third-parties to construct hangars on the Airport Property and perform tasks related to that construction (Original Petition, ¶¶16, 17). When Ranger refused to permit construction on its property and concomitantly refused to subdivide and convey over 81 acres of real property to the Foundation, it sued Ranger for breach of contract and anticipatory breach of contract (Original Peition, pp. 6-9). The breach claim is premised on Ranger’s failure to honor an alleged contractual obligation to convey ownership of the Airport property (Id. at ¶¶19-24). The Foundation’s anticipatory breach claim is premised on its contention that Ranger has repudiated the 2022 Amendment without cause (Original Petition, ¶¶27-31). The Foundation seeks specific performance under both theories.

The Foundation also seeks a declaratory judgment against the City that Ranger is obligated to convey ownership of the property in question to the Foundation (Original Petition, ¶¶35-37). The Foundation also seeks attorneys’s fees under Chapter 38 of the Civil Practice and Remedies Code (Id., at ¶¶26, 34) and under the UDJA (Id., at ¶40).

As Ranger will show, accepting all the Foundations well-pled facts as true as the Court must, neither Texas Government Code Section 271.152 nor the UDJA waive the City’s immunity in this instance. Nor is the City’s immunity waived for attorney’s fees under Chapter 38 of the Texas Civil Practice and Remedies Code.

Accordingly, Ranger files this Rule 91a Motion to Dismiss and Plea to the Jurisdiction.

IV. ARGUMENT AND AUTHORITY

A. Standard of review and burden - Plea to the Jurisdiction

A plea to the jurisdiction is used to defeat a cause of action without regard to the merit of the claim asserted. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). In determining whether jurisdiction exists, rather than looking at the claim's merits, the court must look to the allegations in the pleadings, accept them as true, and construe them in favor of the pleader. *See County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002). However, mere unsupported legal conclusions are insufficient to confer jurisdiction. *Texas Dept. of State Health Services v. Balquinta*, 429 S.W.3d 726, 737–38 (Tex. App.—Austin 2014, pet. dism'd).

Subject matter jurisdiction is a question of law reviewed under a *de novo* standard. *City of Fort Worth v. Robles*, 51 S.W.3d 436, 439 (Tex. App.—Fort Worth 2001, pet. denied). The applicability of governmental immunity is also a question of law. *See Tex. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224, 226–27 (Tex. 2004).

A plea to the jurisdiction can challenge a plaintiff's factual allegations in one of two ways – a challenge to the existence of jurisdictional facts, and a challenge to the sufficiency of the pleaded facts. *City of Weslaco v. Trejo*, 13-18-00024-CV, 2018 WL 3062575, at *4 (Tex. App.—Corpus Christi June 21, 2018, no pet.). Courts may consider jurisdictional evidence submitted by the parties and must do so when necessary to resolve jurisdictional questions. *Bland Indep. Sch. Dist.* at 555. The ultimate inquiry is whether the particular facts presented, as determined by the foregoing review of the pleadings and any evidence, affirmatively demonstrate a claim within the trial court's subject-matter jurisdiction. *Balquinta* at 738.

If the pleadings are insufficient to establish jurisdiction, but do not affirmatively negate it, the claimant should be afforded the opportunity to replead if repleading can remedy the identified defect(s). *Texas Dept. of Transp. v. Sefzik*, 355 S.W.3d 618, 623 (Tex. 2011). But if the pleadings or evidence affirmatively negate jurisdiction and are incurable, a court is not required to afford a claimant the opportunity to replead. *Dohlen v. City of San Antonio*, 643 S.W.3d 387, 397 (Tex. 2022); *Bacon v. Texas Historical Com'n*, 411 S.W.3d 161, 183 (Tex. App.—Austin 2013, no pet.).

If a plea to the jurisdiction is granted, the case is dismissed without prejudice unless it is established that the plaintiff is incapable of remedying the jurisdictional defect, in which case dismissal with prejudice is appropriate. *Green Tree Servicing, LLC v. Woods*, 388 S.W.3d 785, 791 (Tex. App.—Houston [1st Dist.] 2012, no pet.).

Ranger will show that its immunity is not waived under any theory asserted by the Foundation in its live pleading and that repleading would be futile because its pleading and the jurisdictional evidence affirmatively negate this Court's jurisdiction; therefore, dismissal with prejudice is appropriate and the Foundation is not entitled to replead.

B. Immunity bars enforcement unless immunity is properly waived.

Ranger is immune from claims, including contract claims, unless the Legislature has clearly and unambiguously waived such immunity and the Plaintiff properly alleges a valid waiver in its pleadings. *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542 (Tex. 2003).⁴ Governmental immunity encompasses two principles – immunity from suit and

⁴ “Governmental” and “sovereign” immunity are used interchangeably and the law guiding their application is essentially identical. Governmental immunity applies to local governments or arms of the state. Sovereign immunity applies to the state only. *Reata Const. Corp. v. City of Dallas*, 197 S.W.3d 371, 374 (Tex. 2006).

immunity from liability. *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 853 (Tex. 2002). When the government enters a contract, it waives immunity from liability but not suit. *Id.* at 854. Immunity from liability bars enforcement of a judgment against a governmental entity and immunity from suit bars the suit altogether. *City of Denton v. Grim*, No. 05-20-00945-CV, 2022 WL 3714517, at *7 (Tex. App.—Dallas Aug. 29, 2022, pet. filed). Therefore, absent a valid waiver of immunity in clear and unambiguous terms, the government's immunity from suit remains intact. *Id.*

“When a governmental entity ... enters into a contract, it waives immunity from liability but **does not** waive immunity from suit unless the legislature has clearly and unambiguously waived the governmental entity's immunity from suit.” *City of Willow Park, Tex. v. E.S.*, 424 S.W.3d 702, 706 (Tex. App.—Fort Worth 2014, pet. denied) (internal citation omitted) (emphasis supplied).

C. The Foundation bears the affirmative burden to plead an applicable immunity waiver.

“[E]ven if the State acknowledges liability on a claim, immunity from suit bars a remedy until the Legislature consents to suit.” *LTTTS Charter Sch., Inc. v. C2 Const., Inc.*, 358 S.W.3d 725, 740 (Tex. App.—Dallas 2011, pet. denied) (internal citations omitted). “In a suit against a governmental unit, the plaintiff must affirmatively demonstrate the court's jurisdiction by alleging a **valid** waiver of immunity.” *Whitley*, 104 S.W.3d 542 (emphasis supplied).

Therefore, plaintiffs always carry the burden to affirmatively establish a trial court's jurisdiction. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019). The Foundation's burden also extends to demonstrating an applicable immunity waiver for the

amount or type of damages or other relief sought. *Gulf Coast Ctr. v. Curry*, No. 20-0856, 2022 WL 17998210, at *5 (Tex. Dec. 30, 2022) (“Because the [Texas Tort Claims Act] damages caps implicate jurisdiction, we conclude that the plaintiff has the burden to establish which cap applies.”). A court cannot award relief for which immunity is not waived. *Id.* at *5-6 (“[Plaintiff] therefore failed to affirmatively demonstrate that Gulf Coast's immunity from suit was waived beyond the \$100,000 cap.”).

D. Statutory immunity waivers must be “clear and unambiguous.”

“A waiver of sovereign immunity requires clear and unambiguous statutory language.” *Tex. Office of Comptroller of Pub. Accounts v. Saito*, 372 S.W.3d 311, 313 (Tex. App.—Dallas 2012, pet. denied). Courts recognize that the legislature is better suited to balance the conflicting policy issues associated with waiving immunity; therefore, they look to pertinent legislative enactments to determine the extent to which immunity has been voluntarily relinquished. *See Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 695 (Tex. 2003). In the absence of a clear and unambiguous waiver, a suit may not be brought against a governmental entity. *Id.* This means that language such as “sue and be sued” and “plead and be impleaded” does not constitute a clear and unambiguous waiver of immunity. *Tooke v. City of Mexia*, 197 S.W.3d 325, 342 (Tex. 2006).

E. Texas rejects immunity waivers by conduct or contract.

Because immunity is only waived by a clear and unambiguous statutory waiver, the Texas Supreme Court has repeatedly refused to recognize a “waiver-by-conduct” exception. *Health & Human Services Comm’n v. Vazquez*, No. 21-0772, 2022 WL 17998211, at *4 (Tex. Dec. 30, 2022) (internal citations omitted). This is true even when the state acknowledges liability on a claim – “immunity from suit bars a remedy until the Legislature consents to

suit.” *LTTS Charter School, Inc.*, 358 S.W.3d at 740 (internal citations omitted). The waiver-by-conduct prohibition extends to purported contractual immunity waivers. Parties may not contractually waive immunity from breach of contract suits. *Jubilee Acad. Ctr., Inc. v. Sch. Model Support, LLC*, No. 04-21-00237-CV, 2022 WL 1479039, at *8 (Tex. App.—San Antonio May 11, 2022, pet. denied) (internal citations omitted).

There is an important public policy purpose behind the Texas Supreme Court’s repeated refusal to recognize “waiver-by-conduct,” including in breach claims with purported waiver provisions - recognition of such a policy would force governmental entities to use taxpayer resources to litigate the waiver-by-conduct issue before it could enjoy the protection of governmental immunity, thus defeating the purpose of immunity. *Gentilello v. Univ. of Tex. Sw. Health Sys.*, No. 05-13-00149-CV, 2014 WL 1225160, at *4 (Tex. App.—Dallas Mar. 24, 2014, pet. denied) (citing *Sharyland Water Supply Corp. v. City of Alton*, 354 S.W.3d 407, 414 (Tex. 2011) (again rejecting waiver-by-conduct in a breach of contract claim)).

V. GROUNDS FOR PLEA

*A. **Ground One** - Section 271.152 does not waive Ranger’s immunity under the facts pled by the Foundation.*

The Foundation asserts that Ranger’s immunity is waived by the Local Government Contract Claim Act (“LGCCA”) for its claims related to the 2022 Amendment. Tex. Loc. Gov’t Code Ann. § 271.151 et seq. The LGCCA constitutes a clear and unambiguous limited waiver of immunity only for breach of contract claims against “local governmental entities” for “contracts subject to this subchapter.” *Id.* “Contract subject to this subchapter’ is defined as ‘a written contract stating the *essential terms* of the agreement for *providing goods or services to the local governmental* entity that is *properly executed* on behalf of the local governmental entity.” *LTTS Charter School, Inc.* at 740 (internal citations omitted) (emphasis

supplied). If a contract fails to meet one or more of those three elements, immunity is not waived. *Tex. Ass'n of Sch. Boards Risk Mgmt. Fund v. Greenville Indep. Sch. Dist.*, No. 05-21-01012-CV, 2022 WL 2816532, at *2 (Tex. App.—Dallas July 19, 2022, pet. denied). Heath will address each in turn.

i. Essential Terms

The LGCCA does not define “essential terms,” but courts “have characterized ‘essential terms’ as, among other things, ‘the time of performance, the price to be paid, ... [and] the service to be rendered.’” *City of Houston v. Williams*, 353 S.W.3d 128, 138–39 (Tex. 2011) (internal citations omitted). The contract must “define its ‘essential terms with sufficient precision to enable the court to determine the obligations of the parties’ and that the parties must agree to those terms before a court may enforce the contract.” *Learners Online, Inc. v. Dallas Indep. Sch. Dist.*, 333 S.W.3d 636, 643 (Tex. App.—Dallas 2009, no pet.).

Even if the 2022 Amendment were a contract for goods and services (it is not and Ranger will address that next), it does not contain an essential term; that is, what constitutes the “restoration” of the historical hanger to its 1928 “size and appearance” (Ex. 5, ¶ 2). Because essential terms must be stated with a reasonable degree of certainty and definiteness so as to enable a court to understand and enforce a contract term, the 2022 Amendment’s failure to provide a reasonable degree of certainty regarding the parameters of “size and appearance” means an essential term is missing. *City of Ames v. City of Liberty*, No. 09-22-00092-CV, 2023 WL 2180967, at *8 (Tex. App.—Beaumont Feb. 23, 2023, no pet. h.).

The Foundation might argue that some historical records (none of which are identified in the 2022 Amendment) might provide this information, but that would violate

the parole evidence rule. *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 765 (Tex. 2018). While a court is not prohibited from considering extrinsic evidence to “aid in the construction of a contract’s language,” such evidence may only give the words of a contract meaning (i.e., to interpret contract terms). *Id.* Extrinsic evidence may not be used to supply contract terms that are not stated. *Id.*

The most important contract term left wholly unstated is the amount of money the Foundation must spend in order to restore the “1928 ... appearance” of the historical hangar Ex. 5, ¶2). The 2022 Amendment contains absolutely no standards related to construction, remediation, materials required, interior and exterior finish-out, etc. This is not an ambiguity – it is silence. And silence means a missing essential term. The Foundation might plead that it has raised money for this renovation (Original Petition, ¶14), but that is immaterial. What matters is what the 2022 Amendment states – or does not. In this case, regardless of how much money the Foundation might have raised, the 2022 Amendment does not obligate any specific amount to be spent on the “1928 ... appearance” (Ex. 5, ¶2). This “essential term” is wholly absent.

Not only are there no stated parameters for a court to determine what the “1928 ...appearance” means, the 2022 Amendment contains no time for performance. *Jubilee Acad. Ctr., Inc. v. Sch. Model Support, LLC*, No. 04-21-00237-CV, 2022 WL 1479039, at *5 (Tex. App.—San Antonio May 11, 2022, pet. denied) (price to be paid and time of performance essential terms). Even if the Court believed that it were permissible to resort to unknown and unidentified extrinsic historical documents to help interpret the meaning of “1928 ... appearance,” there is no extrinsic historical document that can supply the Foundation’s time to perform. Nor can testimony be used to supply this missing term because that would clearly

violate the parole evidence rule. *Hayes v. Rinehart*, 65 S.W.3d 286, 288 (Tex. App.—Eastland 2001, no pet.) (“The parol evidence rule is a rule of substantive law which provides that, in the absence of fraud, accident, or mistake, extrinsic evidence is not admissible to vary, add to, or contradict the terms of a written instrument that is facially complete and unambiguous.”).

Because the amount of money the Foundation is required to spend⁵ and the time for it to perform the renovation are not part of the 2022 Amendment, it does not contain essential terms, which means it does not fall within the LGCCA’s limited waiver on this basis alone. *City of Liberty*, 2023 WL 2180967, at *8.

ii. Providing Goods or Services

The LGCCA’s immunity waiver only applies to contracts providing “goods or services” to the City. Tex. Loc. Gov’t Code Ann. § 271.151(2)(A). While the provision of goods is easy to identify, courts have struggled with the scope of “services” that must be provided to invoke the immunity waiver.

Chapter 271 does not define the term “services,” and the ordinary meaning of the term “is broad enough to encompass a wide array of activities.” *Lubbock Cnty. Water Control & Imp. Dist. v. Church & Akin, L.L.C.*, 442 S.W.3d 297, 302 (Tex. 2014) (internal citations omitted). The term has been defined to include “any act performed for the benefit of another under some arrangement or agreement whereby such act was to have been performed.” *Id.* (internal citation omitted). But it does not include “indirect” or “attenuated” benefits received by the governmental entity. *Id.*

⁵ The failure to include a dollar amount also factors into another reason this contract is void, as Ranger will show in a subsequent section on void gratuitous grants of public property.

As a matter of law, the LGCCA does not waive immunity for contracts whose primary purpose is to convey real property interests. *Triple BB, LLC v. Vill. of Briarcliff*, 566 S.W.3d 385, 395 (Tex. App.—Austin 2018, pet. denied). The Foundation has judicially admitted that the contract is for the conveyance of real property from Ranger to the Foundation and the specific performance that it seeks is for the conveyance of real property from Ranger to the Foundation (Original Petition, ¶¶11, 14, 16).

Although contracts for which immunity is waived can include both the granting of property and an agreement to provide goods or services, the service to be provided must be described with sufficient specificity for it to qualify as a contract for services. *See Church & Akin, L.L.C.*, 442 S.W.3d at 302. Here, it is not possible to ascertain the scope of the service to be provided, if any, to Ranger because critical essential terms related to that “service” are missing. Under the terms of the 2022 Amendment, the Foundation could spend \$25,000 in three years renovating the 1928 hanger, or it could spend \$100,000 in one year. Under either scenario, the Foundation could say that it complied with the terms of the 2022 Amendment because it contains **no terms** defining those obligations. Because the service to be provided (i.e., the restoration of the 1928 hangar) lacks these essential terms, the 2022 Agreement is simply a conveyance of public property to a third party for unknown and unknowable consideration.

iii. Properly Executed

A contract is “properly executed” under Chapter 271 when it is executed in accord with **all** statutes and regulations governing the contract in question. *El Paso Educ. Initiative, Inc. v. Amex Properties, LLC*, 602 S.W.3d 521, 532 (Tex. 2020) (though executed by an official, contract was not properly executed on behalf of governmental entity because all applicable

requirements to enter the contract were not met) (emphasis supplied). In *El Paso Educ. Initiative, Inc.*, the Court was tasked with determining whether Section 271.152 waived a governmental entity's immunity for a breach of contract claim where the contract was plainly executed by the school president, but where it was undisputed that the governing board did not authorize it in an open meeting by majority vote. *Id.* at 525. The school argued that the lack of official action meant that the contract was not "properly executed" as a matter of law, while the plaintiff argued that the school president's signature on the contract created a fact question as to whether it was "properly executed." *Id.* at 530. The court concluded that the contract was not "properly executed." *Id.* at 533.

Since *El Paso Educ. Initiative, Inc.* was decided, multiple courts have concluded that immunity was not waived due to a failure of proper execution. For example, the Corpus Christi-Edinburg Court of Appeals held that immunity was not waived under Chapter 271 on a contract claim where it was undisputed that, although executed by a school board president, the board's final approval was required to expend the funds promised in the contract and no board vote approving the contract had taken place. *IDEA Pub. Sch. v. Truscheit*, No. 13-22-00091-CV, 2022 WL 3971060, at *7 (Tex. App.—Corpus Christi—Edinburg Sept. 1, 2022, no pet.).

The Amarillo Court of Appeals also recently reached the same conclusion on a breach of contract claim related to a construction project. *City of Hutto v. Legacy Hutto, LLC*, No. 07-21-00089-CV, 2022 WL 2811856, at *2 (Tex. App.—Amarillo July 18, 2022, pet. filed), reh'g denied (Sept. 21, 2022). There, it was undisputed that the city manager had signed the contract, and there was some evidence that the council might have delegated authority for him to enter it. *Id.* at *3. But it was also undisputed that the developer had not complied with

a separate statutory requirement - Section 2252.908 of the Texas Government Code, which provides that governmental entities are not authorized to enter certain contracts unless an ethics disclosure form is submitted by the contracting party at the time the contract is submitted to the city. *Id.*

Recognizing that it is not enough that a city's representative sign a contract, the court noted that for a contract to be "properly executed," it must be done "according to the rules" and thus, "not all executed contracts qualify for a statutory waiver." *Id.* (internal citation omitted). Because the Government Code prohibits cities from entering into certain contracts if section 2252.908 is not complied with by the contracting party, the contract in question "was not 'properly executed' by the parties. Without a properly executed contract, there is no waiver of immunity under section 271.152 of the Texas Local Government Code." *Id.* at *5.

The 2022 Amendment is not properly executed for multiple reasons. First, just like the contract in *Legacy Hutto, LLC*, the Foundation did not comply with Section 2252.908 of the Texas Government Code and submit a 1295 Ethics Disclosure form when it submitted the 2022 Amendment to the City for approval. See Exhibit 6 – City Secretary Affidavit. Section 2252.908 requires all "business entities" to submit a disclosure of interested parties to the governmental body at the time the business entity submits the signed contract to the governmental entity – if it does not, the governmental entity may not enter the contract. Tex. Gov't Code Ann. § 2252.908 (d). The law imposes this duty on the party submitting the contract to the government, not the other way around; therefore, it was the Foundation's legal duty to ensure that it complied with applicable statutory requirements, even if the contract in question were otherwise valid. *Id.* The Foundation did not and it cannot complain

now that its failure to perform its duty under the law is Ranger's fault. *See Legacy Hutto, LLC*, at *5.

Next, the contract is not properly executed because it purports to convey public property to a third-party without first having gone through the required bidding process. Tex. Loc. Gov't Code Ann. § 253.008. See Exhibit 6 – City Secretary Affidavit. If a city is going to sell public property, it **must** publish notice in accordance with Chapter 253. *Id.* It may then sell the property by auction or sealed bid under Section 272.001 of the Local Government Code. *Id.* None of that occurred before Ranger voted on the 2022 Amendment. See Ex. 6 – City Secretary Affidavit.

The failure to perform these mandatory statutory duties means two things. First, it means that the 2022 Amendment was not “properly executed” for purposes of waiving Ranger's immunity under Section 271.152 because it was not done “according to [all of] the rules.” *Legacy Hutto, LLC*, at *3-5. It also means that the sale is void under Chapters 253 and 272 of the Texas Local Government Code.⁶ *See Bowling v. City of El Paso*, 525 S.W.2d 539, 541 (Tex. Civ. App.—El Paso 1975), writ ref'd n.r.e., 529 S.W.2d 509 (Tex. 1975) (citing *McKinney v. City of Abilene*, 250 S.W.2d 924 (1952, writ ref'd n.r.e.)) (failure to comply with notice and bid requirements renders sale of public property void). Ranger will also address this separate ground to void the 2022 Amendment in an subsequent section of this plea.

⁶ Section 272.001 mandates that except under certain limited circumstances, not applicable here, that a city must sell public property for **fair market value**. Tex. Loc. Gov't Code Ann. § 272.001 (emphasis supplied). That is determined by an appraisal or the auction price. The Airport Property was not auctioned and the Foundation does not plead that an appraisal was performed and what the results of it were. This only underscores Ranger's argument that the 2022 Amendment lacks essential terms. If the consideration for this conveyance of public property is the Foundation's renovation of the 1928 hangar, the “price” it pays is the amount of money it must expend on the renovation. But since the 2022 Amendment does not require it to expend any specific amount, the “consideration” the City received for the “renovation” in exchange for the value of 81 acres of land is totally unknown.

Accordingly, for the foregoing reasons, Ranger's immunity is not waived by the LGCCA and the Foundation's claims against the City must be dismissed with prejudice because no amount of repleading can remedy the jurisdictional defects.

B. Ground Two - The UDJA does not waive Ranger's governmental immunity for declarations related to contracts and performance thereunder and there is no waiver by conduct exception.

i. The UDJA does not waive governmental immunity for contract claims.

First, as a matter of law, the UDJA does not waive Ranger's immunity for declarations related to a contract's validity or for the purpose of enforcement:

In addition to clarifying when the UDJA waives governmental immunity, the supreme court has explained that governmental immunity **bars** a request for declaratory relief against a governmental entity (1) that constitutes a suit to recover money damages or (2) that seeks to establish a contract's validity, to enforce performance under a contract, or to impose contractual liabilities-actions that effectively control state action.

Mustang Special Util. Dist. v. Providence Vill., 392 S.W.3d 311, 316 (Tex. App.—Fort Worth 2012, no pet.) (emphasis in original); *see also City of Austin v. Util. Associates, Inc.*, 517 S.W.3d 300, 312 (Tex. App.—Austin 2017, pet. denied).

The UDJA "is not a general waiver of sovereign immunity" but only waives "immunity for certain claims." *Texas Parks & Wildlife Dep't v. Sawyer Trust*, 354 S.W.3d 384, 388 (Tex. 2011); *McLane Co. v. Texas Alcoholic Bev. Comm'n*, 514 S.W.3d 871, 876-77 (Tex. App.—Austin 2017, pet. filed); *see Ex Parte Springsteen*, 506 S.W.3d at 798-99 ("[T]he UDJA's sole feature that can impact trial-court jurisdiction to entertain a substantive claim is the statute's implied limited waiver of sovereign or governmental immunity that permits claims challenging the validity of ordinances or statutes." (citing *Texas Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 634-35 (Tex. 2010) (citing Tex. Civ. Prac. & Rem. Code § 37.006(b))).

Plainly, the Foundation does not seek to challenge the validity of an ordinance passed by Ranger. Rather, it explicitly asks the Court to enforce a contract against Ranger and order the transfer of public property (Original Petition, ¶38):

38. Pursuant to the Texas Uniform Declaratory Judgment Act, the Foundation seeks a declaration from the Court that: (i) the Amendment is a valid and binding agreement; (ii) the Foundation has met all conditions precedent under the Amendment; (iii) the City is obligated to convey ownership of the Ranger Airport and the Airport Property to the Foundation upon the completion of certain improvements; (iv) Section 1 of the Amendment does not require the Foundation to seek City approval prior to entering into the necessary leases and subleases with third parties for three vintage style airport hangars; and (v) the City is not entitled to receive any further consideration from the Foundation in exchange for the City's conveyance of the Airport and Airport Property.

Nor does the UDJA waive immunity when a plaintiff seeks a declaration of his or her rights under a statute or other law. *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 621 (Tex. 2011). Bare statutory construction claims are not permissible against a governmental entity. *McLane Co., Inc. v. Tex. Alcoholic Beverage Comm'n*, 514 S.W.3d 871, 876 (Tex. App.—Austin 2017, pet. denied). Couching a request for relief in terms of a declaratory judgment does not alter the underlying nature of a suit and the UDJA provides no vehicle to the Foundation to pierce Ranger's immunity. *Sawyer Trust*, 354 S.W.3d at 388.

ii. Waiver by conduct is not a viable immunity waiver theory.

In *Texas Natural Resource Conservation Comm'n v. IT-Davy*, the Texas Supreme Court explained why claims of this type under the UDJA have been expressly rejected. 74 S.W.3d 849, 856 (Tex. 2002). In *IT-Davy*, the plaintiff argued that the state had waived its sovereign immunity via (1) entering the contract (waiver by conduct), (2) express contract terms

waiving immunity (waiver by contract), (3) legislative consent under the Water Code [not applicable here], and (4) legislative consent under the UDJA. *Id.* The Texas Supreme Court rejected each theory. *Id.* Theories one (waiver by conduct) and four (UDJA) are pertinent to the 2022 Amendment and will be addressed here (the 2022 Amendment does not contain an express provision purporting to waive immunity, but even if it did, this Court would still have to reject it).

IT-Davy clarified in explicit terms that it is the Legislature’s “sole province” to waive or abrogate immunity and rejected the plaintiff’s call to create a judicially-imposed equitable waiver by immunity rule. *Id.* at 856-57. It explained that a judicially created waiver by conduct exception would force the state to litigate such alleged waivers before enjoying sovereign immunity’s⁷ protections, thereby undermining the doctrine’s underlying policy. *Id.* at 857. The purpose of governmental immunity is to preserve the government’s interest in managing its fiscal matters and not requiring the use of tax resources to be used defending lawsuits except when expressly allowed by the Legislature; therefore, immunity is not waived unless the Legislature “clearly and unambiguously” waives it. Tex. Gov’t Code Ann. §311.034; *Reata Const. Corp.*, 197 S.W.3d at 375.⁸ Thus, merely entering a contract does not waive governmental immunity. *IT-Davy* at 857.

Accordingly, Ranger’s immunity from suit is not waived by the Foundation’s request to construe a contract and for its request for enforcement by the UDJA. Nor can the mere fact

⁷ The terms sovereign immunity and governmental immunity are often used interchangeably and have the same contours and meaning – sovereign immunity simply refers to the State’s immunity and governmental immunity refers to political subdivisions of the state, including cities. *See Reata Const. Corp. v. City of Dallas*, 197 S.W.3d 371, 374 fn. 1 (Tex. 2006).

⁸ *Reata* applied immunity principles to when the government affirmatively asserts claims (or counterclaims) for relief against another party. *Reata* at 375-76. When that happens and the government has willingly engaged in litigation to obtain monetary relief, immunity does not extend to a plaintiff’s claims that would offset the government’s recovery. *Id.* This offset principle is not applicable here because Ranger asserts no claim for affirmative relief.

that Ranger purported to approve the 2022 Amendment waive its immunity and the Foundation's alleged "reliance" on this act cannot waive immunity. This is not a new or recently evolving area of the law. Accordingly, the UDJA does not waive Ranger's immunity either for the declarations sought. *See id.* Based on the foregoing, the Foundation's UDJA claims must be dismissed with prejudice.

C. Ground Three - The Texas Constitution prohibits granting public funds (or value) to private parties.

The Foundation alleges that the "consideration" for the public property it demands to be transferred under the 2022 Amendment (Ex. 5) for over 81 acres of land is the restoration of the 1928 hangar. See Original Petition, ¶10. In fact, the Foundation alleges that this consideration is "more than sufficient." *Id.* The problem with this allegation is that the 2022 Amendment (Ex. 5) contains no language supporting it.

In this instance, Ranger challenges the Foundatings pleadings, which a court must generally accept as true unless they are legal opinions or conclusory, with jurisdictional evidence. *City of El Paso v. High Ridge Const., Inc.*, 442 S.W.3d 660, 665 (Tex. App.—El Paso 2014, pet. denied) ("When a plea to the jurisdiction challenges the existence of jurisdictional facts, the appellate court considers relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues presented."). However, the conclusory allegation that the consideration is "sufficient," is not well-pled because it is at odds with the actual language of the 2022 Amendment, which assigns no value to this so-called consideration (Ex. 5). Therefore, the 2022 Amendment governs the Court's jurisdictional analysis and not the Foundation's characterization of the so-called consideration in its pleadings. *Pub. Util. Comm'n of Tex. v. AMA Communications, LLC*, No. 03-21-00597-CV, 2022 WL 3220405, at *3 (Tex. App.—Austin Aug. 10, 2022, no pet.) (courts **must** consider

jurisdictional evidence when necessary to resolve jurisdictional issues) (emphasis supplied); *Walton v. City of Midland*, 409 S.W.3d 926, 929 (Tex. App.—Eastland 2013, pet. denied) (only well-pleaded facts must be taken as true).

Here, notwithstanding the Foundation’s characterization of the consideration as “more than sufficient,” the language of the 2022 Amendment contains no language setting forth the true amount of that consideration. *See id.* As Ranger has shown, the 2022 Amendment lacks this essential term. See Exhibit 5, ¶2. Therefore, it is impossible to determine from the four corners of the contract how much, if any, money the Foundation must **actually** expend as consideration for the transfer of over 81 acres of land that the Eastland CAD values at almost \$300,000 (See Ex. 1). *Anderson Energy Corp. v. Dominion Oklahoma Tex. Expl. & Prod., Inc.*, 469 S.W.3d 280, 287 (Tex. App.—San Antonio 2015, no pet.) (courts construe parties’ intent from the “four corners” of the contract). Without this vital information, the 2022 Amendment amounts to the gratuitous transfer of public property to a third-party.

The Texas Constitution forbids cities from lending credit or granting money or things of value to an individual, association or corporation. Tex. Const. art. III, §52(a). The purpose of this constitutional limitation is to prevent such transfers. *City of Donna v. Ramirez*, 548 S.W.3d 26, 38 (Tex. App.—Corpus Christi–Edinburg 2017, pet. denied). The Foundation may reply that its non-profit status saves it. But it does not.

A city may contribute to a non-profit corporation, but such contributions must meet a three-part test to determine whether such a contribution satisfies the limits of article III, section 52(a). *Tex. Mun. League Intergov'tl Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 384 (Tex. 2002). The entity making the transfer must (1) ensure that the transfer

is to “accomplish a public purpose, not to benefit private parties; (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public’s investment; and (3) ensure that the political subdivision receives a return benefit.” *Id.*

The 2022 Amendment fails all three prongs. First, neither the language of the 2022 Amendment (Ex. 5), nor the motion approving the contract (Ex.4) purport to make any findings by Ranger that any public purpose is accomplished by the transfer of the property to the Foundation, which wants to sublease “new hangars” (Original Petition, ¶17). Second, the 2022 Amendment purports to relinquish all control over the 81 acres to be transferred to the Foundation (Ex. 5). And third, ***and most important***, as previously shown, the 2022 Amendment is totally silent on the value of Ranger’s consideration – the restoration of the 1928 hangar (Ex. 5). So the benefit received by the public in return for relinquishing 81 acres of public property is wholly unknown. Without this vital information, it is impossible to determine the value received by Ranger in exchange for nearly \$300,000 worth of real property (Ex. 1).

Accordingly, the 2022 Amendment amounts to an invalid and unconstitutional gratuitous grant of public property to a private third-party in violation of the Texas Constitution. *See Tex. Workers’ Comp. Comm’n*, 74 S.W.3d at 384. It is, therefore, void and unenforceable because of this incurable unconstitutional infirmity. *Baca v. Sanchez*, 172 S.W.3d 93, 97 (Tex. App.—El Paso 2005, no pet.) (where pleadings fail to state a cause of action, case may be dismissed). Thus, even if the Foundation could prove all of the allegations in its pleadings, the jurisdiction evidence upon which those pleadings are based (Ex. 5 – 2022 Amendment) conclusively demonstrates that it has failed to plead a viable cause of action

against Ranger because the Court cannot enforce a void contract against the City. *Id.* Thus, dismissal of the Foundation's claim is the only permissible action the Court may take.

D. Ground Four - The 2022 Amendment is void for failure to comply with Chapters 253 and 272 of the Local Government Code.

As previously discussed in the section on immunity waiver and proper execution, the 2022 Amendment is void for failure to comply with mandatory notice and bidding requirements (See Ex. 6 – City Secretary Affidavit). That argument and discussion is adopted and incorporated herein as if set forth verbatim.

Ranger will address some possible arguments in response the Foundation may raise to avoid dismissal. They are unavailing and do not change the outcome.

First, the Foundation may argue that Ranger was not required to comply with notice and bidding requirements because the Foundation is a non-profit corporation. Tex. Loc. Gov't Code Ann. § 253.011. But by its plain language, section 253.011 is inapplicable to the 2022 Amendment because it explicitly states:

(d) Consideration for the transfer authorized by this section shall be in the form of an agreement between the parties that requires the nonprofit organization to use the property in a manner ***that primarily promotes a public purpose of the municipality***. If the nonprofit organization at any time fails to use the property in that manner, ownership of the property automatically reverts to the municipality.

Tex. Loc. Gov't Code Ann. § 253.011 (emphasis supplied). On its face, the 2022 Amendment (Ex. 5) fails this mandatory requirement because it purports to grant the Airport Property to the Foundation “to facilitate development of the property around the Airport with ***personally owned hangars***.” Ex. 5, ¶4. In other words, the Foundation wants to get in the property development business.

The development of “personally owned hangars” is, by definition, not a public purpose, particularly when the City is exchanging the very public property on which those “personally owned hangars” will be developed for an unknown amount of “consideration.” Ex. 5. It would be “palpably and manifestly arbitrary and incorrect” to find that transferring Ranger’s historic municipal airport property, minus one small plot of land and one vintage hangar, to the Foundation so it can develop “personally owned hangars” constitutes any sort of legitimate public purpose. *See Bland v. City of Taylor*, 37 S.W.2d 291, 293 (Tex. Civ. App.—Austin 1931), *aff’d sub nom. Davis v. City of Taylor*, 123 Tex. 39, 67 S.W.2d 1033 (1934) (to avoid constitutional infirmity, grant of money or value must negate subservience to a private purpose). Although courts generally defer to the legislative body to determine what constitutes a proper public purpose, courts are not obliged to accept such findings when they are “clearly wrong.” *Am. Home Assur. v. Tex. Dep’t of Ins.*, 907 S.W.2d 90, 95 (Tex. App.—Austin 1995, writ denied). Here, Ranger did not even make a finding of public purpose. But even if it can be said that the 2022 Amendment makes an implied finding that transferring public property to the Foundation for the development of “personally owned hangars” is the “public purpose,” that would be clearly wrong. This is especially true because the “consideration” received by Ranger (i.e., the public) for such a transfer is unknown.

Accordingly, because it is undisputed that no public notice or bidding occurred before the purported transfer of public property contemplated by the 2022 Amendment, that contract was not signed in accord with Chapters 253 and 272 of the Texas Local Government Code. It is therefore void ab initio and the Foundation’s pleadings fail to state a cause of action for which relief could be granted; therefore, dismissal is required. *Sanchez*, 172 S.W.3d 97.

E. Ground Five – Ranger’s immunity is not waived for attorney’s fees.

The Foundation explicitly seeks recovery of its attorney’s fees under Chapter 38 of the Texas Civil Practice and Remedies Code (Original Petition, ¶26). It also explicitly seeks attorney’s fees under section 37.009 of the Texas Civil Practice and Remedies Code (UDJA) (Original Petition, ¶40). Although not explicitly pled, assuming the Court read its petition expansively, it might assume that it also impliedly pled for attorney’s fees under Local Government Code, section 271.153 since it asserted Chapter 271 as an immunity waiver. However, regardless of what section the Foundation might rely on, Ranger’s immunity for attorney’s fees is not waived.

First, a city’s immunity from an attorney fee award remains intact unless an applicable waiver is pled and proven. *City of Willow Park, Tex. v. E.S.*, 424 S.W.3d 702, 712 (Tex. App.—Fort Worth 2014, pet. denied). It is thus appropriate to raise immunity to attorney’s fees in a jurisdictional plea. *Id.* Moreover, if a city demonstrates that its immunity is not waived for the claims pled, then its immunity from an attorney fee award is also not waived. *See id.* Accordingly, because Ranger’s immunity is not waived under Chapter 271 and the UDJA, then the Foundation is not entitled to seek attorney’s fees under those attorney fee provisions. *See City of San Antonio v. DHL Express (USA), Inc.*, No. 04-22-00603-CV, 2023 WL 380341, at *6 (Tex. App.—San Antonio Jan. 25, 2023, no pet. h.) (when plaintiff fails to show valid immunity waiver, claim for attorney’s fees likewise barred). Ranger adopts and incorporates by reference the argument, authority and evidence cited above in support of those respective grounds for its plea.

Finally, although the Foundation asserted the Chapter 38 attorney fee recovery provisions under the Texas Civil Practice & Remedies Code, this attorney fee award provision

does not apply to governmental entities and Ranger's immunity from an attorney fee award is not waived by Civil Practice & Remedies Code, section 38.001. *City of Corinth v. NuRock Dev., Inc.*, 293 S.W.3d 360, 370 (Tex. App.—Fort Worth 2009, no pet.); *Tex. A & M Univ.-Kingsville v. Lawson*, 127 S.W.3d 866, 874 (Tex. App.—Austin 2004, pet. denied).

Accordingly, the Foundation's claims for attorney's fees must also be dismissed.

Conclusion and Prayer

The Foundation failed to assert claims that can survive Ranger's governmental immunity or be cured by repleading. Either immunity is not waived, or the contract is void and unenforceable as a matter of law. Either way, the Foundation does not invoke this Court's jurisdiction and its claims must be dismissed with prejudice. Repleading cannot cure these fatal deficiencies and the Foundation need not be given an opportunity to drag out this litigation. Ranger cannot be forced to comply with a void contract and the taxpayers cannot be forced to give up public property.

WHEREFORE PREMISES CONSIDERED, Ranger respectfully request that the Court GRANT its Plea to the Jurisdiction and DISMISS WITH PREJUDICE all of Plaintiff's claims; that upon final hearing render judgment that Plaintiff takes nothing; that upon final hearing find that Plaintiff has failed to plead a viable cause of action against Defendant; and for such further relief, in law or equity, to which it has shown itself to be justly entitled.

Respectfully submitted,

/s/ Bradford E. Bullock

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972.668.6414 – FACSIMILE

COUNSEL FOR DEFENDANT
CITY OF RANGER, TEXAS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served according to the Texas Rules of Civil Procedure, in the manner indicated below on the 24th day of March, 2023 addressed to:

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Schyler P. Parker
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P.O. Box 875
Eastland, Texas 76448
Telephone: 254.629.2679

ATTORNEYS FOR PLAINTIFF

Property ID: 55996

Owner: CITY OF RANGER

<table border="1"> <tr> <td>Property ID:</td> <td>55996</td> </tr> <tr> <td>Property Legal Description:</td> <td>WM FRELLS AB 120 (AIRPORT)</td> </tr> <tr> <td>Property Location:</td> <td>DESDEMONA ST RANGER TX 76470</td> </tr> <tr> <td>Survey / Sub Division Abstract:</td> <td>WM FRELLS 120</td> </tr> <tr> <td>Owner Information:</td> <td>CITY OF RANGER 400 WEST MAIN RANGER TX 76470 1295</td> </tr> <tr> <td>Previous Owner:</td> <td></td> </tr> </table>	Property ID:	55996	Property Legal Description:	WM FRELLS AB 120 (AIRPORT)	Property Location:	DESDEMONA ST RANGER TX 76470	Survey / Sub Division Abstract:	WM FRELLS 120	Owner Information:	CITY OF RANGER 400 WEST MAIN RANGER TX 76470 1295	Previous Owner:		<table border="1"> <tr> <td>Account Number:</td> <td>22324-00010-00000-000000</td> </tr> <tr> <td>Deed Information:</td> <td> <table border="1"> <tr> <td>Volume:</td> <td></td> </tr> <tr> <td>Page:</td> <td></td> </tr> <tr> <td>File Number:</td> <td></td> </tr> <tr> <td>Deed Date:</td> <td></td> </tr> </table> </td> </tr> <tr> <td>Block:</td> <td></td> </tr> <tr> <td>Section / Lot:</td> <td></td> </tr> <tr> <td>Property Detail:</td> <td> <table border="1"> <tr> <td>Property Exempt:</td> <td>X</td> </tr> <tr> <td>Category / SPTB Code:</td> <td>XVG</td> </tr> <tr> <td>Total Acres:</td> <td>81.160</td> </tr> <tr> <td>Total Living Sqft:</td> <td>See Detail</td> </tr> <tr> <td>Owner Interest:</td> <td>1.000000</td> </tr> <tr> <td>Homestead Exemption:</td> <td></td> </tr> <tr> <td>Homestead Cap Value:</td> <td>0</td> </tr> <tr> <td>Land Ag / Timber Value:</td> <td>0</td> </tr> <tr> <td>Land Market Value:</td> <td>297,150</td> </tr> <tr> <td>Improvement Value:</td> <td>215,830</td> </tr> </table> </td> </tr> </table>	Account Number:	22324-00010-00000-000000	Deed Information:	<table border="1"> <tr> <td>Volume:</td> <td></td> </tr> <tr> <td>Page:</td> <td></td> </tr> <tr> <td>File Number:</td> <td></td> </tr> <tr> <td>Deed Date:</td> <td></td> </tr> </table>	Volume:		Page:		File Number:		Deed Date:		Block:		Section / Lot:		Property Detail:	<table border="1"> <tr> <td>Property Exempt:</td> <td>X</td> </tr> <tr> <td>Category / SPTB Code:</td> <td>XVG</td> </tr> <tr> <td>Total Acres:</td> <td>81.160</td> </tr> <tr> <td>Total Living Sqft:</td> <td>See Detail</td> </tr> <tr> <td>Owner Interest:</td> <td>1.000000</td> </tr> <tr> <td>Homestead Exemption:</td> <td></td> </tr> <tr> <td>Homestead Cap Value:</td> <td>0</td> </tr> <tr> <td>Land Ag / Timber Value:</td> <td>0</td> </tr> <tr> <td>Land Market Value:</td> <td>297,150</td> </tr> <tr> <td>Improvement Value:</td> <td>215,830</td> </tr> </table>	Property Exempt:	X	Category / SPTB Code:	XVG	Total Acres:	81.160	Total Living Sqft:	See Detail	Owner Interest:	1.000000	Homestead Exemption:		Homestead Cap Value:	0	Land Ag / Timber Value:	0	Land Market Value:	297,150	Improvement Value:	215,830
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Jur Code	Jur Name	Total Market	Homestead	Total Exemption	Taxable
01	EASTLAND COUNTY	512,980		0	0
14	CITY OF RANGER	512,980		0	0
34	RANGER ISD	512,980		0	0
61	RANGER COLLEGE	512,980		0	0

Property ID: 55996

Owner: CITY OF RANGER

Building Detail

Sequence	Type	Class	Year Built	Homesite Value	Condition	Percent Good	Square Feet	Replacement Value	Total Value
1	WHS	2	1950	NO		40%	11,600	536,380	214,550
2	STG	3	1950	NO		45%	392	2,850	1,280

Total Building Value: \$ 215,830

Property ID: 55996

Owner: CITY OF RANGER

Land Detail

Land Sequence 1		
Acres: 46.43	Market Class: IHF	Market Value: 297,150
Land Method: AC	Ag/Timber Class:	Ag/Timber Value: 0
Land Homesiteable: NO	Land Type:	Ag Code:
Front Foot: N/A	Rear Foot: N/A	Lot Depth: N/A
Front Ft Avg: N/A	Lot Depth %: N/A	Land Square Ft: N/A

Total Land Value: \$ 297,150

TEXAS SECRETARY of STATE
JANE NELSON

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:	803148957	Entity Type:	Domestic Nonprofit Corporation
Original Date of Filing:	October 19, 2018	Entity Status:	In existence
Formation Date:	N/A	Non-Profit Type:	N/A
Tax ID:	32068731770	FEIN:	
Duration:	Perpetual		
Name:	Ranger Airfield Maintenance Foundation		
Address:	1402 ODDIE ST RANGER, TX 76470-3208 USA		

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES	INITIAL ADDRESS
Name	Address		Inactive Date			
Jared Calvert	1402 Oddie St. Ranger, TX 76470 USA					

Instructions:

● To place an order for additional information about a filing press the 'Order' button.

TEXAS SECRETARY of STATE
JANE NELSON

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Filing Number:	803148957	Entity Type:	Domestic Nonprofit Corporation
Original Date of Filing:	October 19, 2018	Entity Status:	In existence
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Address:	1402 ODDIE ST RANGER, TX 76470-3208 USA		

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES	INITIAL ADDRESS
Last Update	Name	Title	Address			
October 23, 2018	Jared Calvert	Director	715 Cypress St. Ranger, TX 76470 USA			
October 23, 2018	Doyle Russell	Director	P.O. Box 417 Ranger, TX 76470 USA			
October 23, 2018	Wayne White	Director	395 CR 160 E Cisco, TX 76437 USA			

Instructions:

● To place an order for additional information about a filing press the 'Order' button.

LEASE AGREEMENT

This LEASE AGREEMENT (the "Agreement") is made and entered into on this the 4th day of December, 2018, by and between the CITY OF RANGER, Texas, a Texas municipal corporation (hereinafter referred to as "Lessor"), the owner of Ranger Municipal Airport, hereinafter referred to as "Airport" located within the City of Ranger, and the Ranger Airfield Maintenance Foundation, a non-profit corporation (hereinafter referred to as "Lessee").

ARTICLE I.

1.01. Consideration. The parties hereto expressly stipulate that this Agreement is entered into in consideration of the sums of money recited herein, the use of the Leased Premises as designed herein, the value to Lessor of ensuring occupancy and use of its property inventory, and other good and valuable consideration given, the receipt and sufficiency all of which is hereby acknowledged.

1.02. Leased Premises. Approximately ____ acres, more or less of rentable area and all improvements located thereon situated in Ranger, Eastland County, Texas, as shown on Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Leased Premises").

1.03. Leasing of Premises. Subject to and upon the terms and conditions herein set forth, and each in consideration of the duties, covenants and obligations of the other hereunder, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the premises. Lessor represents and warrants that the premises are a part of the premises it is authorized to lease. The parties hereto expressly stipulate that the Leased Premises are not a dwelling as defined in V.T.C.A., Property Code §92.001(1).

1.04. Purpose and Use of Premises.

(a) The Leased Premises will be used for the purpose of maintaining and operating the Airport and improvements as a tribute to the Golden Age of Aviation as one of the few publicly owned grass airfields still operating with history dating back to 1911; and for the use by Lessee of the Leased Premises upon which is now situated certain assets, buildings, and other improvements that are agreed by the parties to be personal property owned by Lessee, save and except the original hangar, or potential sublessees. Lessor desires to see its historical asset preserved. Permitted uses include: conducting various aviation activities and events, such as fly-ins; other aviation or special events by way of sublease under such terms and conditions Lessee deems to be advisable at that time but pursuant to the terms and conditions herein set out; and to further the activities associated with those events and the preservation of the Airport.

(b) Prior to any other use, Lessee shall first secure the written consent of Lessor as provided herein. Notwithstanding the foregoing, Lessee shall not use the Leased Premises for the purposes of manufacturing or selling any explosives, or other inherently dangerous thing, or device; nor shall Lessee use the Leased Premises in violation of any City of Ranger ordinance provisions, or those of the state or nation.

1.05. Use of Airport and Facilities. During the term of this Lease, Lessor agrees that Lessee shall have unrestricted access to the runways and taxiways now in existence on the Airport to the same extent that any other parties may have use thereof, subject to reasonable rules and regulations and non-discriminatory charges that may be imposed for use of the Airport and facilities by Lessor, the Federal Aviation Administration, or any other governmental entity having

jurisdiction or control over the use of such Airport and facilities.

1.06. Access. Lessee and its employees shall have access to the premises at all times. Lessee's invitees and customers and the general public shall have access to the premises during normal business hours and, at Lessee's election, after business hours.

ARTICLE II.

2.01. Lease Rent. A rental fee of \$1.00 per annum shall be paid by Lessee to Lessor on the first day of the year ("Lease Rent").

2.02. Place of Payment. All payments made hereunder by Lessee shall be made to Lessor at the offices of the City of Ranger, unless notified in writing to the contrary by Lessor. All payments of lease rent and other amounts becoming due and payable from Lessee to Lessor under and in connection with this lease may be made by delivering to Lessor, at the then- applicable address provided for herein, Lessee's check in the amount of such payment, on or before the due date thereof under the terms of this lease.

2.03. Delinquent Payment. Lessee shall pay a late charge of \$25.00 if the annual payment has not been paid by Lessee by the tenth (10th) day of the year in which it is due. Failure of Lessee to pay any rental or the monetary penalty on delinquent rent, shall constitute Lessee's default of this Lease.

2.04. Abatement. Lessee's covenant to pay rent and Lessor's covenants hereunder are independent of each other. Except as otherwise provided herein or by law, Lessee shall not be entitled to abate rent for any reason.

ARTICLE III.

3.01. Effective Date. The effective date of this lease shall be the date and year first above written.

3.02. Term of Lease. The term of this Lease for the Leased Premises described in Exhibit "A" shall begin on the Effective Date and shall continue for thirty (30) years expiring on the 4th day of December, A.D. 2048 (the "Expiration Date") unless sooner terminated or extended as hereinafter provided (the "Initial Term"). At the expiration of the Initial Term of this Agreement, and Lessee not being in default in any rental payments required to be paid and obligations required to be conducted by the terms of this Agreement, Lessee shall have an option to renew this lease for an additional ten (10) years beginning the 1st day of January, A.D. 2048. Said renewal Lease shall be based upon the conditions specified herein and the rental rates for the renewal Lease as fixed in Section 2.01 shall be negotiated hereof. Lessee shall give to Lessor notice of its intention to exercise said option in writing on or before ninety (90) days prior to the end of the Initial Lease Term.

3.03. Termination of Lease. Either party may terminate the lease after the Initial Term upon notice being given of its desire to so terminate at least ninety (90) days prior to the then Initial Term's expiration date. If the Lessor desires to terminate the lease for cause or repurposing the land prior to the expiration of the Initial Term, the Lessee shall be compensated for personal property at a fair market value as represented by airports in Texas located at Granbury, Weatherford, Stephenville, Eastland and Brownwood. The purchase price shall reflect a depreciation schedule of ninety percent (90%) valuation at ten (10) years; seventy-five percent (75%) valuation at twenty (20) years; and sixty percent (60%) valuation at thirty (30) years.

Additionally, the Lessee may surrender the Lease to the Lessor if it becomes insolvent and unable to maintain the Airport. If Lessee becomes insolvent or unable to maintain the Airport, Lessee agrees that all permanent improvements, owned by the Lessee and located on the Leased Premises, shall become the property of Lessor.

ARTICLE IV.

4.01. Covenants and Conditions by Lessee. Lessee hereby covenants and agrees to the following:

(a) Leased Premises. General obligations of Lessee arising from the requirements of Lessor, owner of the Airport, for the use of the Airport and Leased Premises are as follows:

1. Lessee shall lease the premises for the lease term, on the terms and conditions enumerated herein, beginning on the Effective Date and ending on the lease expiration date.

2. Lessee shall utilize the Leased Premises for the purpose of aviation related activities, which includes normal activities related to the operation and storage of an aircraft at a public airport; aviation and civic events; and other ancillary uses. The Leased Premises may not be used as a permanent residence.

3. Lessee shall keep the doors to buildings closed and locked in the absence of the Lessee or authorized invitees.

4. Lessee shall not utilize the Leased Premises for any illegal or unauthorized uses.

5. Lessee shall not use the Leased Premises in a way that is extra hazardous, engage in any activity which would cause Lessor's fire and extended coverage insurance to be canceled or the rate therefor to be increased over the rate which would have been charged had such activity not been engaged in by Lessee, or that would void insurance on the Airport.

(b) Acceptance of Premises. Lessee agrees to accept the Leased Premises in their present condition, the Leased Premises being suitable "as is" for Lessee's intended use(s); further, Lessor hereby disclaims, and Lessee accepts such disclaimer, as to warranty, either express or implied, of the condition, use, or fitness for purpose of the Leased Premises. Lessee assumes full responsibility to make any repairs, at Lessee's own expense, as may be necessary for the safe and/or efficient use of the premises by Lessee and to furnish any equipment necessary to properly secure Lessee's aircraft(s), if any.

(c) Utilities. Lessee shall arrange and be responsible for obtaining and paying for its own telephone and internet service and obtaining any necessary extensions and hardware for the operation and maintenance of these services. Lessee shall pay or reimburse Lessor for the connection and extension of any utility services used by Lessee which are not provided by Lessor.

(d) Equipment. Lessee shall be responsible for obtaining the necessary equipment such as computers, printers and fax machines for the operation of an office.

(e) Maintenance.

1. Lessee shall perform general grounds maintenance and repair to all the Leased Premises including but not limited to, structures, aprons, parking lots, taxi ways, light fixtures, pavements, grass cutting, landscaping, trash collection and removal and all other maintenance requirements that may arise using its own equipment. The grass runway shall be maintained according to applicable guidelines from the FAA Advisory Circular 150/5300-13 Airport Design or an updated version. However, for the first three (3) years of the lease, Lessee may borrow Lessor equipment to accomplish this task, afterwards Lessor may approve usage on a case by case basis.

2. Lessee agrees to maintain the Leased Premises and surrounding area in a safe, clean, neat and reasonable manner free of trash and debris; and maintain the structures and improvements, located thereon in a state of good repair during the entire period of this lease and any renewals thereof.

3. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of Lessee's and any of its sublessees' activities. Lessee shall provide and use approved receptacles for all such garbage, trash, and other refuse. Piling of boxes, cartons, barrels or other similar items in an unattractive or unsafe manner, on or about the Leased Premises, shall not be permitted.

4. Lessee herein agrees not to utilize or permit others to utilize, for an extended period of time, areas on the Leased Premises, which are located in plain sight on the outside of the hangar(s) or building(s), or enclosed fenced areas, to be used for the storage of wrecked or permanently disabled aircraft, aircraft parts, automobiles, vehicles of any type, or any other equipment or items which would distract from the appearance of the Leased Premises.

5. The proceeds derived from any commercial operation, sublease, fly-in, or event shall be retained by the Lessee to partially offset its cost of maintaining the Leased Premises.

(f) Access. During the term of this Lease, Lessee shall have the unencumbered use of the Leased Premises; provided, however, that Lessor shall have access to said property for the purpose fulfilling its obligations hereto of said Lessee as are hereinafter set out; or to reasonably inspect the premises. Further, provided that Lessor may make necessary improvements on the property herein leased as might be required for the efficient operation, maintenance, and/or expansion of the Airport in conjunction with the Lessee.

(g) Assignment/Subletting.

1. Lessee may assign this lease or sublease any part of or the entire Leased Premises as long as written consent is obtained from Lessor. Lessor shall not unreasonably withhold consent to a proposed assignment or sublease. Lessee may appeal to the City Council if consent to a proposed assignment or sublease is withheld. The City Council shall grant permission to assign this lease. Any attempt to assign or sublet without Lessor's consent shall be null and void. Neither the acceptance nor rent from any assignee or sublessee, nor the passage of time after any such assignment or

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sublease, shall constitute a waiver of this prohibition. Lessor's written approval to any particular such assignment or sublease shall not constitute Lessor's approval of any subsequent assignment or sublease and shall not relieve Lessee from the performance of its obligations hereunder, including, but not limited to, the payment of rent.

2. Upon obtaining permission from the City Manager, Lessee may sublet the Leased Premises to other organizations or entities; if other entities desire to sublease a portion of the Airport property to build a structure, the Lessee has the supervisory role to approve representative period structure design to further the goal of preserving the airfield as a historical asset.

(h) Illegal Activity. If Lessee, its employees, successors or assigns, or any Director of Lessee's organization, is arrested and convicted of any felonious illegal activity on Airport grounds and it is proved in court that Lessee condoned, and or, participated in such activity then this Lease Agreement is to be considered void and terminated.

(i) Grant Compliance. Lessee agrees to comply with such enforcement procedures as the United States or State of Texas might demand that the City take in order to comply with the City's Assurances required to obtain F.A.A. or Texas Department of Transportation grant funding or other action necessitated for any future Airport improvements.

(j) Non-Discrimination. The Lessee, for itself, its personal representatives, 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, sex, religion, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the Department of Transportation;

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, sex, religion or nation origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

3. That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Code of Federal Regulations, Title 49, Transportation Subtitle A, Office of the Secretary of Transportation, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964, Section 21.5 Discrimination prohibited; and

4. That the Lessee shall at all times use the premises in compliance with all Non-Discrimination laws, either in effect at the present time or those promulgated in the future, of the United States of America, the State of Texas, the City of Ranger, and the Federal Aviation Administration, or their successors.

(k) Abide by All Laws.

1. Lessee shall obey all rules, regulations, and terms of the lease and of the use, condition, and occupancy of the premises, including the rules and regulations of the Airport, if any, adopted by Lessor from time to time.

2. Lessee agrees to abide by all laws, statutes, ordinances, rules and regulations of the Federal Aviation Administration, Texas Department of Transportation, Division of Aviation, State of Texas, Texas Commission on Environmental Quality, the Environmental Protection Agency, City of Ranger and of all other duly constituted public authorities having jurisdiction. No provision in this Agreement shall be construed as being in conflict with Federal Aviation Administration Rules or other laws; and this Agreement shall be construed as being in harmony with such laws in the case of any conflict. Lessee agrees to conduct all activities on the Leased Premises in accordance with the standards now established or that may be reasonably established later by any competent and lawful authority.

3. Further, Lessee agrees to abide by the manufacturer's direction in regards to the use, storage and disposal of pesticides, herbicides, hazardous chemicals, fuel, oil and other chemicals including their containers except for a conflict with a superior law which shall be adhered to strictly.

(l) Taxes. Lessee agrees to pay, in addition to the rent provided for herein, all taxes which Lessee may be required by law to pay. In addition, Lessee agrees to pay its pro-rata share of any *ad valorem* taxes assessed against Lessor associated with any improvements on the Leased Premises and/or for the real property, if such is not tax-exempt.

(m) Securing Aircraft. Lessee agrees to inform aircraft owners that the owner or their agents are responsible for setting parking brakes, placing chocks and tying down and checking of all aircraft on the Leased Premises. Lessee agrees to not park vehicles or aircraft in locations that inhibit the flow of traffic flow or other authorized user's access.

(n) Lien Granted. Lessee may grant a first lien to a bank for construction of improvements. Subject thereto, City retains a lien upon all improvements made to and upon the Leased Premises to secure Lessee's performance hereunder and a first lien on all improvements not subject to a lien from a bank. Lessor subordinates its security interest and statutory and/or contractual liens to a bank's security interests in Lessee's personal property. Notwithstanding the foregoing, no bank lien shall be longer than the term of this lease.

(o) Storage. Lessor shall not be liable for any loss or damage to Lessee's or sublessee's aircraft. Lessee expressly agrees that the aircraft and their contents under Lessee's control are to be stored, whether on the field or in the hangar and covered under Lessee's insurance as is appropriate.

(p) Lock Systems and Keys. Lessee may, at its sole cost and expense, add or change security systems or lock systems, provided that Lessee furnishes security codes and/or key(s) to any gate(s) emergency service vehicles must access in case of emergencies.

4.02. Performance Representations by Lessor. Lessor hereby covenants and agrees to the following:

(a) Leased Premises. Lessor shall lease the premises to Lessee for the lease term, on the terms and conditions enumerated herein, beginning on the Effective Date and ending on the Expiration Date, or ending on any renewal after the Expiration Date.

(b) Rules and Regulations. Lessor shall obey all laws, rules, regulations, and terms of the Agreement and of the use, condition, and occupancy of the Leased Premises.

(c) Operating expenses. Lessor shall pay operating expenses, which shall mean expenses that Lessor shall be required to pay in connection with the ownership outside of normal maintenance of the Airport, except principal and interest on any debt, expenditures classified as capital expenditures for federal income tax purposes, and expenses for which Lessee may be required to reimburse Lessor.

(d) Insurance. Lessor shall adequately insure the Airport as required by law and as further described herein. The parties agree that Lessee shall have no claim to any proceeds of Lessor's insurance policy.

(e) Maintenance by Lessor.

1. Maintenance of any unoccupied property or future acquired property of the Airport that is not a part of the Leased Premises shall remain the obligation of Lessor. Provided, however, that Lessor shall only be obligated to use Airport revenue funds or state and federal grants for such purpose and it shall never have the obligation to use general, operating or bond funds for this purpose.

(f) Utilities. Lessor shall be required and does hereby agree to maintain sewer, water and electric service which are located on some of the Airport property herein leased and shall have access to same across the Leased Premises for the purposes of performing said maintenance in the future. Lessor shall provide sewer, water (not to exceed 10,000 gallons per month) to a single connection specified by the Lessee and Lessee shall reimburse Lessor for electric service, except where limits herein are exceeded. Airport sub-lessees shall pay Lessor for electricity and other utilities used at their own cost.

(g) Inspection. Lessor shall have the right to enter said Leased Premises at reasonable times during normal business hours, for inspection and to make written request that repairs be made to the facilities as may be necessary for the safe and efficient use of the facilities by Lessee.

(h) Covenant of Title, Authority and Quiet Possession.

1. Lessor represents and warrants that Lessor has full right and lawful authority to enter into and perform the Lessor's obligations under this lease for the full term as stated above, and all renewals hereafter provided.

2. Lessor further represents and warrants that Lessor has title to the Leased Premises.

3. Lessor further covenants that if Lessee shall discharge the obligations herein set forth to be performed by Lessee, Lessee shall have and enjoy, during the term hereof, and all renewals hereinafter provided, quiet and undisturbed possession of the Leased Premises and all appurtenances appertaining thereto, together with the right to use the runways and taxiways of the Airport facility as contemplated herein so long as Lessee is not in default or has not become insolvent. Provided, however, that this lease is subject to the right of the United States of America to have exclusive or non-exclusive

use, control and possession without charge, of the Airport or any portion thereof, during periods of national emergency; and further, subject to the right of the F.A.A. and United States Government under such Agreement including the right to take a portion of the Airport premises for air traffic control activities, weather reporting activities or communication activities related to air traffic control. Lessee shall provide notice of dates and times the Airport will be closed to use; and Lessor reserves the right to close the Airport for emergencies without notice.

ARTICLE V.

5.01. Insurance. As a condition precedent to Lessee's right to operate at said Airport, Lessee shall continuously maintain in effect during the term of this Agreement and any extension thereof, at Lessee's expense, the following insurance coverage:

(a) Comprehensive General (Public) Liability Insurance covering the Lessee, and Lessee's activities at the Airport. Liability insurance limits shall be in the following minimum amounts: Bodily Injury, including Death and Property Damage: \$500,000 combined single limit coverage, on a per occurrence or claims made basis/\$1,000,000 aggregate limit.

(b) Fire and extended coverage to cover 80% of the full replacement value for the original 1928 Hangar at the initiation of this Lease Agreement. This coverage shall include for theft, vandalism, malicious mischief, as well as damages caused from weather conditions, acts of God, etc.

(d) All policies, either of the Lessee or Sub-Lessee's, shall name the City of Ranger as an additional named insured and provide for a minimum of thirty (30) days written notice to Lessor prior to the effective date of any cancellation, material change, or lapse of such policies. Notwithstanding other provisions herein contained, Lessor may cancel this lease with or without notice to Lessee should Lessee's insurance lapse for a period of ten (10) days or more. Lessor may elect to reinstate and revive such Lease after such insurance obligation is cured by Lessee.

(f) Appropriate insurance on Lessee's personal property located within the Leased Premises.

(g) All policies must be approved by Lessor to ensure that the provisions of this section are included.

(h) Lessor shall be provided with a copy of all such policies.

(i) Any insurance policy herein required or procured by Lessee shall contain an express waiver of any right or subrogation by the insurance company against the City of Ranger.

5.02. Destruction of the Premises. If the improved premises shall be partially damaged by any casualty insurable under Lessee's insurance policy, Lessee shall, upon receipt of the insurance proceeds, repair the same. If the Leased Premises shall be damaged as a result of a risk which is not fully covered by Lessee's insurance, Lessee shall either (a) repair or rebuild the damaged improvements to the extent of available insurance proceeds, (b) remove all evidence of said building returning the land to natural state, or (c) in the case of the 1928 Hangar assign the insurance proceeds to Lessor. If Lessee fails to repair or rebuild the damaged improvements to the extent of available insurance proceeds or terminate this

Lease and assign insurance proceeds to Lessor, Lessor shall have the right to terminate this Lease and recover damages from Lessee.

5.03. Airport Insurance. Lessor shall be required and does hereby agree to maintain Airport insurance under the general policy of the City.

5.04. Independent Contractor. During all times that this Lease is in effect, the parties agree that Lessee is and shall be deemed to be an independent contractor and operator and not an agent or employee of the City with respect to their acts or omissions hereunder. It is mutually agreed that nothing contained herein shall be deemed or construed to constitute a partnership or joint venture between the parties hereto.

Indemnity. Ranger Municipal Airport will remain a Public Airport open for Public use. As such Lessor retains liability for normal airport operations covered by City insurance as per 5.03 above. Lessee agrees to indemnify and hold harmless the Lessor, its agents, employees, and representatives from and against all liability for any and all claims, suits, demands, and/or actions arising from negligent acts or omissions which may arise out of or result from Lessee's occupancy or use of the Airport. Lessee shall also indemnify Lessor against any and all mechanic's and materialmen's liens or any other types of liens imposed upon the premises demised hereunder arising as a result of Lessee's conduct or activity.

ARTICLE VI.

6.01. Default by Lessee.

(a) Default by Lessee shall be defined as (a) failing to timely pay the Lease Rent, or (b) failing to begin a reasonable attempt to comply, within ten (10) days of receiving written notice from Lessor, with any substantive provision of this lease other than the defaults set forth in this Article VI.

(b) Lessor's remedies for Lessee's default are to (a) enter and take possession of the Leased Premises, after which Lessor may relet the Leased Premises on behalf of Lessee and receive the Lease Rent directly by reason of the reletting, and Lessee agrees to reimburse Lessor for actual expenditures reasonably made in order to relet; or (b) enter the Leased Premises and perform Lessee's obligations; or (c) terminate this lease by proper written notice and sue for damages.

(c) Lessee agrees that due to termination of the Lease by Lessor because of default, all permanent improvements located on the Leased Premises shall become the property of Lessor and that Lessee shall timely and peaceably vacate the premises.

6.02. Default by Lessor.

(a) Default by Lessor shall be defined as (a) Lessor failing to comply with applicable provisions of the lease which constitute default; or (b) Lessor failing to begin a reasonable attempt to comply with any substantive provision of this lease within ten (10) days of receiving proper written notice.

(b) Lessee's remedies for Lessor's default include provisions under this Article VI., and termination of this lease if Lessor fails to provide an essential service for thirty (30) days after default.

(c) It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this lease does not preclude pursuit of other remedies in this lease or as provided by law. Lessor and Lessee have a duty to mitigate damages.

(d) Lessor retains all rights allowable by law and equity to remove Lessee from the premises and recover damages therefrom.

6.03. Early Termination.

(a) If Lessee does not timely pay all sums due to Lessor when such sums become due and payable in accordance with the terms of this lease, or if Lessee shall abandon the premises for a period of one-hundred twenty (120) days or more, or if Lessee is not performing any terms, provisions, covenants or conditions of this Agreement, then, the same shall constitute a default. In said event, Lessor may immediately or any time thereafter, terminate this lease by giving Lessee one-hundred twenty (120) days notice in writing of the cause for termination. Improvements may be disposed of as provided in Section 6.01 above.

(b) Provided, however, that as to those actions or circumstances which Lessee should do or discontinue doing or correct which create a danger or are derogatory to aviation activities, the delinquency shall be cured by Lessee immediately, without notice by City. Conditions or circumstances creating a dangerous situation or which are or may be derogatory to aviation activities shall be conclusive as to Lessee if the determination that they are such is made by the Federal Aviation Administration, Texas Division of Transportation, Division of Aviation or City. The term derogatory as herein used, shall mean those things which do or reasonably appear to hinder aviation activities.

6.04. Cancellation. It is understood and agreed, by and between the parties hereto, that the continuing use of the Airport as an airport for general aviation is essential to the operation of Lessee, and that failure to continue the use of the Airport for Airport and aviation purposes shall constitute a default in the lease; and upon giving notice to Lessor by Lessee of such default and failure to cure such default within thirty (30) days after the giving of such notice, Lease shall terminate and end the lease as of the date one-hundred twenty (120) days after such notice shall have been given to Lessor. Lessee's remedy shall be limited to cancellation and recovering the costs of constructing the improvements prorated over the term of the lease, as provided in Section 3.03, less any months of the existence of the improvements prior to the cancellation. Lessor shall not be responsible or liable for any other actual or consequential damages that may arise from such cancellation.

6.05. Abandon or Vacated Leased Premises. In the event that the Leased Premises is abandoned or vacated by Lessee, Lessor shall have the right, but not the obligation, to relet the premises for the remainder of the period covered by this lease. Lessee agrees that upon abandoning or vacating the Leased Premises, all permanent improvements owned by the Lessee located on the Leased Premises shall become the property of Lessor. Lessor agrees to treat any sublessee according to their lease unencumbered by the faults of the Original Lessee.

6.06. Remedies. In case of any default which continues for more than thirty (30) days after notice is given as herein required, Lessor may, at its option, instead of canceling this Lease,

take possession of the Leased Premises and relet the same for the account of Lessee, and Lessee shall be liable to Lessor for the amount of rent payable hereunder for the remainder of the lease term, less the net amount received by Lessor on account of such reletting, such net amount to be the total amount received by such reletting, less necessary costs and expenses, including, without limitation, the expense of renovating, repairing and advertising incurred in connection with the reletting of the Leased Premises. Lessee hereby grants, and at all times Lessor shall have a contractual lien on Lessee's property in the Leased Premises to secure the performance of all of Lessee's obligations hereunder which contractual lien shall be in addition to all liens provided as a matter of law. Lessee may remove its property, including improvements thereon, in accordance with the provisions contained in this lease within thirty (30) days of the notice by Lessor of default and Lessor's request to remove same. After such time, Lessor, in addition to the other rights or remedies it may have, shall have the right to remove all persons and property from the Leased Premises. Such property shall become the property of Lessor. Lessee hereby waives all claims for damages which maybe caused by the re-entry of Lessor and the taking of possession of the Leased Premises or removal or storage of the property as herein provided, and will save Lessor harmless from any loss, costs or damages occasioned by Lessor thereby, and no such re-entry shall be considered or construed to be a forcible entry. No such re-entry or taking possession of said Leased Premises by Lessor shall be construed as an election on its part to terminate this lease unless a written notice of such intention be given Lessee.

6.07. Waiver of Statutory Notice to Quit. In the event Lessor exercises its option to cancel this lease upon the happening of any or all of the events set forth herein, a notice of cancellation given pursuant to the lease and sent to the address specified in this lease, or subsequent address provided shall be sufficient to cancel this lease.

6.08. Surrender of Premises. Lessee covenants and agrees that it will not injure the building or the premises but will take the same care thereof which a reasonably prudent person would take of his/her own property, and upon termination of this lease, in whatever manner such termination may be brought about, promptly surrender and deliver the Leased Premises to Lessor in as nearly identical conditions as they existed at the beginning of this lease, ordinary wear and tear and damage by any casualty excepted. Lessee shall also surrender to Lessor all keys to the Leased Premises and identification badges. Lessee, having paid all rentals and not in default thereof, shall be given an reasonable time, not to exceed one-hundred twenty (120) days after the termination of this Lease, to remove all of Lessee's personal property, including the improvement as allowed by this lease.

6.09. Rights of Mortgagee. A bank may retain a first lien on any hangar, structure, building or improvement constructed pursuant to a mortgage between Lessee and the bank. Upon default of Lessee's obligations to said mortgagee, the mortgagee shall have the right to enter upon said Leased Premises and operate or manage said hangar, structure, building or improvement according to the terms of this Agreement, for a period not to exceed the term of the mortgage with Lessee, or until the loan is paid in full, whichever comes first, but in no event longer than the term of this Lease. The mortgagee shall not lease the Leased Premises to any other person without the express written consent of the City. Lessee must notify the City of the name, address and amount of mortgage for any improvements attached to the Leased Premises. It is expressly understood and agreed that the right of the mortgagee referred to herein is limited and restricted to those improvements constructed with funds borrowed from mortgagee.

6.10. NON-APPROPRIATION. Notwithstanding anything contained in this lease to the contrary, each and every financial obligation of Lessor pursuant to this lease is subject to appropriations. In the event no funds or insufficient funds are appropriated or budgeted by Lessor for the intended use of the Leased Premises, Lessor will immediately notify Lessee its assignee

of such occurrence and this lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessor of any kind whatsoever, except for the proration of the improvements as provided for in Section 3.03. In the event of such termination, Lessee agrees to peaceably surrender possession of the Leased Premises to Lessor or its assignee on the date of such termination and remove Lessee's personal property and improvements as provided in Section 6.08.

ARTICLE VII.

7.01. Improvements. The Lessee may, for its purposes and approved activities, erect a building, or buildings, of a design, décor, purpose and in a place which represent the Golden Age of Aviation defined to be the 1920's to the 1930's and protects the historical aspect of the Airport. Such building or buildings, even though affixed to the premises, shall be deemed to be personal property belonging to the Lessee and may be removed at any time but at no cost to the Lessor, and the premises shall be placed by the Lessee in substantially the same condition as they were in prior to the Lessee's utilization thereof. Within a reasonable time after the termination of this lease, or any renewal term thereof, the Leased Premises shall be placed by the Lessee in a clean and orderly condition.

7.02. Runways and Hangars. Lessee may install a paved all-weather runway at its expense, with the provision that it must not replace the grass runway. Lessee may build a new operating hangar(s) and restore the original 1928 Airport Hangar at Lessee's expense.

7.03. Construction of Improvements. All improvements and alterations made by Lessee on the premises are subject to approval by Lessor, in writing, prior to construction to determine that such construction is in accordance with the various building ordinances, electrical codes and the uses and purposes contemplated by this Agreement. Lessee shall tender an adequate site plan to Lessor and secure the proper building permits.

7.04. Alterations/Improvements to Leased Premises. Lessee shall undertake no alterations or modifications to the Leased Premises, except for the buildings and improvements currently on the property the parties have agreed are Lessee's personal property, without express written consent of Lessor, and upon termination of this Lease Agreement, any such alterations or modifications shall become the property of the Lessor.

ARTICLE VIII.

8.01. Excusable Delay. "Excusable Delay," as used herein, shall mean and include all delays in a party's performance of its obligations hereunder (other than its obligations to pay money), including the impossibility of such performance, which shall result from or be caused by any legal proceedings or other litigation threatened, instituted against or defended by such party, in good faith, and not merely for purposes of delay; acts of God, acts of the public enemy, wars, blockades, epidemics, earthquakes, storms, floods, explosions, strikes, labor disputes, work stoppages, riots, insurrections, breakage or accident to machines or lines of pipe or mains, lawful acts of any governmental agency or authority restricting or curtailing the erection of the building, other causes beyond the reasonable control of such party, including but not limited to equipment failures, inability of Lessee to procure and obtain needed building materials whether as a result (directly or indirectly) of any lawful order, law or decree of any governmental authority or agency or otherwise, and any other cause, whether of the kind herein referred to or

otherwise; provided, that as to any and all such causes of Excusable Delay the party subjected thereto (i) within ten (10) days after such party has knowledge thereof shall give the other party notice of the existence thereof and of the length of the delay anticipated therefrom, and (ii) within ten (10) days after the cause of delay has ceased to exist, shall give the other party notice of the actual Excusable Delay which resulted from such cause; and provided further, such party shall pursue with reasonable diligence the avoidance or removal of such delay. The inability or refusal of a party to settle any labor dispute shall not be deemed to qualify or limit the foregoing or the effect of Excusable Delay and no such failure or refusal shall constitute delay by such party for which such party shall be responsible hereunder.

8.02. Force Majeure. All of the obligations of Lessor and of Lessee under this lease are subject to delay or suspension resulting from Excusable Delay. The parties hereto shall exercise reasonable diligence to avoid or minimize any such delay or suspension.

ARTICLE IX.

9.01. Miscellaneous Provisions. The parties hereto agree as follows:

(a) Protection of Airport. 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 or adjacent to the Airport which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft. Height locations shall be specifically identified based upon location of the demised premises and safety requirements of Federal and State Governments and Aviation Administrators.

(b) Development of Airport. Lessee expressly reserves the right to grant to others additional leases and privileges with respect to said Airport and facilities, with Lessors consent. Lessor shall not unreasonably withhold consent.

(c) Subordination. This Lease shall be subordinate to provisions of any existing or future Agreements entered into by and between the Lessor and the Federal or State Government for the improvement, operation and maintenance of the Airport; provided, that if such Agreements restrict the operation of the Leased Premises, lease terms shall be negotiated, if and where appropriate.

(d) Release of Claims/Subrogation. Lessor and Lessee hereby release each other from any claim, by subrogation or otherwise, for any damage to the premises, the improvements or personal property by reason of fire or the elements, regardless of cause, including negligence of either party. This release applies only to the extent that it is permitted by law, the damage is covered by insurance proceeds, and the release does not adversely affect any insurance coverage.

(e) Notice to Insurance Companies. Lessor and Lessee shall notify the issuing insurance companies of the release set forth in this Article, and shall have the insurance policies endorsed, if necessary, to prevent invalidation of coverage.

(f) Casualty/Total or Partial Destruction. If the premises are damaged by casualty, the Lessor may, at its sole option, choose not to restore the premises.

(g) Condemnation/Substantial or Partial Taking. If the premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, then this lease will terminate. Lessee shall have no claim to the condemnation award or proceeds in lieu of condemnation.

(h) Limitation of Warranties. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease.

(i) Notices. Any notice or communication to parties required or permitted to be given under this lease shall be effectively given only if in writing and such notice shall be considered received three (3) days after depositing such notice in the U.S. registered or certified mails, postage prepaid, return receipt requested, or by commercial overnight courier service, addressed as follows:

1. If addressed to Lessor:

City of Ranger, Texas

Ranger, TX
Attention: City Manager

With a copy to:

City Attorney
Attn: Paige Saenz
The Knight Law Firm, LLP

Austin, TX

2. If addressed to Lessee:

Ranger Airfield Maintenance Foundation
1402 Oddie Street
Ranger, Texas 76470
Attention: Executive Director

provided, however, that any party shall have the right to change the address to which notices shall thereafter be sent by giving notice to the other party as aforesaid, but not more than two addresses shall be in effect at any given time for Lessor and Lessee hereunder.

(j) Attorneys' Fees. In the event of litigation between Lessor and Lessee wherein one or both parties is seeking to enforce any right or remedy hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees incurred in connection with such litigation from the other party.

(k) Applicable Law. This lease shall be governed by and construed in accordance with the laws of the state of Texas, and venue shall lie in Eastland County, Texas.

(l) Binding Effect. The covenants and agreements herein contained shall inure to and be binding upon Lessor, its successors and assigns, and Lessee, its successors and

assigns; provided such reference to assigns is not intended to imply or grant any right on the part of either party to assign this lease. No modification of this Lease shall be binding upon either party unless it is in writing and is signed by both parties.

(m) Tense and Captions. For the purposes of this agreement, the singular number shall include the plural and the masculine shall include the feminine and vise-versa, whenever the context so admits or requires. The captions and headings are inserted solely for the convenience of reference and are not part of nor intended to govern, limit or aid in the construction of any provision hereof.

(n) Severability Clause. If any term, covenant, condition or provision of this lease, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this lease or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than such as to which it shall have been invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(o) Incorporation of Exhibits. All exhibits, schedules and attachments referred to in this lease are hereby incorporated by reference for all purposes as fully as if set forth at length herein. This lease constitutes the entire agreement of the parties with respect to the subject matter hereof, and all prior correspondence, memoranda, agreements or understandings (written or oral) with respect hereto are merged into and superseded by this lease.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written, in duplicate originals.

Lessor:

CITY OF RANGER,
a municipal corporation

By: [Signature]
_____, Mayor

Lessee:

Ranger Airfield Maintenance
Foundation, a non-profit corporation

By: [Signature]
Name: JARED CALVERT
Title: DIRECTOR RMP

Attest:

[Signature]

City Secretary



Exhibit "A"



TEXAS

ARIZONA

CALIFORNIA

KANSAS

CERTIFICATE OF INSURANCE

CERTIFICATE HOLDER:

To Whom It May Concern

POLICYHOLDER:

Eagle Flying Museum
1402 Oddie Street
Ranger, TX 76470

This is to certify that the following policy(s), subject to the terms, conditions, limitations and endorsements contained therein, and during their effective period, have been issued by the company(s) indicated below. In the event of material change or cancellation of said policy(s), the company will endeavor to notify the certificate holder, but failure to do so shall impose no liability or obligation of any kind upon the undersigned or the company(s) involved.

Policy Type: Property & Liability

Insurance Company: Preferred Aviation Underwriter

Policy Number: 02-LX-027569021-0

Policy Period: June 13, 2018 – June 13, 2019

Property – 1402 Oddie Street

Building - \$126,000

Deductible \$1,000 / \$6,500 Minimum Wind & Hail

THE FOREGOING EVIDENCE OF COVERAGE IS NOT VERBATIM OF POLICY CONDITIONS, LIMITATIONS OR LANGUAGE; THE POLICY(S) REPRESENTED BY THIS CERTIFICATE ARE NOT AMENDED IN ANY WAY UNLESS SO STATED ON THIS CERTIFICATE.

NOTICE OF CANCELLATION: IN THE EVENT OF MATERIAL CHANGE OR CANCELLATION OF SAID POLICY(S), THE COMPANY(S) SHALL ENDEAVOR TO GIVE 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER WITH THE EXCEPTION OF A 10 DAY NOTICE FOR NON-PAYMENT OF PREMIUM.

Authorized Signature

COR000022



**CITY OF
RANGER**

REGULAR MEETING MINUTES

A Regular Meeting of the Governing Body of the City of Ranger, Texas, was held on **Monday, January 31, 2022 at 5:30 p.m.** in City Hall, 400 West Main Street Ranger, Texas. The following subjects were discussed, to wit:

COUNCIL MEMBERS AND CITY STAFF PRESENT:

Honorable John Casey	Mayor
Commissioner Larry Monroe	Place 1
Commissioner Robert Butler	Place 2
Commissioner Kevan Moize	Place 3
Commissioner Bittni Boykin	Place 4
City Manager Gerald Gunstanson	
City Secretary Savannah Fortenberry	
Public Works Director Robert Alvarez	
Honorable Tammy S. Archer	

Agenda Item 01: Call to Order- Mayor John Casey

Roll Call/Quorum Check- Savannah Fortenberry
Invocation of Prayer- City Manager Gerald Gunstanson
Pledge of Allegiance to United States Flag- Mayor John Casey
Pledge of Allegiance to Texas Flag- Mayor John Casey

Agenda Item 02: Citizen's Presentation: 1. No Participation.

Agenda Item 03: Announcements from City Council or Staff- 1. Mayor Casey announced the regularly scheduled meeting for February 14, would be moved to February 17, 2022 at 5:30pm.

Agenda Item 04: Discuss/Consider: approval of the city council meeting minutes for the regular meeting on January 10, 2022. - Savannah Fortenberry, City Secretary

*Motion made by Commissioner Moize to approve the city council meeting minutes, with the changes, for the regular meeting on January 10, 2022 and 2nd by Commissioner Monroe. **All Ayes and Motion Passed.**

Agenda Item 05: Discuss/Consider: an update of the current grants pursued by the City. – Gerald Gunstanson, City Manager

*Current grants being pursued are as listed: \$350, 000 block grant for fire hydrants and gate valves, \$500,000 grant for a new ambulance, \$4,700 from West Central Texas Council of Governments for tire removal. All grants listed do not have a match required.

*Motion made by Commissioner Monroe to approve the update given and 2nd by Commissioner Boykin. **All Ayes and Motion Passed.**

Agenda Item 06: Discuss/Consider: adopting Local Procurement Policies & Procedures for the City of Ranger pertaining to the Texas Department of Housing and Community Affairs (TDHCA) grant for the Texas Community Resiliency Program (CRP). –Gerald Gunstanson, City Manager

*Motion made by Commissioner Boykin to table agenda item 6 until the next council meeting and 2nd by Commissioner Butler. **All Ayes and Motion Passed.**

Agenda Item 07: Discuss/Consider: approval to allow the City Manager to use current department budgeted training funds to send Cadets to a Basic Police Academy and enter into a two-year employment reimbursement agreement. – John Casey, Mayor

*Motion made by Commissioner Butler to submit the contract to the City Attorney for legal review and 2nd by Commissioner Boykin. **All Ayes and Motion Passed.**

Agenda Item 08: Discuss/Consider: an update on the street repairs for Pine Street. – Robert Butler, Commissioner Place 2

*Motion made by Commissioner Butler for a draft plan to be presented at the February 17th council meeting regarding the street repairs on Pine Street and 2nd by Commissioner Moize. **Ayes- Butler, Moize, Monroe; Abstain-Boykin**

Agenda Item 09: Discuss/Consider: SECOND AND FINAL READING OF ORDINANCE NO. 2022-01-10-C: AN ORDINANCE OF THE CITY OF RANGER, TEXAS; AMENDING ORDINANCE NO. 2021-08-23-F PROVIDING FOR THE ADOPTION AND AMENDMENT OF THE CITY OF RANGER PERSONNEL POLICY; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING EFFECTIVE DATE AND OPEN MEETINGS CLAUSES. –Gerald Gunstanson, City Manager

*Motion made by Commissioner Butler to approve the second and final reading of Ordinance No. 2022-01-10-C and 2nd by Commissioner Monroe. **All Ayes and Motion Passed.**

Agenda Item 10: Discuss/Consider: approval of a ‘no fees’ policy at the collection station for residential customers with an active utility bill. – Kevan Moize, Commissioner Place 3

*Motion made by Commissioner Moize to approve the no fee policy at the collection station through the current fiscal year and 2nd by Commissioner Boykin. **All Ayes and Motion Passed.**

Agenda Item 11: Discuss/Consider: The City Council will now conduct a Closed Executive Session at 6:28pm Pursuant to and in accordance with the Texas Government Code Section 551.071, Advice of Counsel and 1.05 Texas Disciplinary Rules of Professional Conduct, the Council shall meet and discuss the following:

- Update regarding ECWSD’s water rate increase

Agenda Item 12: Discuss/Consider: Reconvene into Open Session and pursuant to the provisions of Chapter 551 Texas Government Code take action from Executive Session – John Casey, Mayor

*Motion made by Commissioner Moize to move forward with the PUC filing due to the lack of having a combined meeting determining a rate increase we were advised by our attorney to pursue a challenge of the rate increase and 2nd by Commissioner Monroe. **All Ayes and Motion Passed.**

Agenda Item 13: Discuss/Consider: Convene in Executive Session Pursuant to Texas Government Code § Section 551.072. **Deliberations about Real Property:** A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

1. Ranger Municipal Airport

Agenda Item 14: Discuss/Consider: Reconvene into Open Session **at 7:23pm** and take action from Executive Session – John Casey, Mayor

*Motion made by Commissioner Butler approve the first addendum of the lease as put forward by the Ranger Airfield and 2nd by Commissioner Boykin. **All Ayes and Motion Passed.**

Agenda Item 15: Discuss/Consider: Adjournment- 7:26pm

*Motioned by Commissioner Boykin to adjourn and Commissioner Monroe 2nd the motion. **All Ayes and Motion Passed.**

These minutes were approved on the 17th day of February, 2022

CITY OF RANGER, TEXAS



John Casey, Mayor

ATTEST:



Savannah Fortenberry, City Secretary



FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement (“Amendment”) shall be effective as of January 31, 2022 (“Effective Date”) and is between the City of Ranger, Texas, a Texas municipal corporation (hereinafter “Lessor”), the owner of Ranger Municipal Airport (hereinafter “Airport”), and the Ranger Airfield Maintenance Foundation, a non-profit corporation (hereinafter “Lessee”), with each party to this Amendment being individually referred to as “Party” or collectively being referred to as “Parties”.

WHEREAS, Lessee is the current lessee under that certain Lease Agreement, dated December 4, 2018, with Lessor, (hereinafter “Lease”);

WHEREAS, Lessor desires to convey ownership of the Airport to Lessee upon the satisfaction of certain improvements; and

WHEREAS, the Parties to this Amendment would like to amend the Lease as set forth in Sections 1-7 below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both Lessor and Lessee, the Parties hereby agree as follows:

1. Additional Hangars. Lessee shall permit not less than three (3) new, vintage-style appearance aircraft hangars to be constructed on Airport property by approved third parties. Lessee also agrees to sublease to each third party constructing a new hangar, a lot of land in the dimensions of the newly constructed hangar. Said lots will be sold/transferred to private ownership upon execution of Section 3 below. The aforementioned third parties are subject to approval by Lessee, and that approval cannot be unreasonably withheld.

2. 1928 Hangar. Lessee shall restore Lessor’s 60’x60’ 1928 hangar to its historical 1928 size and appearance.

3. Purchase Option. Upon completion of Sections 1 & 2 above and subject to adherence to all provisions that are required under Texas Department of Transportation Airport Division, Lessor shall convey to Lessee the Airport and Airport Property as set out in Exhibit “A” attached hereto and incorporated herein. Airport Property shall include Airport land, rights, fixtures, and appurtenances, but shall not include the approximately 80’x80’ lot of land upon which the City’s 1928 hangar. Such hanger shall continue to serve as the Leased Premises under the Lease between Lessor and Lessee. Conveyance shall be under a Special Warranty Deed with an automatic right of reversion outlined in 4 below.

4. Right of Reverter. Under the terms of the Special Warranty Deed, Lessee is granted the Airport and Airport Property to facilitate development of the property around the Airport with personally owned hangars. Subject to the Special Warranty Deed, Lessee agrees that the Airport’s current runways and infield will not be developed, and no currently existing runway (longest being Runway 1/19, 3400 feet) will be shortened more than 25% in length or in any way permanently closed. If any of these events occur, Lessee’s right of ownership to the runways and the infield shall automatically revert to Lessor.

5. Amendment Governs. Should there be a conflict between the terms and conditions of this Amendment and the terms and conditions of the Lease or any other oral or written agreement between the Parties,

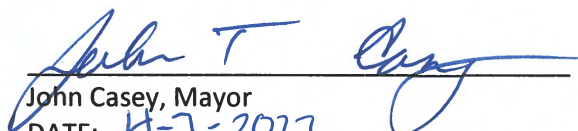
the terms and conditions of this Amendment shall control and govern. The remainder of the Lease not amended by this Amendment shall remain in full force and effect.

6. Successors and Assigns. This Amendment shall inure to the benefit and bind the respective heirs, representatives, successors and permitted assigns of the parties.


7. Entire Agreement. This Amendment embodies and includes the entire agreement between the Parties. This Amendment may only be amended or modified by mutual written agreement by all of the Parties hereto or their respective successors and assigns.

CITY OF RANGER

RANGER AIRFIELD MAINTENANCE FOUNDATION

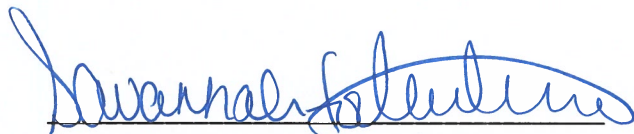


John Casey, Mayor
DATE: 4-7-2022



Jared Calvert,
DATE: 4-7-22

ATTEST:



Savannah Fortenberry, City Secretary

CAUSE NO. CV2246534

RANGER AIRFIELD MAINTENANCE FOUNDATION,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
v.	§	91 st JUDICIAL DISTRICT
	§	
CITY OF RANGER, a Texas Municipal Corporation,	§	
	§	
Defendant.	§	EASTLAND COUNTY, TEXAS

AFFIDAVIT OF SAVANNAH FORTENBERRY

County of Eastland	§
	§
State of Texas	§

Before me, the undersigned authority, personally appeared Savannah Fortenberry, City Secretary of the City of Ranger, Texas, who, being by me duly sworn, stated as follows:

“My name is Savannah Fortenberry. I am over 18 years of age, of sound mind, capable of making this affidavit, and have personal knowledge of the facts stated herein.

In my role as City Secretary for the City of Ranger, Texas, I am statutorily designated as the official custodian of records for the City. As part of my duties, I am responsible for maintaining public records kept in the regular course of business by the City of Ranger, which includes documents and records provided to or filed with the City.

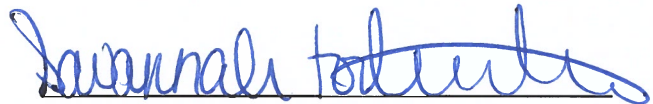
I have reviewed the City’s public records as they are maintained in the regular course of business, and the City does not have in its records a Texas Ethics Commission Form 1295 from Ranger Airfield Maintenance Foundation related to the contract that is the subject of the above-styled litigation in Cause No. CV2246534. Nor was such a form submitted to me as the official custodian of records at, before or after the time that the City Council authorized the contract that is the subject of the above-styled lawsuit on or about January 31, 2022.

Additionally, in my role as City Secretary, I am statutorily designated as the official who prepares all notices required by law. Prior to the City Council’s vote to authorize the execution of the contract that is the subject of the above-styled litigation in Cause No.

CV2246534 on or about January 31, 2022, I was not directed to and the City of Ranger did not publish notice in accordance with Texas Local Government Code §§ 253.008 and 272.001, which requires a city to publish notice as directed by statute prior to the sale of real property.

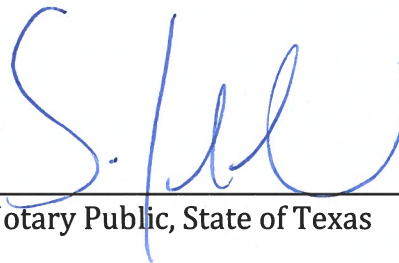
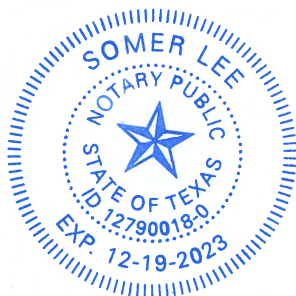
Additionally, in my role as City Secretary, I am responsible for not only preparing such notices related to the sale of municipally owned property, but also for maintaining records related to the disposition of municipally owned property. Prior to the City Council's vote to authorize the execution of the contract that is the subject of the above-styled litigation in Cause No. CV2246534 on or about January 31, 2022, the property that is the subject of the above-styled lawsuit was not and as not been put out for sealed bids, nor was it the subject of public auction and the City possesses no records reflecting such actions or events.

Further affiant sayeth not."



Savannah Fortenberry
Affiant

Sworn to and subscribed before me on the 21 day of March, 2023.



Notary Public, State of Texas

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Lindsay Askew on behalf of Bradford Bullock
Bar No. 793423
laskew@txmunicipallaw.com
Envelope ID: 74000591
Filing Code Description: Motion (No Fee)
Filing Description: Motion (No Fee)
Status as of 3/24/2023 4:18 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Samantha Tandy		samantha.tandy@wickphillips.com	3/24/2023 2:58:41 PM	SENT
Arturo D. Rodriguez	791551	art@txmunicipallaw.com	3/24/2023 2:58:41 PM	SENT
Jacob Fain		jacob.fain@wickphillips.com	3/24/2023 2:58:41 PM	SENT
Schyler Parker		schyler.parker@wickphillips.com	3/24/2023 2:58:41 PM	SENT
Ryan Carter		ryan.carter@wickphillips.com	3/24/2023 2:58:41 PM	SENT
Gwen Gonzales		gwen.gonzales@wickphillips.com	3/24/2023 2:58:41 PM	SENT
Megan Servage		megan.servage@wickphillips.com	3/24/2023 2:58:41 PM	SENT
Lindsay Askew		laskew@txmunicipallaw.com	3/24/2023 2:58:41 PM	SENT
W.H. "Bill" Hoffmann		hoff2@sbcglobal.net	3/24/2023 2:58:41 PM	SENT

Associated Case Party: A TEXAS MUNICIPALITY OF RANGER

Name	BarNumber	Email	TimestampSubmitted	Status
Deva Bruce		deva@txmunicipallaw.com	3/24/2023 2:58:41 PM	SENT
Brad Bullock		brad@txmunicipallaw.com	3/24/2023 2:58:41 PM	SENT