

NO. 11-23-00204-CV

IN THE COURT OF APPEALS FOR THE ELEVENTH DISTRICT
AT EASTLAND, TEXAS

CITY OF RANGER, A TEXAS MUNICIPAL CORPORATION

Appellant

v.

RANGER AIRFIELD MAINTENANCE FOUNDATION

Appellee

From the 91st Judicial District Court, Eastland County, Texas,
Trial Court Cause No. CV2246534

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ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. 38(a), the following are all of the parties and counsel to the interlocutory order appealed from:

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STATEMENT OF THE CASE

Nature of Underlying Proceeding:

This case involves Ranger Airfield Maintenance Foundation’s lawsuit (Tab 2) against the City of Ranger for a breach of contract claim and anticipatory breach of contract claim related to an alleged conveyance of public property to a private entity (Tab 3), which purported to be an amendment to a lease agreement with the City (Tab 4). After the trial court heard the City of Ranger’s plea (Tab 5), but before it ruled on it, the Foundation filed an amended pleading (Tab 6), wherein it also asserted a declaratory judgment claim on the contract in question and sued current and former council members in their official capacities under an “ultra vires” theory.

Trial Court:

91st Judicial District of Eastland County, Texas, the Honorable Steven R. Herod presiding.

Order on which Appeal is based:

On August 17, 2023, Judge Herod denied the City of Ranger’s plea to the jurisdiction (Tab 1). The City timely filed a notice of appeal of that Order (Tab 7).

STATEMENT REGARDING ORAL ARGUMENT

This case involves governmental immunity, and contract interpretation, in the context of a long and detailed course of conduct between the Foundation and Ranger. Oral argument should be helpful to the Court in both discussing the fairly involved and intersecting substantive law, as well as the complex factual background in which it is being applied.

ISSUES PRESENTED

1. Immunity does not apply in the first instance to situations where a city contracts in its proprietary capacity but does apply when a city contracts in its governmental capacity. The contracts in question related to the City's operation of an airport – a governmental function as a matter of law. Was the City acting in a governmental capacity when it entered the contracts in question, thereby entitling it to assert governmental immunity?
2. Texas Local Government Code Chapter 271 contains a limited waiver of a city's immunity from suit in certain breach of contract actions, but only if the contract is written, states essential terms providing goods and services to the local governmental entity and is properly executed on its behalf. Did the trial court err in denying Ranger's plea to the jurisdiction regarding breach of contract claims related to the 2022 Amendment because the City's immunity was not waived?
3. A party need not be allowed to replead when it will not cure jurisdictional defects and the Foundation's attempt to replead *ultra vires* claims against Ranger's current and former commissioners is futile because it does not invoke the trial court's jurisdiction. Should this matter be remanded to the trial court so the Foundation can proceed on its newly pleaded *ultra vires* claims?

STATEMENT OF FACTS

This case is about whether a city's governmental immunity is waived by Chapter 271 of the Texas Local Government Code for a claim for specific performance to force a city to convey municipally owned real property to a private third party. After leasing the municipal airport from Ranger for several years, the Foundation sought to purchase the bulk of the premises from the City and entered into a contract that purports to convey the real property to the Foundation. Thereafter, when Ranger refused to convey the property, the Foundation sued it for specific performance. This appeal involves Ranger's plea to the jurisdiction which was denied by the trial court, on the basis that Chapter 271 does not waive the City's immunity for the contract in question.

A. Ranger and the Foundation enter the 2018 Lease.

Ranger owns a historic municipal airport and airfield. 1CR075-77. Ranger and the Foundation entered a 30-year lease ("2018 Lease") on December 4, 2018, for one-dollar a year. 1CR080-096.¹ The purpose of the lease is for the Foundation to maintain and operate Ranger's historic municipal airport. 1CR080. The Foundation assumed all operations of the airport and in exchange for an annual rent of one dollar a year, it promised to operate the property "for the purpose of aviation related

¹ The version of the 2018 Lease attached to the Foundation's Original Petition in the Clerk's Record is incomplete; therefore, Ranger refers the Court to the version attached to Ranger's plea.

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.” 1CR082. The 2018 Lease also permits the Foundation to retain any proceeds it derives from the operation of Ranger’s municipal airport to help offset its cost of maintaining the premises. 1CR083.

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. 1CR089. The Foundation’s remedies for cancellation are limited to recovery of costs of improvements prorated over the term of the lease. 1CR081, 1CR089.

The 2018 Lease also permits the Foundation to make improvements to the property. It requires that any such improvements maintain a design aesthetic of the 1920’s to 1930’s “Golden Age of Aviation,” are deemed to be the personal property of the Foundation, and may be removed by the Foundation at no cost to the City upon the conclusion of the lease. 1CR091. Any improvements constructed by the Foundation require the City’s prior approval and any improvements constructed without Ranger’s approval become the City’s property. 1CR091.

The 2018 Lease was signed by Ranger’s mayor and by the Foundation’s director, Jared Calvert. 1CR094. Notably, in both the preamble and in the signature block, the Foundation represents to Ranger that it is a “non-profit corporation.” 1CR080, 1CR094.

Importantly, the 2018 Lease not only permits the Foundation to build new operating hangars, it already permits the Foundation to “restore” the original 1928 Airport Hangar at the Foundation’s expense. 1CR091.

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

In late 2021 or early 2022, Ranger was approached by the Foundation about acquiring the Airport property and at a city council meeting on January 31, 2022, Ranger placed the following item on its agenda for executive session (1CR099):

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.**

This agenda item references section 551.072 of the Texas Government Code, which permits governing bodies to enter a closed meeting to deliberate “the

purchase, exchange, lease, or value of real property” if open deliberation would have a detrimental effect on the negotiating position of the governmental body. Tex. Gov’t Code § 551.072. Upon reconvening into open session, Ranger approved a motion to authorize “the first addendum of the lease as put forward by the Ranger Airfield,” which passed unanimously. 1CR099.

Neither the agenda item nor the motion reflect that the public was notified that the “sale” of the airport property to the Foundation was being considered by Ranger.

C. The 2022 Amendment purports to convey the Airport property to the Foundation.

First and foremost, by the Foundation’s own judicial admission, the purpose of the 2022 Amendment is to convey ownership of the Airport property to the Foundation. 1CR007-008.

The 2022 Amendment is not itself a lease. 1CR101-102. Instead, it amends Sections 1-7 of the 2018 Lease and purports to obligate Ranger to convey the bulk of the Airport property to the Foundation. For absolute clarity, the following chart compares Sections 1-7 of the 2018 Lease to Sections 1-7 of the 2022 Amendment:

<u>2018 Lease – 1CR080-096</u>	<u>2022 Amendment – 1CR101-102</u>
Section 1 – Establishes the lease term, purpose and use of the premises as an airport,	Section 1 – Establishes that Foundation will cause three new hangars to be constructed <i>and transferred to private ownership</i>
Section 2 – Establishes rental fee, delinquency of payment	Section 2 – Foundation shall restore historic hangar to “1928 size and appearance”

Section 3 – Establishes lease term and termination provisions	Section 3 – Sets forth purchase “option” of balance of Airport, minus 1928 “historic hanger”
Section 4 – Establishes lessee’s duties, utility responsibility, maintenance standards, access, assignment of lease, applicability of aviation rules and laws	Section 4 – Sets forth right of reverter
Section 5 – Establishes insurance requirements, indemnity	Section 5 – Sets forth that this amendment governs over 2018 Lease
Section 6 – Establishes default provisions, early termination, cancellation, remedies, surrender of premises	Section 6 – Successors and assigns clause
Section 7 – Establishes lessee’s right to make improvements, ownership of improvements, alteration of premises	Section 7 – Entire agreement clause

The sole “consideration” for the conveyance of the Airport property to the Foundation is found in Section 2 – the Foundation’s promise to restore the historic hangar to its “1928 size and appearance,” (1CR101). Under the 2018 Lease, the Foundation had the option to “restore the original 1928 Airport Hangar at Lessee’s expense.” 1CR091.

The Eastland CAD Property Information for the city-owned Airfield reflects that it is an 81.160 acre tract of property. 1CR075-077. Eastland CAD estimates the total 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. 1CR075-077. In its Original Petition, the Foundation agrees that the property is at least 81 acres. 1CR007. 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 (80x80 feet) (1CR008), while the remainder of the land is purportedly conveyed to the Foundation.

Notably, the 2022 Amendment contains no terms explaining what it means to “restore” the historic hangar to its 1928 “size and appearance.” 1CR008. 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 spent, or how the 1928 hangar “appeared” when it was first built, both from an interior and exterior standpoint.

D. 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. 1CR009-010. 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. 1CR010-014. The breach claim is premised on Ranger’s failure to honor an alleged contractual obligation to convey ownership of the Airport property. 1CR010-011. The Foundation’s anticipatory breach claim is premised on its contention that Ranger has repudiated the 2022 Amendment without

cause. 1CR011-012. 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. 1CR013-014. The Foundation also sought attorney's fees under Chapter 38 of the Civil Practice and Remedies Code and under the UDJA. 1CR011-014.

E. Ranger files a plea to the jurisdiction and days before the hearing, the Foundation asserts the proprietary-governmental distinction for the first time.

After filing its original answer (1CR040-043), Ranger filed a plea to the jurisdiction, asserting various grounds on which the Foundation's claim fails to invoke the trial court's jurisdiction and must be dismissed. 1CR045-074. Shortly before Ranger's plea was finally set for hearing, the Foundation filed a response (1CR126-158) and asserted for the first time that Ranger was acting in a proprietary, not governmental, capacity when it entered the 2022 Amendment. 1RR6:16-9:17.

The trial court took an appropriately deliberative approach to the late filing and allowed Ranger to provide post-hearing briefing and respond to all the Foundation's arguments, including the proprietary-governmental dichotomy. 1RR9:19-20.

F. The Foundation’s counsel conceded several important points during the hearing on Ranger’s plea.

The hearing on Ranger’s plea proceeded and in it, the trial court was presented with numerous reasons (as set forth more fully in the briefing) why the Foundation’s lawsuit could not proceed. And the Foundation’s counsel conceded several important points.

For example, Ranger argued that the 2022 Amendment failed to contain all necessary “essential terms.” 1RR14:8-15:3. Ranger argued that the first missing “essential term” is the price to be paid. 1RR16:11-17:20. Ranger also argued that because the judicially admitted purpose of the 2022 Amendment is to convey municipally owned real property to a private party, the price to be paid is especially important because publicly owned property cannot be gratuitously conveyed to private parties. 1RR17:21-18:9. Ranger also argued that the time of performance is undefined and that fundamentally, the contract is one for the conveyance of land, not goods and services to the City. 1RR18:10-21.

Ranger also argued that the 2022 Amendment was not properly executed for a variety of reasons, including the Foundation’s failure to provide a 1295 Ethics Disclosure Form and the failure to comply with mandatory statutory requirements related to the conveyance of public land to private parties. 1RR20:19-25:8. Ranger also discussed the futility of allowing the Foundation to replead ultra vires claims

against Ranger’s officials in their official capacities.² 1RR25:17-26:22. Ranger also discussed why the failure to comply with mandatory statutory requirements related to the conveyance of public property renders any immunity waiver ineffective under the “properly executed” requirement under Chapter 271. 1RR29:13-31:14. Ranger also discussed why attorney’s fees under the various grounds sought by the Foundation are unavailable. 1RR31:18-25. Finally, Ranger spent time explaining why the Foundation’s 11th hour assertion of the proprietary-governmental dichotomy did not help save its claims. 1RR31:1-36:7.

During its argument, the Foundation made multiple important judicial admissions. First, it admitted that the purpose of the 2018 Lease was for “preserving, operating, and maintaining” the Airport property. 1RR38:1-5. Second, it asserted that under the 2022 Amendment, it had “to preserve, maintain, and operate the airport.” 1RR38:22-23. It also admitted that at least a portion of the 81 acres it is

² Between the time of the hearing on Ranger’s jurisdictional plea (July 27, 2023 – See 1RR001), and the date of the trial court’s order denying Ranger’s plea (August 17, 2023 – See 1CR284), the Foundation filed a First Amended Petition on August 10, 2023 (1CR245-259), which names current and former Ranger Commissioners as defendants. Notwithstanding the officials’ inclusion in the pleading, the Foundation asserts the same claims against Ranger as it did in its original pleading—breach of contract, anticipatory breach of contract, and declarations related to the enforceability of the 2022 Amendment. 1CR251-256. However, the Foundation also seeks the following alternative *ultra vires* declarations against the Commissioners: (1) the Commissioners acted *ultra vires* by failing to give the Foundation notice of the 1295 Ethics Disclosure form and allowing it to cure; (2) the Commissioners acted *ultra vires* by entering the 2022 Amendment; and (3) a declaration that if Ranger acted in its governmental capacity in entering the 2022 Amendment, its immunity is waived for the purpose of adjudicating a breach of contract claim. 1CR255. The Foundation’s decision to file an amended pleading in time to include it in the Clerk’s Record is fortuitous because it amply demonstrates why such an amendment is futile, which Ranger will discuss in greater detail in argument.

asking the trial court to order the City to convey will be turned into “private residences,” which will purportedly “increase the number of residents” in the city and raise tax revenues, utility sales and generally benefit the City. 1RR42:4-8. Finally, the Foundation’s own counsel raised an argument that municipal property notice and bidding requirements should not apply because of ripeness considerations. 1RR49:17-50:3.

G. Ranger provided additional post-hearing briefing and the trial court denied Ranger’s plea.

In its post-hearing response Ranger addressed the proprietary-governmental dichotomy and why Ranger was acting in a governmental capacity when it entered both contracts in question. 1CR217-231. Thereafter, the trial court entered its order denying Ranger’s plea. 1CR284 (See Tab 1). Ranger then timely appealed. 1CR289-290.

SUMMARY OF THE ARGUMENT

The trial court erred by failing to grant Ranger’s plea to the jurisdiction for multiple reasons. First, to the extent that it determined Ranger acted in a proprietary capacity when it purported to enter the 2022 Amendment (meaning immunity is inapplicable), this is clearly erroneous. As a matter of law, airports constitute a governmental function and as the Foundation alleges, the ostensible purpose of both the 2018 Lease and the 2022 Amendment was to develop, operate and maintain a municipal airport. The City was acting in a governmental capacity when it entered

the 2018 Lease and the 2022 Amendment; therefore, immunity applies in the first instance and to the extent that the trial court concluded otherwise, it erred.

Second, Texas Local Government Code, Subchapter I, contains a limited waiver of a city's immunity from suit in breach of contract actions in certain, statutorily enumerated, circumstances. The Foundation's breach of contract and anticipatory breach of contract claims based on the 2022 Amendment failed to invoke the trial court's jurisdiction because the 2022 Amendment lacks multiple essential terms (price, consideration, time of performance), is not for goods and services (its purpose is to convey public real property to a private third party thereby avoiding public bidding requirements), and was not properly executed (no 1295 Ethics Disclosure Form, statutory non-compliance with bidding notice requirements).

Third, a plaintiff need not be given the opportunity to replead when repleading is futile; however, because the Foundation repleaded before the trial court issued its order, the question is whether this matter should be remanded to the trial court so that the Foundation can proceed on its already repleaded *ultra vires* claims. The answer is no. The Foundation's repleaded *ultra vires* claims do not invoke the trial court's jurisdiction because they are still fundamentally breach of contract claims asking for declarations regarding the enforceability of a contract and an attempt to use prospective injunctive relief to obtain contract performance. The Foundation's

amended pleading demonstrates the futility of repleading, which renders remand unnecessary.

ARGUMENT & AUTHORITIES

I. The proprietary/governmental dichotomy analysis governs whether immunity applies in the first instance in municipal contract disputes.

When a governmental entity is sued, courts undertake a structured analysis to determine if the plaintiff has invoked the trial court's subject matter jurisdiction. Courts must initially determine whether immunity applies in the first instance. *Hays St. Bridge Restoration Group v. City of San Antonio*, 570 S.W.3d 697, 703 (Tex. 2019). If the court determines that immunity exists, then it determines if immunity has been clearly and unambiguously waived by an applicable statutory waiver enacted by the Legislature. *Id.*

The *Wasson I* and *Wasson II* cases govern the analysis of whether a municipal action challenged in a breach-of-contract case is proprietary or governmental. *Id.* (citing *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 433 (Tex. 2016) [*Wasson I*] and *Wasson Interests, Ltd. v. City of Jacksonville*, 559 S.W.3d 142, 151 (Tex. 2018) [*Wasson II*]). The proper inquiry to answer the proprietary/governmental act question is whether the city was engaged in a governmental or proprietary function *when it entered the contract*, not when an alleged breach occurs. *Wasson II* at 149-50 (emphasis supplied).

To answer this question, the court considers four factors:

whether (1) the City's act of entering into the [contract] was mandatory or discretionary, (2) the [contract was] intended to benefit the general public or the City's residents, (3) the City was acting on the State's behalf or its own behalf when it entered the [contract], and (4) the City's act of entering into the [contract] was sufficiently related to a governmental function to render the act governmental even if it would otherwise have been proprietary.

Hays Street Bridge Restoration Group at 705. In *Hays Street*, the Supreme Court considered whether a memorandum of understanding (“MOU”) that San Antonio discretionarily entered with a bridge restoration group was proprietary or governmental. The Texas Supreme Court concluded that although entering the MOU was discretionary (favoring proprietary action), the other factors weighed in favor of entry of the MOU being a governmental act (meaning immunity applies, which then triggers the waiver analysis). *Id.* at 705-06. This Court should reach the same conclusion here.

A. The Foundation pleads that the 2018 Lease and 2022 Amendment relate to the operation and maintenance of an airport – a governmental function as a matter of law.

The Foundation’s argument that Ranger acted in a proprietary capacity when it entered the 2018 Lease (1CR080-096, Tab 4) and 2022 Amendment (1CR101-101, Tab 3) is belied by its factual pleadings and the jurisdictional evidence—the contracts themselves and its own declaration (1CR160-163). In both its original petition (1CR005-016), and its first amended petition (1CR245-259), the Foundation repeatedly judicially admits that the purpose of the 2018 Lease is for the operation

and maintenance of an operational airport (1CR007, 008, 248, 249). In both its response to Ranger’s plea (1CR126-158), including the Calvert Declaration (1CR160-163), and in its argument to the trial court, the Foundation also admits that the purpose of the Lease is for the operation of a museum (1CR128, 129, 151, 161; 1RR40:7-42:3).

In *Hays Street*, the activities constituted governmental functions under the TTCA (bridge construction/maintenance and community development/urban renewal). *Id.* Here, the activities contemplated by the agreements also constitute governmental functions as a matter of law (airports used for flight, museums, transportation systems) under the TTCA. Tex. Civ. Prac. & Rem Code Ann. §101.0215(a)(14, 16, 22, 24).³

In *Hays Street*, the Court noted that the bridge restoration group conceded in its brief that the bridge in question was an important “cultural landmark” and that it was to be restored for “residents and *visitors*.” *Id.* (emphasis in original). Here, the Foundation concedes in its pleadings, declaration and response that the airfield is

³ The Foundation would have this Court rewrite the TTCA by arguing that because the airfield is allegedly not a “commercial” airport, its operation is not a governmental function. 1CR139. But the TTCA does not state that a municipal airport must be for *commercial* operation. It simply says, “airports used for flight activities” constitute a governmental function as a matter of law. Tex. Civ. Prac. & Rem. Code Ann. §101.0215(a)(10). Courts cannot judicially rewrite statutes. *See City of League City v. Jimmy Changas, Inc.*, 670 S.W.3d 494, 501 (Tex. 2023); *Pederal Energy v. Bruington Eng’g*, 536 S.W.3d 487, 492 (Tex. 2017) (“We cannot rewrite a statute in the guise of interpreting it.”).

“historic,” that the it hosts air shows for “tourists,” and that the 2018 Lease’s purpose is for “preservation” of the airfields. 1CR126. And while none of this alleged “preservation” is funded by the State of Texas, the funding source is not one of the four factors courts consider under *Wasson II*. Rather, the Foundation judicially admits that the alleged purpose of the 2018 Lease furthers multiple activities statutorily defined as governmental functions. 1CR128. That conclusion is buttressed by the Calvert Declaration wherein he admits that pursuant to the 2018 Lease is to operate and maintain Ranger’s “historic grass airfield” and that while serving in that role, the Foundation hosts publicly attended airshows and “offers flight experiences to residents *and tourists* in historic aircraft.” 1CR161.

Calvert’s Declaration also establishes that an additional purpose under the 2018 Lease is for the Foundation to operate (on behalf of Ranger) a “museum about the historical airfield that is *open to the public*.” 1CR161. Museums and airfields that are *open to the public* plainly serve interests beyond those of Ranger’s taxpayers. Yet despite its own allegations and admissions, the Foundation argued to the trial court that Ranger engaged in a proprietary function when it entered the 2018 Lease (which it is quick to argue the 2022 Amendment only *amends*) because Ranger *voluntarily* entered it. 1CR134-135.

Contrast the 2018 Lease with the lease in *Wasson II*, where the city was simply acting as a landlord leasing individual lots to tenants, which were not essential to the

operation or maintenance of the lake or a marina. *Wasson II* at 152-53. Had the city in *Wasson II* been leasing to tenants who operated or maintained a city marina, the outcome would likely have been different because operation of a city marina is a governmental function. Tex. Civ. Prac. & Rem Code Ann. §101.0215(a)(23). That distinction is key and makes the 2018 Lease much more analogous to the *Hays Street* facts than to the *Wasson II* facts.

Jimmy Chagas, another recent Texas Supreme Court case discussing the governmental/proprietary distinction, is also more analogous to the situation in *Wasson II* and not *Hays Street* or the facts present here. See *Jimmy Chagas, Inc.*, 670 S.W.3d at 501. The contract in question in *Jimmy Chagas* was a Chapter 380 agreement for the purpose of economic development and job creation. *Id.* at 503. The court noted that certain “community-development and urban-renewal activities” constitute governmental acts, but that the standard Chapter 380 agreement in question did not fit within that statutory rubric. *Id.*

In addressing each factor in turn, the court found that in exercising its discretion to enter the Chapter 380 agreement, League City acted primarily for its own benefit and the benefit of municipal residents. *Id.* at 504-05. And critically, the court found that the Chapter 380 agreement was not sufficiently related to a governmental function (either listed in the TTCA or when considering common law governmental functions). *Id.* at 505-06.

As set forth above, that stands in distinct contrast to the Foundation's own allegations and the language of the 2018 Lease (1CR080-096, Tab 4). As the Foundation itself points out, the purpose of the Lease was for the Foundation to step into Ranger's shoes and undertake functions on behalf of Ranger that are plainly governmental in nature (airports, museum, transportation). It cannot argue that these purposes underpin the 2018 Lease and then back away from them when it is convenient. Yet that is precisely what it argued to the trial court.

While it is not clear from the trial court's order (1CR284, Tab 1) that it determined Ranger acted in a proprietary capacity as the basis for its ruling, because that is a question of law, it is appropriate for this Court to review this issue *de novo* and reach the conclusion that the trial court should have reached. *See id.* at 499. Here, that means finding that Ranger acted in its governmental capacity in entering the 2018 Lease, and by extension, the 2022 Amendment.

Accordingly, this Court should find that immunity applies in the first instance. This means the next step is determining whether Ranger's immunity is clearly and unambiguously waived.

II. 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. *Fraley v. Tex. A&M Univ. Sys.*, 664 S.W.3d 91, 101 (Tex. 2023).

Ranger will show that its immunity is not waived under any theory asserted by the Foundation and that remand to proceed on its repleaded *ultra vires* claims would be futile because its fact allegations and the jurisdictional evidence affirmatively negated the trial court's jurisdiction; therefore, dismissal with prejudice was appropriate and the trial court erred in failing to grant Ranger's plea. Additionally, the Foundation is not entitled to proceed on its replead *ultra vires* claim and this matter should not be remanded because it would be futile. *State v.*

Navarrette, 656 S.W.3d 681, 696 (Tex. App.—El Paso 2022, no pet.) (citing *Cnty. of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002)).

III. 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 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

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).

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).

IV. 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.” *LITS 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*, 658 S.W.3d 281, 287 (Tex. 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 288. (“[Plaintiff] therefore failed to affirmatively demonstrate that Gulf Coast's immunity from suit was waived beyond the \$100,000 cap.”).

V. Statutory immunity waivers are interpreted narrowly and must be “clear and unambiguous.”

Immunity waivers are interpreted narrowly, not expansively. *City of Dallas v. Gadberry Constr. Co., Inc.*, No. 05-22-00665-CV, 2023 WL 4446291, at *3 (Tex. App.—Dallas July 11, 2023, no pet.) (citing *Mission Consol. Indep. Sch. Dist. v. Garcia*, 253 S.W.3d 653, 655 (Tex. 2008) (“We interpret statutory waivers of immunity narrowly.”)).

Moreover, a waiver “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).

VI. 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*, 667 S.W.3d 290, 294 (Tex. 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 a breach of contract suit; only the Legislature may do so.” *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) (citing *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 858 (Tex. 2002)) (emphasis in original).

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)).

VII. 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). Ranger will address each in turn.

A. The 2022 Amendment lacks 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 all essential terms; that is, what constitutes the “restoration” of the hanger to its historical 1928 “size and appearance.” 1CR101-102, Tab 3. 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 define in any meaningful way “historical 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.).

Preserving the historic aspect of the Airfield property is a primary purpose of the 2018 Lease and is mentioned multiple times. For example, in section 1.04, the Lease states, “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... Lessor desires to see its historical asset preserved.” 1CR080. Again, in section 4.01(g)(2), the Lease plainly states the Foundation’s role in ensuring that preservation—the Foundation “has the supervisory role to approve representative

period structure design to further the goal of preserving the airfield as a historical asset.” 1CR084. (Parenthetically, this is the same historic property the Foundation wants to subdivide, develop and sell off.)

The Foundation argued at the hearing that it provided “detailed plans” to Ranger for the restoration work (1RR45:16-20), but nowhere in the appellate record or the Foundation’s pleadings is there evidence of such “detailed plans” and in any event, no such plans are identified in or attached to the 2022 Amendment (1CR101-102, Tab 3). Absent at least some reference to these “detailed plans” in the 2022 Amendment (which does not exist), such extrinsic evidence would violate the parol 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 historic “1928 ... appearance” of the original hangar. 1CR101, Tab 3. 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’s allegation that it has raised money for this

renovation (1CR009), 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 restoring the historic “1928 ... appearance” (1CR101, Tab 3). This “essential term” is wholly absent.

Not only are there no stated parameters for a court to determine what the historic “1928 ...appearance” means, the 2022 Amendment contains no time by which the restoration must be completed. *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 historic “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 parol 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 spend 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 of immunity. *City of Liberty*, 2023 WL 2180967, at *8. Based on the foregoing, Ranger’s immunity is not waived on this basis alone.

B. The 2022 Amendment does not provide new good or services to Ranger—it is a contract to convey publicly owned property to a private party.

The LGCCA’s immunity waiver only applies to contracts that provide “goods or services” to Ranger. 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.*

Indeed, “services” cannot be read so broadly that it is “read completely out of the statute.” *Triple BB, LLC v. Vill. of Briarcliff*, 566 S.W.3d 385, 395 (Tex. App.—

Austin 2018, pet. denied). This is particularly true given the rule that immunity waivers are to be construed narrowly. *Gadberry Constr. Co., Inc.*, No. 05-22-00665-CV, 2023 WL 4446291, at *3. 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. 1CR008-009.

The first problem with the service that the Foundation claims it will provide is that it is not a new or unique service contemplated in the 2022 Amendment. 1CR101-102. The 2018 Lease already required the Foundation to provide the following services to Ranger (1CR080-087, Tab 4): preservation of the Airport (§1.04(a)) and maintenance of the Airport (§4.01(e)). The 2018 Lease also allowed the Foundation to construct improvements on the Airport (which it could keep), and to build new operating hangars and *restore the historic 1928 Airport Hangar at the Foundation's expense* (1CR091 - §7.01, 7.02).

When the power to restore the 1928 Airport Hangar remained discretionary with the Foundation, the scope of that “restoration” was not material. The Foundation could do as little or as much “restoration” as it chose so long as it obtained Ranger’s written consent and it protected the historical aspect of the Airport. 1CR091 – Article VII. However, the 2018 Lease provides no more guidance

for what it means to “restore” the historic 1928 Airport Hangar than the 2022 Amendment.

This leads to the second “goods or services” problem with the 2022 Amendment—a written contract only triggers Chapter 271’s immunity waiver if it states the essential terms of the service to be provided to the city. *See Church & Akin, L.L.C.*, 442 S.W.3d at 302. While it is true that the service need not be “primary purpose” of the contract, the contract must nonetheless sufficiently spell out the services to be provided. *Id.* Here, without *any* guiding contractual references in the 2022 Amendment (1CR101-102 Tab 3), the Foundation may determine that a coat of paint constitutes sufficient historical restoration, or it may determine that no paint is more historically accurate and call it a day.

Because both outcomes are equally plausible under the terms of the 2022 Amendment *and not the Foundation’s post hoc arguments about how much money it has allegedly raised*, the Amendment does not state essential terms of the service that is actually required to be provided to Ranger. *See id.* Because the service to be provided (i.e., the restoration of the 1928 hangar) lacks basic essential terms, the 2022 Agreement does not trigger chapter 271’s immunity waiver and is instead nothing more than a conveyance of public property to a third-party for unknown and possibly no consideration. *See id.*

C. The 2022 Amendment is not 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 to contract with a city—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.* (emphasis supplied).⁵ Tex. Gov't Code § 2252.908(d).

⁵ On August 4, 2023, before the trial court signed the order on appeal (1CR284), the Foundation filed a supplemental response to Ranger's plea (1CR233-236), which included a declaration from its lawyer that she filed a 1295 Ethics Disclosure form on behalf of the Foundation on August 2, 2023 with the Texas Ethics Commission. 1CR238-239, 243. This shows (a) that no ethics disclosure form was filed at the time the contract in question was submitted to the City (otherwise why file one almost 20 months after the 2022 Amendment was executed?), and (b) that the Foundation implicitly acknowledges that filing such forms are *required* by law.

Recognizing that it is not enough that a city's representative sign a contract, the court noted that for a municipal 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 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. *Id.* 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 *at the time* it submitted the 2022 Amendment to the City for approval. 1CR103-104 – 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 *validly*

complain now that its failure to perform its duty under the law is Ranger's fault. *See Legacy Hutto, LLC*, at *5.⁶

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. 1CR103-104 – 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 for *fair market value*. Tex. Loc. Gov't Code Ann. § 272.001.⁷ None of that occurred before Ranger voted on the 2022 Amendment. 1CR103-104.

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

⁶ This has not stopped the Foundation from complaining in its amended pleading that Ranger is at fault for failing to notify the Foundation of the Foundation's duty to comply with state law. 1CR255. Of course, no such duty exists.

⁷ 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. *Id.* 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 and possibly zero if the Foundation determines that the hangar is sufficiently “renovated” as-is.

“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. *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).

The Foundation has argued that Ranger was not required to comply with notice and bidding requirements before conveying public property without notice and bidding because the Foundation is a non-profit corporation (1CR153-155). *See* Tex. Loc. Gov’t Code Ann. § 253.011. Setting aside the Foundation’s judicial admission that at the time it entered the 2022 Amendment, it was not a fully compliant non-profit corporation (1CR149-150), 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 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.*” 1CR101. In other words, the Foundation wants to get in the property development business.

The development and sale of “personally owned hangars” by the Foundation on formerly public property (for an unknown amount of consideration) cannot in any sense be considered a legitimate public purpose.⁸ 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” out of this historic landmark 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 and none can be discerned in transferring publicly owned historic property to a private party so that it can subdivide and develop it into private

⁸ The Foundation does not run away from the true purpose of the public property conveyance that it is asking the trial court to order – “Admittedly, new hangars will be constructed and sold to private owners ...” 1CR154-155.

lots and keep the proceeds of those sales. 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 *and possibly zero*. 1CR101.

Accordingly, because it is undisputed that no public notice or bidding occurred before the purported transfer of public property contemplated by the 2022 Amendment, it was not signed in accord with Chapters 253 and 272 of the Texas Local Government Code; therefore, the 2022 Amendment was not properly executed based on the failure to follow these statutory mandates. Therefore, to the extent that the trial court found immunity applies (as it should have), it erred in finding that Ranger’s immunity is waived by the LGCCA for claims under the 2022 Amendment. The Foundation’s claims against the City should have been dismissed with prejudice because the 2022 Amendment does not invoke a chapter 271 waiver and no amount of repleading can remedy the jurisdictional defects.

VIII. The Texas Constitution prohibits granting public funds (or value) to private parties; therefore, Ranger’s immunity is not waived by chapter 271 because the trial court does not have jurisdiction to award the relief the Foundation seeks.

The Foundation alleges that the “consideration” for the public property it demands to be transferred under the 2022 Amendment (1CR101-102) for over 81

acres of land is the restoration of the 1928 hangar. 1CR008. In fact, the Foundation alleges that this consideration is “more than sufficient.” *Id.* The problem with this allegation is that the 2022 Amendment contains no language supporting it.

In this instance, Ranger challenges the Foundation’s 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.”).

The Foundation’s 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. 1CR008. The language of 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. Therefore, it is impossible to determine from the four corners of the 2022 Amendment, even when read in the context of the 2018 Lease, how much, if any, money constitutes the Foundation’s consideration for the transfer of over 81 acres of land that the Eastland CAD values at almost \$300,000. 1CR075-077. *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, and because the amount of consideration is wholly left to the discretion of the Foundation because it alone gets to determine what constitutes sufficient “restoration,” 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, even assuming that the Foundation’s admission that it was not a fully

compliant non-profit corporation at the time the 2022 Amendment was entered is not fatal. 1CR

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, nor the motion approving the contract (1CR097-099) 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 develop and sell new privately-owned hangars. Second, the 2022 Amendment purports to relinquish all control over the 81 acres to be transferred to the Foundation. And third, as previously shown, the 2022 Amendment is totally silent on the value of Ranger's consideration—the benefit received by Ranger in return for 81 acres of public property.

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 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 that the trial court has jurisdiction to award the relief that it seeks—specific performance resulting in the gratuitous transfer of public property to a private party. *Id.*

Thus, although specific performance is available under the LGCCA, because the Foundation seeks relief that the trial court cannot lawfully award, chapter 271 does not waive Ranger's immunity in this instance. *City of Colleyville v. Newman*, No. 02-15-00017-CV, 2016 WL 1314470, at *3 (Tex. App.—Fort Worth Mar. 31, 2016, pet. denied) (chapter 271 does not waive immunity for recovery not authorized by section 271.153). Therefore, the trial court erred in failing to dismiss the Foundation's breach of contract claims with prejudice.

IX. 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.

A. 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. denied); *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 (1CR013):

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.

B. 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's⁹ protections, thereby

⁹ 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).

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 375.¹⁰ Thus, merely entering a contract does not waive governmental immunity from suit. *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 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 trial court erred by failing to dismiss the Foundation’s UDJA claims with prejudice.

¹⁰ *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.

X. 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. 1CR008. It also explicitly seeks attorney's fees under section 37.009 of the Texas Civil Practice and Remedies Code (UDJA). 1CR014. 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 for an attorney fee award, Ranger's immunity 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 that attorney fee provision. *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). Likewise, because

the Foundation's UDJA claims must be dismissed for failure of jurisdiction, it is not entitled to an attorney fee award under the UDJA.

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 should have also been dismissed with prejudice and the trial court erred by failing to do so.

XI. Remanding the Foundation's *ultra vires* claims in its amended petition to the trial court would be futile because they do not invoke the trial court's jurisdiction.

In an effort to save its claims from dismissal, the Foundation filed an Amended Petition (1CR245-259) before the trial court entered its order mistakenly denying Ranger's plea (1CR284). Remanding the matter to the trial court would be futile though because the new *ultra vires* claims in the Foundation's Amended Petition do not invoke the trial court's jurisdiction.

In its Amended Petition, the Foundation seeks the following declarations: (1) whether Ranger is obligated to convey ownership of the Airport property to the

Foundation; (2) whether the 2022 Amendment is valid, binding and enforceable; (3) whether the City Commissioners acted outside their authority by failing to give the Foundation notice of 1295 Ethics Disclosure requirements; (4) whether the City Commissioners acted outside their authority in executing the 2022 Amendment; and (5) whether the City has waived its immunity under section 271.152, thereby allowing the trial court to adjudicate contract claims against Ranger. 1CR254-255.

This mishmash of declarations all amounts to the same thing—an improper effort to use the UDJA to adjudicate a breach of contract claim against Ranger and obtain contract performance in the guise of permissible ultra vires relief (i.e., prospective injunctive relief).

The trial court lacks jurisdiction over the Foundation’s pleaded declaratory judgment theories because there is no applicable waiver of governmental immunity. Nothing in the UDJA or any other statute or act of the Texas Legislature, gives the Foundation the authority to file the pleaded declaratory judgment claims against Ranger’s officials. *See Tex. Dep’t. Of Transp. v. Sefzik*, 35 5S.W. 3d 618, 622 (Tex. 2011); *Sampson v. Univ. of Tex. At Austin*, 500 S.W.3d 380, 384 (Tex. 2016); *Suarez v. City of Tex. City*, 465 S.W.3d 623, 632-33 (Tex. 2015); *Tex. Dep’t of Criminal Justice v. Miller*, 51 S.W.3d 583, 587 (Tex. 2001).

The UDJA “is not a grant of jurisdiction, but ‘merely a procedural device for deciding cases already within a court’s jurisdiction’.” *Cheanult v. Phillips*, 914 S.W.

2d 140, 141 (Tex. 1996). The UDJA is not a general waiver of sovereign immunity. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 370 (Tex.2009). As the Texas Supreme Court has noted, “state agencies ... are immune from suits under the UDJA unless the Legislature has waived immunity for the particular claims at issue.” *Sefzik*, 355 S.W.3d at 620.

The UDJA provides a limited waiver of immunity for claims challenging the validity or constitutionality of ordinances or statutes. See TEX. CIV. PRAC. & REM. CODE ANN. § 37.006(b); and *see Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 76 (Tex.2015); *Tex. Parks & Wildlife Dep't v. Sawyer Trust*, 354 S.W.3d 384, 388 (Tex.2011); *Heinrich*, 284 S.W.3d at 373 n.6. Indeed, the UDJA’s waiver of sovereign immunity is limited and narrow. *Tex. Dep't of State Health Servs. v. Balquinta*, 429 S.W.3d 726, 746 (Tex. App.—Austin 2014, pet. dism'd) (describing UDJA waiver of sovereign immunity as “limited”); *see also Harvel v. Tex. Dep't of Ins.-Div. of Workers' Comp.*, 511 S.W.3d 248, 253 (Tex. App.—Corpus Christi 2015, pet. denied) (describing UDJA waiver of sovereign immunity as “narrow”).

The validity or constitutionality of an ordinance or statute is the only waiver of governmental immunity in the UDJA. See TEX. CIV. PRAC. & REM. CODE ANN. § 37.006(b); *Patel*, 469 S.W.3d at 76; *Sawyer Trust*, 354 S.W.3d at 388; *Heinrich*, 284 S.W.3d at 373 n.6. The Foundation does not contest one of Ranger’s

ordinances as its requested *ultra vires* declarations make clear. 1CR254-255. To the contrary, the Foundation merely seeks to enforce a contract. As a matter of law, such claims do not fall within a waiver of immunity in the UDJA. *See Sefzik*, 355 S.W. 3d at 622 (Tex. 2011) (“... Sefzik is not challenging the validity of a statute; instead, he is challenging TxDOT’s actions under it, and he does not direct us to any provision of the UDJA that expressly waives immunity for his claim”); *Pharmserv, Inc. v. Tex. Health & Human Services Comm'n*, No. 03-13-00526-CV, 2015 WL 1612006, at *9 (Tex. App.—Austin Apr. 9, 2015, no pet.) (UDJA does not waive immunity for contract construction or enforcement).

The UDJA also permits parties to sue government officials in their official capacities for declaratory or injunctive relief against actions taken by a governmental official beyond his discretion or without legal authority (i.e., *ultra vires* actions). *See Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 158 (Tex. 2016). To fall within the *ultra vires* exception, “ ‘a suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.’ ” *Id.* at 161.

A plaintiff asserting *ultra vires* claims must “allege facts affirmatively demonstrating actionable *ultra vires* conduct by state officials in order to avoid dismissal on jurisdictional grounds due to sovereign [or governmental] immunity.”

Matzen v. McLane, 659 S.W.3d 381, 388 (Tex. 2021). To fall within the *ultra vires* exception to governmental immunity, the plaintiff “must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.” *Heinrich*, 284 S.W.3d at 372.

The Foundation’s allegations do not implicate the *ultra vires* exception to immunity because (a) its pleadings do not identify a purely ministerial act that Ranger’s city commission had to perform, and (b) its pleadings do not identify any acts that the commissioners took that exceeded their authority.¹¹ Therefore, remanding this matter to the trial court is futile because the Foundation’s pleadings affirmatively negate jurisdiction for a valid *ultra vires* claim. Accordingly, remand is unnecessary and this Court should reverse the trial court and render the decision that it should have entered—dismissal with prejudice.

PRAYER

The trial court erred in denying Ranger’s Plea to the Jurisdiction because the LGCCA does not waive its immunity for the breach claims asserted by the Foundation or for the relief that the Foundation seeks. The trial court also erred in denying Ranger’s Plea because the Foundation’s UDJA claims do not invoke the

¹¹ Curiously, the Foundation appear to ask for a declaration that the City Commissioners exceeded their authority by erroneously entering the 2022 Amendment. Of course, that would nullify the very contract that the Foundation is trying to enforce. Because the only relief available under an *ultra vires* claim is prospective injunctive relief (which may not be used for contract enforcement purposes), this fails to invoke a justiciable *ultra vires* claim. If necessary though, Ranger concedes that the 2022 Amendment is unenforceable for the reasons set forth in this appeal.

trial court's jurisdiction because it is seeking a declaration of rights under a contract and is not challenging the validity of an ordinance. The trial court also erred in denying Ranger's Plea because the Foundation's claims for attorney' fees do not independently invoke the trial court's jurisdiction. Moreover, this Court need not remand this case to the trial court because the Foundation's *ultra vires* claims set forth in its amended petition do not invoke the trial court's jurisdiction.

The City of Ranger, therefore, prays that the trial court's order denying its plea to the jurisdiction be reversed and judgment rendered in favor of Ranger and that the Foundation's claims be dismissed with prejudice, and for such other relief, at law or in equity, to which Ranger is justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT,
THE CITY OF RANGER**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been sent via electronic service to Appellees' attorneys of record, in compliance with Rule 6.3 of the TEXAS RULES OF APPELLATE PROCEDURE, on October 25, 2023, including the following counsel of record:

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Bradford E. Bullock

CERTIFICATE OF COMPLIANCE

This is to certify that, according to the Microsoft Word computer program used to prepare this document, the document contains 12,569 words in compliance with Texas Rule of Appellate Procedure 9.4(i)(3), excluding those items that are not to be included in the word count pursuant to Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ Bradford E. Bullock
Bradford E. Bullock

APPENDIX

- Tab 1. Order Denying Defendant's Plea to the Jurisdiction
- Tab 2. Ranger Airfield Maintenance Foundation Original Petition
- Tab 3. 2022 First Amendment to Lease Agreement
- Tab 4. 2018 Lease Agreement
- Tab 5. City of Ranger's Plea to the Jurisdiction and Plaintiff's Response
- Tab 6. Ranger Airfield Maintenance First Amended Petition
- Tab 7. City of Ranger Notice of Appeal

CAUSE NO. CV2246534

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

ORDER DENYING DEFENDANT’S PLEA TO THE JURISDICTION

On this day, the Court considered Defendant City of Ranger’s (“Defendant”) Plea to the Jurisdiction (the “Plea”), filed on March 24, 2023. After considering the Plea, Plaintiff Ranger Airfield Maintenance Foundation’s (“Plaintiff”) Response to Defendant’s Plea to the Jurisdiction, replies, evidence, and arguments of counsel, if any, the Court finds that the Plea should be DENIED. Accordingly, it is

ORDERED that the Plea is DENIED in its entirety.

SIGNED this 17 day of August, 2023.



 JUDGE PRESIDING

CAUSE NO. CV2246534

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

PLAINTIFF’S ORIGINAL PETITION

Plaintiff Ranger Airfield Maintenance Foundation (the “Foundation”) files this Original Petition against Defendant City of Ranger, a Texas Municipal Corporation (the “City” or “Defendant”), and respectfully shows the Court as follows:

I. INTRODUCTION

This is a case about a City and its officials who have refused to honor contractual commitments to a non-profit organization that has been serving the City’s residents for years. After entering into an express contractual agreement to convey ownership of the Ranger Airport and Airport Property to the Foundation, the City is now refusing to honor its contract and is refusing to convey ownership of the property to the Foundation. The City’s refusal to honor its contractual commitment to the Foundation has caused the Foundation to suffer significant damages. Accordingly, the Foundation was forced to bring this lawsuit against the City.

II. DISCOVERY LEVEL

1. Discovery in this matter will be conducted under Level 3 of the Texas Rules of Civil Procedure. In accordance with Rule 47 of the Texas Rules of Civil Procedure, the Foundation

states that at this time, it is currently seeking specific performance of the City's obligations under a contract involving real property and monetary relief of over \$250,000 but not more than \$1,000,000.

III. PARTIES

2. Plaintiff Ranger Airfield Maintenance Foundation is a non-profit corporation who maintains its principal place of business in Ranger, Texas.

3. Defendant City of Ranger is a Texas Municipal Corporation in Eastland County, Texas. The City of Ranger may be served with process through its mayor, John Casey, its clerk, Somer Lee, or its secretary, Savannah Fortenberry, at 400 W. Main Street, Ranger, Texas 76470, or wherever they may be found.

IV. VENUE AND JURISDICTION

4. The Court has subject matter jurisdiction over this lawsuit because no other court has exclusive jurisdiction of the subject matter of these causes, and the amount in controversy exceeds this Court's minimum jurisdictional requirements.

5. Venue is proper in Eastland County, Texas pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1) because Eastland County is the county in which all, or a substantial part of, the events or omissions giving rise to the Foundation's claims occurred. Additionally, venue is proper in Eastland County pursuant to Texas Civil Practice and Remedies Code § 15.011 because this is a suit concerning real property or an interest in real property and Eastland County is the county in which all or party of the property is located. Further, venue is proper in Eastland County, Texas pursuant to the December 4, 2018 Lease Agreement between the parties.

V. FACTUAL BACKGROUND

A. The Foundation.

6. The Foundation is a non-profit organization dedicated to rehabilitating, restoring, preserving, and supporting the historic grass airfield located in Ranger, Texas. A vital part of the City of Ranger for over a decade, the Foundation and its team of dedicated volunteers have spent over a decade serving the City and its residents through their work preserving and maintaining the Ranger Airfield (work the City itself admittedly cannot afford to do).

B. The City Enters into a Lease Agreement and Subsequent Amendment with the Foundation.

7. To further these preservation efforts (and because the City cannot afford to preserve the airfield on its own), the Foundation and the City entered into that certain December 4, 2018 Lease Agreement (the "Lease") for 81 acres of land that comprises the Ranger Municipal Airport. *See* the December 4, 2018 Lease Agreement, attached as Exhibit A; *see also* the Survey of the Ranger Municipal Airport, attached hereto as Exhibit B.

8. The purpose of the Lease was to provide the Foundation a right to use and occupy the Ranger Airport in exchange for the Foundation's agreement to maintain and preserve the airfield. The Lease was unanimously approved and authorized by the City Commissioners and signed by the Mayor.

9. The City and the Foundation operated under the Lease for several years without issue. After the Lease was signed, the Foundation made major improvements to the airfield property at no cost to the City. Subsequently, on or around January 31, 2022, the Foundation and the City entered into that certain First Amendment to the Lease Agreement (the "Amendment"). *See* the January 31, 2022 First Amendment to the Lease Agreement, attached hereto as Exhibit C.

10. The purpose of the Amendment was to allow the Foundation the right to purchase the Ranger Airport in exchange for certain improvements to the Airport and the Foundation's continued work to maintain the property as an airfield and to restore and maintain the City's historic 1928 hangar. The City's historical 1928 hangar would remain the property of the City under the Amendment, but the Foundation would fund and provide a much-needed restoration to the hangar. Restoration of the City's historical hangar is work the City cannot afford to do itself. The Foundation's agreement to restore the historical hangar for the City was more than sufficient consideration for the Amendment.

11. Through the Amendment, the City expressly represented that it "desire[d] to *convey ownership* of the Airport to [the Foundation] upon the satisfaction of certain improvements." *See id.* (emphasis added). Specifically, the City agreed that:

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 hangar 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.

See Ex. C, ¶¶ 1-3.

12. The Amendment further contained the following right of reversion:

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.

See id., ¶ 4.

13. Over the course of four City meetings spanning ninety-eight days, the Amendment was unanimously approved and authorized by the City Commissioners and signed by the Mayor.

C. The Foundation Relies on the City's Express Representations to its Detriment; the City Breaches its Contracts.

14. Relying on the City's representation that it desired to convey ownership of the Airport to the Foundation, the Foundation went to work fulfilling its contractual obligations to the City. Specifically, as was required under the Amendment, the Foundation found approved third parties who were willing to build not less than three (3) new, vintage-style appearance aircraft hangars on the Ranger Airport property. *See* Ex. C, ¶ 1. Further, the Foundation raised over \$200,000 in funds to restore the City's existing 1928 hangar to its historical size and appearance.

Id., ¶ 2.

15. In short, the Foundation was ready, willing, and able to fulfill all of its contractual obligations and conditions under the Amendment and has already provided much needed value to the City.

16. In exchange for these efforts, the City expressly agreed to "convey...the Airport and Airport Property" to the Foundation. *Id.*, ¶ 3. Rather than live up to its promises, however, the City has refused to honor its commitments. Specifically, the City has refused to allow those third parties to construct the necessary vintage-style hangars on the Airport Property and has refused to convey the Airport Property to the Foundation as was required under the Amendment once the

three hangars and restoration of the City's historic hangar was completed. Instead, the City has disregarded its contract with the Foundation, has sought to impose additional restrictions upon the Foundation that were not part of the written agreement, and is seeking additional consideration from the Foundation as an additional condition to the agreement.

17. Even worse, the very same City officials who approved the Lease and the Amendment (and encouraged the Foundation to raise over \$200,000 to support the restoration of City property) are now interfering with the Lease and blocking the Foundation's attempts to construct and sublease new hangars on the premises. The City's refusal to honor its contractual commitments to the Foundation have caused the Foundation to suffer significant damages.

18. In sum, the City has refused to honor its contractual commitment to the Foundation. The City's actions are wrongful and are a breach of the Amendment. If the City does not cease its wrongful behavior, the Foundation will lose crucial contracts and will suffer irreparable injury.

VI. CAUSES OF ACTION¹

COUNT 1: Breach of Contract.

19. The Foundation realleges and incorporates by reference the preceding paragraphs for all purposes, the same as if set forth herein.

20. The Foundation and City entered into a valid, enforceable contract (*i.e.* the Amendment) whereby the City expressly represented that it "desire[d] to *convey ownership* of the Airport to [the Foundation] upon the satisfaction of certain improvements."

21. The Amendment constitutes a valid and binding contract between the Foundation, on the one hand, and the City, on the other.

¹ To the extent necessary, the Foundation pleads each and every cause of action herein in the alternative.

22. The Foundation fully performed its obligations and satisfied all conditions precedent under the Amendment. The City, however, has failed to comply with its obligations under the Amendment.

23. The City materially breached the Amendment by failing to comply with the conditions of the Amendment, including without limitation.

24. As a direct and proximate result of the City's breach of the Amendment, the Foundation seeks specific performance of the City's obligations under the Amendment and damages in an amount to be determined at trial, in addition to court costs and attorneys' fees incurred.

25. Pursuant to Texas Government Code § 271.152, the City has waived sovereign immunity to this suit for the purpose of adjudicating this breach of contract claim because the City entered into a contract with the Foundation that is subject to Texas Government Code § 271.

26. Attorneys' Fees. The Foundation is entitled to recover reasonable attorneys' fees under Chapter 38 of the Texas Civil Practice & Remedies Code, because this suit is for breach of a written contract. The Foundation has retained counsel, who presented the Foundation's claims to the City. The Foundation is entitled to an award of reasonable attorneys' fees in an amount to be proven at trial.

COUNT 2: Anticipatory Breach of Contract.

27. The Foundation realleges and incorporates by reference the preceding paragraphs for all purposes, the same as if set forth herein.

28. The Foundation and City entered into a valid, enforceable contract (*i.e.* the Amendment) whereby the City expressly represented that it "desire[d] to **convey ownership** of the Airport to [the Foundation] upon the satisfaction of certain improvements."

29. The Amendment constitutes a valid and binding contract between the Foundation, on the one hand, and the City, on the other.

30. The Foundation performed its obligations and satisfied all conditions precedent under the Amendment. The City, however, has absolutely repudiated its obligations under the Amendment. Specifically, the City repudiated its obligations under the Amendment by refusing to allow those third parties to construct the necessary vintage-style hangars on the Airport Property thus refusing to convey the Airport Property to the Foundation as was required under the Amendment. The City has further repudiated its obligations under the Amendment by disregarding its contract with the Foundation, seeking to impose additional restrictions upon the Foundation that were not part of the written agreement, and seeking additional consideration from the Foundation as an additional condition to the agreement.

31. The City's repudiation was without just excuse and the Foundation has been damaged as a result.

32. As a direct and proximate result of the City's anticipatory breach of the Amendment, the Foundation seeks specific performance of the City's obligations under the Amendment and damages in an amount to be determined at trial, in addition to court costs and attorneys' fees incurred.

33. Pursuant to Texas Government Code § 271.152, the City has waived sovereign immunity to this suit for the purpose of adjudicating this anticipatory breach of contract claim because the City entered into a contract with the Foundation that is subject to Texas Government Code § 271 and that contract forms the basis of this claim.

34. Attorneys' Fees. The Foundation is entitled to recover reasonable attorneys' fees under Chapter 38 of the Texas Civil Practice & Remedies Code, because this suit is for anticipatory

breach of a written contract. The Foundation has retained counsel, who presented the Foundation's claims to the City. The Foundation is entitled to an award of reasonable attorneys' fees in an amount to be proven at trial.

COUNT 3: Declaratory Judgment.

35. The Foundation realleges and incorporates by reference the preceding paragraphs for all purposes, the same as if set forth herein.

36. Pursuant to the Texas Uniform Declaratory Judgment Act and Chapter 37 of the Texas Civil Practice and Remedies Code, this Court is able to declare the rights, status, and other legal relations of the parties to this action with respect to the Agreement.

37. A real and present controversy exists between the Foundation and the City regarding the interpretation of the Amendment and whether the City is obligated to convey ownership of the Ranger Airport and Airport Property to the Foundation.

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.

39. Pursuant to Texas Government Code § 271.152, the City has waived sovereign immunity to this suit for the purpose of adjudicating this declaratory judgment claim because the

City entered into a contract with the Foundation that is subject to Texas Government Code § 271 and that contract forms the basis of the Foundation's claim.

40. Pursuant to Texas Civil Practice and Remedies Code § 37.009, the Foundation is entitled to recover its reasonable and necessary attorneys' fees and costs from the City.

VII. CONDITIONS PRECEDENT

41. All conditions precedent to the Foundation's claims for relief have been performed or have occurred.

VIII. REQUEST FOR RELIEF

The Foundation respectfully requests that this Court, upon final disposition of this matter, enter judgment against the City for the following relief:

- (A) Compensatory damages in an amount of be determined at trial;
- (B) Any other damages, including consequential and special damages;
- (C) Specific performance of the City's obligations under the Sections 1 and 2 of the Amendment;
- (D) A declaratory judgment 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;

(E) Pre-judgment and Post-judgment interest on all sums at the maximum rate allowed by law;

(F) The Foundation's reasonable attorneys' fees and expenses incurred in the filing and prosecution of this action;

(G) All costs of court;

(H) Any and all costs and reasonable attorneys' fees incurred in any and all related appeals and collateral actions (if any); and

(I) Such other relief to which is Court deems the Foundation is justly entitled.

Dated: December 30, 2022

Respectfully submitted,

/s/ Schyler P. Parker

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ATTORNEYS FOR PLAINTIFF

EXHIBIT A

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 81 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

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 a 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, floor, column and in a class which represent the Golden Age of

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 RMF

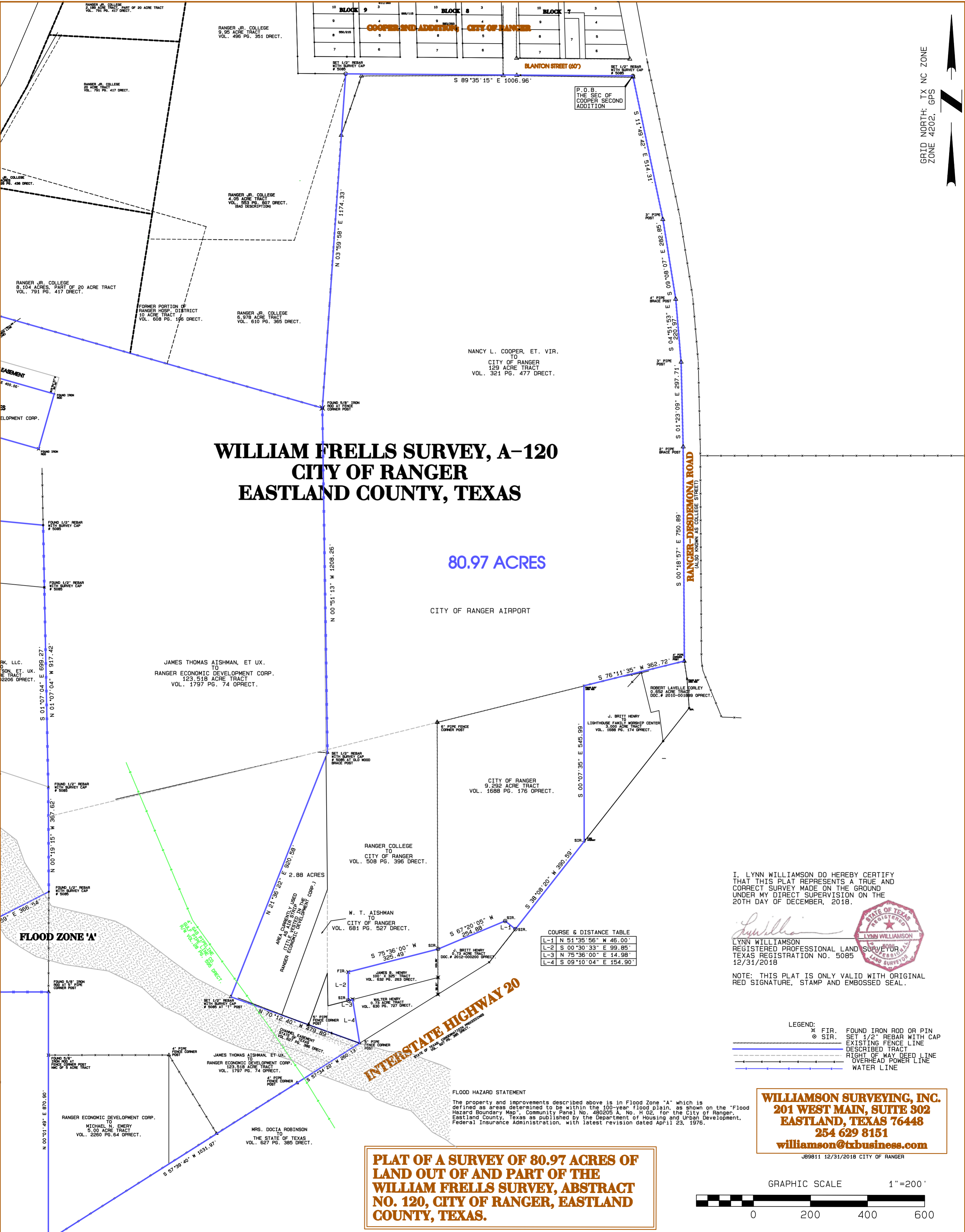
Attest:

[Signature]

Savannah Foster City Secretary



Exhibit "A"



**WILLIAM FRELLS SURVEY, A-120
CITY OF RANGER
EASTLAND COUNTY, TEXAS**

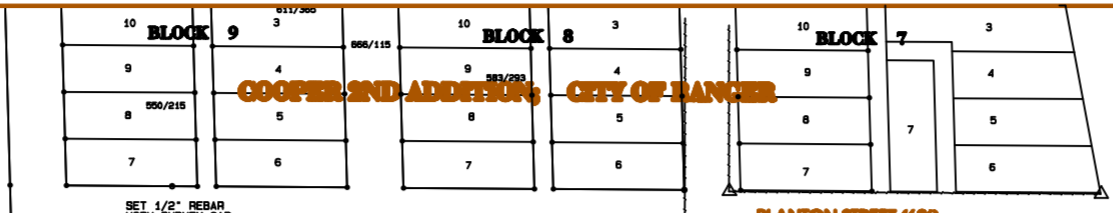
80.97 ACRES

CITY OF RANGER AIRPORT

FLOOD ZONE 'A'

INTERSTATE HIGHWAY 20

RANGER-DESDEMONA ROAD
(ALSO KNOWN AS COLLEGE STREET)



P.O.B. THE SEC OF COOPER SECOND ADDITION

NANCY L. COOPER, ET. VIR. TO CITY OF RANGER 129 ACRE TRACT VOL. 321 PG. 477 DRECT.

JAMES THOMAS AISHMAN, ET UX. TO RANGER ECONOMIC DEVELOPMENT CORP. 123.518 ACRE TRACT VOL. 1797 PG. 74 OPRECT.

CITY OF RANGER 9,292 ACRE TRACT VOL. 1688 PG. 176 OPRECT.

RANGER COLLEGE TO CITY OF RANGER VOL. 508 PG. 396 DRECT.

W. T. AISHMAN TO CITY OF RANGER VOL. 681 PG. 527 DRECT.

JAMES B. HENRY TO CITY OF RANGER VOL. 632 PG. 283 DRECT.

WALTER HENRY TO CITY OF RANGER VOL. 630 PG. 727 DRECT.

JAMES THOMAS AISHMAN, ET UX. TO RANGER ECONOMIC DEVELOPMENT CORP. 123.518 ACRE TRACT VOL. 1797 PG. 74 OPRECT.

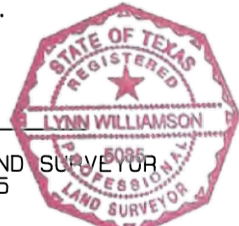
MRS. DOCIA ROBINSON TO THE STATE OF TEXAS VOL. 627 PG. 385 DRECT.

RANGER ECONOMIC DEVELOPMENT CORP. TO MICHAEL N. EMERY 5.00 ACRE TRACT VOL. 2280 PG. 64 OPRECT.

COURSE & DISTANCE TABLE
L-1 N 51°35'56" W 46.00'
L-2 S 00°30'33" E 99.85'
L-3 N 75°36'00" E 14.98'
L-4 S 09°10'04" E 154.90'

I, LYNN WILLIAMSON DO HEREBY CERTIFY THAT THIS PLAT REPRESENTS A TRUE AND CORRECT SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION ON THE 20TH DAY OF DECEMBER, 2018.

Lynn Williamson
LYNN WILLIAMSON
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5085
12/31/2018

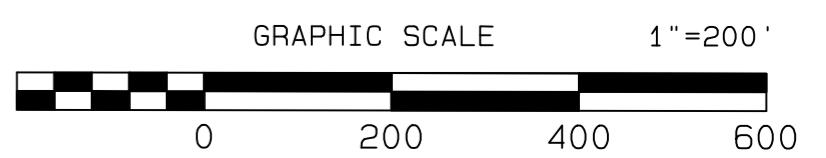


NOTE: THIS PLAT IS ONLY VALID WITH ORIGINAL RED SIGNATURE, STAMP AND EMBOSSED SEAL.

LEGEND:
 x FIR. FOUND IRON ROD OR PIN
 o SIR. SET 1/2" REBAR WITH CAP
 --- EXISTING FENCE LINE
 --- DESCRIBED TRACT
 --- RIGHT OF WAY DEED LINE
 --- OVERHEAD POWER LINE
 --- WATER LINE

PLAT OF A SURVEY OF 80.97 ACRES OF LAND OUT OF AND PART OF THE WILLIAM FRELLS SURVEY, ABSTRACT NO. 120, CITY OF RANGER, EASTLAND COUNTY, TEXAS.

WILLIAMSON SURVEYING, INC.
 201 WEST MAIN, SUITE 302
 EASTLAND, TEXAS 76448
 254 629 8151
 williamson@txbusiness.com



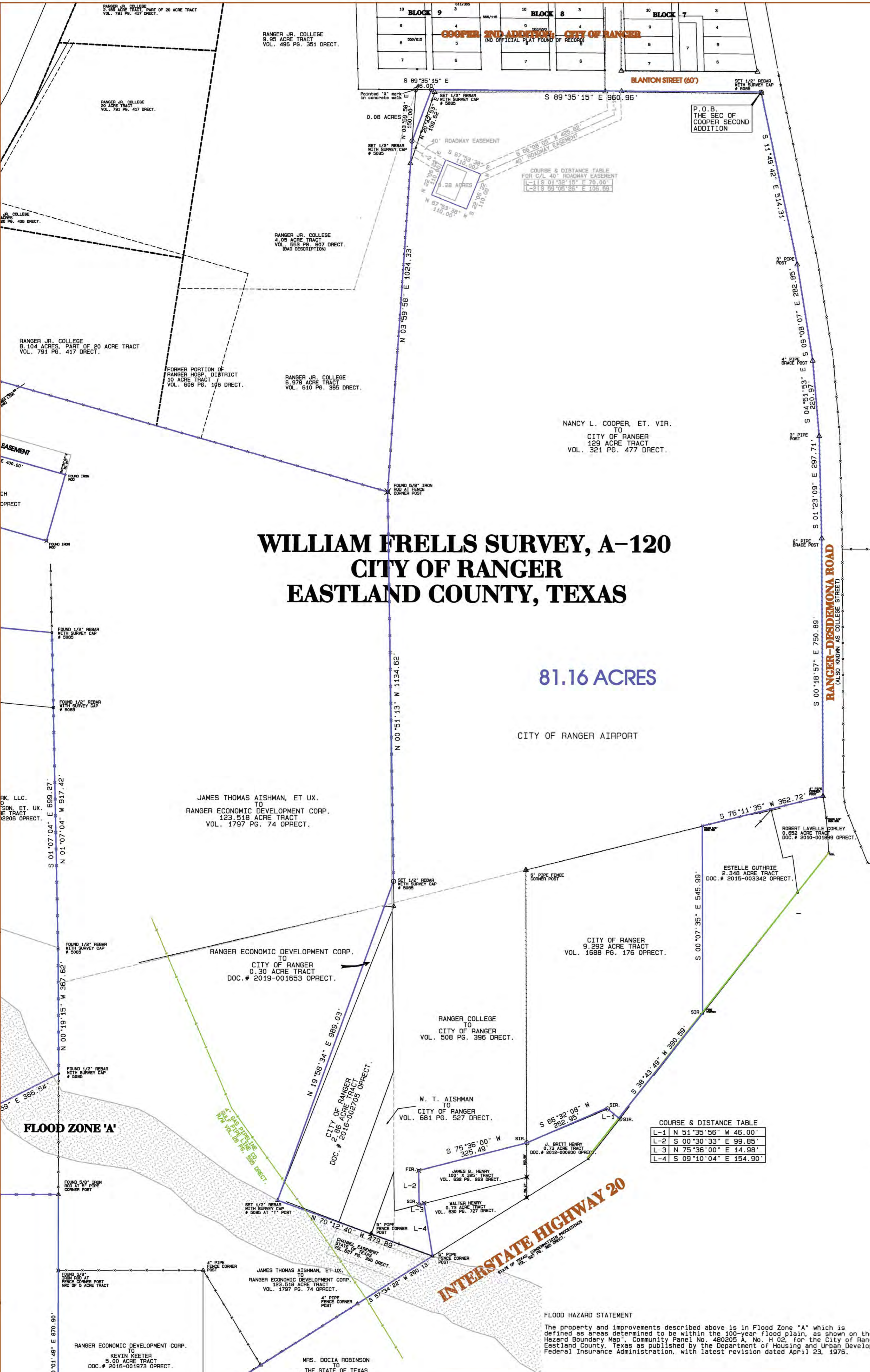
FLOOD HAZARD STATEMENT
 The property and improvements described above is in Flood Zone "A" which is defined as areas determined to be within the 100-year flood plain, as shown on the "Flood Hazard Boundary Map", Community Panel No. 480205 A, No. H 02, for the City of Ranger, Eastland County, Texas as published by the Department of Housing and Urban Development, Federal Insurance Administration, with latest revision dated April 23, 1976.

JB9811 12/31/2018 CITY OF RANGER

EXHIBIT B

Exhibit "A"

GRID NORTH: TX NC ZONE
ZONE 4202, GPS



**WILLIAM FRELLS SURVEY, A-120
CITY OF RANGER
EASTLAND COUNTY, TEXAS**

81.16 ACRES

CITY OF RANGER AIRPORT

FLOOD ZONE 'A'

INTERSTATE HIGHWAY 20

STATE OF TEXAS
COUNTY OF EASTLAND

COURSE & DISTANCE TABLE

L-1	N 51°35'56" W 46.00'
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TEXAS REGISTRATION NO. 5085
12/31/2018
REVISED 11/08/2019



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PLAT OF A SURVEY OF 81.16 ACRES OF LAND OUT OF AND PART OF THE WILLIAM FRELLS SURVEY, ABSTRACT NO. 120, CITY OF RANGER, EASTLAND COUNTY, TEXAS.

WILLIAMSON SURVEYING, INC.
201 WEST MAIN, SUITE 302
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JB9811 12/31/2018 CITY OF RANGER

GRAPHIC SCALE 1"=200'

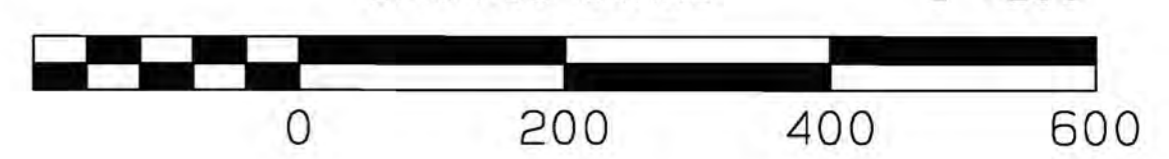


EXHIBIT C

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 hangar 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

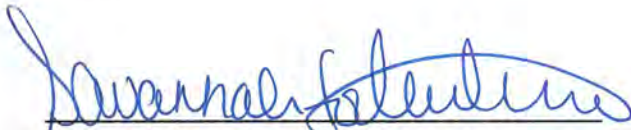


John Casey, Mayor
DATE: 4-7-2022



Jared Calvert,
DATE: 4.7.22

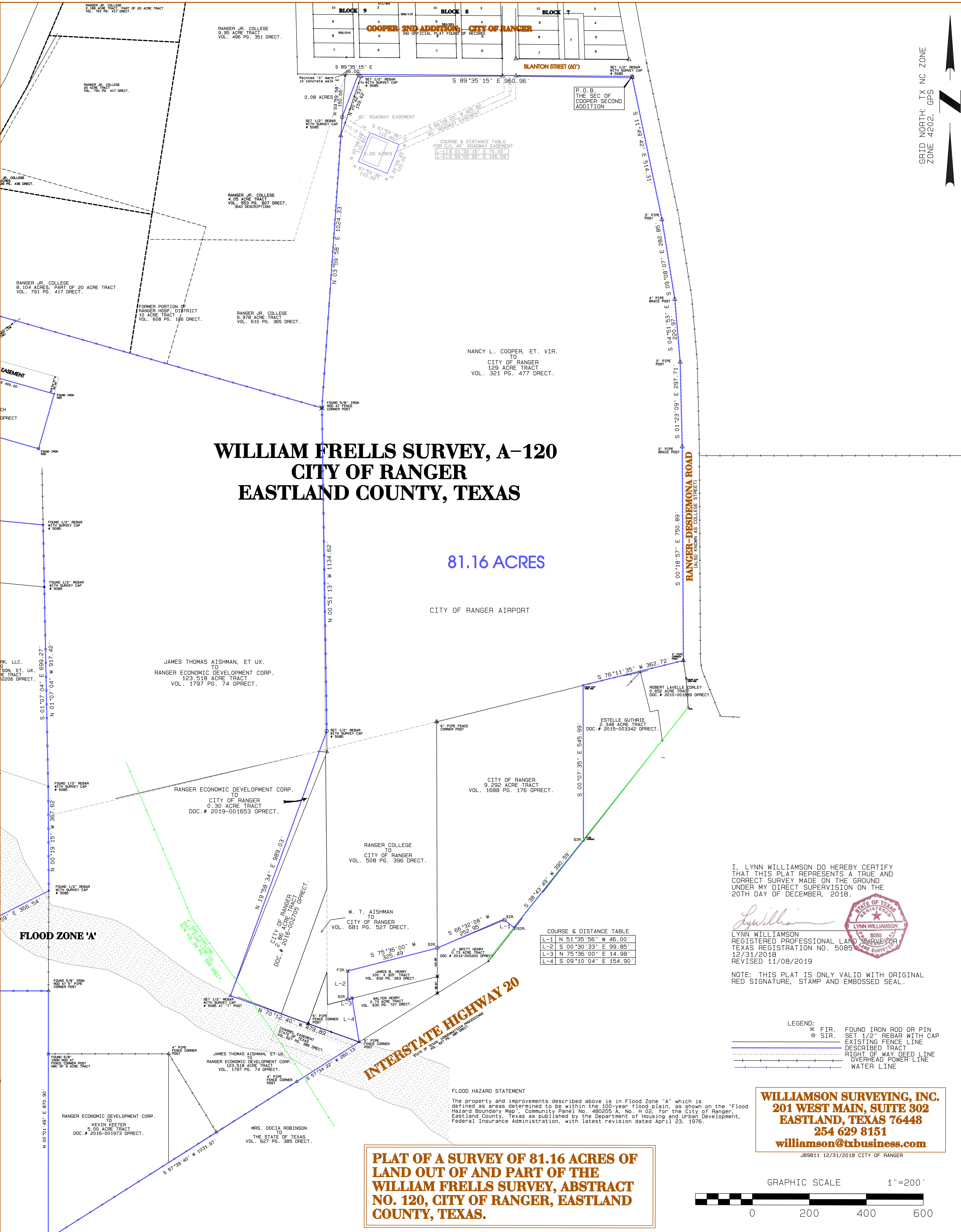
ATTEST:



Savannah Fortenberry, City Secretary

Exhibit "A"

GRID NORTH: TX NC ZONE
ZONE 4202, GPS



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Lynn Williamson

LYNN WILLIAMSON
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5085
12/31/2018
REVISED 11/08/2019



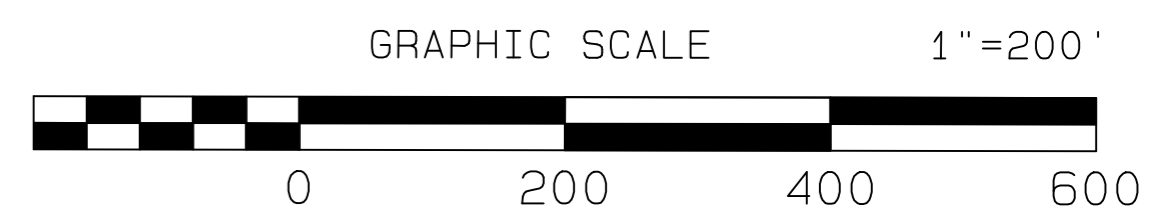
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WILLIAMSON SURVEYING, INC.
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JB98111 12/31/2018 CITY OF RANGER

PLAT OF A SURVEY OF 81.16 ACRES OF LAND OUT OF AND PART OF THE WILLIAM FRELLS SURVEY, ABSTRACT NO. 120, CITY OF RANGER, EASTLAND COUNTY, TEXAS.



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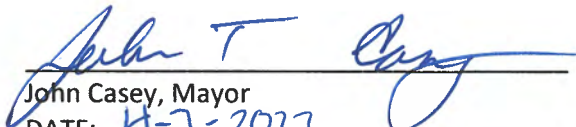
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CITY OF RANGER

RANGER AIRFIELD MAINTENANCE FOUNDATION

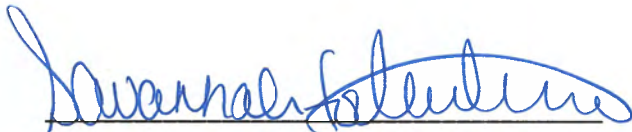


John Casey, Mayor
DATE: 4-7-2022



Jared Calvert,
DATE: 4-7-22

ATTEST:



Savannah Fortenberry, City Secretary

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

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 a 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 RAMP

Attest:

[Signature]

City Secretary



Exhibit "A"



TAB 4 Box 183

ADDISON, TX 75001

OFFICE: 972-250-0400

FAX: 972-250-0401

LGAINSURANCE.COM

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

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):

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

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.” *LTTS 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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AUSTIN, TEXAS 78727
512-930-1317 – TELEPHONE
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:

Jacob T. Fain
State Bar No. 24053747
jacob.fain@wickphillips.com *Via e-file and email*

Schyler P. Parker
State Bar No. 24092937
schyler.parker@wickphillips.com *Via e-file and email*

Megan E. Servage
State Bar No. 24110347
megan.servage@wickphillips.com *Via e-file and email*

WICK PHILLIPS GOULD & MARTIN LLP

100 Throckmorton Street, Suite 1500
Fort Worth, Texas 76102
Telephone: 817.710.1011
Telecopier: 817.332.7789

W.H. "Bill" Hoffmann, Jr.
State Bar No. 9791500
hoff2@sbcglobal.net *Via e-file and email*

HOFFMANN LAW OFFICE

115 E. Main St.
P.O. Box 875
Eastland, Texas 76448
Telephone: 254.629.2679

ATTORNEYS FOR PLAINTIFF

Property ID: 55996

Owner: CITY OF RANGER

<table border="1" style="width: 100%; border-collapse: collapse;"> <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> </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	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Account Number:</td><td>22324-00010-00000-000000</td></tr> <tr><td>Deed Information:</td><td>Volume: <input type="text"/> Page: <input type="text"/> File Number: <input type="text"/> Deed Date: <input type="text"/></td></tr> <tr><td>Block:</td><td><input type="text"/></td></tr> <tr><td>Section / Lot:</td><td><input type="text"/></td></tr> </table>	Account Number:	22324-00010-00000-000000	Deed Information:	Volume: <input type="text"/> Page: <input type="text"/> File Number: <input type="text"/> Deed Date: <input type="text"/>	Block:	<input type="text"/>	Section / Lot:	<input type="text"/>								
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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
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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

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 RAMP

Attest:

[Signature]
[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 hangar 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,

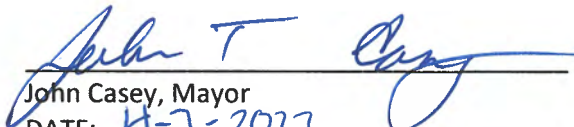
the terms and conditions of this Amendment shall control and govern. The remainder of the Lease not amended by this Amendment shall remain in full force and effect.

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

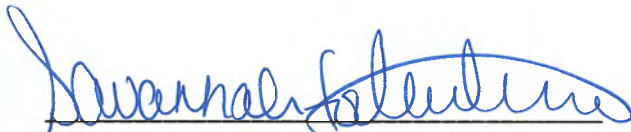


John Casey, Mayor
DATE: 4-7-2022



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.

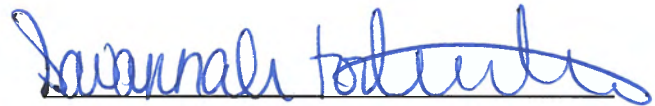
I have reviewed the City’s public records as they are maintained in the regular course of business, and the City does not have in its records a Texas Ethics Commission Form 1295 from Ranger Airfield Maintenance Foundation related to the contract that is the subject of the above-styled litigation in Cause 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.

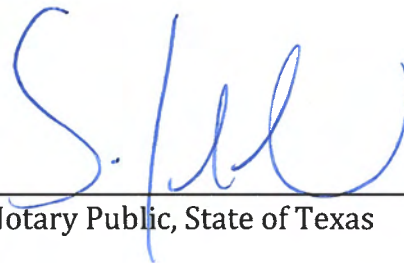
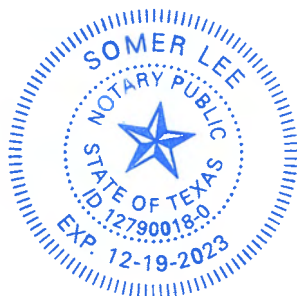
Additionally, in my role as City Secretary, I am responsible for not only preparing such notices related to the sale of municipally owned property, but also for maintaining records related to the disposition of municipally owned property. Prior to the City Council's vote to authorize the execution of 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

CAUSE NO. CV2246534

<p>RANGER AIRFIELD MAINTENANCE FOUNDATION,</p> <p>Plaintiff,</p> <p>v.</p> <p>CITY OF RANGER, a Texas Municipal Corporation,</p> <p>Defendant.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE DISTRICT COURT OF</p> <p>91ST JUDICIAL DISTRICT</p> <p>EASTLAND COUNTY, TEXAS</p>
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**PLAINTIFF’S RESPONSE TO DEFENDANT CITY OF RANGER’S
PLEA TO THE JURISDICTION**

Plaintiff Ranger Airfield Maintenance Foundation (the “Foundation” or “Plaintiff”) files this Response to Defendant City of Ranger’s (the “City” or “Defendant”) Plea to the Jurisdiction (the “Plea”)¹, and respectfully shows the Court as follows:

I. INTRODUCTION

The City refuses to comply with its agreement with the Foundation. Rather than fulfill its obligations under the contract, the City deploys wide-ranging governmental immunity theories in an effort to avoid them. The Foundation and the City (the “Parties”) entered into a contract for services for the conveyance of the Airfield Property and the preservation of the historic Airfield and the restoration of its 1928 hangar. Under the facts of this case, governmental immunity provides no refuge to the City. Therefore, the City should be held to its bargain, and the Plea should be denied.

¹ Upon ruling on Defendant’s Plea, any relief requested in Defendant’s Motion for Protection and to Abate Discovery would be moot and should be summarily denied.

II. RELEVANT FACTUAL BACKGROUND

A. The Foundation and the City agree to restore and preserve the historic Airfield.

1. The Foundation is a non-profit organization dedicated to performing the services of rehabilitating, restoring, preserving, and supporting the historic grass airfield in Ranger, Texas.² Through the work of the Foundation, the Airfield is known as a vital part of the Ranger community as a tourist, educational and amusement attraction for the City. The Foundation hosts airshows and other public events, offers flying lessons to high school students through its high school pilot program, and offers flight experiences to residents and tourists in historic aircraft.³ The Foundation and its dedicated volunteers have spent fifteen (15) years serving the City and its residents through their work preserving and maintaining the Airfield.⁴

2. In 2018, the City could not provide the funds and services required to preserve the Airfield on its own. The Airfield needed to be restored and preserved for the City residents, so the Foundation stepped in to provide the much-needed improvements.

3. In December 2018, the Foundation, entered into a Lease Agreement (the “Lease”) with the City for the 81 acres of land that comprises the Ranger Municipal Airport to facilitate the Foundation’s preservation efforts for the Airfield.⁵

4. The purpose of the Lease was to provide the Foundation a right to use and occupy the Airport in exchange for the Foundation’s agreement to maintain and preserve the airfield.⁶ The Lease was unanimously approved and authorized by the City Commissioners and signed by the Mayor.⁷

² Declaration of Jared Calvert (“Calvert Decl.”), ¶¶ 4-5, attached hereto as Exhibit A.

³ *Id.*

⁴ *Id.*

⁵ See the Lease, attached hereto as Exhibit A-1; Calvert Decl., ¶ 6.

⁶ Calvert Decl., ¶ 7.

⁷ *Id.*

5. The City and the Foundation operated under the Lease for three years without issue.⁸ After the Lease was signed, the Foundation made major improvements to the airfield property at no cost to the City, including constructing the first hangar on the property since 1928; opening the interim museum about the historic airfield that is open to the public; moving over fifteen hundred yards of dirt into a flood area, removing the dilapidated and dangerous office building; constructing a 1920s air mail concrete arrow, building three bathrooms for Airfield visitors with showers for campers, installing over fifteen hundred feet of high fencing, purchased land on both ends of the Airfield for runway protection, and much more.⁹

6. Subsequently, in January 2022, the Foundation and the City entered into the First Amendment to the Lease Agreement (the “Amendment” together with the Lease, the “Agreement”).¹⁰

7. The terms of the Amendment provided for the transfer of property at the Airfield to the Foundation in exchange for the Foundation providing certain improvements and the Foundation’s continued work to maintain the property as a public airfield and to restore and maintain the City’s historic 1928 hangar.¹¹

8. The City maintained a right of reversion to the airport runways and infield.¹² Moreover, the City’s historical 1928 hangar would remain the property of the City under the Amendment.¹³ It would remain open to the public as a museum, but the Foundation would fund, maintain, and provide a much-needed restoration to the historic hangar.¹⁴ The restored hangar

⁸ *Id.* at ¶ 8.

⁹ *Id.*

¹⁰ See the First Amendment, attached hereto as Exhibit A-2; Calvert Decl., ¶ 9.

¹¹ See Ex. A-2; Calvert Decl., ¶ 10.

¹² Ex. A-2, ¶ 4.

¹³ *Id.*

¹⁴ Calvert Decl., ¶ 11.

would house the permanent airfield museum and be filled with period-correct antique aircraft, vehicles, and memorabilia already owned by the Foundation. Restoration of the City’s historical hangar is work the City cannot afford to do itself. The Foundation’s agreement to restore the historical hangar for the City was more than sufficient consideration for the Amendment. The Foundation estimates that it will cost the Foundation more than \$200,000 in direct expenses to restore the historic hangar, with a majority of the work performed by volunteers, when quoted without consideration of the volunteer effort restoration cost would exceed \$500,000.¹⁵ The City acknowledged this consideration by approving the Amendment, which stated in part that “for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both [the City] and [the Foundation]. . .”¹⁶ It was the City’s insistence during the negotiations of the Amendment that the 1928 hangar remained owned by the City.

9. Through the Amendment, the City expressly represented that it “desire[d] to **convey ownership** of the Airport to [the Foundation] upon the satisfaction of certain improvements.”¹⁷

10. Specifically, the City agreed that¹⁸:

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 hangar 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.

¹⁵ *Id.* at ¶ 11.

¹⁶ Ex. A-2.

¹⁷ *See id.* (emphasis added).

¹⁸ *See id.*, ¶¶ 1-3.

11. Notably, the Amendment further contained the following right of reversion¹⁹:

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 hangers. 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.

12. The Amendment was on the agenda for discussion and approval at four City Commission meetings.²⁰ The process of gaining approval from the City Commissioners lasted just shy of 100 days.²¹ Ultimately, the Amendment was unanimously approved and authorized by the City Commissioners. The City was represented by counsel in this transaction, the Foundation was not.²² The City's attorney made no mention of the alleged requirement (a requirement the City has seemingly ignored in many City contracts throughout the years until now because it wishes to evade its obligations) of an ethics disclosure or any other requirements that needed to be fulfilled to enter the Amendment.²³ In accordance with the City Charter, the Mayor executed the Amendment to effectuate the Amendment between the Parties.²⁴

B. The Foundation performs services under the Amendment.

13. Pursuant to the Amendment, the Foundation went to work fulfilling its contractual obligations to the City. Specifically, as was required under the Amendment, the Foundation found approved third parties who were willing to build not less than three (3) new, vintage-style appearance aircraft hangars on the Ranger Airport property.²⁵ Further, the Foundation raised more

¹⁹ See *id.*, ¶ 4.

²⁰ Calvert Decl., ¶ 12.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Ex. A-2; see Charter of the City of Ranger, Texas, Art. V, attached hereto as **Exhibit B-1**.

²⁵ Calvert Decl., ¶ 13; see Ex. A-2, ¶ 1.

than \$200,000 in funds to restore the City’s existing 1928 hangar to its historical size and appearance.²⁶ The Foundation and its volunteers also continued to provide the services outlined in the Lease, including but not limited to mowing the grass airfield and maintaining, promoting, and preserving the Airfield.²⁷

14. The Foundation has spent six months preparing the property for construction and finalizing building designs.²⁸ The Foundation has ordered more than \$100,000 in supplies.²⁹

15. The Foundation’s services to the City are important to Ranger’s history and current City business and tourism. The City of Ranger’s website even promotes the Airfield to visitors.³⁰ The City acknowledges on its website that the Airfield is leased and supported by the Foundation.³¹

Accepting aviators since 1911, Ranger Antique Airfield is a living example of our past.

**Leased and supported by Ranger Airfield Foundation (a 501 (C) (3) nonprofit),
the airfield is mowed, maintained, promoted, preserved
and directed entirely by volunteers and donations.**

16. In short, the Foundation endeavored to fulfill all its contractual obligations and conditions under the Amendment and has already provided much-needed value to the City.

17. In exchange for these efforts, and only upon completion of the construction of the new hangars and the restoration of the historic hangar, the City expressly agreed to “convey...the Airport and Airport Property” to the Foundation.³²

²⁶ Calvert Decl., ¶ 13; *see* Ex. A-2, ¶ 2.

²⁷ Calvert Decl., ¶ 13.

²⁸ *Id.* at ¶ 14.

²⁹ *Id.*

³⁰ *See* <http://www.rangertx.gov/airfield.html>.

³¹ *See id.*

³² Ex. A-2, ¶ 3.

18. However, instead of complying with its obligations under the Amendment, and before the Foundation could complete construction, the City anticipatorily breached the Amendment by ordering the Foundation to stop construction on the Airfield. This order was given without a vote by the City commissioners.

III. ARGUMENT AND AUTHORITIES

The Court should deny the City's Plea because it does not maintain immunity when it engages in proprietary acts, such as entering into the Amendment with the Foundation. A proprietary function is one that is discretionary and performed to benefit itself and not the greater public. Alternatively, if this Court determines the City acted in its governmental capacity when it entered into the Amendment, the City still is not immune from suit because the Legislature clearly and unambiguously waived the immunity under Chapter 271 of the Local Government Code.³³

A. Standard of Review.

A plea to the jurisdiction contests a trial court's subject matter jurisdiction.³⁴ By asserting a plea to the jurisdiction, a party contests the trial court's authority over the subject matter of the dispute without regard to whether the claims asserted have merit.³⁵ The Court should first look to the pleadings to determine if jurisdiction is proper, construing the pleadings liberally in favor of the plaintiff and looking to the pleader's intent.³⁶ The allegations found in the pleadings may either affirmatively demonstrate or negate the Court's jurisdiction.³⁷ If the pleadings do neither, it is an issue of pleading sufficiency and the plaintiff should be given an opportunity to amend the

³³ See Tex. Loc. Gov't Code § 271.152.

³⁴ *Texas Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999); *Benefit Realty Corp. v. City of Carrollton*, 141 S.W.3d 346, 348 (Tex. App.—Dallas 2004, pet. denied).

³⁵ *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000).

³⁶ *Tex. Dep't of Park & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

³⁷ *Id.* at 226-27.

pleadings.³⁸ If a plea to the jurisdiction challenges the existence of jurisdictional facts, the Court may consider relevant evidence submitted by the parties, as necessary to resolve the jurisdictional issues raised.³⁹

Whether a court has subject matter jurisdiction is a question of law.⁴⁰ The plea to the jurisdiction standard mirrors the standard for a traditional motion for summary judgment.⁴¹ The governmental entity must meet the summary judgment standard of proof for its assertion that the trial court lacks jurisdiction.⁴² By requiring the state to meet the summary judgment standard of proof in cases such as this one, a plaintiff is protected from having to “put on their case simply to establish jurisdiction.”⁴³ For a plaintiff, the standard for a plea to the jurisdiction is lower than for a summary judgment because the Court does not consider the merits of the plaintiff’s case.⁴⁴

When the evidence creates a fact issue regarding a jurisdictional challenge, the issue becomes one for the fact-finder to decide.⁴⁵ The Court may rule on the plea as a matter of law only “if the relevant evidence is undisputed or fails to raise a fact question on the jurisdictional issue...”⁴⁶ In considering the evidence, the Court must “take as true all evidence favorable to the nonmovant” and “indulge every reasonable inference” and resolve any doubts in the nonmovant’s favor.”⁴⁷

³⁸ *Id.*

³⁹ *Id.* at 227.

⁴⁰ *Id.* at 226; *Texas Natural Res. Conservation Comm’n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002); *State Dep’t of Hwys. & Pub. Transp. v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002).

⁴¹ *Miranda*, 133 S.W.3d at 228; *City of Fort Worth v. Robinson*, 300 S.W.3d 892, 895 (Tex. App.—Fort Worth 2009, no pet.).

⁴² *Miranda*, 133 S.W.3d at 228; *Robinson*, 300 S.W.3d at 895.

⁴³ *Bland*, 34 S.W.3d at 554.

⁴⁴ *See County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002).

⁴⁵ *Miranda*, 133 S.W.3d at 227-28.

⁴⁶ *Id.* at 228.

⁴⁷ *Id.*

B. The City has no immunity for its proprietary actions.

The City has no immunity when it engages in proprietary acts, such as entering the Amendment with the Foundation. A city operates by exercising both its governmental and proprietary functions. The capacity in which a governmental entity functions determines whether it maintains immunity. Governmental entities are not immune from lawsuits arising out of the performance of proprietary functions, whereas they may be immune from lawsuits arising out of the performance of governmental functions.⁴⁸ The Texas Supreme Court has held that the governmental/proprietary dichotomy can be applied in contract claims; historically, it had only been applied to tort claims.⁴⁹ “[A] city does not have derivative immunity when it engages in a proprietary function, even in the contract-claims context.”⁵⁰

A proprietary function is one that is discretionary and performed mainly for the benefit of the governmental entity itself—not the greater State of Texas.⁵¹ Texas courts have noted the distinction between the two is “[g]overnmental functions are what a municipality *must* do for its citizens and proprietary function are what a municipality *may, in its discretion*, perform for its inhabitants.”⁵²

Notably, the City has failed to identify even one governmental function it was furthering in entering the Amendment. The City’s Plea is completely silent regarding the

⁴⁸ *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 430 (Tex. 2016) (“*Wasson I*”).

⁴⁹ *Id.* at 430. (“In sum, sovereign immunity does not imbue a city with derivative immunity when it performs proprietary functions. This is true whether a city commits a tort or breaches a contract.”).

⁵⁰ *Wheelabrator Air Pollution Control, Inc. v. City of San Antonio*, 489 S.W.3d 448, 451 (Tex. 2016)

⁵¹ *Wasson Interests Ltd. v. City of Jacksonville*, 559 S.W.3d 142, 147 (Tex. 2018) (“*Wasson II*”).

⁵² *Canario’s, Inc. v. City of Austin*, No. 03-14-00455-CV, 2015 WL 5096650, at *3 (Tex. App.—Austin Aug. 26, 2015, pet. denied) (emphasis added) (quoting *Oldfield v. City of Houston*, 15 S.W.3d 219, 226 (Tex. App.—Houston [14th Dist.] 2000, pet. denied), *superseded by statute on other grounds as recognized in Truong v. City of Houston*, 99 S.W.3d 204, 210 (Tex. App.—Houston [1st Dist.] 2002, no pet.); see *City of New Braunfels v. Carowest Land, Ltd.*, 432 S.W.3d 501, 519 (Tex. App.—Austin 2014, no pet.) (explaining that a city performs proprietary function if it acts in its private capacity for benefit of only those within its corporate limits and not as arm of State (quoting *Tooke v. City of Mexia*, 197 S.W.3d 325, 343 (Tex. 2006))).

governmental/proprietary dichotomy. This is because the City’s voluntary decision to enter the Lease and the Amendment with the Foundation to benefit the City’s citizens by renovating the Airfield—which would save the community’s airfield, provides a venue for events that attract hundreds of aircraft, increase tax revenue, increase city utility sales, remove city liability, and provide many economic development benefits to the City—was a proprietary function for which the City is not immune from suit.

The Court should look to the following factors in determining whether a function is proprietary or governmental: (1) whether the City’s act of entering into the Amendment was mandatory or discretionary, (2) whether the Amendment was intended to benefit the general public or the City’s residents, (3) whether the City was acting on the State’s behalf or its own behalf when it entered the Amendment, and (4) whether the City’s act of entering the Amendment was sufficiently related to a governmental function to render the act governmental even if it would otherwise have been proprietary.⁵³ Each of these factors weighs in the favor of the City entering the Amendment being a proprietary function.

1. The City exercised its discretion when it debated for four city council meetings and ultimately chose to enter the Amendment.

The City’s decision to enter into the Amendment with the Foundation was discretionary, not mandatory. Discretionary acts are those that require “personal deliberation, decision and judgment[.]”.⁵⁴

While exercising powers related to airports is listed as a governmental function under the Tort Claims Act, this Amendment falls more in line with an economic development program similar to those contemplated by Chapter 380. Notably, the Texas Supreme Court recently instructed that the Tort Claims Act’s classifications merely serve as “guidance in the contract-

⁵³ *Wasson II*, 559 S.W.3d at 150.

⁵⁴ *City of Wichita Falls v. Norman*, 963 S.W.2d 211, 215 (Tex. App.—Fort Worth 1998, pet. dismissed w.o.j.).

claims context—rather than binding lists to be interpreted narrowly.”⁵⁵ The Court held that a city entering a Chapter 380 agreement that provided for economic development activities to the municipality and its residents was a proprietary function.⁵⁶

The Amendment provides economic development benefits similar to those that fall within the statutory framework of Chapter 380, which provides that a government entity “*may* establish and provide for the administration of one or more programs, including for making loans and grants of public money . . . to promote state or local economic development and to stimulate business and commercial activity *in the municipality*.”⁵⁷ The legislature specifically stated that a governmental entity “*may*” provide economic development programs, not “*must*.” This creates a permissive power where a city can still exercise discretion in deciding *whether or not* to enter into a contract.

Here, the Amendment was intended to develop the Airfield and the surrounding property in a manner that would bring economic activity and benefit to the City and its residents. The Ranger city commissioners unanimously approved the Amendment after debating the Amendment for four meetings. The need for four meetings to debate the topic in and of itself indicates that it was up to the City’s *discretion* to decide whether or not to agree to the Amendment. The State did not require or mandate that the City enter into the Amendment with the Foundation. The City was acting in its proprietary function when it agreed to grant the land to the Foundation to further bolster the economic development of Ranger.

⁵⁵ *City of League City v. Jimmy Changas, Inc.*, ___ S.W.3d ___, No. 21-0307, 2023 WL 3909986, at *5 (Tex. June 9, 2023) (quoting *Hays Street Bridge Restoration Group v. City of San Antonio*, 570 S.W.3d 697, 705 n.46 (Tex. 2019)).

⁵⁶ *Id.* at *9.

⁵⁷ Tex. Loc. Gov’t Code § 380.001(a) (emphasis added).

2. The City entered into the Amendment to benefit itself and its residents, not the greater State of Texas.

The City entered into the Amendment to benefit the City and its residents, not the general public, by developing a historic airfield and providing economic benefits and jobs to Ranger by developing the additional hangars. The City's proprietary functions benefit its residents.⁵⁸ The Court should look to the contract itself to determine whether the City intended to provide local or state benefits.⁵⁹ The Amendment makes no mention of any benefit to the greater State of Texas.

A primary reason the city commissioners wanted and pursued the Amendment was the benefits it would bring to the City of Ranger. First and foremost, the Airfield's purpose is to promote the golden age of aviation through airshows and entertainment events that draw up to 300 airplanes to Ranger, which promotes business and stimulates the economy in Ranger as tourists arrive in Ranger to enjoy the Airfield. Further, the Foundation and the City determined the Amendment would also positively impact economic development in Ranger because the development of the hangars would require major improvements and the addition of a water main being extended to the Airfield. This would, in turn, supply water to the Airfield and nearby Ranger economic development land. The Foundation and the Ranger Economic Development Corporation also planned that the water main would allow for increased firefighting capabilities, which would encourage builders to build in Ranger. Additionally, the water main would increase the City's utility sales, directly benefiting the City, not the State.

The Amendment directly benefits the City and its residents. The City cannot successfully argue that the Amendment would have some "spillover" benefit to the adjacent areas outside the

⁵⁸ TEX. CIV. PRAC. REM. CODE § 101.0215(b).

⁵⁹ See *City of Westworth Village v. City of White Settlement*, 558 S.W.3d 232, 244-45 (Tex. App.—Fort Worth 2018, pet. denied).

City or the State as a whole.⁶⁰ Because the City did not enter into the Amendment to primarily benefit the general public, this factor also weighs in favor of a proprietary function.⁶¹

3. The City was not acting for the State when it entered into the Amendment.

The third factor also weighs in favor of the Foundation because the City acted on its own behalf by entering the Amendment. “This factor further distinguishes between acts a city chooses to perform in its private capacity to benefit its residents from those sovereign acts it is required to perform as an arm or agent of the state in the exercise of a strictly governmental function solely for the public benefit.”⁶²

The Court in *Jimmy Changas* stated that absent some indication to the contrary, it is likely that a city was acting on its own behalf if the first and second factors both indicate a city entered into the contract as a proprietary function.⁶³ Like in *Jimmy Changas*, nothing in the terms of this Amendment would indicate in any way that the City was acting on the State’s behalf and not its own when it entered into the Amendment.

4. The City’s conduct in entering the Amendment was not essential to a governmental function.

The final factor also weighs in favor of the City’s actions being tied to a proprietary function instead of a governmental one. The factor considers “whether the city’s act of entering into the [contract] was sufficiently related to a governmental function to render the act governmental even if it would otherwise have been proprietary.”⁶⁴

The Texas Supreme Court has consistently held that “not all activities ‘associated’ with a governmental function are ‘governmental,’ and [t]he fact that a city’s proprietary action ‘touches

⁶⁰ *See id.* at 245.

⁶¹ *See id.* (finding cities acted primarily to economically benefit their municipalities).

⁶² *Jimmy Changas, Inc.*, 2023 WL 3909986, at *7 (internal quotations omitted).

⁶³ *Id.* at *7.

⁶⁴ *Wasson II*, 559 S.W.3d at 150.

upon' a governmental function is insufficient to render the proprietary action governmental. Instead, a city's proprietary action may be treated as governmental only if it is essential to the city's governmental actions."⁶⁵

As noted above, the City has failed to identify even one governmental function it was serving by entering the Amendment, let alone how its conduct would be essential to a governmental function. The Amendment is not essential to a governmental function related to airports because the Airfield is not a commercial airport that serves the greater public.⁶⁶ Therefore, the fourth factor also indicates the City acted in a proprietary capacity on its own behalf when it entered into the Amendment.

C. Alternatively, the City waived governmental immunity by entering a contract for services with the Foundation.

The City cannot succeed on its Plea because it waived governmental immunity when it entered the Agreement with the Foundation for the restoration, maintenance, and construction services to the 1928 hangar and the Airport Property. Section 271.152 of the Local Government Contract Claims Act (the "Act") clearly and unambiguously waives the City's immunity from suit. Section 271.152 provides:

A local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter.⁶⁷

"According to its plain terms, the statute by clear and unambiguous language waives a governmental entity's immunity from suit for breach of written contract."⁶⁸ The City argues that

⁶⁵ *Jimmy Changas, Inc.*, 2023 WL 3909986, at *8 (internal citations omitted) (quoting *Wasson II*, 559 S.W.3d at 152-53).

⁶⁶ Calvert Decl., ¶ 5.

⁶⁷ Tex. Loc. Gov't Code § 271.152.

⁶⁸ *City of Houston v. Williams*, 353 S.W.3d 128, 134 (Tex. 2011) (citing *Ben Bolt–Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivs. Prop./Cas. Joint Self–Ins. Fund*, 212 S.W.3d 320, 327 (Tex. 2006)).

section 271.152 is inapplicable because the Foundation has not sued upon a “contract subject to this subchapter” and therefore the City has not waived sovereign immunity. A “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.”⁶⁹ The City incorrectly argues that the Agreement does not meet these requirements because it (1) does not contain essential terms, (2) is not a contract for goods or services, and (3) is not properly executed. The Agreement fits squarely within the requirements of Section 271.152, and accordingly, the City has waived its immunity from suit.

1. The Agreement contains sufficient essential terms to satisfy the requirements in Section 271.152.

As an initial matter, the City’s argument that the Amendment does not contain the essential terms is a red herring because the Amendment and the Lease together form the Agreement that waives the City’s immunity. Contracts may be embodied in more than one document.⁷⁰ “It is well-established law that instruments pertaining to the same transaction may be read together as to ascertain the parties’ intent.”⁷¹ Each document need not contain all the terms surrounding a transaction. Instead, only the essential terms are required.⁷² Therefore, the Amendment and the Lease should be read together. The City is also incorrect in its assertion that the Agreement does not contain an essential term because it does not define what constitutes the “restoration” of the hangar. After the execution of the Amendment, but before the city commissioners voted to effectuate the terms of the Amendment, the Foundation gave the City detailed plans for the restoration project.

⁶⁹ Tex. Loc. Gov’t Code § 271.152.

⁷⁰ See *Williams*, 353 S.W.3d at 138.

⁷¹ *Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 840–41 (Tex.2000).

⁷² See *id.* at 840.

The analysis as to whether an agreement states the essential terms of the agreement for purposes of Section 271.152's waiver of immunity is the same analysis used to determine whether an agreement fails for indefiniteness. "Contracts should be examined on a case-by-case basis to determine which terms are material or essential."⁷³ Section 271.151 does not define 'essential terms,' but [the Texas Supreme Court has] characterized 'essential terms' as, among other things, 'the time of performance, the price to be paid, . . . [and] the service to be rendered.'⁷⁴ Describing the scope of work as "restoration services" is sufficient to establish the essential terms of a contract.⁷⁵ In *Clear Creek ISD*, the Texas Supreme Court concluded that "despite the contract's lack of detailed specificity, we conclude that [the agreement] nonetheless meets the "low threshold" of an agreement for services that states all essential terms and is therefore enforceable."⁷⁶ Accordingly, so long as the written contract does not fail for indefiniteness, then the written contract states the essential terms of the agreement for purposes of Section 271.152's waiver of immunity.

Here, the Agreement does not fail for indefiniteness because its terms are sufficiently definite to enable the court to understand the parties' obligations under the Agreement. The Agreement contains all essential terms because it lists the Foundation's obligation to restore the hangar.⁷⁷

⁷³ *Port Freeport v. RLB Contracting Inc.*, 369 S.W.3d 581, 589 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (quoting *Parker Drilling Co. v. Romfor Supply Co.*, 316 S.W.3d 68, 74 (Tex. App.—Houston [14th Dist.] 2010, pet. denied)). A contract is legally binding "if its terms are sufficiently definite to enable a court to understand the parties' obligations." *Id.* (quoting *Fort Worth Indep. Sch. Dist.*, 22 S.W.3d at 846).

⁷⁴ *City of Houston v. Williams*, 353 S.W.3d 128, 138-39 (Tex. 2011) (quoting *Kirby Lake Dev. Ltd. v. Clear Lake City Water Auth.*, 320 S.W.3d 829, 838 (Tex. 2010)).

⁷⁵ *See Clear Creek Indep. Sch. Dist. v. Cotton Commercial USA, Inc.*, 529 S.W.3d 569, 581 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (concluding the contract contained all essential terms when it generally described the party's obligation as "restoration services" without defining what "restoration services" entailed.).

⁷⁶ *Id.* at 585.

⁷⁷ *See id.* at 581.

Further, material and essential terms are those that the parties would consider “vitally important ingredients” to their agreement and are determined on a case-by-case basis.⁷⁸ To be enforceable, “a contract must be sufficiently definite in its material terms so that a court can understand what the promisor undertook.”⁷⁹ In addition, because contracts are construed to avoid forfeitures, if the parties’ conduct shows that they clearly intended to agree and a reasonably certain basis for granting a remedy exists, courts will find the contract terms definite enough to provide that remedy, even though one or more material terms are missing or left to be agreed upon.⁸⁰ In doing so, the court “may imply material terms that can reasonably be implied, such as the price, duration, or time for performance.”⁸¹ Here, the material and essential terms of the Amendment were agreed upon and specified in Sections 1-7 of the Amendment, which amends the Lease that also contains essential terms and forms the Agreement. The City contends that the contract does not contain an essential term because it does not adequately define the parameters of the restoration efforts the Foundation will undertake on the 1928 hangar. This is untrue. The Amendment contained the size of 60 feet by 60 feet for the 1928 hangar. However, the manner and parameters of the restoration are not essential to the bargain that was reached between the City and the Foundation. There is no evidence that the method or the precise size and appearance of the 1928 hangar restoration was vitally important to the parties at the time of the Agreement.⁸² Likewise, there is no evidence that the cost or timeline of the restoration would be essential or material to the parties at the time of entering the Agreement. The Lease stated the restoration of the hangar would

⁷⁸ See *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 481 (Tex. 2019).

⁷⁹ See *T.O. Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 221 (Tex.1992).

⁸⁰ *Smith v. Barnhart*, 576 S.W.3d 407, 417 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (citing *Fischer v. CTMI LLC*, 479 S.W.3d 231, 239 (Tex. 2016)).

⁸¹ *Id.*

⁸² See *Abatement Inc. v. Williams*, 324 S.W.3d 858, 862 (Tex. App.—Houston [14th Dist.] 2010, pet. denied) (noting that a contract’s failure to define how profits were to be calculated was not fatal absent evidence establishing that a particular method of calculating profits was important to the parties at the time of the agreement, when payment on the contract was to be based on the profits).

be done at the Foundation's expense.⁸³ The restoration expense was not material to the Foundation as it agreed to fully fund the restoration in exchange for the conveyance of the airfield property. The exact cost of the restoration was not material to the City because it agreed the cost, paid by the Foundation, would be in lieu of paying cash to purchase the Airfield. The City also understood the value it would receive from the Foundation's restoration services, the restored hangar, and the vast improvement to the Airfield for community and tourist attractions. Knowing the value of its property, the City entered the Agreement agreeing that a fair exchange for the property was the restoration of the hangar, irrespective of the cost of the restoration. The material parameters for the time of performance are included in the Amendment, mainly that the Parties' performances are contingent upon each other's performance.⁸⁴ Therefore, the time of performance was not material because the conveyance would occur until and unless the restoration of the hangar was completed.

The material and essential terms to the City and the Foundation at the time of the Amendment were that the Airport and Airport Property would be conveyed to the City upon completion of: (1) the construction of at least three vintage-style aircraft hangars and, (2) the restoration of the 1928 hangar. The parties need not attach blueprints detailing the exact restoration of the historical hangar for the Court to ascertain the Foundation's obligation under the Amendment. The essential terms of the bargain struck between the parties were agreed upon and outlined in the executed Amendment.

2. The Amendment is a contract for services as required under Section 271.152.

Section 271.152 waives immunity for breach of a contract providing goods or services to a local governmental entity. The Parties agreed to a contract wherein the City would convey the Airport and the Airport Property in exchange for the Foundation furnishing services to the City

⁸³ Ex. A-1, at ¶ 7.02.

⁸⁴ Ex. A-2, at ¶ 3.

and for the City's benefit. The Amendment meets the statutory definition of a services contract despite the fact that the Amendment also includes a conveyance of property.

The Texas Supreme Court has established that the services provided to the governmental entity need not be the primary purpose of the contract to satisfy an immunity waiver.⁸⁵ Further, the term "services" under Section 271.152 is a broad term that should be liberally construed.⁸⁶ In *Kirby Lake Development, Ltd. v. Clear Lake City Water Authority*, the Court noted the purpose of Section 271.152 was to *loosen* the immunity bar as to local governments given the authority to enter contracts.⁸⁷ The court found that the term "services" was broad enough to encompass a wide array of activities, generally including any act performed for the benefit of another.⁸⁸

A Texas court in *Town of Flower Mound v. Rembert Enterprises, Inc.* found a developer provided services for the benefit of a governmental entity when it was required to construct a road for the town as a condition for approval of other development permits.⁸⁹ There, the court found the developer's work in setting the manner of constructing the road, designing and constructing the road, and working with TXDOT regarding the location, alignment, design, and construction of the right turn lane were all services to the governmental body sufficient to waive immunity.⁹⁰ A waiver of immunity occurs even when the developer is merely authorized to hire third parties.⁹¹

⁸⁵ See *Kirby Lake Development, Ltd. v. Clear Lake City Water Authority*, 320 S.W.3d 829, 838 (Tex. 2010).

⁸⁶ See *id.*

⁸⁷ *Id.* at 838-39.

⁸⁸ *Id.* at 839; see also *City of Houston v. Williams*, 353 S.W.3d 128, 139 (Tex. 2011).

⁸⁹ *Town of Flower Mound v. Rembert Enterprises, Inc.*, 369 S.W.3d 465, 470 (Tex. App.—Fort Worth 2012, reh. den.).

⁹⁰ *Id.* at 473.

⁹¹ See *Clear Lake City Water Auth. v. MCR Corp.*, No. 01-08-00955-CV, 2010 WL 1053057, at *9 (Tex. App.—Houston [1st Dist.] Mar. 11, 2010, pet. denied) (mem. op.) (court stated the mere fact "that the Agreement authorized [developer] to contract with third parties for the construction of the Facilities along with streets, roads, and bridges, [was] sufficient to constitute the provision of services to the [governmental entity], within the meaning of 271.152.").

Additionally, a governmental entity is not steadfastly immune from suit just because the contract that forms the basis of a claim provides for both a conveyance of real property and services.⁹² In the *Wight Realty Interests, Ltd. v. City of Friendswood* case, the court held that the trial court erred in granting a city's plea to the jurisdiction based on immunity from suit.⁹³ There, the city argued it should be immune from suit because the contract involved only a sale of property.⁹⁴ However, the court stated that the city's argument was "contradicted by the terms of the contract, which obligated [plaintiff] to provide construction services and guaranteed the [c]ity's payment to [plaintiff] of its costs associated with the construction of the improvements and recreational facilities in the event the [c]ity defaulted."⁹⁵ The court concluded that the contract contemplated the provision of services under Section 271.152.⁹⁶

Here, the Amendment, and certainly the Agreement in its entirety, details the many services the Foundation is to provide to the City. The Amendment outlines that the Foundation shall provide the following services to the City: (1) the Foundation shall permit the construction and hire the third parties to construct at least three airport hangars on the Airport Property; (2) the Foundation shall sublease the property on which each hangar is constructed, and then once constructed the hangar properties will be subject to taxes, bringing more revenue to the City; (3) the Foundation shall provide restoration services on the City's 1928 hangar; and (4) the Foundation shall continue to maintain and operate the 1928 hanger for the benefit of the City under the terms of the Lease. The City incorrectly alleges that the Agreement does not waive immunity because it also provides for the conveyance of the Airport Property. While the Foundation concedes one of the purposes of

⁹² See *Wight Realty Interests, Ltd. v. City of Friendswood*, 333 S.W.3d 792, 797 (Tex. App.—Houston [1st Dist.] 2010, no pet.).

⁹³ *Id.* at 798.

⁹⁴ *Id.* at 797-98.

⁹⁵ *Id.*

⁹⁶ *Id.* at 798.

the Amendment was the conveyance of the Airport Property, this does not foreclose its ability to bring suit against the City. Despite containing the conveyance of the Airport Property, the City still waived immunity by entering the Amendment because it also provided for services, and the services need not be the primary purpose of the contract to constitute a waiver.⁹⁷

3. The Amendment was properly executed.

The Foundation's pleading sufficiently alleges that the City Commissioners unanimously approved the Amendment, and the City properly executed the Amendment. The Foundation's Petition also alleges that Ranger's Mayor executed the Amendment. The City reaped the benefit of the execution of this Amendment while the Foundation raised money for the restoration of the 1928 hangar and the construction of the additional hangars. Nevertheless, the City now argues that the contract was not properly executed as required under section 271.152.⁹⁸ Neither section 271.151, section 271.152, nor the local government code defines the words or phrases "properly executed." The Texas Supreme Court has stated that for immunity to be waived based on a contract, the contract must be properly executed "in accord with the statutes and regulations prescribing that authority."⁹⁹ However, the statutory construction of "properly executed" "does not require, as part of 'proper execution,' compliance with all laws and statutes governing a particular governmental entity."¹⁰⁰ The authority to enter into contracts can be dictated by documents adopted by a governmental entity for its own governance, such as a city charter.¹⁰¹ The City's "proper execution" argument fails for two reasons: (1) the City Commissioners unanimously authorized the contract for services; and (2) the Mayor of Ranger executed the Amendment.

⁹⁷ See *Kirby Lake Dev., Ltd.*, 320 S.W.3d at 839.

⁹⁸ See *Plea*, at p. 15.

⁹⁹ See *El Paso Educ. Initiative, Inc. v. Amex Properties, LLC*, 602 S.W.3d 521 (Tex. 2020).

¹⁰⁰ See *Housing Auth. of City of Dallas v. Killingsworth*, 331 S.W.3d 806, 812 (Tex. App.—Dallas 2011, pet. denied).

¹⁰¹ See, e.g., *City of Houston Clear Channel Outdoor, Inc.*, 233 S.W.3d 441, 446 (Tex. App.—Houston [14th Dist] 2007, no pet.) (looking to city charter to determine whether contract was "properly executed.")

The City heavily relies on the *El Paso Education Initiative Inc. v. Amex Properties, LLC* case to support its position that the Amendment was not properly executed. However, this reliance is misplaced because the *Amex* case is entirely distinguishable from the present case. The City uses the *Amex* case to illustrate that a signature of an official does not conclusively establish the governmental entity's approval of the contract. This is true in the *Amex* case because the official, a school board president who executed the document, did so *sua sponte*, without board approval, while actively misleading the voting body about the status of the contract negotiations.¹⁰² There, the company seeking to enforce the contract knew it needed to be approved and asked the board president to provide a resolution or minutes setting out the deal approval before it would go further in negotiations.¹⁰³ The board president persisted in negotiations but never presented the deal to the board for approval.¹⁰⁴ The company never received the requested approval documentation and still entered into the contract.¹⁰⁵

This case does not neatly fit into the fact pattern outlined in the *Amex* cases. Instead, the cases could not be more distinct. Whereas in the *Amex* case, the company pushed forward without proof of approval, here, the Foundation had first-hand knowledge that the Amendment had been thoroughly presented to the City Commissioners over the course of four meetings and most importantly, *the City Commissioners approved the Amendment*. According to the Ranger City Charter, the City Commission has powers and makes decisions on behalf of the City.¹⁰⁶ The City Commission is composed of five city commissioners, one of which is the Mayor of the City.¹⁰⁷ While the Foundation's pleading properly alleges facts to support its position that the Amendment

¹⁰² *Id.* at 525-26.

¹⁰³ *Id.* at 525.

¹⁰⁴ *Id.* at 525-26.

¹⁰⁵ *Id.*

¹⁰⁶ Ex. B-1, Art. V, § 1.

¹⁰⁷ *Id.* at Art. V, § 1.

was authorized and properly executed, the City’s own jurisdictional evidence also supports it. The City attached meeting minutes conclusively establishing the City Commissioners’ approval to enter the Amendment.¹⁰⁸ Only after the City Commissioners approved the Amendment did the Mayor execute the Amendment.¹⁰⁹ This is a stark contrast to the *Amex* case, where the board president acted on his own in secret to execute the contract. Accordingly, the court should not find the City’s reliance on the *Amex* case instructive or persuasive.

The City further argues that the Amendment is not properly executed because the Foundation did not adhere to public disclosure requirements under the Government Code or comply with the notice and bidding requirements under the Local Government Code.¹¹⁰ The City claims that it did not waive immunity because a form was not submitted, despite the fact that the City had all the information that would have been included on the form when it entered the Agreement with the Foundation. The City relies on the non-binding and distinguishable *City of Hutto v. Legacy Hutto, LLC* case to support this argument.¹¹¹ No other courts have held that section 2252.908 applies to the proper execution of a contract with a local government entity.

Section 225.908 requires parties to submit a conflict-of-interest form or disclosure and is recognized as a transparency law.¹¹² The Dallas Court of Appeals determined that failure to comply with a different transparency law, the Texas Open Meetings Act (“TOMA”), was “not directed to a governmental entity’s authority to enter into contract” and therefore compliance was not necessary for immunity to be waived.¹¹³ Section 2252.908 and TOMA are both examples of

¹⁰⁸ *Killingsworth*, 331 S.W.3d at 812.

¹⁰⁹ Ex. A-2 and B-1, Art. V.

¹¹⁰ See Tex. Gov’t Code § 2252.908; see also Tex. Loc. Gov’t Code § 272.001.

¹¹¹ See *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).

¹¹² Tex. Gov’t Code § 2252.908.

¹¹³ See *City of Hutto v. Legacy Hutto, LLC*, 2022 WL 2811856, at *3.

transparency laws that serve similar purposes. Under section 2252.908, a party contracting with a governmental entity must disclose interested parties in the transaction to provide transparency. This transparency law is not intended to be an additional requirement for waiver of immunity. Instead, its purpose is to ensure the general public has access to information about how their public officials are conducting business on their behalf.

Here, unlike in *Hutto*, the purpose of section 2252.908 as a transparency law was fulfilled in this case. The Foundation is a charitable organization whose board of directors are volunteers and are not compensated.¹¹⁴ The board of directors of the Foundation have no direct financial interest in the Foundation.¹¹⁵ The company contracting with the government entity in *Hutto* was not a charitable organization. Further, the information about potential conflicts of interest or interested parties was disclosed to the general public during the city commission meetings to approve the Amendment. Therefore, while the actual form was not filed by the Foundation, the Foundation provided all information regarding its charitable organization to the City and the purpose of the 2252.908 form was fulfilled. As a matter of equity, the City should not be able to curtail its obligations based on a technicality.

As to the bidding process requirements, the conveyance contained in the Amendment did not have to comply with the bidding process requirements for two reasons. First, section (b) of the Local Government Code 272.001 details that the notice and bidding requirements of 272.001(a) do not apply to “land that the political subdivision wants to have developed by contract with an independent foundation[.]”¹¹⁶ The Foundation is an independent foundation and the Airfield is land that the City agreed to have restored and developed by the Foundation. Second, the Foundation should be exempt from these requirements because it will soon complete its

¹¹⁴ Calvert Decl., ¶ 4.

¹¹⁵ *Id.*

¹¹⁶ Tex. Loc. Gov’t Code § 272.001(b)(4).

registration as a non-profit organization under Section 253.011 of the Local Government Code.¹¹⁷ The Foundation satisfies the requirements of these sections because it is an organization that should be exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code.¹¹⁸ The Foundation's Certificate of Formation unequivocally states the purpose of the Foundation is for "charitable and educational purposes within the meaning of Section 501(c)(3) . . . and to promote public interest and education through rehabilitation, restoration, maintenance and/or construction structures, property and assets of historical or educational value in the State of Texas."¹¹⁹ Further, the fundraising arm of the Airfield, Ranger Airfield Foundation ("RAF"), is already a non-profit organization under Section 253.011. RAF was formed in 2008 and is a 501(c)(3) non-profit organization. RAF has always been the fundraising vehicle for the Foundation and its work. However, in 2018, at the City's insistence, RAF formed the Foundation to enter the Lease.

The City states that the Foundation is not exempt because the property will not be used "in a manner that primarily promotes a public purpose of the municipality."¹²⁰ It states that the Foundation does not seek to promote a public purpose because some of the land will contain privately owned hangars. However, this is untrue.

As detailed above, the Airfield has and will continue to provide tourism and amusement attractions for the City residents and visitors, despite private hangars occupying some of the Airfield Property.¹²¹ Under the Agreement, the runways, the runway safety areas, and the infield of the property will remain undeveloped, open to the public, and subject to the City's right of

¹¹⁷ Tex. Loc. Gov't Code § 253.011; Tex. Gov't Code § 2252.906; *see* the Foundation's Certificate of Formation, attached hereto as Exhibit A-3.

¹¹⁸ *See* Ex. A-3.

¹¹⁹ *Id.*

¹²⁰ Tex. Loc. Gov't Code § 253.011.

¹²¹ Ex. A-1, ¶ 1.04.

reversion. Additionally, the area around the 1928 hangar will be open for continued public use for City events and a public museum. The Agreement contains restrictions that require the Foundation and the future lot owners must maintain the runway and the public use status. The Foundation will ensure that the public will get the benefit of the Foundation's continued preservation efforts under the Lease.

The Mayor of Ranger properly executed the Amendment after it was unanimously approved and authorized by the City Commissioners of Ranger. Accordingly, the City has waived governmental immunity.

Alternatively, in the event the Court decides the City did not properly execute the Amendment, the Foundation requests leave to amend its pleading due to the City Commissioners engaging in *ultra vires* conduct and entering the Amendment without authority.

The Foundation alleges that the City, its City Commissioners, including Mayor John Casey, exceeded their authority in the *ultra vires* acts. Sovereign immunity does not bar claims alleging *ultra vires* conduct—that the official acted without legal authority in carrying out his or her duties.¹²² A plaintiff has a cognizable *ultra vires* claim when the allegations demonstrate the official in question acted without legal authority.¹²³ The court construes relevant statutes that define the scope of the officials' legal authority and applies them to the facts alleged to ascertain whether the officials' actions were beyond their legal authority.¹²⁴

The Foundation has a cognizable *ultra vires* claim if the City did not, as it claims, have authority to enter the Amendment. A government official may be sued, in his official capacity, for

¹²² See *City of El Paso v. Heinrich*, 284 S.W.3d 366, 369-70 (Tex. 2009) (affirming denial of plea to the jurisdiction in an action to determine or protect rights from city official who has acted without statutory authority); *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 157-58 (Tex. 2016).

¹²³ See *Trauth v. K.E.*, 2020 Tex. App. LEXIS 7254, at *6.

¹²⁴ See *id.*

ultra vires acts.¹²⁵ A suit to require compliance with the law is not barred merely because it compels the government actor to follow the law.¹²⁶

If the City acted without authority, as the City alleges, then the Foundation should be allowed the opportunity to replead so that it can assert claims against Mayor John Casey and the City Commissioners involved in approving the Amendment, despite the fact they had no authority to enter the Amendment without a public disclosure form on file.

D. The City does not have immunity from the Foundation’s claim for declaratory judgment.

The Foundation has brought a claim for declaratory judgment against the City seeking a declaration of its right under the Amendment. The City argues that the Foundation cannot bring a declaration claim to alter the underlying nature of the suit. But the Texas Supreme Court has held that governmental immunity is waived for claims to determine a parties’ rights to a contract subject to Section 271.151(2).¹²⁷ The City contends “[n]or does the UDJA waive immunity when a plaintiff seeks declaration of his or her rights under a statute or other law” and cites the *Texas Department of Transportation v. Sefzik* case to support this proposition.¹²⁸ However, the *Sefzik* case states that there are particular cases where the UDJA waives sovereign immunity.¹²⁹ There, the court decided that immunity was not waived for the UDJA claim because the plaintiff was not challenging the statutes’ validity but rather the governmental entity’s actions under the statute.¹³⁰

¹²⁵ *Heinrich*, 284 S.W.3d 366, 370.

¹²⁶ *See id.* at 372.

¹²⁷ *See Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist.*, 212 S.W.3d at 330 (holding immunity from suit was waived under chapter 271 as to a lawsuit for declaratory judgment seeking determination of whether loss was covered under an insurance policy); *see also Houston Cmty. Coll. Sys. v. HV BTW, LP*, 589 S.W.3d 204, 218 (Tex. App.—Houston [14th Dist.] 2019, no pet.).

¹²⁸ The Plea, p. 20 (citing *Tex. Dep’t of Transp. v. Sefzik*, 355 S.W.3d 618, 622 (Tex. 2011)).

¹²⁹ *Sefzik*, 355 S.W.3d at 622.

¹³⁰ *Id.*

Accordingly, the Texas Supreme Court acknowledged that, as is the case here, proper claims under the UDJA waive sovereign immunity.¹³¹

The Foundation is entitled to seek a declaration determining its rights to the Airfield Property under the Amendment because the City waived its immunity by entering the contract.

E. The Foundation’s claims are not barred by the Texas Constitution because the Foundation is a non-profit corporation, and the Amendment is supported by consideration.

The City’s next argument is that the Texas Constitution prohibits the conveyance because it grants public funds to private parties.

The City’s first argument on this ground is that the consideration for the conveyance is insufficient and the Amendment does not support the Foundation’s pleading that the consideration was more than sufficient. The City erroneously states that the problem with the allegation of sufficient consideration is that the Amendment “contains no language supporting it.” This is patently untrue. The Amendment states the following¹³²:

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:

The Amendment goes on to detail the consideration agreed to by the parties.

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.

¹³¹ *Id.*

¹³² Ex. A-1.

By unanimously voting to approve the Amendment and the Mayor executing the Amendment, the City and its City Commissioners acknowledged the consideration was sufficient in exchange for the conveyance of the Airfield Property. Importantly, the City offers no evidence—only conjecture and innuendo—that the consideration is in fact insufficient.

Next, the City argues that without sufficient consideration, the conveyance constitutes a “gratuitous transfer of public property to a third-party.”¹³³ The Texas Constitution prohibits the granting of monies “to any individual, association of individuals, municipal or other corporations whatsoever,” with certain exceptions.¹³⁴ The Foundation, as acknowledged by the City, is a non-profit organization and the conveyance in the Amendment fits squarely one of the exceptions to this prohibition. The attorney general, citing *Texas Municipal League Intergovernmental Risk Pool v. Workers’ Compensation Commission*, has devised a three-part test requiring governmental entities making a conveyance or grant of public moneys or thing of value to:

- a. Ensure the predominant purpose of the expenditure is to accomplish a public purpose, not to benefit private parties;
- b. Retain public control over funds to ensure that the public purpose is accomplished; and protect the public’s investment; and
- c. Ensure that the political subdivision receives a return benefit.¹³⁵

The conveyance of the Airfield Property in the Amendment clears this bar. As to the first prong, the predominant purpose of the Amendment is to convey the Airfield Property to the Foundation, which will accomplish a public purpose. As detailed above, keeping the historic Airfield open as an airport provides tourism and amusement attractions for the City. Admittedly,

¹³³ The Plea, p. 23.

¹³⁴ Tex. Const. art. III, § 52(a).

¹³⁵ See Tex. Att’y Gen. Op. No. GA-0076 (2003) (citing *Tex. Mun. League Intergov’tl Risk Pool v. Tex. Workers’ Comp. Comm’n*, 74 S.W.3d 377, 384 (Tex. 2002)).

new hangars will be constructed and sold to private owners, but that does not negate the fact that the purpose of the Airfield and the soon-to-be restored historic hangar is to provide a public benefit to the City of Ranger and its citizens. The new hangars will provide revenue for the Foundation to remain open for the City and will ensure that the public will get the benefit of the Foundation’s continued preservation efforts under the Lease, including “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. . .”¹³⁶

As to the second prong, the Foundation clears this threshold as well. The City argues that the Amendment purports to relinquish all control over the 81 acres and therefore fails the second prong. However, the City retains sufficient control over the Airfield Property after conveyance to protect the public’s investment. The Amendment details that the City shall retain control over the historic hangar that drives public interest in the Airfield. Additionally, the Amendment contains a right of reversion that protects the public’s investment. The Airfield Property is to be conveyed under a Special Warranty Deed that will limit the Foundation’s right to modify or develop the Airfield Property. The Foundation agreed to the following:¹³⁷

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.

Accordingly, the City retains control over how the Airfield Property can and cannot be used by the Foundation.

¹³⁶ See Ex. A-1, ¶ 1.04.

¹³⁷ See Ex. A-2, ¶ 4.

Finally, the Foundation satisfies the third and final prong of the test because the City receives a return benefit of the bargained-for consideration of the Foundation's restoration services as detailed above.

F. The Amendment is valid because as a non-profit corporation, the Foundation did not have to adhere to the requirements of Chapters 253 and 272 of the Local Government Code.

The Foundation incorporates by reference all arguments made above as to the Foundation's status as a non-profit corporation exempting it from the requirements under section 253.008 of the Local Government Code.

G. The City waived its immunity with regards to the Foundation's claim for attorneys' fees.

Because the City's immunity is waived as to the declaratory judgment and breach of contract causes of action, it is also waived as to the Foundation's request for attorneys' fees in the event the Foundation's declaratory judgment and breach of contract causes of action are successfully prosecuted against the City. Section 271.153 expressly provides that a party can recover reasonable and necessary attorneys' fees from a governmental entity that waived its immunity by contract under section 271. Additionally, in *City of Dallas v. Jones*, the court held that to the extent a city was not immune from the request for a declaratory judgment, it was not immune from the request for attorneys' fees.¹³⁸ Accordingly, the Court should deny the Plea as to the Foundation's claim for attorneys' fees.

IV. REQUEST FOR RELIEF

For the foregoing reasons, the Court should deny the City's Plea to the Jurisdiction in its entirety, or alternatively, grant the Foundation leave to amend its claims for ultra vires conduct of

¹³⁸ *City of Dallas v. Jones*, No. 05-09-01379-CV, 2010 WL 2839614, 331 S.W.3d 781 (Tex. App.—Dallas July 21, 2010, pet. filed, Rule 53.7(f) motion granted) (finding that the trial court did not err in denying the city's Plea to the Jurisdiction for attorneys' fees); *see also Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994).

the City officials in the event the Court finds the Amendment was not properly executed, and award the Foundation all other and further relief to which it may be entitled.

Dated: July 25, 2023

Respectfully submitted,

/s/ Schyler P. Parker

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**ATTORNEYS FOR PLAINTIFF RANGER
AIRFIELD MAINTENANCE FOUNDATION**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on all counsel pursuant to the Texas Rules of Civil Procedure on July 25, 2023.

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/s/ Schyler P. Parker

Schyler P. Parker

EXHIBIT A

CAUSE NO. CV2246534

<p>RANGER AIRFIELD MAINTENANCE FOUNDATION,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p>v.</p> <p>CITY OF RANGER, a Texas Municipal Corporation,</p> <p style="padding-left: 40px;">Defendant.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE DISTRICT COURT OF</p> <p>91ST JUDICIAL DISTRICT</p> <p>EASTLAND COUNTY, TEXAS</p>
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DECLARATION OF JARED CALVERT

1. My name is Jared Calvert. I am fully competent to make this Declaration and all statements herein are true and correct and are within my personal knowledge.

2. I am the Founder and member of the Board of Directors for the Ranger Airfield Maintenance Foundation (the “Foundation”), the Plaintiff in this lawsuit. As Founder and board member of the Foundation and through my review of the business records of the Foundation, I have personal knowledge of the statements herein, which are true and correct.

3. I am a custodian of records for the Foundation. The records attached hereto are the Foundation’s records, and I have knowledge of the information contained in those records. In addition, the records attached are kept systematically by the Foundation, in the regular course of business, and it was the Foundation’s regular course of business to make the records or to transmit information thereof to be included in such records. Finally, the records attached hereto are true and correct copies of the originals or exact duplicates of the originals.

4. The Foundation is a non-profit organization whose board of directors are volunteers and are not compensated. The board of directors of the Foundation have no direct financial interest in the Foundation.

5. The Foundation is dedicated to performing the services of rehabilitating, restoring, preserving, and supporting the historic grass airfield in Ranger, Texas. The Airfield maintains a airport that services private aircraft, not a commercial airport that services airlines. The Foundations hosts airshows and other public events, offers flying lessons to high school students through its high school pilot program, and offers flight experiences to residents and tourists in historic aircraft. The Foundation and its dedicated volunteers have spent more than a decade serving the City and its residents through their work preserving and maintaining the Airfield.

6. In December 2018, the Foundation entered into a Lease Agreement (the “Lease”) with the City for the 81 acres of land that comprises the Ranger Municipal Airport. A true and correct copy of the Lease is attached hereto as **Exhibit A-1**.

7. The purpose of the Lease was to provide the Foundation a right to use and occupy the Airport in exchange for the Foundation’s agreement to maintain and preserve the airfield. The Lease was unanimously approved and authorized by the City Commissioners and signed by the Mayor.

8. The City and the Foundation operated under the Lease for several years without issue. After the Lease was signed, the Foundation made major improvements to the Airfield property at no cost to the City, including constructing the first hangar on the property since 1928, opening the interim museum about the historical airfield that is open to the public, moving over fifteen hundred yards of dirt into a flood area, removing the dilapidated and dangerous office building, constructing a 1920s air mail concrete arrow, building three bathrooms for Airfield

visitors with showers for campers, installing over fifteen hundred feet of high fencing, purchased land on both ends of the Airfield for runway protection, and much more.

9. In January 2022, the Foundation and the City entered into the First Amendment to the Lease Agreement (the “Amendment” together with the Lease, the “Agreement”). A true and correct copy of the Amendment is attached hereto as **Exhibit A-2**.

10. The terms of the Amendment provided for the transfer of property at the Airfield to the Foundation in exchange for the Foundation providing certain improvements and the Foundation’s continued work to maintain the property as an airfield and to restore and maintain the City’s historic 1928 hangar.

11. Under the Amendment, the Foundation would fund, maintain, and provide a much-needed restoration to the historic hangar. Based on quotes from contractors, the Foundation estimates the value of the restoration work to exceed \$500,0000 to restore the historic hangar, which does not take into account the maintenance expenses.

12. The Amendment was on the agenda for discussion and approval at four City Commission meetings. The process of gaining approval from the City Commissioners spanned almost 100 days. Ultimately, the Amendment was unanimously approved and authorized by the City Commissioners. The City was represented by counsel in this transaction, the Foundation was not. The City’s attorney made no mention of the alleged requirement of an ethics disclosure or any other requirements that needed to be fulfilled to enter the Amendment. Notably, the Foundation has since become aware that the City has ignored the “requirement” for an ethics disclosure in a number of other City contracts throughout the years.

13. After entering the Amendment, the Foundation found approved third parties who were willing to build not less than three (3) new, vintage-style appearance aircraft hangars on the

Ranger Airport property, as required under paragraph 1 of the Amendment. Further, the Foundation raised over \$200,000 in funds to restore the City's existing 1928 hangar to its historical size and appearance. The Foundation and its volunteers also continued to provide the services outlined in the Lease, including but not limited to mowing the grass airfield and maintaining, promoting, and preserving the Airfield.

14. The Foundation has spent six months preparing the property for construction and finalizing building designs. The Foundation has ordered over \$100,000 in supplies.

15. A true and correct copy of the Foundation's Certificate of Formation is attached hereto as **Exhibit A-3**.

My name Jared Calvert, my date of birth is October 17, 1986, and my work address is 1402 Oddie St., Ranger, Texas 76470. I declare under penalty of perjury that the foregoing is true and correct, and within my personal knowledge.

Executed in Eastland County, Texas on July 24, 2023.



Jared Calvert

EXHIBIT A-1

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 81 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

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 a 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

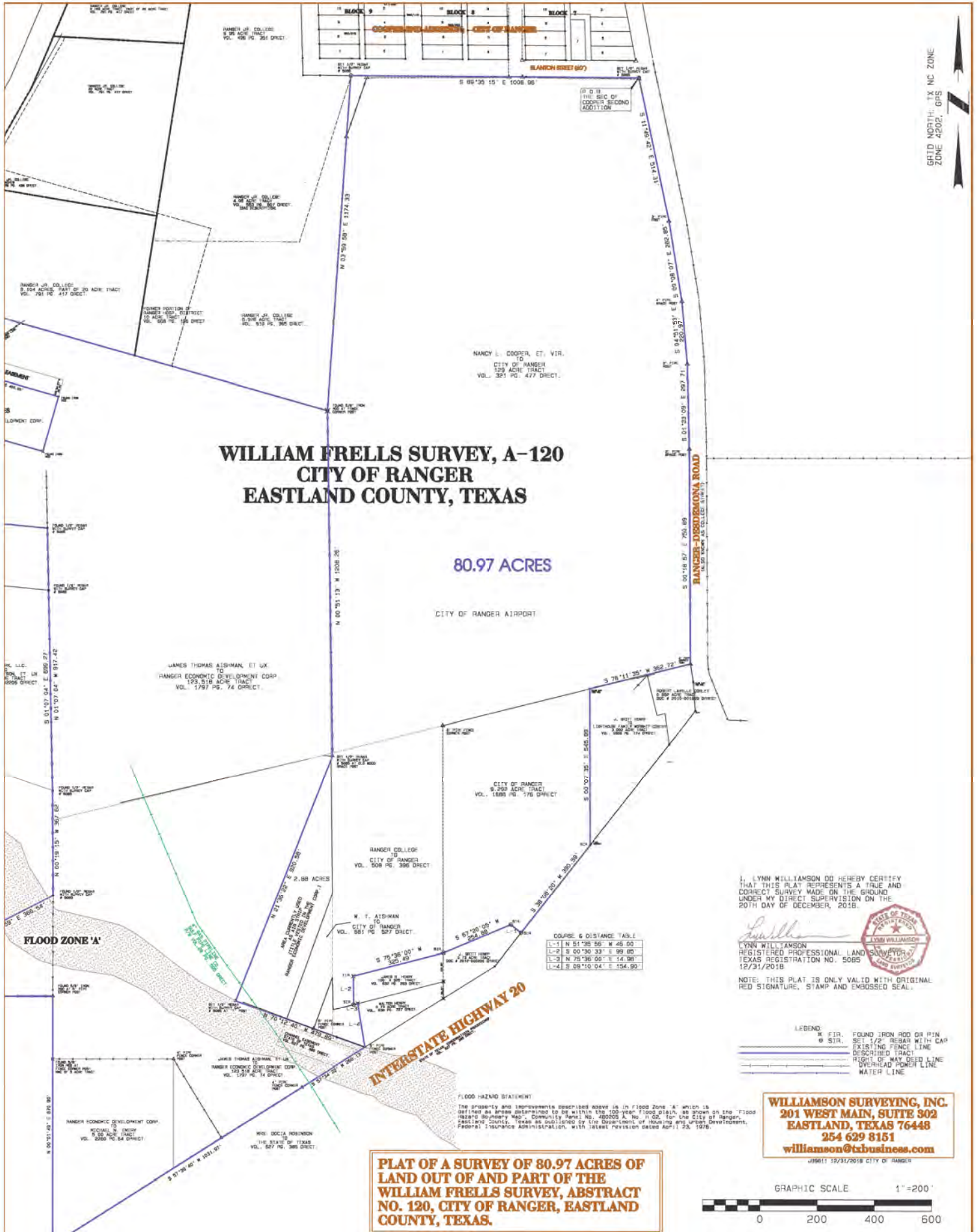
By: [Signature]
Name: JARED CALVERT
Title: DIRECTOR RAMP

Attest:

[Signature]

Savannah Foster City Secretary





GRID NORTH: TX NC ZONE
ZONE 4202, GRS

I, LYNN WILLIAMSON DO HEREBY CERTIFY THAT THIS PLAT REPRESENTS A TRUE AND CORRECT SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION ON THE 20TH DAY OF DECEMBER, 2018.

Lynn Williamson
LYNN WILLIAMSON
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5085
12/31/2018

PLAT OF A SURVEY OF 80.97 ACRES OF LAND OUT OF AND PART OF THE WILLIAM FRELLS SURVEY, ABSTRACT NO. 120, CITY OF RANGER, EASTLAND COUNTY, TEXAS.

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 hangar 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

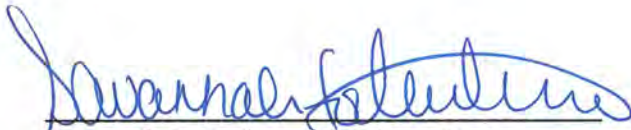


John Casey, Mayor
DATE: 4-7-2022

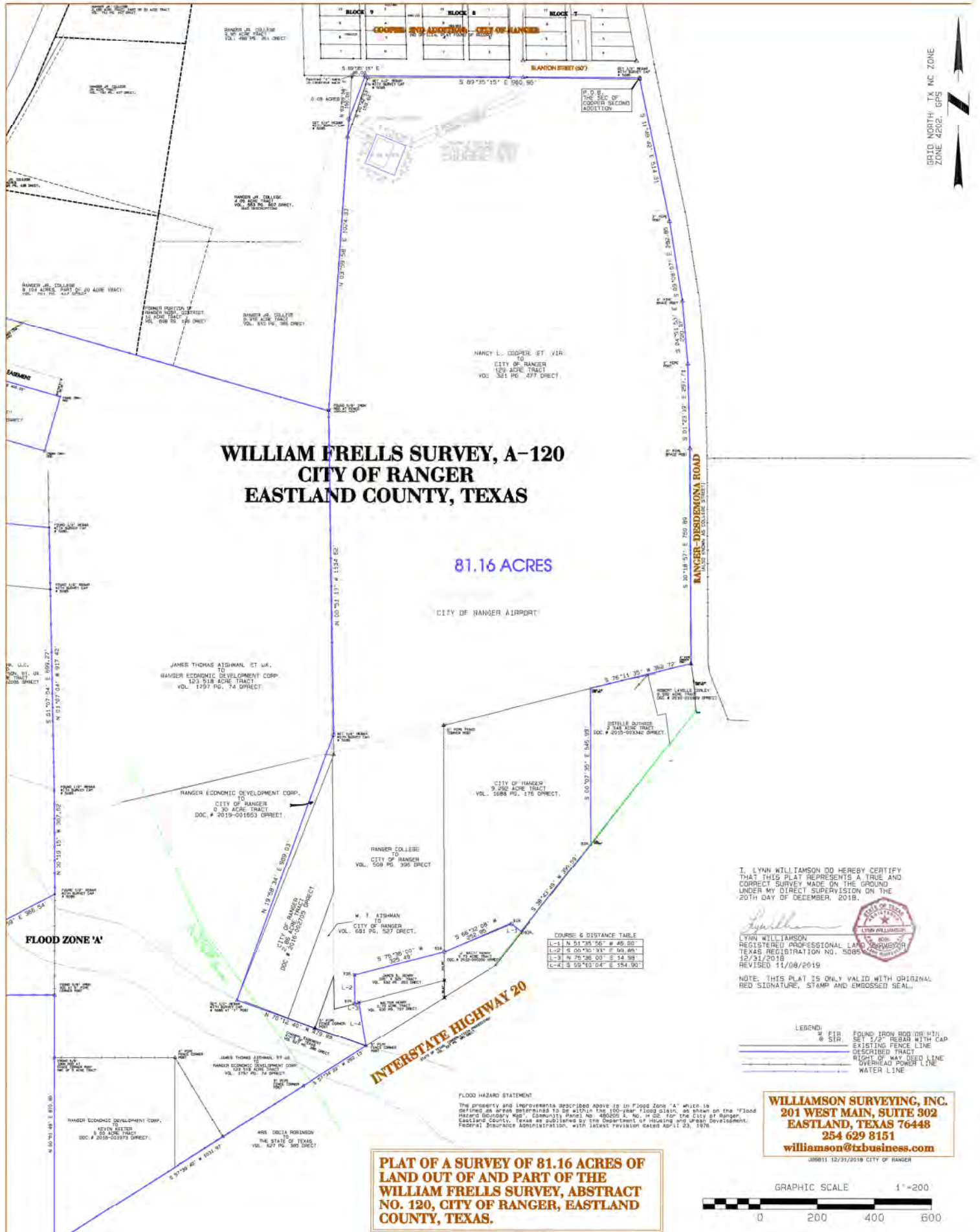


Jared Calvert,
DATE: 4.7.22

ATTEST:



Savannah Fortenberry, City Secretary



GRID NORTH TX NC ZONE
ZONE 4202

I, LYNN WILLIAMSON DO HEREBY CERTIFY THAT THIS PLAT REPRESENTS A TRUE AND CORRECT SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION ON THE 20TH DAY OF DECEMBER, 2018.

Lynn Williamson

LYNN WILLIAMSON
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 5085
12/31/2018
REVISED 11/08/2019

NOTE: THIS PLAT IS ONLY VALID WITH ORIGINAL RED SIGNATURE, STAMP AND EMBOSSED SEAL.

PLAT OF A SURVEY OF 81.16 ACRES OF LAND OUT OF AND PART OF THE WILLIAM FRELLS SURVEY, ABSTRACT NO. 120, CITY OF RANGER, EASTLAND COUNTY, TEXAS.

EXHIBIT A-2

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".

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

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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,

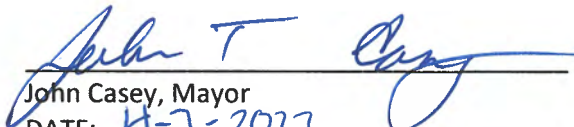
the terms and conditions of this Amendment shall control and govern. The remainder of the Lease not amended by this Amendment shall remain in full force and effect.

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

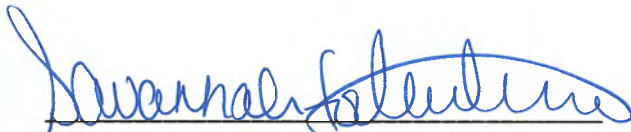


John Casey, Mayor
DATE: 4-7-2022



Jared Calvert,
DATE: 4-7-22

ATTEST:



Savannah Fortenberry, City Secretary

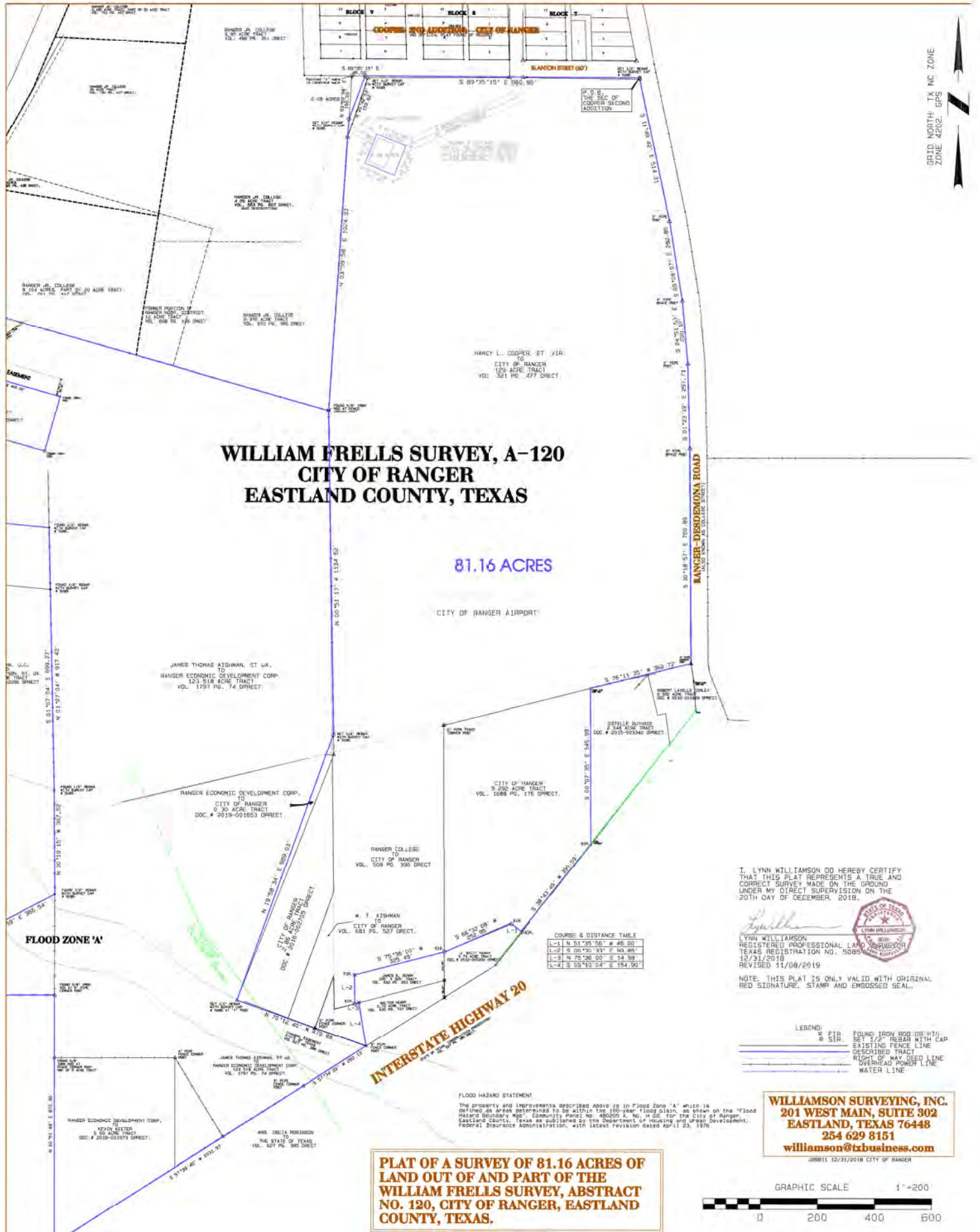


EXHIBIT A-3

Form 202
(Revised 05/11)
 Submit in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512/463-5709
Filing Fee: \$25



This space reserved for office use.

**Certificate of Formation
 Nonprofit Corporation**

FILED
 In the Office of the
 Secretary of State of Texas
OCT 19 2018
Corporations Section

Article 1 – Entity Name and Type

The filing entity being formed is a nonprofit corporation. The name of the entity is:

Ranger Airfield Maintenance Foundation

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Jared Calvert

First Name Last Name Suffix

C. The business address of the registered agent and the registered office address is:

1402 Oddie St. Ranger TX 76470

Street Address City State Zip Code

Article 3 – Management

The management of the affairs of the corporation is vested in the board of directors. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and qualified are as follows:

A minimum of three directors is required.

Director 1				
Jared		Calvert		
First Name	M.I.	Last Name	State	Suffix
715 Cypress St.		Ranger	TX	76470
Street or Mailing Address	City	State	Zip Code	Country
				USA

RECEIVED
 OCT 19 2018
 Secretary of State

Director 2				
Doyle		Russell		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
P.O. Box 417	Ranger	TX	76470	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 3				
Wayne		White		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
395 CR 160 E	Cisco	TX	76437	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

OR

The management of the affairs of the corporation is to be vested in the nonprofit corporation's members.

Article 4 – Membership

(See instructions. Do not select statement B if the corporation is to be managed by its members.)

- A. The nonprofit corporation shall have members.
- B. The nonprofit corporation will have no members.

Article 5 – Purpose

(See instructions. This form does not contain language needed to obtain a tax-exempt status on the state or federal level.)

The nonprofit corporation is organized for the following purpose or purposes:

To rehabilitate, restore, maintain and/or construct structures, property and assets of historical or educational value for the education and enjoyment of the public.

The following text area may be used to include any additional language or provisions that may be needed to obtain tax-exempt status.

And for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Service Publication 557.

And to promote public interest and education through the rehabilitation, restoration, maintenance and/or construction of structures, property and assets of historical or educational value in the State of Texas.

Supplemental Provisions/Information

(See instructions.)

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

The management of Ranger Airfield Maintenance Foundation will be handed over to and handled solely by the Board of Directors named in these Articles as of the date of incorporation and the Organizer therefore will no longer be liable for the Corporation from that date forward.

The Board of Directors will meet, at a minimum, once a year.

The fiscal year will be January 1 to December 31.

The Board of Directors will consist of 5 directors and must have a majority vote for approval of any item.

Organizer

The name and address of the organizer:

Jared Calvert

Name

715 Cypress St.

Ranger

TX

76470

Street or Mailing Address

City

State

Zip Code

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

[Empty box for describing the event or fact]

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: 10-10-18



Signature of organizer

Jared Calvert

Printed or typed name of organizer

EXHIBIT B-1

CHARTER OF THE CITY OF RANGER, TEXAS

Submitted for Adoption or Rejection at Special Election held in the City of Ranger on the 3rd Day of April 1919.

THE CHARTER

ARTICLE I

SECTION 1. CORPORATE NAME: That all the inhabitants of the City of Ranger, in Eastland County, Texas, as the boundaries and limits of said city are herein established or may herein be established, shall be a body politic, incorporated under, and to be known by the name and style of the "CITY OF RANGER," with such powers, rights and duties as are herein provided.

SECTION 2. BOUNDARIES: That the boundaries and limits of said corporation shall be as follows: Beginning at the S.W. corner of the original town of Ranger, Eastland County, Texas. Thence S. 62.30 E. 1395 feet to the center of the main line track of the Texas and Pacific Railway Company, where the same intersects the South boundary line of the town of Ranger; Thence S. 27.30 W. 362 feet, to the point of a 0' 45" curve to the left; thence with said curve 437 ft. to the point of a tangent. Thence S. 24' 0" W. 2447 ft. to the point of a curve 1' 0" to the right; thence with said curve 745 ft. to the point of a tangent. Thence S. 31' 30" W. 4826.5 ft. to a bolt driven in the ground in the center of the main line tracks of the Texas and Pacific Railway Company, this point being in all 8896 feet from the South boundary line of the town of Ranger, Texas, the same being witnessed by an iron bolt driven in the ground 150 ft. East and one driven in the ground 150 ft. West, and being the place of beginning of this survey: THENCE West 225 varas to the West line of the Wm. Frels survey; thence North on the West line of the Wm. Frels survey about 1460 varas to the northwest corner of the Wm. Frels survey, thence East with the line between the Mark Haley and Frels surveys to the corner of the lands of McCleskey and W.R. Hodges heirs, about 50 varas; thence North to the dividing line of the McCleskey and Hodges, through the Mark Haley survey, about 700 varas; thence continuing on said line West about 100 varas; thence continuing said line North about 880 varas to the Eastland road thence continuing said line North about 730 varas on the West line of W. Rice land in the Mark Haley survey to a point on the South boundary line of the B.B.B. & C.R.R. Co. survey, thence West with said railroad company's south line about 140 varas to the South corner of same. Thence North along the West boundary line of the B.B.B. & C.R.R. line survey about 1150 varas, thence East through the lands of the B.B.B. & C.R.R. Co.'s survey and Standifer survey to the North line of the W.J. Smith survey, thence continuing East with the North line of the W.J. Smith survey and the North line of a 45-vara strip sold by W.A. Glenn to M.H. Hagaman, said strip runs the full length of the Z.C. Collier and lies on the North side of the same, in all about 5050 varas to a point on said line which would be intersected by the dividing line between Hodges and McCleskey, Gholson and Davis, Sudderth and Handry, if produced North. Thence South along the said named line through the 45 vara strip Z.C. Collier survey and James Lehea survey about 3300 varas to the

North line of the Jesse Bledsoe survey, thence West with said Bledsoe North line, about 1300 varas to the Northwest corner of said Bledsoe survey, Thence South with th4e West line of the Bledsoe survey about 1450 varas to a line which would intersect the West line of the Jesse Bledsoe survey if produced East across R.P. Marquis land from the Southwest, East and West line of Mrs. M.A. Ames land. Thence West 1100 varas, crossing R.P. Marquis land and along Mrs. M.A. Ames South boundary line to Jack Phillips land; thence through Jack Phillips and W.A. Huffman land in a Southwesterly direction about 1250 varas to J.C. Shook's Southeast corner, thence West along J.M. Shooks South line and through the lee Williams land about 1,000 varas to the place of beginning; containing about 6.35 square miles.

ARTICLE II

SECTION 1. CORPORATE POWERS: The City of Ranger, made a body politic and corporate by the legal adoption of this Charter, shall have perpetual succession, may use a common seal, may sue and be sued, may contract and be contracted with, impleaded in all courts and places and in all matters whatever; may take, hold and purchase lands, within or without the city limits, as may be needed for the corporate purposes of said city and may sell any real estate or personal property owned by it: perform and render all public services and when deemed expedient, may condemn property for corporate use and may hold, manage and control the same, and shall be subject to all the duties and obligations now pertaining to or incumbent upon said city as a corporation, not in conflict with the provisions of this charter, and shall enjoy all the rights immunities, powers, privileges and franchises now possessed by said city, and herein conferred and granted.

SECTION 2. POWERS OF ORDINANCE: The City of Ranger, shall have the power to enact and enforce all ordinances necessary to protect health, life and property and to prevent and summarily abate and remove all nuisances and to prevent and enforce the good government, order and security of the city and its inhabitants, and to enact and enforce ordinances on any and all subjects, provided, that no ordinance shall be enacted inconsistently with the provisions of this Charter, or the General Laws or Constitution of the State of Texas.

SECTION 2-a. The City of Ranger, in addition to all other powers hereunder shall have all of the rights and powers granted to cities and towns under the provisions of Title 28 of the Revised Statutes of 1925, said rights and powers to be cumulative of any and all powers held by said City.

As amended at an election held November 20, 1926.

SECTION 3. STYLE OF ORDINANCES: The style of all ordinances of the City of Ranger shall be: "Be it Ordained by the City of Ranger," but the same may be omitted when published by the City of Ranger.

SECTION 4. REAL ESTATE ETC., OWNED BY THE CITY: All real estate owned in fee simple title, or head by lease, sufferance, easement or otherwise; all public buildings, fire stations, parks, streets and alleys, and all property, whether real or personal, of whatever kind,

character or description now owned or controlled by the City of Ranger, shall vest in, inure to, remain and be the property of said City of Ranger.

SECTION 5. ACQUISITION OF PROPERTY: The City of Ranger, shall have the power and authority to acquire by purchase, gift, devise, deed, condemnation or otherwise any character of property, including any charitable or trust fund.

SECTION 6. PUBLIC PROPERTY EXEMPT FROM EXECUTION: Said City shall have the power to provide that no public property, or any other character of property owned or held by said city, shall be subject to any execution of any kind or nature.

SECTION 7. CITY FUNDS NOT SUBJECT TO GARNISHMENT: Said city shall have the power to provide that no funds of the city shall be subject to garnishment and that the city shall never be required to answer in any garnishment proceedings.

SECTION 8. EXEMPT FROM LIABILITY TO DAMAGES: Said city shall have the power to provide for exemption of said city from liability on account of any claim for damages to any person or property, or to fix such rules and regulations, governing the city's liability, as may be deemed advisable.

SECTION 9. RIGHT OF EMINENT DOMAIN: Said city shall have the right of eminent domain and the power to appropriate private property for public purposes whenever the governing authority shall deem it necessary; and to take any private property, within or without the city limits, for any of the following purposes to wit: City Halls, Police Stations, Jails, Calaboose, Fire Stations, and Fire Alarm Systems, Libraries, Hospitals, Sanitariums, Auditoriums, Market Houses, Reformatories, Abattoirs, Streets, Alleys, Parks, Highways, Playground, Sewer System, Storm Sewers, Sewage Disposal Plants, Filtering Beds, and Emptying Grounds for Sewer Systems, Telephone and Telegraph Systems, Gas Plants or Gas Systems, Cemeteries, Crematories, Prisons, Farms, Pest Houses, and to acquire lands within or without the city for any other municipal purposes that may be deemed advisable. That the power herein granted for the purpose of acquiring private property shall include the power of improvement and enlargement of water works, including water supply, riparian rights, stand pipes, water sheds, and the construction of reservoirs. That in all cases wherein the city exercises the power of eminent domain, it shall be controlled, as nearly as practicable by the laws governing the condemnation of property by railroad corporations in this State; the city taking the position of the railroad corporation in any such case.

SECTION 10. OWNERSHIP OF PUBLIC UTILITIES: Said city shall have the power to buy, own or construct, and to maintain and operate, within or without the city limits, complete water system or systems, gas or electric lighting or power plants or plants, telephone systems, street railways, sewer systems, sewage plants, fertilizing plants, abattoirs, municipal railway terminals, or any other public service utility and to demand and receive compensation for service furnished by the city for private purposes or otherwise, and have power to regulate, by ordinance

the collection of compensation for such services, that said city shall have the power to acquire by lease, purchase or condemnation, the property of any such person, firm or corporation, now or hereafter conducting any such business, for the purpose of operation such public utility or utilities and for the purpose of distributing such service throughout the city, or any portion thereof.

SECTION 11. FUNDS FOR ACQUISITION OF ANY PUBLIC UTILITY-SECURITY FOR SAME, ETC.: That should the city determine to acquire any public utility by purchase, condemnation or otherwise, as herein provided, said city shall have the power to obtain funds for the purpose of acquiring said public utility and paying the compensation therefor, by issuing bonds or notes, or other evidences of indebtedness and shall secure the same by fixing a lien upon the property constituting the public utility so acquired, and said security shall apply alone to said property so pledged.

SECTION 12. MANUFACTURE OR PURCHASE OF PUBLIC UTILITY PRODUCTS: Said city shall have the authority to manufacture its own electricity, gas or anything else that may be needed or used by it or the public, to make contracts with any person, firm or corporation for the purchase of gas, water, electricity or any other commodity or articles used by it or the public, and to sell same to the public as may be determined by the governing authority.

SECTION 13. RIGHT TO OPERATE AND MAINTAIN PUBLIC UTILITY ACQUIRED, EXCLUSIVE: In the event said city shall acquire by purchase, gift, devise, deed, condemnation or otherwise, any waterworks system, electric-light or power system, gas system, street railway system, telephone system or any other public service utility to operate and maintain such public service utility, so acquired, shall be exclusive.

SECTION 14. RIGHT TO REGULATE CHARGES, ETC., OF HOLDER OF FRANCHISE OR PRIVILEGE: Said city shall have the power to determine, fix and regulate the charges, fares and rates of any person, firm or corporation exercising or that may hereafter exercise, any right of franchise or public privileges in said city, and to prescribe the kind of service to be furnished, the equipment to be used, the manner in which service shall be rendered and to change such regulations from time to time; that in order to ascertain all the facts necessary for a proper understanding of what is or should be reasonable rate regulation, the governing authority shall have full power to inspect the books and other records of such person, firm or corporation and to compel the attendance of witnesses for such purpose; provided that in adopting such regulations and in fixing or changing such compensation, no stock or bond authorized or issued by any person, firm or corporation exercising such franchise or privilege shall be considered unless proof be made that the same have been actually issued by such person, firm or corporation for money, or its equivalent, paid and used for the development of the property under investigation.

SECTION 15. STREET POWERS: The City of Ranger shall have exclusive dominion, control and jurisdiction in, upon, over and under the public streets, avenues, alleys and highways

of the city and to provide for the improvement thereof by paving, raising, grading, draining or otherwise, and to charge the cost of making such improvement against the abutting property, by fixing a lien against the same and a personal charge against the owner thereof, according to an assessment specially levied therefor, in an amount not to exceed the special benefit any such property received in enhanced value by reason of such improvements, and to provide for the issuance of assignable certificates covering the payment for said improvements; provided, that in no event shall more than three-fourths of the cost of such improvement be charged to the owner and made a lien against said abutting property; it being further provided that all street railway, steam railways and other railways shall pay the entire cost of improving said streets, avenues, alleys and highways between the rails and tracks of any such railway companies, and for a distance of two feet on each side thereof.

SECTION 16. CONSTRUCTION OF SIDEWALKS AND CURBS: Said city shall have the power to provide for the construction and building of sidewalks and charge the entire cost of construction of said sidewalks including the curb, against the owner of the abutting property and to make a special charge against the owner for such cost, and to provide by special assessment, a lien against such property for such cost.

SECTION 17. SIDEWALKS, IMPROVEMENT DEFECTIVE MAY BE DECLARED NUISANCE: Said city shall have the power to provide for the construction, improvement or repair of any such sidewalk, or the construction of any such curb, by penal ordinance, and to declare defective sidewalks to be a public nuisance.

SECTION 18. FRANCHISES FOR USE OF STREETS: Said city shall have the power and authority to grant franchises for the use and occupancy of streets, avenues, alleys and any and all public grounds belonging to or under the control of the city. No telegraph, telephone, electric light or power, street railway, interurban railway, or steam railway, gas company, waterworks, water systems or any other character of public utility shall be granted any franchise or permitted the use of any street, avenue, ally highway or grounds of the city without first making application to and obtaining the consent of the governing authorities thereto, expressed by ordinance, and upon paying such compensation as may be prescribed, and upon such conditions as may be provided for such ordinance, and before such ordinance proposing to make any grant or franchise or privilege to any applicant to use or occupy any streets, avenue, alley or any other public ground belonging to or under control of the city, shall become effective, publication of said ordinance, as finally proposed to be passed, shall be made in some newspaper published in the City of Ranger once a week for three (3) consecutive weeks, which publication shall be made at the expense of the applicant desiring said grant and said proposed ordinance shall not be thereafter changed unless again republished as in the first instance, not shall any such ordinance take effect or become a law or contract or vest any rights in the applicant therefor, until after the expiration of thirty days from the last publication of said ordinance as aforesaid.

Pending the time such ordinance may become effective, it is hereby made the duty of the governing authority of the city to order an election if requested to do so by written petition signed

by at least ten (10) per cent of the legally qualified voters, as determined by the number of votes cast in the last regular municipal election, at which election the qualified voters of said city shall vote for or against the proposed grant, as set forth in detail by the ordinance conferring the rights and privileges upon the application therefor. Such election shall be ordered not less than thirty (30) days nor more than ninety (90) days from the date of filing said petition, and if at said election the majority of the votes cast shall be for granting such franchise or privilege, said ordinance and the making of said proposed grant shall thereupon become effective, but if a majority of the votes cast at said election shall be against the granting of such franchise or privilege, such ordinance shall be ineffective and the making of such proposed grant be null and void.

SECTION 19. PUBLIC WORKS IMPROVEMENTS: Said city shall have the power to open, extend, straighten and widen any public street, avenue or alley and for such purpose to acquire the necessary land by purchase or condemnation and to provide that the cost of improving any such streets, avenue or alley by opening, extending, straightening or widening the same shall be paid by the owner of property lying in the territory of such improvement and which is specially benefitted thereby, and to provide that the cost shall be charged by special assessment against such owner and his property for the amount due by him, and three (3) Special Commissioners shall be appointed by the County Judge of Eastland County, Texas, for the purpose of condemning said land and apportioning said cost, and such apportionment shall be specially assigned by the governing authority of said city against the owners and their property lying in the territory so found by said Special Commissioners, to be specially benefitted in enhance value, and said city may issue assignable certificates for the payment of any such cost against such property owner and his property, and may provide for the payment thereof in deferred payments, which deferred payments, shall bear interest at the rate of not exceeding eight (8) per cent per annum. Said city shall pay such portion of cost as may be determined by Special Commissioners, to be due, by it; provided the cost paid by the city shall never exceed one-third (1/3) of the cost of such improvement.

SECTION 20. ALTERING STREETS, OBSTRUCTIONS, ENFORCEMENTS, ETC.: Said city shall have the power to control, regulate, and remove all obstructions, encroachments and encumbrances on any public street, avenue, or alley and to narrow, alter, widen, vacate and perpetually close any public street, avenue, or alley, or any part thereof, and to regulate and control the movement of buildings and structures of every kind and character upon and along the same. As amended at an election held on May 23, 1921.

SECTION 21. PARKS, PLAYGROUNDS, ETC.: Said city shall have exclusive control over all city parks, and playgrounds and control, regulate and remove all obstructions and prevent all encroachments thereupon; and to provide for raising, grading, filling, terracing, landscape gardening, erecting buildings, provide amusements therein, for establishing walks and paving driveways around in and through said parks, playgrounds and other public grounds.

SECTION 22. PEACE AND GOOD ORDER: Said city shall have the power to define all

nuisances, prohibit the same within the city and outside the city limits for a distance of five thousand (5000) feet; to police all parks, grounds, speedways, streets, avenues and alleys owned by said city, within or without the city limits; to prohibit the pollution of all sources of water supply of said city, and to provide for the protection of water sheds.

To provide for the inspection of dairies, cows and dairy herds, slaughter pens, and slaughter houses and abattoirs, within or without the city limits, from which meat, milk, butter or eggs from same are furnished to the inhabitants of said city, and to provide for the inspection of meat markets, grocery stores, drug stores, confectioneries, fruit stands, ice cream factories, laundries, bottling plants, hotels, restaurants, and bakeries; the source, storage and distribution of water and other places where food or drinks for human consumption are manufactured, handled, sold or exposed for sale, and to regulate and inspect the character and standard of such articles of food and drink so sold or offered for sale.

To provide for the inspection and regulation of the sanitary condition of all premises and vacant lots within the city limits; for the removal of garbage, night soil, refuse, and unsanitary vegetation; to provide for establishing a lien against the property for any expenses incurred by the city in enforcing this provision and further to provide for the making and enforcing of all proper and reasonable regulations for the health and sanitation of said city and its inhabitants.

To provide for a health department and the establishment of rules and regulations protecting the health of the city; the establishment of quarantine stations, pest-houses and hospital and to provide for the adoption of necessary quarantine laws to protect the inhabitants against contagious and infectious diseases.

To provide for a sanitary sewer system and for the maintenance thereof; to require property owners to make connection to such sewers with their premises and to provide for fixing a lien against any property owner's premises who fails or refuses to make sanitary sewer connections and to charge the cost against the said owner and make it a personal liability, and to fix penalties for failure to make sanitary sewer connections.

To require property owners, their agents and lessees to remove, within a reasonable time, ice, slush, snow, and other debris from sidewalks fronting on property owned, occupied or controlled by such owner, agent or lessee and to require such owners, agent or lessee to remove all low hanging limbs from trees adjacent to sidewalks in said city.

To prohibit the driving of herds of horses, mules, cattle, hogs, sheep, goats and all herds of domestic animals along or upon the streets, avenues or alleys of said city.

To establish and regulate, restrain and prohibit the running at large of horses, mules, cattle, sheep, swine, goats, geese, chickens, pigeons, ducks, and all other domesticated animals and fowls and to authorize the restraining, impounding and sale of the same for the cost of the proceedings and the penalty incurred, and to order their destruction when they cannot be sold and to impose penalties upon the owner thereof for the violation of any ordinances regulating or

prohibiting the same, and to tax, regulate, restrain and prohibit the running at large of dogs and to authorize their destruction and impose penalties on the owners or keepers thereof.

To prohibit the inhumane treatment of animals and provide punishment therefor.

To prohibit and restrain the flying of kites, firing fire arms, firecrackers, rolling of hoops and the use of velocipedes, bicycles or the use and practice of any amusement on the streets or sidewalks to the annoyance of the pedestrians or persons using such streets or sidewalks, and to restrain, regulate and prohibit the ringing of bells, or the blowing of horns, bugles and whistles, crying of goods and other noises, practices and performances, tending to the collection of persons in the streets or tending, unnecessarily, to interfere with the peace and quietude of the inhabitants of said city; and to suppress all unnecessary noises.

To license, tax and regulate or suppress and prevent hawkers, peddlers and pawnbrokers.

To license, tax and regulate the charges of fares made by any person, firm or corporation owning, operation or controlling any vehicle operated for the carriage of passengers or freight for hire, on the public streets of the city.

To regulate the operation of railway trains and street cars operated on, along or across the streets, avenues, or alleys of said city; to license and control the operation of automobiles, motorcycles, taxicabs, busses, cabs, and carriages, and all character of vehicles, using the public streets, and to regulate the use and occupancy of the streets by any such vehicles.

To provide for the regulation and control of plumbers and plumbing works and to secure efficiency in the same.

To provide for the inspection of weights, measures and meters and fix a standard of such weights, measures and meters and require conformity to such standards and provide penalties for failure to use or conform to same, and to provide for inspection fees.

To provide for the issuance of permits for erection of all buildings; for the inspection of the construction of all buildings in respect to proper wiring for electric lights and other electric appliances; piping for gas; flues and chimneys, plumbing and sewer connections, and to enforce proper regulations in regard thereto.

To provide for the establishment and maintaining of a public library.

To provide for the establishment and designation of fire limits; to prescribe the kind and character of fireproof buildings within said limits and for the condemnation of dangerous or dilapidated structures which are calculated to increase the fire hazard.

To enact and enforce all ordinances and resolutions, necessary to regulate the safety of all office buildings, hotels. Apartment houses, rooming houses, hospitals, theaters, store buildings, and all public buildings.

To require the construction of fire escapes in connection with public buildings, and to determine the sufficiency and regulate the safety of all exits and fire escapes provided on public buildings of every kind and character.

To provide for the establishment of districts and limits within said city, wherein saloons for the sale of spiritous, vinous and malt liquors may be located and maintained, and to prohibit the sale of such liquors or the location of such saloons without such defined districts or limits and to regulate and control theaters moving picture shows, vaudeville shows, dance halls, ten-pen alleys, pool-halls, and other public amusements, whenever the preservation of order, tranquillity, public safety or good morals demand it.

To restrain and punish vagrants, mendicants, beggars and prostitutes, to regulate, control or prohibit the sale, gift or barter or exchange cocaine, opium, morphine and the salts thereof.

To prohibit and punish keepers and inmates of bawdy, assignation and disorderly houses, and to punish such keepers, inmates and owners or agents of such owners of such houses, knowingly permitting such houses to be occupied as such bawdy, assignation or disorderly houses and to determine such inmates and keepers as vagrants.

To provide for establishment and maintaining the Fire Department of the City.

To require waterworks corporation, gas companies, street car companies, telephone companies, electric light and power companies, or other individuals, exercising franchises, now or hereafter, from the city, to make and furnish extensions of their service to such territory as may be required by ordinance.

To establish and maintain the City Police Department, prescribe the qualifications and duties of policemen and regulate their conduct.

To provide for the enforcement of all ordinances enacted by it, by a fine not to exceed two hundred (\$200) dollars, provided that no ordinance shall provide a greater or less penalty than is prescribed for a like offense by the laws of the state.

To provide for the commutation of fines imposed, by labor in a work house, on the public streets and public ways of the city; and for the collection of any fine imposed, execution may be enforced, as execution issued in civil cases.

To provide for a court for trial of misdemeanor offenses, know as the "Corporation Court" with such powers and duties as are defined and prescribed in an act of the Legislature of the State of Texas and any Acts amendatory thereof entitled: "An Act to Establish and Create in Each of the Cities, Towns and Villages of this State a Court to be known as the Corporation Court, in each City, Town or Village, and to Prescribe the Jurisdiction and Organization thereof, and to abolish Municipal Courts," said Act being title 22, Chapter 5, Articles 903 to 922; inclusive of the Revised Statues of the State of Texas.

To appoint as soon as practicable after the adoption of this Charter, some suitable person for the position of judge or recorder of the Corporation Court, who shall discharge the duties of said office under the terms and provisions of the state law creating said court, and subject to the provisions of the Charter.

To establish, maintain and regulate the city prison, workhouses and other means of punishment for vagrants, city convicts and disorderly persons, and such hospitals, orphanages and charitable institutions as may be deemed expedient by the governing authority.

SECTION 23. INITIATIVE AND REFERENDUM: Any proposed ordinance may be submitted to the commission for adoption, and any ordinance or resolution passed by the commission may be submitted to the people for repeal. In either event the ordinance or resolution proposed to be adopted or repealed shall be set out in a written or printed instrument which shall be filed with the person exercising duties of city clerk and at the time of the filing of such written or printed instrument, there shall be filed a statement signed by not less than five (5) qualified voters of the City of Ranger, stating that they have proposed such ordinance or resolution for adoption or repeal, and such electors shall be regarded as the initiating or referring committee, as the case may be, for the purpose herein after provided.

Before any such ordinance or resolution may be submitted to the Commission for adoption or repeal, it shall be necessary that a petition signed by not less than twenty-five (25) per cent of the qualified voters within the City of Ranger, as determined by the number voting at the last regular municipal election shall be presented to the Commission, referring to such ordinance or resolution and requesting its adoption or repeal, as the case may be. All such petitions circulated for signatures shall be uniform in character and shall have attached to the same exact writing or printed copy of the proposed ordinance or resolution sought to be adopted or repealed.

Each signer of a petition shall sign his name in ink or indelible pencil, in his own handwriting, and shall place on the same following his name, his place of residence by street number. The signatures to any such petition need not all be attached to the same paper, but to each such paper there shall be attached an affidavit, by the circulator thereof, stating the number of signers to such part of the petition, and that each signature is genuine and that of the person whose name it purports to be and that it was made in the presence of one affiant.

When signatures have been obtained in the number above provided for, and the petition and statement have been filed with the person exercising the duties of city clerk, such officer shall submit all papers pertaining to such ordinance or resolution and proposed initiation or reference to the Commission at its next regular meeting and such officers shall mail to each of the members of such initiating or referring committee a notice of the time of next meeting of the Commission when such ordinance or resolution and its adoption or repeal shall be considered, or a time then set by such Commission for its consideration which hearing and consideration shall be open to the public and the public shall be permitted to present arguments for or against such proposed ordinance or resolution.

After such presentation of the petition and public hearing, the commission shall, within thirty (30) days from the date of the submission of such petition, take final action upon the same, by either adopting or rejecting the ordinance thus initiated by petition, or by either repealing or refusing to repeal the ordinance or resolution thus sought to be referred, and in either event, the action of the Commission shall be noted in its minutes.

If the Commission refuses to pass or to repeal the proposed ordinance or resolution or passes the same in an amended form from that presented in the petition, or repeals only a part of such ordinance or resolution, instead of repealing the same in the manner set out in such petition of reference, then in either event, such initiating committee, or such referring committee, may require that such ordinance or resolution, either in its original or amended form, be submitted to a vote of the electors for adoption or repeal, as the case may be.

When an ordinance or resolution proposed by petition is to be submitted to a vote of the electors for adoption or repeal after the Commission has acted upon the same, as provided for in the preceding paragraph, then such initiating or referring Committee as the case may be, upon a majority vote of such committee, shall certify their desire to have the same submitted for adoption or rejection, within twenty (20) days after the omission shall take action on the same, and shall file such certificate and statement with the person exercising the duties of the city clerk.

After receipt of such certificate and the certified copy of the proposed ordinance or resolution, the person exercising the duties of the City Clerk shall present such certificate and certified copy of the proposed ordinance or resolution to the Commission at its next regular meeting. If an election is to be held at a date not more than ninety (90) days nor less than ten (10) days after such meeting of the Commission, then such ordinance or resolution, proposed for adoption or repeal shall be submitted by the Commission to a vote of the electors at such election to be held, but if no such election is to be held within such time, then the Commission shall provide for submitting such proposed ordinance or resolution, for adoption or rejection, to the electors at a special election to be held not less than twenty (20) days nor more than forty (40) days thereafter.

The form of ballot for use in an election held for adoption of any initiated ordinance shall state the title of the ordinance and contain a succinct statement of its nature and purpose and below such statement, on separate lines, there shall be printed the words: FOR THE ORDINANCE–AGAINST THE ORDINANCE. If a majority of the electors voting in such election shall vote in favor thereof, it shall thereupon become an ordinance of the city.

The form of ballot for use in an election held for the repeal of any referred ordinance or resolution, and contain succinct statement of the nature and purpose of the ordinance or resolution sought to be repealed, and below such statement, in separate lines, there shall be printed the words: FOR THE REPEAL OF THE ORDINANCE (OR RESOLUTION), AGAINST THE **REPEAL OF THE ORDINANCE (OR RESOLUTION)**. If a majority of the electors voting in such election shall vote in favor of the repeal of such ordinance ore resolution, then the same shall be considered repealed. Providing, however, that nothing

contained in this section shall affect the manner of calling elections to determine whether or not franchises shall be granted.

SECTION 24. RECALL. Any elective officer of the city, shall be subject to recall and removal from office by the qualified electors of the city, and the procedure to effect such removal shall be as follows:

A petition demanding the question of removing such officer or officers to be submitted to the electors, shall be filed with the person discharging the duties of city clerk. Such petition for the recall of any such elective officer or officers shall be signed by at least thirty (30) per cent of the qualified voters, to be determined by the number of votes cast in the last regular municipal election; at least one-fifth (1/5) of whom shall certify that at the election at which the officer or officers was or were elected, they voted for the election of such officer or officers proposed to be recalled.

Petitions for signatures for such recall shall be procured only from a person exercising the duties of city clerk, who shall keep a sufficient number of such blank petitions on file for distribution, and prior to the issuance of such petitions for signatures there shall be filed with such person an affidavit by one or more qualified electors, stating the name or names of the officer or officers sought to be removed. Such officer issuing such petitions for removal to an elector shall enter in a record to be kept, the name of the elector to whom issued, the date of such issuance and the number of such petitions issued, and shall certify on such petitions for signatures, the name of the elector to whom issued and the date of issuance. No petition for signatures shall be accepted and take into consideration in determining the necessary percentage of voters for removal unless it bears such certificate and be filed as herein provided.

Each signer of a recall petition shall sign his name thereto in ink or indelible pencil, and shall write thereon, after his name, his place of residence by street number. To each of said petitions there shall be attached an affidavit of the circulator thereof, stating the number of signers to such part of the petition and that each signature to the same is genuine, was made in his presence and is that of the person whose name it purports to be.

All papers comprising a recall petition, shall be returned and filed with the person exercising the duties of city clerk, within thirty (30) days after the filing of the affidavit herein before provided for. The person exercising the duties of the city clerk, upon the return of such petition, shall at once submit the same to the governing authorities shall at once submit the same to the governing authorities of the city, and shall notify the officer or officers sought to be recalled of such action. If the official whose removal is sought does not resign within five (5) days after such notice is given, the governing authority of the city shall thereupon order and fix a day for holding a recall election, the date of which election shall not be less than fifteen (15) days nor more than thirty (30) days from the time such petition was presented to the governing authority of the city.

The ballot at such recall election shall conform to the following requirements, with respect to

each person whose removal is sought, the question shall be submitted. “Shall (name of person) be removed from the office (naming the office) by recall?” Immediately following each of such questions there shall be printed on the ballots, in separate lines, in the order here set out the words: For the recall of (naming the person), Against the recall of (naming the person), should a majority of the votes cast at such recall election be for the recall of the officer named on the ballot, he shall, regardless of any technical defects in the recall petition, be deemed removed from office, but should a majority of the votes cast at such recall election be against the recall of the officer named on the ballot, such officer shall continue in office for the remainder of his term, subject to recall as before.

No recall petition shall be filed against any officer of the city within six (6) months after his election, nor within six (6) months after an election for such officers recall.

In case the governing authority of the city shall fail or refuse to receive the recall petition, order such recall election, or discharge any other duties with reference to such recall, then the County Judge of Eastland County, Texas, shall discharge any such duties herein provided to be discharged by the governing authorities of said city.

If in such recall election, there shall, as a result of such election, remain one or more of such elective officers, who is not recalled, then such officer or officers not recalled shall discharge all of the duties incumbent upon the governing authority of said city until the vacancy or vacancies created at such recall elections are filled by an election for that purpose, as hereinafter provided for, but if in any proposed recall election it is proposed and submitted to recall all effective officers, then there shall be placed on said ballot under the question of recall, the names of candidates to fill the vacancies proposed to be created by such election, but the names of such officers proposed to be recalled shall not appear on the ballot as candidates.

If at any recall election it is not proposed and submitted to recall all of the elective officers, but only one or more, fewer than all, and such election shall result in favor to the recall of one or more of such officers, proposed to be recalled, then it shall be the duty of such officers or officer not recalled and constituting the governing authority of the city, within five (5) days after such election is held, to meet, canvass the returns, declare the results of the election and on the same day order an election to fill such vacancy or vacancies; which election shall be held not less than ten (10) days nor more than twenty (20) days after the same have been ordered.

ARTICLE III

SECTION 1. TAXATION: The city shall have the power and is hereby authorized, annually, to levy and collect taxed, not exceeding two dollars and fifty cents (\$2.50) on each one hundred dollars (\$100.00) of assessed valuation of all real and personal property within the city limits, not exempt from taxation by the Constitution and laws of the state.

Said city shall have the right annually, to levy and collect a poll tax not exceeding one dollar

(\$1.00) for each year, upon all male inhabitants between the ages of twenty-one (21) and sixty (60) years, not exempt from poll tax by the general laws of the state.

Shall authorize the granting and issuance of license and shall direct the manner of issuing and registering the same and fix the fees therefor; but no license shall be issued for a longer period than one (1) year and shall not be assignable except by permission of the governing authority of the city.

Shall have the power, annually, to levy and collect a franchise tax against any public corporation using and occupying the public streets or grounds of the city, separately from the tangible property of such corporation, and to levy and collect, annually, upon the shares or property or corporations, companies, and corporate institutions, as the same are now or may be assessed by the state laws, and shall have full power to enforce the collection of such taxes.

Shall have the power to regulate the manner and mode of making out tax lists, inventories and appraisements of property therein, and to prescribe the oath that shall be administered to each person rendering property for taxation and to prescribe how, when and where property shall be rendered and to prescribe the number and form of assessment rolls and to adopt such measures as may be deemed advisable to secure the assessment of all property within the city limits and to collect taxes thereon, and may provide a fine upon all persons failing, neglecting or refusing to render their property for taxation, and to do any and all other things necessary or proper to render effectual the collection of monies by taxation.

Shall have the power to provide for the rendition of unrendered property for taxation and levy and assess taxes thereon, annually, and to provide for the rendition, levy and assessment of taxes for previous years on property omitted from taxation, and to provide interest at the rate of six (6) per cent per annum upon such unrendered or omitted property and to charge and provide for correction and reassessment of property erroneously assessed.

All real, personal or mixed property held, owned or situated in the City of Ranger shall be liable for all municipal taxes, due by the owner thereof, including taxes on real estate, franchises personal and mixed property, poll taxes and all other municipal taxes of whatever character. Such municipal taxes are hereby declared to be a lien charge and encumbrance upon the property so taxed and shall be a prior lien to all other claims, sales, assignments, grants, transfers, gifts, and judicial writs. Said lien shall exist until all such taxes have been paid and against any real estate which, for any cause, has failed to be assessed for one or more years, and such lien shall be good and effective for every year for which assessment has failed.

Personal property of all persons, firms or corporations owning any taxes to the City of Ranger, is hereby made liable for all of such taxes, whether the same be upon personal or real property or upon both. The governing authority of the city at its first meeting in June of each year, or as soon thereafter as practicable shall levy the annual tax for such year, but several taxes or assessments allowed by this charter may be levied, assessed and collected at such time as the

governing authority may provide; provided, that should the governing authority fail or neglect to levy the annual tax herein provided for any one year the annual tax levy for the preceding year last made by said governing authority shall and will be considered in force and effective as tax levy for the year for which no annual tax levy was made.

Said city shall have full power to provide, for the prompt collection, by suit or otherwise, of taxes assessed, levied and imposed, and is hereby authorized, and to that end shall have full powers and authority to sell, or cause to be sold all kinds of property, real and personal, and shall make such rules and regulations and enact all such ordinances as are deemed necessary for the collection of any taxes provided in this Charter.

It shall not be necessary in any action, suit or proceeding in which the city shall be a party, for any bond, undertaking or security to be executed in behalf of the city.

The city shall have power to control and manage the finances of the city; to provide its fiscal year and fiscal arrangements.

All monies arising from the collection of taxes by the city shall be divided into two funds, and designated as a “General Fund” and an “Interest and Sinking Fund.”

No irregularities in the time or manner of making or returning the city assessment rolls or the approval of such rolls, shall invalidate any assessment.

The governing authority of the city shall create a Board of Equalization, whose duties shall be to equalize the values of all property rendered for taxation in the City of Ranger; prescribe the qualifications, compensations and number necessary to constitute said board, and enact all ordinances necessary to regulate and control the equalization of values by such board.

ARTICLE IV

SECTION 1. BONDS: The governing authority of the city have the power to appropriate so much of the general revenues of the city as may be necessary for the purpose of retiring and discharging the accrued indebtedness of the city, and for the purpose of improving the streets, constructing sewers, erecting and maintaining public buildings of every kind and for purchasing or constructing waterworks plants and systems and for the purpose of erecting, maintaining, and operating an electric light and power plant and such other public utilities as the governing authority may, from time to time, deem expedient, and in furtherance of any and of all these subjects, the city shall have the right and power to borrow money upon the credit of the city and to issue coupon bonds of the city therefor, in such sum or sums as may be deemed expedient; to bear interest not to exceed six (6) per cent per annum; payable annually or semiannually at such place or places, as may be designated by the city ordinance; provide, that the aggregate amount of said bonds shall at no time exceed the limit authorized by statute upon the whole taxable value of the City of Ranger as ascertained by the tax records.

All bonds shall specify for what purpose they are issued, and shall be invalid if sold for less than

their par value and when any bonds are issued by the city, a fund shall be provided to pay the interest and create a sinking fund to redeem said bonds, which fund shall not be diverted or drawn upon for any other purpose and the person acting as city treasurer shall honor no drafts upon said fund except to pay interest upon or redeem the bonds for which it was provided.

Said bonds shall be issued for a period of time not to exceed forty (40) years: shall be signed by the Mayor, countersigned by the person acting in the capacity of city secretary, and shall be payable at such places and times as may be fixed by the ordinance of the governing authority. All such bonds shall be submitted to the Attorney General of the State for his approval and the Comptroller for resignation, as provided by state law; provided that any such bonds, after approval may be issued by the city either optional or serial, or otherwise, as may be deemed advisable by the governing authority.

Before the issuance of any bonds the same shall be submitted to a vote of the qualified property tax paying voters of the city, and should a majority of the votes cast at such election be in favor of issuing the bonds, the same shall be issued as provided herein, but should said election fail to carry, bonds shall not be issued. The election provided for above shall be conducted as other elections under the state law, after due notice by publication, once each week for three (3) consecutive weeks prior thereto, in one or more newspapers published in Ranger, which said notice shall state the nature and purpose of said election.

SECTION 2. No bonds shall be issued unless they shall have been authorized at an election held for the purpose except funding and refunding bonds which shall not require an election except as otherwise herein provided. The City Commission shall have the authority to pass all necessary ordinances to provide for the funding or refunding of the whole or any part of the existing debt of the City, or of any future debt by canceling the evidences thereof and issuing to the holders bonds or treasury warrants with or without coupons, bearing interest at an annual rate not to exceed six (6%) per cent per annum, provided, however, that the outstanding bonds of the City may always be refunded into bonds, but the outstanding warrant and note indebtedness of the City may be refunded into bonds only to the extent of the notes and warrants outstanding at the time this Charter Amendment is adopted and said note and warrant indebtedness outstanding at any time in the future incurred for the purpose of permanent street improvements may be refunded into bonds, but no other future note and warrant indebtedness shall be refunded into bonds except when refunding bonds are authorized at an election held for that purpose.

Added at an election held November 20, 1926.

SECTION 3. The City Commission shall have the power, when in its discretion it deems expedient and necessary, and at any regular meeting, to pass an ordinance or ordinances authorizing the issuance of interest-bearing time warrants, with or without interest coupons, not to exceed in amount \$25,000.00 at any one time, for the purposes for which bonds are authorized to be issued under this Charter, such warrants to bear interest not to exceed six per cent per annum, payable annually or semi-annually, and to mature at such times, and to be payable at such places, as may be fixed by the City Commission, but before any such warrants shall be issued or sold, they shall be submitted to and be approved by the Attorney General of this state and

registered in the office of the Comptroller of the State of Texas. At the time any such warrants are ordered to be issued, the City Commission shall levy a sufficient tax to provide for the payment of the necessary annual interest on and to create a sinking fund for, such warrants so authorized to be issued. They shall be signed by the Mayor, countersigned by the City Secretary, shall state the purpose for which they are issued, the place where payable, and shall bear the seal of the corporation. Added at an election held November 20, 1926.

ARTICLE V

SECTION 1. MUNICIPAL GOVERNMENT: The municipal government of the City of Ranger shall consist of the City Commission, which shall be composed of five (5) Commissioners, one of whom shall be Mayor of the City.

SECTION 2. TERM OF OFFICE: The Mayor and four (4) Commissioners shall be elected to two-year terms. The Mayor, Commissioner No. 1 and Commissioner No. 3 shall be elected in odd numbered years. Commissioner No. 2 and Commissioner No. 4 shall be elected in even numbered years. At the general election in May 2015, the Mayor, Commissioner No. 1 and Commissioner No. 3 shall be placed on the ballot for election for a term of two (2) years and Commissioner No. 2 and Commissioner No. 4 shall be placed on the ballot for election for a term of one (1) year. At the general election in May 2016, Commissioner No. 2 and Commissioner No. 4 shall be placed on the ballot for election for a term of two (2) years. All positions shall be elected to two-year terms after the foregoing provisions have been effected. As amended at an election held November 4, 2014.

SECTION 3. VACANCIES: Vacancies shall be filled by resolution of appointment duly entered and adopted by the City Commission in regular session. The resolution to specify that the appointment be for the remainder of the unexpired term, and that the appointee possess all the qualifications for Mayor and Commissioners contained in Section 4 of Article V. Should a vacancy occur in the office of Mayor, the then Mayor Pro Tempore shall serve the remainder of the unexpired term as Mayor and the Commissioner's place vacated by the Mayor Pro Tempore to be filled as provided hereinabove. As amended at an election held on November 28, 1961.

SECTION 4. QUALIFICATIONS: The Mayor and each Commissioner shall be resident electors in the City of Ranger. All other officers and employees shall be actual bona fide residents of the city. The Mayor and Commissioners shall not preside over, vote in or discuss before the governing body of the city at any meeting thereof, any contract, job work or serviced for the municipality or any sale to the city of any supplies, equipment, material, articles or property of any kind sold or offered for sale to the city and in which he is directly or indirectly interested, but shall fully secure himself in all matters pertaining thereto.

No other officer or employee of the city shall be in any way interested in the profits or emoluments of any contract, job, work or service rendered or to be rendered to the city, or in any sale to the city of any character of supplies, equipment materials, property or articles purchased by or offered for sale to the city.

No officer or employee shall hold any office of emolument other than that of Notary Public, in Federal State or County government.

Any officer or employee of the city who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office and any such contract in which any officer or employee is or may become interested may be declared void by the Commission. No officer or employee of the city (except policemen and firemen in uniform, or wearing badge) shall accept any frank, free ticket, passes or service, or anything of value, directly or indirectly from any person, firm or corporation, upon terms more favorable than are granted to the public. Any violation of this section shall be a misdemeanor, and on conviction for such violation, such office or employment shall be forfeited.

SECTION 5. ELECTIONS: The elective officers of the city shall consist of a Mayor and four Commissioners (the Commissioners to be designated as Commissioner No. 1 and Commissioner No. 2 and Commissioner No. 3 and Commissioner No. 4) each of whom shall be elected to the office for which he is a candidate by a majority of the qualified voters of the city at large. Should any candidate fail to receive a majority of votes at the regular election for the office for which he is a candidate, the Commission shall immediately order a special election to be held not less than ten (10) days nor more than twenty (20) days after the results of the regular election has been declared at which special election the names of only the two candidates receiving the highest number of votes at the regular election, for the office for which they were candidate, shall be printed on the ballot and submitted to the qualified voters for election and the candidate receiving the majority of votes at such special election, for the place or office for which he was a candidate shall be declared duly elected.

SECTION 6. JUDGE OF ELECTION: The Commission shall be the judge of the election and qualification of its members.

SECTION 7. ELECTIVE RETURN: The Commission shall, on the next regular meeting day of said commission, after each regular and special election, canvass the returns and declare the result of such election.

SECTION 8. ELECTION DAY: Municipal elections of the City of Ranger shall be held on the first Saturday in May or the date nearest thereto as required by law. As amended at an election held November 4, 2014.

SECTION 9. ELECTIONS, LAWS CONTROLLING: All elections provided for in this Charter, except the regular election held on the first Tuesday of April A.D. 1919, and on said day every two years thereafter, shall be called special elections, and all elections shall be conducted and results canvassed and announced by the election authorities prescribed by the General Election Laws of the State of Texas, and said General Election Laws shall control in all municipal elections, except as otherwise herein provided.

SECTION 10. COMMISSION CONSTITUTED LEGISLATIVE AND GOVERNING BODY OF CITY: The Commission shall enact all ordinances and resolutions, and adopt all regulations, and constitute the governing body of the city, with all powers and authority herein granted.

SECTION 11. DUTIES OF MAYOR: The Mayor of the City shall be the presiding officer of the Commission except that in his absence or disability to act, a Mayor pro tempore may be chosen; he shall be entitled to vote as a member of the Commission; sign all bonds; be the official head of the city, and exercise all powers and perform all duties imposed upon him by this Charter and by the ordinances of the city.

SECTION 12. MEETING OF THE COMMISSION: On the first Monday at ten o'clock a.m. after the election of the Commission has been declared, the Commission shall meet in the Council Chamber of the City Hall, at which time the Commissioners shall qualify and assume the duties of their offices. Thereafter the Commissioners shall meet at such time as may be prescribed by ordinance or resolution, but they shall meet at least once each week. The Mayor or the City Manager, hereinafter provided for, may call special meetings of the Commission at any time deemed advisable. All meetings of the Commission shall be public, except such executive sessions as may be provided for by ordinance, and any citizen shall have access to the minutes and records thereof at all reasonable times. The Commission shall determine its own rules and order of business, and shall keep a journal of its proceedings.

SECTION 13. COMPENSATION AND ATTENDANCE: The compensation of the Mayor and each Commissioner shall be Ten (\$10.00) Dollars per diem, for attendance upon each regular meeting of the Commission, but not more than one regular meeting shall be held each week; provided, however, that no compensation be allowed the Mayor or either Commissioner if absent from any regular meeting of the Commission, unless such absence be unavoidable, the reasons therefor be presented in writing, and the same be considered sufficient by the other members of the Commission and such reasons and excuse spread upon the minutes of the proceedings.

SECTION 14. LEGISLATIVE PROCEDURE: A majority of all members elected on the Commission shall constitute a quorum to do business, and the affirmative vote of a majority shall be necessary to adopt any ordinance or resolution. The vote upon the passage of all ordinances and resolutions shall be taken by "Yea" and "Nay" and entered upon the Journal. Every ordinance or resolution passed by the Commission shall be signed by the Mayor and the person acting as city clerk or secretary within two days, and by him ordered.

SECTION 15. ORDINANCE ENACTMENT: Each proposed ordinance or resolution shall be introduced in written or printed form, shall not contain more than one subject, which shall be clearly stated in the title, but general appropriation ordinances may contain the various subjects and accounts for which monies are to be appropriated. No ordinance, unless it be declared an emergency measure, and passed by a unanimous vote of the Commission shall be passed on the day on which it shall be introduced.

SECTION 16. EMERGENCY MEASURES: DEFINED AND PROVIDED FOR: An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health or safety, or providing for the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble thereto. Ordinances appropriating money, not exceeding two hundred fifty (\$250.00) dollars and ordinances for the payment of salaries and wages, may be passed as emergency measures, but no measure making a grant, renewal or extension of a franchise, or other special privilege or regulate the rate to be charged for its services by any public utility, shall, ever be passed as an emergency measure.

SECTION 17. ORDINANCES: PUBLICATION OF: All ordinances other than emergency measures, shall be published once a week for two (2) consecutive weeks, in some newspaper published in the City of Ranger, and no ordinance shall become effective until ten (10) days after the date of its last publication.

SECTION 18. ORDINANCES: RECORDING: Every ordinance, or resolution, upon its becoming effective, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the Mayor and party exercising the duties of city clerk or secretary.

SECTION 19. INVESTIGATION BY COMMISSION: The Commission may investigate the financial transaction of any office or department of the city government and the acts and conduct of any official or employee. In conducting such investigation, the Commission may compel the attendance of witnesses, the production of books and papers, and other evidence, and for that purpose may issue subpoenas or attachments which shall be signed by the Mayor; which may be served and executed by any officer authorized by law to serve subpoenas or other process, or any peace officer of the city. If witness shall refuse to appear or to testify to any facts within his knowledge, or to produce any papers or books in his possession, or under his control, relating to the matter under investigation before the Commission, the Commission shall have the power to cause the witness to be punished as for contempt, not exceeding a fine of one hundred (\$100.00) dollars and three days in the city prison. No witness shall be excused from testifying, touching his knowledge of the matter under investigation in any such inquiry, but such testimony shall not be used against him in any criminal prosecution except for perjury committed upon such inquiry.

SECTION 20. CITY MANAGER: The City Commission may appoint a City Manager, who shall be the administrative head of the municipal government, and shall be responsible for the efficient administration of all departments; he shall be a resident of the City of Ranger when appointed, and shall hold his office two (2) years unless sooner removed from same. He shall be removable from office by the Commission after a public hearing before the full Commission for good cause shown upon charges duly filed for incompetence, habitual neglect of duty, or misfeasance or malfeasance in office. If the City Commission shall fail or refuse to appoint a City Manager, or should there, for any reason, be a vacancy in the office of City Manager, the Mayor of said city shall discharge all of the duties imposed by the terms of this Charter upon the City Manager until such vacancy be filled, or until such time as the City Commission may, in its

discretion, appoint a City Manager. As amended at an election held on May 23, 1921.

SECTION 21. POWERS AND DUTIES OF THE CITY MANAGER: The City Manager shall see that the laws and ordinances of the city are enforced;

Appoint all appointive officers or employees of the city, with the advice and consent of the Commission (such appointments to be upon the merit and fitness alone), and remove all officers and employees appointed by him:

Attend all meetings of the Commission, with a right to take part in the discussion, but having no vote;

Recommend in writing, to the Commission such measures as he may deem necessary or expedient;

Keep the Commission fully advised as to the financial condition and needs of the city, and perform such other duties as may be prescribed by this Charter, or be required of him by ordinance or resolution of the Commission.

SECTION 22. CONTRACTS FOR SERVICES: No contract shall ever be made which binds the city to pay for personal services to be rendered for any stated period of time, but all appointive officers and employees shall be subject to peremptory discharge as herein provided, other than the City Manager.

SECTION 23. DEPARTMENTS: The Commission shall create and consolidate such offices and may divide the administration of the City's affairs into such offices or departments at their discretion. As amended at an election held on May 23, 1921.

SECTION 24. BOARD OF CITY DEVELOPMENT: The Commission shall have the authority to appoint what shall be know and designated as a "Board of City Development," which shall be composed of not exceeding fifteen (15) members who shall serve without compensation, and may prescribe the qualifications and duties of such board and their term of office, and may appropriate not exceeding two mills on the one dollar valuation of taxable property in the City of Ranger from the general fund of said city, to support the works of the board.

SECTION 25. SALARIES: GENERAL: The Commission shall fix and determine the salaries and wages of all appointive officers and employees of the city, and provide for the payment thereof.

SECTION 26. PAYMENT OF CLAIMS: No warrant for the payment of any claims shall be issued by the city, unless such claim shall be evidenced by an itemized account approved by the City Manager and audited and allowed by the Commission at a regular meeting, and all warrants shall be signed by the Mayor and countersigned by the city clerk or secretary.

SECTION 27. ACCOUNTING PROCEDURE: Accounting procedure shall be devised and maintained for the city adequate to record in detail, all transactions affecting the acquisition, custodianship and disposition of values including cash receipts, credit transactions and disbursements; and the recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules in detail support thereof as shall be necessary to show the full effect of such transactions for each fiscal year, upon the finances of the city government, including distinct summaries and schedules for each public utility owned and operated.

SECTION 28. AUDIT AND EXAMINATION: The Commission shall cause a continuous audit of the books of accounts; all records and transactions of the administration of the affairs of the city: such audit shall be made annually during each fiscal year and shall be made by a certified public accountant. The duty of the certified public accountant shall include the certification of all statements required in Section 27 of this Charter; such statements shall include a general balance sheet showing summaries of income and expenditures and also comparisons, in proper classification with the last previous audit; such summaries shall be published in some newspaper published in Ranger, one time within ten (10) days after the completion of such audit.

SECTION 29. CONTRACTS: All contracts for public printing, public improvements, and public works of every kind and character, and the purchase of supplies for use in any department of the city, exceeding an expenditure of one hundred (\$100.00) dollars shall be let on sealed competitive bids.

SECTION 30. NEPOTISM: No person related within the second degree by affinity, or within the third degree by consanguinity, to the Mayor, to either of the Commissioner or the City Manager, shall be appointed to any office, position, clerkship or service of the city.

SECTION 31. HOURS OF LABOR UPON PUBLIC WORKS: Eight (8) hours shall constitute a day's work for all laborers, workmen, or mechanics who may be employed by or on behalf of the city, in any one calendar day, where such employment, contract or work is for the purpose of construction, repairing or improving buildings, bridges, streets, avenues, alleys, highways or public improvements of a similar character, requiring the services of laborers, workmen or mechanics.

SECTION 32. OFFICIAL BONDS: The City Manager shall give an official bond in the sum of five thousand (\$5,000.00) dollars and the person or persons exercising the duties of City Treasurer and City Tax Collector shall give official bonds in such sums as may be prescribed by the Commission from time to time, such bonds shall be payable to the City of Ranger, and shall in each instance, be conditioned for the faithful discharge of duties of such respective officers, and for the faithful accounting for all monies, credits and things of value coming into the hands of such respective officers. Such bonds shall be procured from some regularly accredited surety company, authorized to do business under the laws of the State of

Texas, and the premiums to such surety companies shall be paid by the City of Ranger.

The City Manager shall have the right to require official bonds from other appointive officers of the city in such amounts and condition as he may deem best for the efficiency of the public service. All official bonds shall be approved by the Commission and filed and recorded with the person exercising the duties of city clerk.

SECTION 33. OATH OF OFFICE: Every officer of the city shall, before entering upon the duties of his office, take and subscribe to the oath prescribed by the Constitution of the State of Texas for County Officials.

GENERAL PROVISIONS.

SECTION 1. The enumeration of powers made in this Charter shall never be construed to preclude by implication or otherwise, the city from exercising the powers incident to the enjoyment of local self government, nor to do any and all things not inhibited by the Constitution and laws of the State of Texas.

SECTION 2. RATIFICATION OF ORDINANCES: All ordinances and resolutions in force at the time of the taking effect of this Charter, not inconsistent with its provisions, shall continue in force until amended or repealed.

SECTION 3. AMENDMENTS TO CHARTER: This Charter, after its adoption, may be amended in accordance with the provisions of an Act of the Thirty-third Legislature of the State of Texas, entitled, "An Act Authorizing Cities Having More Than 5,000 Inhabitants, by a Majority Vote of the Qualified Voters of Said City, at an Election Held for that Purpose, to Adopt and Amend their Charter, Etc.". Approved April 7th, 1913, and any Acts Amendatory thereto.

SECTION 4. VOTE OF THE PROPOSED CHARTER, MANNER, ETC.,: This Charter shall be submitted to the qualified voters of the City of Ranger for adoption or rejection, on the Third of April, A.D., 1919, at which election if a majority of the qualified voters voting in such election shall vote in favor of the adoption of this Charter, then it shall become the Charter of the City of Ranger until amended or repealed. It being impracticable to submit this Charter by section, it is hereby prescribed that the form of ballot for use in such election shall be as follows, to-wit:

preventing the Foundation from performing a variety of services required by the contract. The City's refusal to honor its contractual commitment to the Foundation has caused the Foundation to suffer significant damages. Accordingly, the Foundation was forced to bring this lawsuit against the City and the City Commissioners.

II. DISCOVERY LEVEL

1. Discovery in this matter will be conducted under Level 3 of the Texas Rules of Civil Procedure. In accordance with Rule 47 of the Texas Rules of Civil Procedure, the Foundation states that at this time, it is currently seeking specific performance of the City's obligations under a contract involving, among other things, real property and monetary relief of over \$250,000 but not more than \$1,000,000.

III. PARTIES

2. Plaintiff Ranger Airfield Maintenance Foundation is a non-profit corporation who maintains its principal place of business in Ranger, Texas.

3. Defendant City of Ranger is a Texas Municipal Corporation in Eastland County, Texas. The City of Ranger has appeared and may be served in accordance with Rule 21a.

4. John Casey, Kevan Moize, Larry Monroe, Samantha McGinnis, and Terry Robinson are/were members of the City Commission for the City of Ranger. The City Commission Defendants may be served with process by serving the City of Ranger Acting Secretary, Somer Lee at 400 W. Main St., Ranger, Texas 76470.

IV. VENUE AND JURISDICTION

5. The Court has subject matter jurisdiction over this lawsuit because no other court has exclusive jurisdiction of the subject matter of these causes, and the amount in controversy exceeds this Court's minimum jurisdictional requirements.

6. Venue is proper in Eastland County, Texas pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1) because Eastland County is the county in which all, or a substantial part of, the events or omissions giving rise to the Foundation's claims occurred. Additionally, venue is proper in Eastland County pursuant to Texas Civil Practice and Remedies Code § 15.011 because this is a suit concerning real property or an interest in real property and Eastland County is the county in which all or party of the property is located. Further, venue is proper in Eastland County, Texas pursuant to the December 4, 2018 Lease Agreement between the parties.

7. The Court has jurisdiction over the claims against the City Commissioners, John Casey, Kevan Moize, Larry Monroe, Samantha McGinnis, and Terry Robinson, in their official capacities as members of the Ranger City Commission under the "ultra vires" exception to governmental immunity as more fully described below.

V. FACTUAL BACKGROUND

A. The Foundation.

6. The Foundation is a non-profit organization dedicated to rehabilitating, restoring, preserving, and supporting the historic grass airfield located in Ranger, Texas. A vital part of the City of Ranger for over a decade, the Foundation and its team of dedicated volunteers have spent over a decade serving the City and its residents through their work preserving and maintaining the Ranger Airfield (work the City itself admittedly cannot afford to do).

B. The City Enters into a Lease Agreement and Subsequent Amendment with the Foundation.

7. To further these preservation efforts (and because the City cannot afford to preserve the airfield on its own), the Foundation and the City entered into that certain December 4, 2018 Lease Agreement (the "Lease") for 81 acres of land that comprises the Ranger Municipal Airport.

See the December 4, 2018 Lease Agreement, attached as Exhibit A; see also the Survey of the Ranger Municipal Airport, attached hereto as Exhibit B.

8. The purpose of the Lease was to provide the Foundation a right to use and occupy the Ranger Airport in exchange for the Foundation's agreement to maintain and preserve the airfield. The Lease was unanimously approved and authorized by the City Commissioners and signed by the Mayor.

9. The City and the Foundation operated under the Lease for several years without issue. After the Lease was signed, the Foundation made major improvements to the airfield property at no cost to the City.

10. Subsequently, on or around January 31, 2022, the Foundation and the City entered into that certain First Amendment to the Lease Agreement (the "Amendment"). See the January 31, 2022 First Amendment to the Lease Agreement, attached hereto as Exhibit C.

11. The purpose of the Amendment was to allow the Foundation the right to purchase the Ranger Airport in exchange for certain improvements to the Airport and the Foundation's continued work to maintain the property as an airfield and to restore and maintain the City's historic 1928 hangar. The City's historical 1928 hangar would remain the property of the City under the Amendment, but the Foundation would fund and provide a much-needed restoration to the hangar. Restoration of the City's historical hangar is work the City cannot afford to do itself. The Foundation's agreement to restore the historical hangar for the City was more than sufficient consideration for the Amendment.

12. The Foundation's maintenance obligations were not amended or disturbed by the Amendment. The Amendment provided, the "remainder of the Lease not amended by this

Amendment shall remain in full force and effect.” *See id.*, ¶ 5. The Foundation never ceased performance of its maintenance obligations after the execution of the Amendment.

13. Through the Amendment, the City expressly represented that it “desire[d] to **convey ownership** of the Airport to [the Foundation] upon the satisfaction of certain improvements.” *See* Ex. C. (emphasis added). Specifically, the City agreed that:

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 hangar 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.

See Ex. C, ¶¶ 1-3.

14. The Amendment further contained the following right of reversion:

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.

See id., ¶ 4.

15. The Amendment was on the agenda for discussion and approval at four City Commission meetings. The process of gaining approval from the City Commissioners lasted just shy of 100 days. Ultimately, the Amendment was unanimously approved and authorized by the City Commissioners. In accordance with the City Charter, Mayor Casey executed the Amendment to effectuate the Amendment between the Parties. The City Commissioners made no mention of further requirements for the Foundation to undertake to effectuate the Amendment.

C. **The Foundation Relies on the City's Express Representations to its Detriment; the City Breaches its Contracts.**

16. Relying on the City's representation that it desired to convey ownership of the Airport to the Foundation, the Foundation went to work fulfilling its contractual obligations to the City. Specifically, as was required under the Amendment, the Foundation found approved third parties who were willing to build not less than three (3) new, vintage-style appearance aircraft hangars on the Ranger Airport property. *See* Ex. C, ¶ 1. Further, the Foundation raised over \$200,000 in funds to restore the City's existing 1928 hangar to its historical size and appearance. *Id.*, ¶ 2.

17. In short, the Foundation was ready, willing, and able to fulfill all of its contractual obligations and conditions under the Amendment and has already provided much needed value to the City.

18. In exchange for these efforts, the City expressly agreed to “convey...the Airport and Airport Property” to the Foundation. *Id.*, ¶ 3. Rather than live up to its promises, however, the City has refused to honor its commitments. Specifically, the City has refused to allow those third parties to construct the necessary vintage-style hangars on the Airport Property and has refused to convey the Airport Property to the Foundation as was required under the Amendment once the three hangars and restoration of the City's historic hangar was completed. Instead, the City has

disregarded its contract with the Foundation, has sought to impose additional restrictions upon the Foundation that were not part of the written agreement, and is seeking additional consideration from the Foundation as an additional condition to the agreement.

19. Even worse, the very same City Commissioners who approved the Lease and the Amendment (and encouraged the Foundation to raise over \$200,000 to support the restoration of City property) are now interfering with the Lease and blocking the Foundation's attempts to construct and sublease new hangars on the premises. Specifically, Commissioner Moize has actively rallied the other City Commissioners against effectuating the Amendment. The City Commissioners have held closed-door meetings and decided to interfere with the City's obligations under the Amendment. The City's refusal to honor its contractual commitments to the Foundation have caused the Foundation to suffer significant damages.

20. In sum, the City has refused to honor its contractual commitment to the Foundation. The City's actions are wrongful and are a breach of the Amendment. If the City does not cease its wrongful behavior, the Foundation will lose crucial contracts and will suffer irreparable injury.

VI. CAUSES OF ACTION¹

COUNT 1: Breach of Contract.

21. The Foundation realleges and incorporates by reference the preceding paragraphs for all purposes, the same as if set forth herein.

22. The Foundation and City entered into a valid, enforceable contract (*i.e.* the Amendment) whereby the City expressly represented that it “desire[d] to *convey ownership* of the Airport to [the Foundation] upon the satisfaction of certain improvements.”

¹ To the extent necessary, the Foundation pleads each and every cause of action herein in the alternative.

23. The Amendment constitutes a valid and binding contract between the Foundation, on the one hand, and the City, on the other.

24. The Foundation fully performed its obligations and satisfied all conditions precedent under the Amendment. The City, however, has failed to comply with its obligations under the Amendment.

25. The City materially breached the Amendment by failing to comply with the conditions of the Amendment, including without limitation.

26. As a direct and proximate result of the City's breach of the Amendment, the Foundation seeks specific performance of the City's obligations under the Amendment and damages in an amount to be determined at trial, in addition to court costs and attorneys' fees incurred.

27. The City does not have immunity from breach of contract because it was acting in its proprietary capacity when it entered into the Amendment. In the alternative if the City was working in its governmental capacity, pursuant to Texas Government Code § 271.152, the City has waived sovereign immunity to this suit for the purpose of adjudicating this breach of contract claim because the City entered into a contract with the Foundation that is subject to Texas Government Code § 271.

28. Attorneys' Fees. The Foundation is entitled to recover reasonable attorneys' fees under Chapter 38 of the Texas Civil Practice & Remedies Code, because this suit is for breach of a written contract. The Foundation has retained counsel, who presented the Foundation's claims to the City. The Foundation is entitled to an award of reasonable attorneys' fees in an amount to be proven at trial.

COUNT 2: Anticipatory Breach of Contract.

29. The Foundation realleges and incorporates by reference the preceding paragraphs for all purposes, the same as if set forth herein.

30. The Foundation and City entered into a valid, enforceable contract (*i.e.* the Amendment) whereby the City expressly represented that it “desire[d] to **convey ownership** of the Airport to [the Foundation] upon the satisfaction of certain improvements.”

31. The Amendment constitutes a valid and binding contract between the Foundation, on the one hand, and the City, on the other.

32. The Foundation performed its obligations and satisfied all conditions precedent under the Amendment. The City, however, has absolutely repudiated its obligations under the Amendment. Specifically, the City repudiated its obligations under the Amendment by refusing to allow those third parties to construct the necessary vintage-style hangars on the Airport Property thus refusing to convey the Airport Property to the Foundation as was required under the Amendment. The City has further repudiated its obligations under the Amendment by disregarding its contract with the Foundation, seeking to impose additional restrictions upon the Foundation that were not part of the written agreement, and seeking additional consideration from the Foundation as an additional condition to the agreement.

33. The City’s repudiation was without just excuse and the Foundation has been damaged as a result.

34. As a direct and proximate result of the City’s anticipatory breach of the Amendment, the Foundation seeks specific performance of the City’s obligations under the Amendment and damages in an amount to be determined at trial, in addition to court costs and attorneys’ fees incurred.

35. The City does not have immunity from breach of contract because it was acting in its proprietary capacity when it entered into the Amendment. In the alternative if the City was working in its governmental capacity, pursuant to Texas Government Code § 271.152, the City has waived sovereign immunity to this suit for the purpose of adjudicating this anticipatory breach of contract claim because the City entered into a contract with the Foundation that is subject to Texas Government Code § 271 and that contract forms the basis of this claim.

36. Attorneys' Fees. The Foundation is entitled to recover reasonable attorneys' fees under Chapter 38 of the Texas Civil Practice & Remedies Code, because this suit is for anticipatory breach of a written contract. The Foundation has retained counsel, who presented the Foundation's claims to the City. The Foundation is entitled to an award of reasonable attorneys' fees in an amount to be proven at trial.

COUNT 3: Declaratory Judgment.

37. The Foundation realleges and incorporates by reference the preceding paragraphs for all purposes, the same as if set forth herein.

38. Pursuant to the Texas Uniform Declaratory Judgment Act and Chapter 37 of the Texas Civil Practice and Remedies Code, this Court is able to declare the rights, status, and other legal relations of the parties to this action with respect the Agreement.

39. A real and present controversy exists between the Foundation and the City regarding the interpretation of the Amendment and whether the City is obligated to convey ownership of the Ranger Airport and Airport Property to the Foundation upon the satisfaction of certain improvements.

40. 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.

41. Alternatively, pursuant to the Texas Uniform Declaratory Judgment Act, the Foundation seeks a further declaration from the Court that: (i) the City Commissioners acted outside their legal statutory authority in voiding the Amendment without first giving the Foundation notice of requirement for a 1295 Ethics Disclosure Form and providing the Foundation the opportunity to cure.

42. Alternatively, pursuant to the Texas Uniform Declaratory Judgment Act, the Foundation seeks a further declaration from the Court that: (i) the City Commissioners acted outside their legal or statutory authority in executing the Amendment and/or their actions were in violation of the City of Ranger Charter.

43. The City does not have immunity because it was acting in its proprietary capacity when it entered into the Amendment. In the alternative if the City was working in its governmental capacity, pursuant to Texas Government Code § 271.152, the City has waived sovereign immunity to this suit for the purpose of adjudicating a breach of contract claim, which therefore extends to adjudicating this declaratory judgment claim because the City entered into a contract with the Foundation that is subject to Texas Government Code § 271 and that contract forms the basis of the Foundation's claim.

44. Pursuant to Texas Civil Practice and Remedies Code § 37.009, the Foundation is entitled to recover its reasonable and necessary attorneys' fees and costs from the City.

VII. CONDITIONS PRECEDENT

45. All conditions precedent to the Foundation's claims for relief have been performed or have occurred.

VIII. REQUEST FOR RELIEF

The Foundation respectfully requests that this Court, upon final disposition of this matter, enter judgment against the City for the following relief:

- (A) Compensatory damages in an amount of be determined at trial;
- (B) Any other damages, including consequential and special damages;
- (C) Specific performance of the City's obligations under the Sections 1 and 2 of the Amendment;
- (D) A declaratory judgment 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;
- (E) Pre-judgment and Post-judgment interest on all sums at the maximum rate allowed by law;

(F) The Foundation's reasonable attorneys' fees and expenses incurred in the filing and prosecution of this action;

(G) All costs of court;

(H) Any and all costs and reasonable attorneys' fees incurred in any and all related appeals and collateral actions (if any); and

(I) Such other relief to which is Court deems the Foundation is justly entitled.

Dated: August 10, 2023

Respectfully submitted,

/s/ Schyler P. Parker

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**ATTORNEYS FOR PLAINTIFF RANGER
AIRFIELD MAINTENANCE FOUNDATION**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on all counsel pursuant to the Texas Rules of Civil Procedure on August 10, 2023.

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Counsel for Defendant City of Ranger, Texas

/s/ Schyler P. Parker

Schyler P. Parker

EXHIBIT A

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 81 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

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

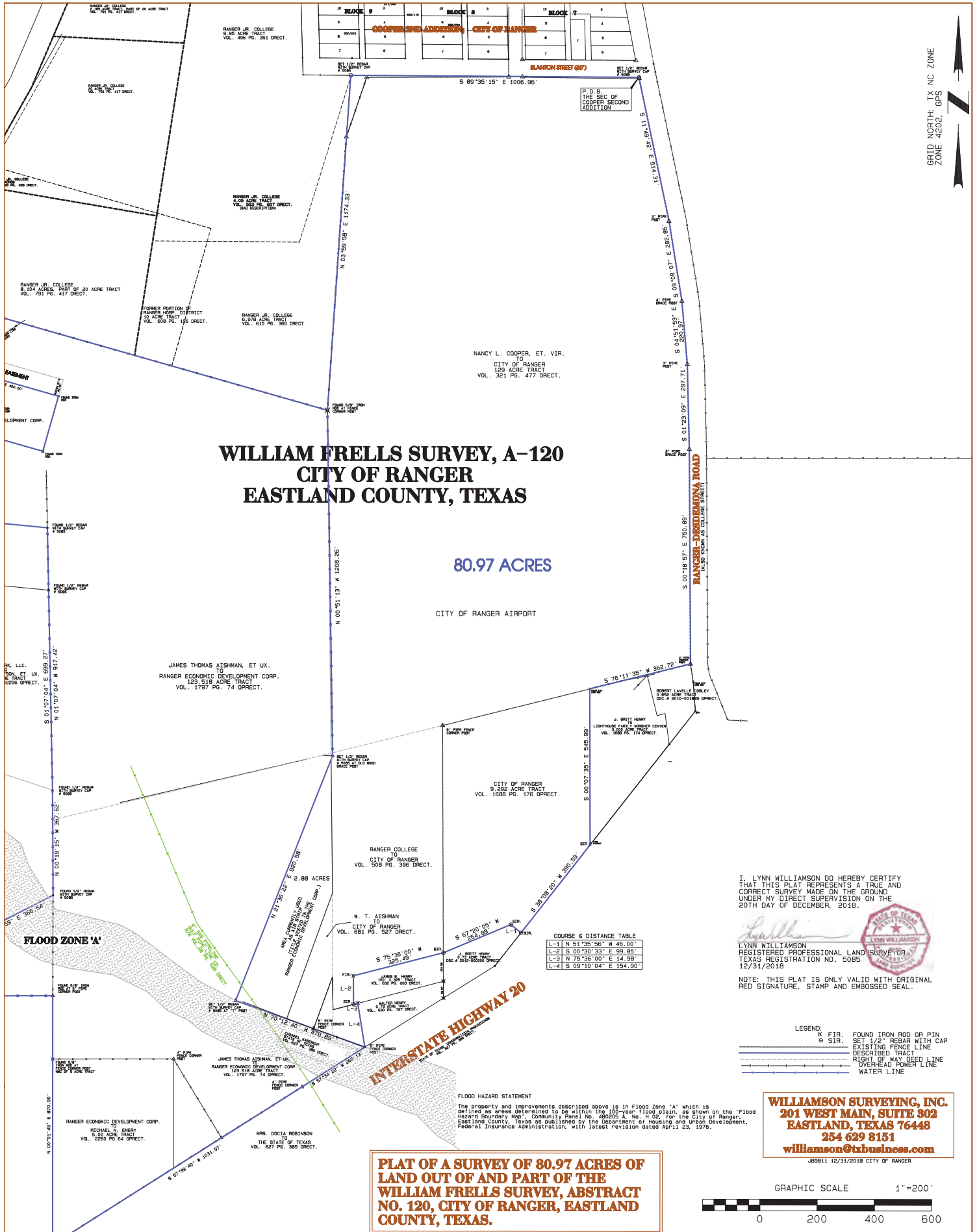
By: [Signature]
Name: JARED CALVERT
Title: DIRECTOR RAMP

Attest:

[Signature]
[Signature] City Secretary



GRID NORTH: TX NC ZONE
ZONE 4202, GPS



**WILLIAM FRELLS SURVEY, A-120
CITY OF RANGER
EASTLAND COUNTY, TEXAS**

80.97 ACRES

CITY OF RANGER AIRPORT

FLOOD ZONE 'A'

INTERSTATE HIGHWAY 20

FLOOD HAZARD STATEMENT

The property and improvements described above is in Flood Zone "A" which is defined as areas determined to be within the 100-year flood plain, as shown on the "Flood Hazard Boundary Map", Community Panel No. 480205 A, No. H 02, for the City of Ranger, Eastland County, Texas as published by the Department of Housing and Urban Development, Federal Insurance Administration, with latest revision dated April 23, 1976.

I, LYNN WILLIAMSON DO HEREBY CERTIFY THAT THIS PLAT REPRESENTS A TRUE AND CORRECT SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION ON THE 20TH DAY OF DECEMBER, 2018.

Lynn Williamson
 LYNN WILLIAMSON
 REGISTERED PROFESSIONAL LAND SURVEYOR
 TEXAS REGISTRATION NO. 5085
 12/31/2018

NOTE: THIS PLAT IS ONLY VALID WITH ORIGINAL RED SIGNATURE, STAMP AND EMBOSSED SEAL.

- LEGEND:
- ⊗ FIR FOUND IRON ROD OR PIN
 - ⊙ SIR SET 1/2" REBAR WITH CAP
 - EXISTING FENCE LINE
 - - - DESCRIBED TRACT
 - RIGHT OF WAY DEED LINE
 - OVERHEAD POWER LINE
 - WATER LINE

COURSE & DISTANCE TABLE

L-1	N 51°35'56" W	46.00'
L-2	S 00°30'33" E	99.85'
L-3	N 75°36'00" E	14.98'
L-4	S 09°10'04" E	154.90'

PLAT OF A SURVEY OF 80.97 ACRES OF LAND OUT OF AND PART OF THE WILLIAM FRELLS SURVEY, ABSTRACT NO. 120, CITY OF RANGER, EASTLAND COUNTY, TEXAS.

WILLIAMSON SURVEYING, INC.
 201 WEST MAIN, SUITE 302
 EASTLAND, TEXAS 76448
 254 629 8151
 williamson@txbusiness.com

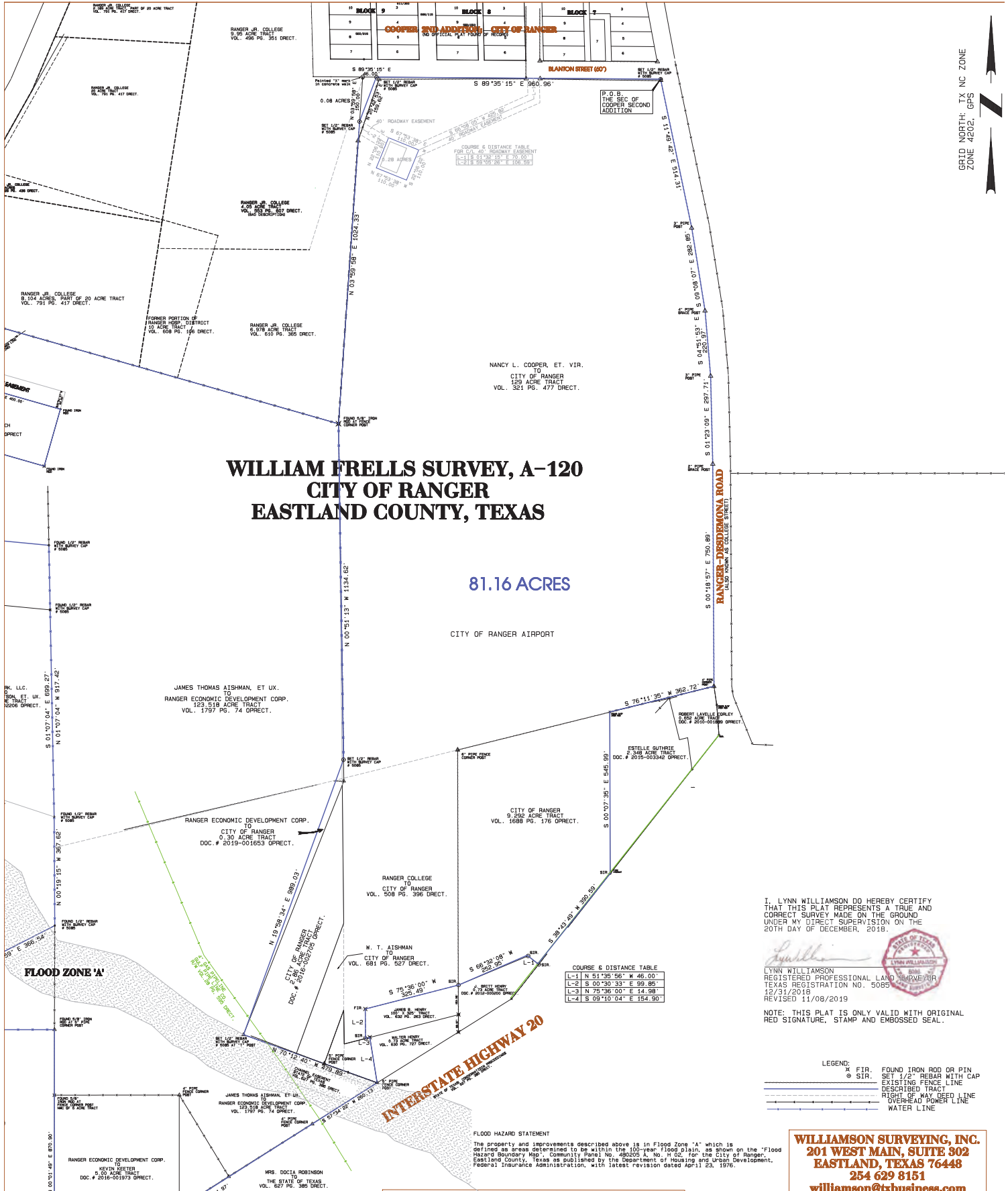
JB9811 12/31/2018 CITY OF RANGER

GRAPHIC SCALE 1"=200'



EXHIBIT B

Exhibit "A"



PLAT OF A SURVEY OF 81.16 ACRES OF LAND OUT OF AND PART OF THE WILLIAM FRELLS SURVEY, ABSTRACT NO. 120, CITY OF RANGER, EASTLAND COUNTY, TEXAS.

COURSE & DISTANCE TABLE

L-1	N 51°35'56" W 46.00'
L-2	S 00°30'33" E 99.85'
L-3	N 75°36'00" E 14.98'
L-4	S 09°10'04" E 154.90'

I, LYNN WILLIAMSON DO HEREBY CERTIFY THAT THIS PLAT REPRESENTS A TRUE AND CORRECT SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION ON THE 20TH DAY OF DECEMBER, 2019.

Lynn Williamson
 LYNN WILLIAMSON
 REGISTERED PROFESSIONAL LAND SURVEYOR
 TEXAS REGISTRATION NO. 5085
 12/31/2018
 REVISED 11/08/2019

NOTE: THIS PLAT IS ONLY VALID WITH ORIGINAL RED SIGNATURE, STAMP AND EMBOSSED SEAL.

- LEGEND:
- ⊕ FIR FOUND IRON ROD OR PIN SET 1/2" REBAR WITH CAP
 - EXISTING FENCE LINE
 - - - DESCRIBED TRACT
 - RIGHT OF WAY DEED LINE
 - OVERHEAD POWER LINE
 - WATER LINE

WILLIAMSON SURVEYING, INC.
 201 WEST MAIN, SUITE 302
 EASTLAND, TEXAS 76448
 254 629 8151
 williamson@txbusiness.com

GRAPHIC SCALE 1"=200'



EXHIBIT C

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 hangar 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

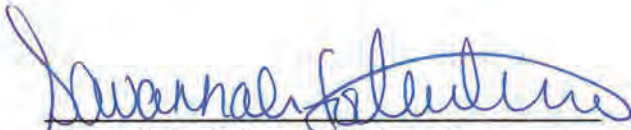


John Casey, Mayor
DATE: 4-7-2022

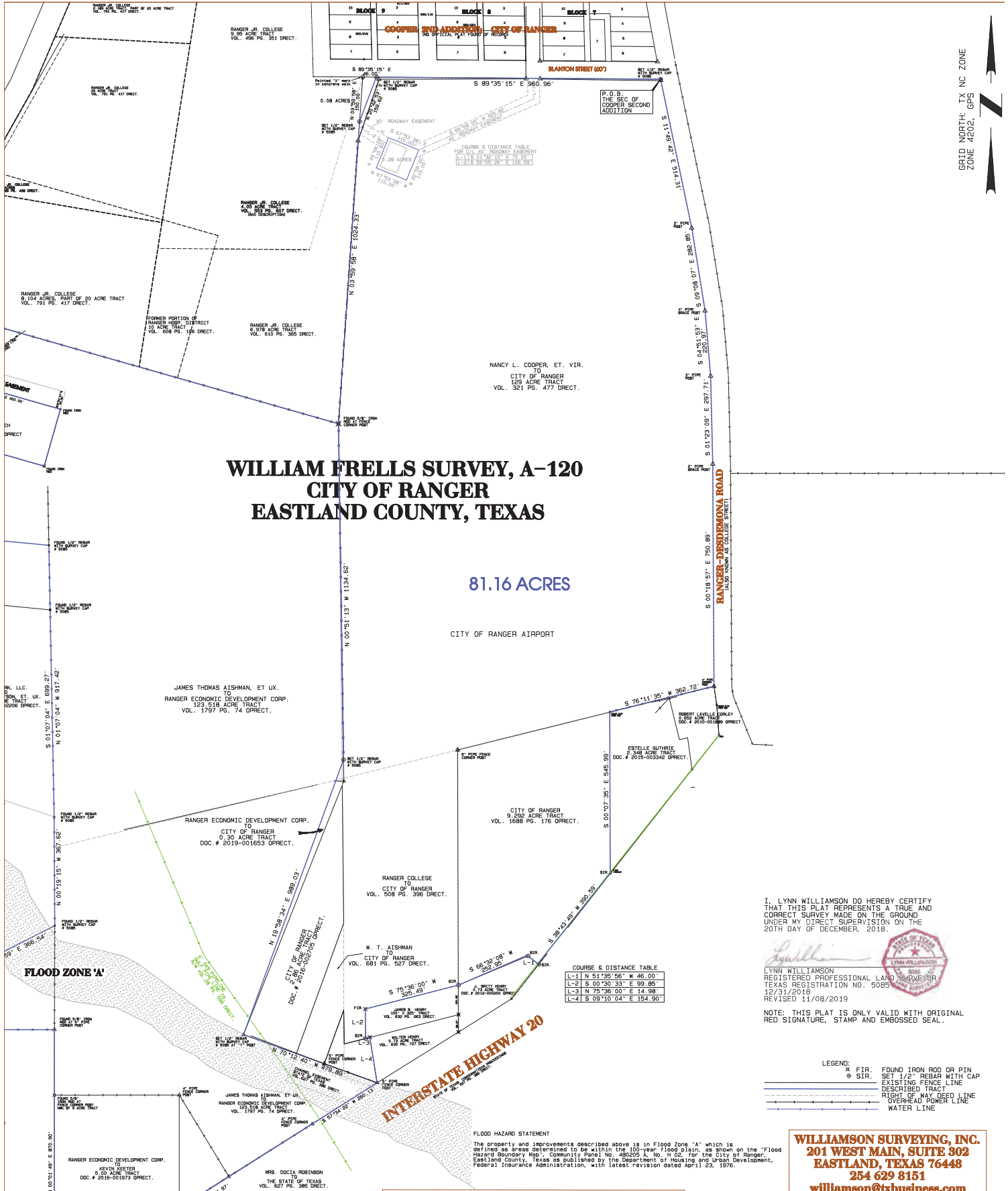


Jared Calvert,
DATE: 4.7.22

ATTEST:



Savannah Fortenberry, City Secretary



**WILLIAM FRELLS SURVEY, A-120
CITY OF RANGER
EASTLAND COUNTY, TEXAS**

81.16 ACRES

CITY OF RANGER AIRPORT

RANGER - FREEDMONA ROAD
ALSO KNOWN AS COLLEGE STREET

INTERSTATE HIGHWAY 20

COURSE & DISTANCE TABLE

L-1	N 51°35'56" W 46.00'
L-2	S 00°30'33" E 99.85'
L-3	N 75°36'00" E 14.98'
L-4	S 09°10'04" E 154.90'

I, LYNN WILLIAMSON DO HEREBY CERTIFY THAT THIS PLAT REPRESENTS A TRUE AND CORRECT SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION ON THE 20TH DAY OF DECEMBER, 2019.

Lynn Williamson
 LYNN WILLIAMSON
 REGISTERED PROFESSIONAL LAND SURVEYOR
 TEXAS REGISTRATION NO. 5085
 12/31/2018
 REVISED 11/08/2019

NOTE: THIS PLAT IS ONLY VALID WITH ORIGINAL RED SIGNATURE, STAMP AND EMBOSSED SEAL.

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 --- WATER LINE

FLOOD HAZARD STATEMENT
 The property and improvements described above is in Flood Zone "A" which is defined as areas determined to be within the 100-year Flood plain as shown on the "Flood Hazard Boundary Map" Community Panel No. 480205 A, No. 1162 for the City of Ranger, Eastland County, Texas as published by the Department of Housing and Urban Development, Federal Insurance Administration, with latest revision dated April 23, 1976.

PLAT OF A SURVEY OF 81.16 ACRES OF LAND OUT OF AND PART OF THE WILLIAM FRELLS SURVEY, ABSTRACT NO. 120, CITY OF RANGER, EASTLAND COUNTY, TEXAS.

WILLIAMSON SURVEYING, INC.
 201 WEST MAIN, SUITE 302
 EASTLAND, TEXAS 76448
 254 629 8151
 williamson@txbusiness.com

GRAPHIC SCALE 1"=200'



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.

Barbara Morgan on behalf of Camille Youngblood
 Bar No. 24110568
 barb.morgan@wickphillips.com
 Envelope ID: 78405185
 Filing Code Description: Amended Filing
 Filing Description: Plaintiff's First Amended Petition
 Status as of 8/11/2023 9:28 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Samantha Tandy		samantha.tandy@wickphillips.com	8/10/2023 1:42:59 PM	SENT
Arturo D. Rodriguez	791551	art@txmunicipallaw.com	8/10/2023 1:42:59 PM	SENT
Jacob Fain		jacob.fain@wickphillips.com	8/10/2023 1:42:59 PM	SENT
Schylar Parker		schylar.parker@wickphillips.com	8/10/2023 1:42:59 PM	SENT
Gwen Gonzales		gwen.gonzales@wickphillips.com	8/10/2023 1:42:59 PM	SENT
Deva Bruce		deva@txmunicipallaw.com	8/10/2023 1:42:59 PM	SENT
Megan Servage		megan.servage@wickphillips.com	8/10/2023 1:42:59 PM	SENT
Brad Bullock		brad@txmunicipallaw.com	8/10/2023 1:42:59 PM	SENT
Lindsay Askew		laskew@txmunicipallaw.com	8/10/2023 1:42:59 PM	SENT
McKenzie Farley		mckenzie.farley@wickphillips.com	8/10/2023 1:42:59 PM	SENT
W.H. "Bill" Hoffmann		hoff2@sbcglobal.net	8/10/2023 1:42:59 PM	SENT

CAUSE NO. CV2246534

RANGER AIRFIELD MAINTENANCE	§	IN THE DISTRICT COURT OF
FOUNDATION,	§	
	§	
Plaintiff,	§	
	§	
V.	§	91ST JUDICIAL DISTRICT
	§	
CITY OF RANGER, A TEXAS	§	
MUNICIPAL CORPORATION,	§	
	§	
Defendant.	§	EASTLAND COUNTY, TEXAS
	§	

CITY OF RANGER’S NOTICE OF INTERLOCUTORY APPEAL

COMES NOW the City of Ranger, (“Ranger” or “City”), Defendant, and files this notice of interlocutory appeal from the denial of Defendant’s plea to the jurisdiction in the above-referenced matter.

The judgment was signed on August 17, 2023.

The name of the party bringing the appeal is the City of Ranger, Texas.

The City of Ranger, Texas desires to appeal to the Texas Eleventh Court of Appeals and hereby gives Notice of Appeal.

Respectfully submitted,

/s/ Bradford E. Bullock
Bradford E. Bullock
 State Bar No. 00793423
brad@txmunicipallaw.com

Arturo D. Rodriguez, Jr.
 State Bar No. 00791551
art@txmunicipallaw.com
 Messer & Fort, PLLC
 4201 W. Parmer Ln, Ste. C-150
 512.903.1317 – Telephone
 972.668.6414 – Facsimile
COUNSEL FOR DEFENDANT

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 5th day of September, 2023 addressed to:

Jacob T. Fain
State Bar No. 24053747
jacob.fain@wickphillips.com *Via e-file*

Schyler P. Parker
State Bar No. 24092937
schyler.parker@wickphillips.com *Via e-file*

Megan E. Servage
State Bar No. 24110347
megan.servage@wickphillips.com *Via e-file*

WICK PHILLIPS GOULD & MARTIN LLP
100 Throckmorton Street, Suite 1500
Fort Worth, Texas 76102
Telephone: 817.710.1011
Telecopier: 817.332.7789

W.H. "Bill" Hoffmann, Jr.
State Bar No. 9791500
hoff2@sbcglobal.net *Via e-file*

HOFFMANN LAW OFFICE
115 E. Main St.
P.O. Box 875
Eastland, Texas 76448
Telephone: 254.629.2679

ATTORNEYS FOR PLAINTIFF

Automated Certificate of eService

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Lindsay Askew on behalf of Bradford Bullock
 Bar No. 793423
 laskew@txmunicipallaw.com
 Envelope ID: 79205336
 Filing Code Description: Notice of Appeal
 Filing Description: Notice of Appeal
 Status as of 9/6/2023 8:08 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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Lindsay Askew on behalf of Bradford Bullock
Bar No. 793423
laskew@txmunicipallaw.com
Envelope ID: 80946857
Filing Code Description: Brief Requesting Oral Argument
Filing Description: Brief Requesting Oral Argument
Status as of 10/25/2023 10:50 AM CST

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