

**CITY OF LAGO VISTA, TEXAS**

**RESOLUTION NO. 15-1600**

**A RESOLUTION BY THE CITY COUNCIL OF LAGO VISTA, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH RODGERS-PENN INVESTMENTS TO ALLOW THE CITY TO CLEARCUT A PORTION OF THE PROPERTY CONSISTING OF 4.6 ACRES FOR PURPOSES OF AIRPORT SAFETY.**

**WHEREAS**, the City of Lago Vista, Texas ("City") owns and operates the Rusty Allen Airport ("Airport"), home to over 59 based aircraft and providing various other services to airplanes;

**WHEREAS**, as part of the required operation and maintenance, the City Council reviews the Airport's needs and safety issues and has been informed that vegetative obstacles exist at the north end of the runway that may hamper safe operations at the Airport,

**WHEREAS**, personnel from the City have contacted the owners of the property where the obstacles exist to discuss the safety needs of the Airport and desire to remedy such concerns; and

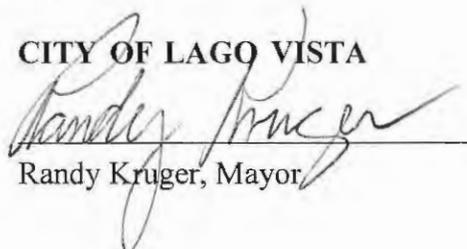
**WHEREAS**, the owners of the property, Rodgers-Penn Investments are in agreement in allowing the City to clearcut the vegetation existing on a 4.6 acres portion of the property;

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Lago Vista, Texas hereby directs the City Manager to execute on behalf of the City of Lago Vista, an agreement with the owner of the Property in question, Rodgers-Penn Investments, to allow the City to undertake clearcutting the vegetation within a 200' x 1,000' strip, an approximately 4.6 acre portion of the overall property, as more properly shown on Exhibit A, attached hereto and incorporated herein for all purposes.

**AND, IT IS SO RESOLVED.**

**PASSED AND APPROVED** this 19<sup>th</sup> day of February 2015.

**CITY OF LAGO VISTA**

  
Randy Kruger, Mayor

**ATTEST:**

  
Belinda Kneblick, Assistant City Secretary

On a motion by Council Member D'Anne Gloris, seconded by Council Member Ed Tidwill, the above and foregoing instrument was passed and approved.

## ACCESS AGREEMENT FOR VEGETATION REMOVAL

THIS AGREEMENT ("Agreement") is made as of the 25 day of February, 2015 ("Effective Date"), by and between **Rodgers Penn Investments, a Texas family partnership**, whose address is PO Box 4625, Lago Vista, Texas 78645 ("Landowner"); and **the City of Lago Vista, a home rule municipal corporation** whose address is 5803 Thunderbird Street, Lago Vista, Texas 78645-5864 (the "City") (collectively, "the Parties").

### WITNESSETH:

WHEREAS, Landowner owns approximately 1,924 acres of land whose legal description is FM 1431 ABS. 46 SUR. 1 \*# VAR. SUR. BRANDON WM 1924.020 (1-D-1W) located at 21650 FM 1431, Lago Vista, Texas 78645 (the "Property"); and

WHEREAS, the City wishes to enter the Property to perform airport safety activities, namely removal of foliage and trees ("vegetation removal") that may impact and/or impede the approach or take off of the airplanes that use the Rusty Allen Airport (all such activities collectively defined as the "Work");

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Access. Landowner hereby grants to the City and its authorized consultants, contractors, representatives and agents the right of entry in, across, and over the Property to do the Work, expressly subject to City's performance of its obligations hereunder and to all existing easements and encumbrances.

The Property is the sole responsibility of the Landowner, who has knowledge of the applicable laws that may impact the Work. Landowner has informed the City that the Work on the Property is within the guidelines of the owner(s) wildlife protection program as well as the guidelines for the Balconies Canyonland Refuge. Owner shall also be responsible for notifying City of any permits or other authorizations that Owner understands may be required to perform such vegetation removal, as well as assisting City with obtaining any such required permits. Should it be determined by any entity that has regulatory and/or enforcement authority concerning any portion of the Property that the Work would touch or have access to, including the Wildlife Protection Program, the US Fish and Wildlife Guidelines for the Balcones Canyonland Refuge, or other environmental or conservation program established by Travis County, EPA, and/or TCEQ, that any laws or regulations have been violated by the actions of the City in performing these services, Owner shall indemnify City for any claims or damages so long as City has acted within the parameters of this Agreement.

The Work is the sole responsibility of the City and shall be performed in compliance with all applicable laws. The City agrees that no foliage or trees shall be cut or removed without express permission of the Landowner. The City shall set the geographic boundaries in which

City's Contractors may perform the Work, with the final consultation and approval of the Landowner. Establishment of the boundaries shall occur within seven (7) days of the execution of this Agreement.

The City shall have such Project completed by a Contractor who shall perform such Work in compliance with all applicable laws. Such laws include, without limitation, applicable environmental, health, and safety laws, rules, regulations or legally binding published policies of governmental entities; all applicable laws pertaining to the Work; and all applicable laws pertaining to the disposal of all waste generated by the Work.

The City agrees that it shall use only properly licensed and bonded Contractor to perform the Work and that such Contractor(s) shall enter into an agreement with the City to cover such items as damages, liability, claims, as well as timeframes and necessary permits, which City shall provide a copy to Owner. City shall review all insurance and bonds and shall provide a copy of such to Owner as well.

During its access, the City shall restrict access to or disturb only such parts of the Property as may be deemed necessary by the City or required by law to facilitate implementation of the Work and to protect the health and safety of the public and all persons present at the Property.

All Work shall be accomplished by March 14, 2015. The Work is to be performed at reasonable times and in a manner that will not unreasonably interfere with the Owner's uses of the Property. The City shall contact Owner's representative, Mr. Tom Penn, at least 48 hours in advance of the vegetation removal by written, verbal or E-mailed notice of request for access to the Property. The equipment shall enter upon the Property at a mutually agreed upon location and begin such Work at the location indicated in advance by the City. All Work shall be performed between the hours of 8:00 o'clock a.m. to 5:00 o'clock p.m. on regular business days unless otherwise approved by the Landowner.

Upon completion of Work, the City shall ensure that its Contractor removes all debris caused by performance of the Work or the equipment brought upon the Property and repairs any fences cut or damaged by the Contractor during the performance of the Work. Within three (3) days after being informed that the Contractor's cleanup has occurred, Landowner shall walkthrough and signoff that all site restoration has been completed to Landowner's satisfaction.

**2. INDEMNITY. The City, to the extent authorized by law, shall indemnify, defend and hold harmless Landowner and its executor and agents (collectively, "Indemnitees") for, from and against any and all claims and liabilities relating to bodily injury or property damage, arising out of, resulting from or related to any failure by the City to properly perform the Work in accordance with this Agreement, or negligence or willful misconduct of the City or its officers, agents, employees, consultants or contractors related to this Agreement and the Work.**

**3. Term and Survival. The access provisions of this Agreement shall expire six (6) months after the Effective Date; provisions other than the access rights shall survive the**

completion of the Work. Notwithstanding the foregoing, Landowner may terminate the City's access rights at any time should the City fail to comply with the terms of this Agreement.

4. Standard of Care. All Work shall be performed by the City, its consultants, contractors, agents and representatives, in accordance with generally accepted industry standards of care, skill, diligence, and professional competence applicable to the City and its consultants and contractors. The City shall fully inform and advise any consultants and contractors hired by it with respect to the Work of the provisions contained in this Agreement. The City will not enter into any agreements with any such consultants or contractors that are inconsistent with the provisions hereof, and will ensure that the Work is performed in accordance with the provisions of this Agreement. The City shall be solely responsible for the fees of the City's consultants or contractors. The term "contractor(s)" as used throughout this Agreement shall include contractors and subcontractors of any tier.

5. Liens. The City shall save and keep the Property free from all mechanics' and materialmen's liens, and all other liens or claims, legal or equitable, arising out of the Work hereunder. In the event any lien or claim is filed by anyone claiming by, through, or under City, the City shall remove and discharge same within ten (10) days of the filing thereof.

6. Governing Law; Jurisdiction and Venue. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS PERFORMABLE IN TRAVIS COUNTY, TEXAS AND HEREBY SUBMIT TO THE JURISDICTION OF THE COURTS OF THAT COUNTY, AND HEREBY AGREE THAT ANY SUCH COURT SHALL BE A PROPER FORUM FOR THE DETERMINATION OF ANY DISPUTE ARISING HEREUNDER.

7. Parties' Relationship. This Agreement is entered into solely to provide for the performance of the Work and to define the rights, obligations, and liabilities of the Parties thereto. Nothing contained in this Agreement or otherwise inferable therefrom shall be deemed or construed (1) to make City the agent, servant, or employee of Landowner, or (2) to create any partnership, joint venture, or other association between Landowner and the City.

8. Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements or understandings with respect to the subject matter contained herein.

9. Successors and Assigns. This Agreement is personal to the City and shall inure to the benefit of, and be binding upon, the City, Landowner and their respective legal representatives, successors and permitted assigns. Neither Party may assign this Agreement without the express written consent of the other Party.

10. Notices. All notices, requests, demands or other communications hereunder shall be in writing and, addressed as follows:

If to the Landowner: Rodgers Penn Investments  
Attn: Mr. Tom Penn  
P.O. Box 4625

Lago Vista, Texas 78645

If to City: The City of Lago Vista  
Attn: City Manager  
5803 Thunderbird Drive  
Lago Vista, Texas 78645

Except for the notice of access required in Section 1, all notices, requests, demands, and communications must be in writing and shall be deemed to have been given if delivered by hand, or sent by telecopy or facsimile, or sent by United States mail, first class, registered or certified, return receipt requested, with proper postage prepaid. Notice of access required in Section 1 may be verbal, E-mailed, or in writing and shall be deemed to have been given at the time of receipt of the notice by Landowner's representative, Mr. Tom Penn. Mr. Tom Penn affirms that he has full authority to enter into this Agreement for and on behalf of the Landowner.

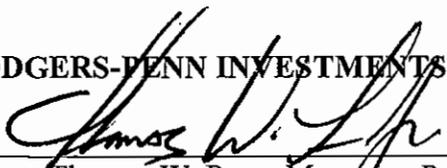
11. Construction. The Parties acknowledge that each Party and, if it so chooses, its counsel, have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this Agreement, the term "including" means "including without limitation" and, unless otherwise specified, the term "days" means calendar days, not business days. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.

12. Conflicts. In the event of a conflict between this Agreement and any other agreement relating to the Work, the provision of this Agreement shall control.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other party, it being understood that all Parties need not sign the same counterparts; all of such counterparts shall together constitute one and the same instrument. The Parties agree that facsimile copies of this Agreement shall be deemed to be the equivalent of originals.

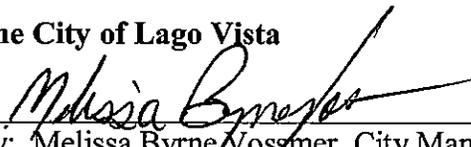
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in the manner appropriate to each, effective as of the date referenced in the first paragraph hereof.

**RODGERS-PENN INVESTMENTS, a Texas Family Partnership**

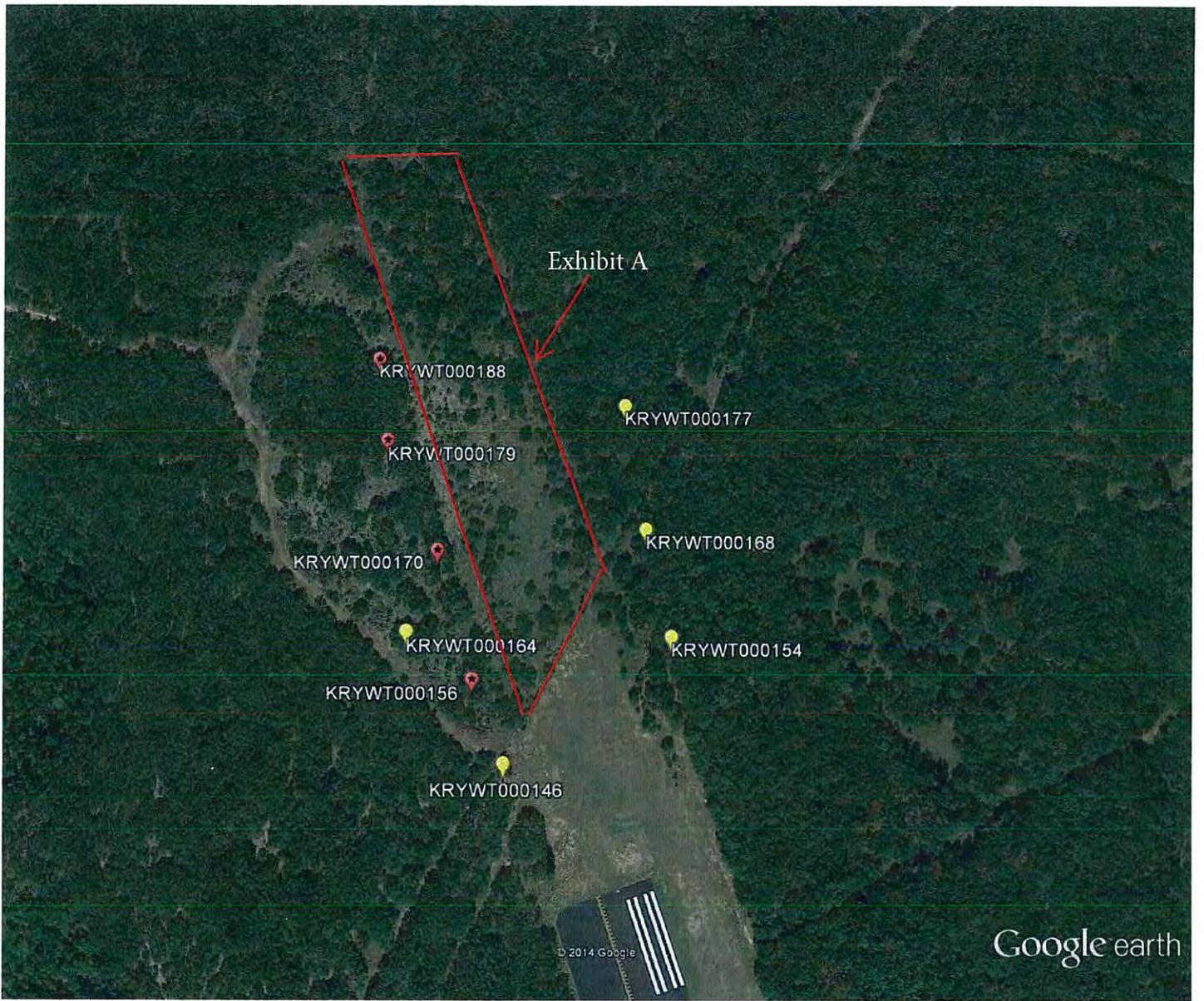
  
By: Thomas W. Penn, Managing Partner

Date Signed: 2/25/2015

The City of Lago Vista

  
By: Melissa Byrne Vossmer, City Manager

Date Signed: 2/07/15



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