

Wilson, Lara**From:** James R. Carpenter [jim@carpenteraustin.com]**Sent:** Tuesday, September 01, 2009 5:06 PM**To:** McDonald, Ronnie ; Dildy, Lee**Cc:** Joe Ternus**Subject:** FW: Central Texas Airport**Attachments:** Bastrop County.DOC

Judge, Commissioner Dildy;

Attached is the email with the DRAFT 381 AGREEMENT that we have prepared. This draft is updated from the original form we used in our meeting on both Villa Muse and Central Texas Airport in Fulbright Jaworski offices.

As you can see below Bill Newman and Tom Pollan have each been emailed this document. No one else outside our group or from Bastrop County has received it; as we leave that to your direction. We stand ready to answer any questions or meet at your convenience.

Jim Carpenter
President

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From: Kyle, Jerry [mailto:JerryKyle@andrewskurth.com]**Sent:** Tuesday, September 01, 2009 4:04 PM

To: Bill Newman; Tom Pollan; Garry Kimball; James R. Carpenter; Jerry Hooper;
darin@carpenteraustin.com; Kurt Hudspeth; Walter Tacquard; Doyle Perkinson;
PLindner@davidsontrillo.com; Stephen Carpenter

Cc: Dillard, William**Subject:** Central Texas Airport

As discussed at our meeting on August 17, attached please find a proposed draft economic development agreement relating to the referenced development. Please provide any comments and call with any questions at your earliest convenience. Thanks.

<< Bastrop County.DOC>>

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10/21/2010

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CHAPTER 381 ECONOMIC DEVELOPMENT AGREEMENT
BASTROP COUNTY, TEXAS AND CENTRAL TEXAS AIRPORT, LLC

This Chapter 381 Economic Development Agreement ("Agreement") is entered into by and between Bastrop County, Texas, a political subdivision of the State of Texas ("County"), and Central Texas Airport, LLC, a limited liability company organized under the laws of the State of Texas ("Company").

RECITALS

WHEREAS, Section 381.004, Texas Local Government Code, authorizes counties to develop and administer community and economic development programs to stimulate business location and commercial activity in a county;

WHEREAS, it is the intent of County and Company that, as a result of Company's development under this Agreement, business and commercial activity in Bastrop County will be stimulated, and commercial activity will be encouraged, developed and stimulated, producing additional tax revenue, job opportunities, affordable housing and business opportunities in and for the County;

WHEREAS, Company has stated that the Project (as defined herein) would not be completed without County and Company entering into this Agreement on the terms set forth herein;

WHEREAS, the Commissioners Court finds that the Project will result in substantial immediate and long-term benefit to Bastrop County and significant financial benefit to other taxing entities within Bastrop County and will promote state and local economic development, and that the Project will stimulate economic development within an area of Bastrop County that is or has been considered to be economically disadvantaged; and

WHEREAS, the Company has stated and the Commissioners Court finds that the Project will be available for use (and the Project will be used) by the public in a manner that will fulfill an essential community purpose.

NOW, THEREFORE, in consideration of the hereinafter set forth agreements, covenants, reimbursements and payments, the amount and sufficiency of which are acknowledged, County and Company agree to the terms and conditions stated in this Agreement.

Section 1. Definitions. In this Agreement, the following capitalized terms shall have the meanings stated below, unless context clearly otherwise requires.

(a) "Ad Valorem Grant" has the meaning set forth in Subsection 4(a)(ii).

(b) "Airport" means (i) an area used or intended for use for the landing and takeoff of aircraft, (ii) any appurtenant areas used or intended for use for airport buildings or other airport facilities or right-of-way (iii) any airport buildings or facilities located on an appurtenant area and (iv) any related operations, business and purposes.

(c) "Airport Improvements" means those certain Airport-related improvements to be constructed as part of the Project, which are generally described under the heading "Airport" on Exhibit B attached to this Agreement.

(d) "Base Year Regular Ad Valorem Taxes" means the aggregate of all Regular Ad Valorem Taxes collected by County for the 2009 property tax year with respect to the Project.

(e) "Base Year County Sales and Use Taxes" means the aggregate of all County Sales and Use Taxes collected by County on account of taxable transactions in, on or from the Project during calendar year 2009.

(f) "BCAD" means the Bastrop Central Appraisal District.

(g) "Commence" means that a notice to proceed to construct improvements has been delivered to a contractor.

(h) "Commercial Improvements" means the commercial improvements to be constructed within the Project, which are generally described on Exhibit B attached to this Agreement under the heading "Commercial Improvements."

(i) "Commissioners Court" means Bastrop County Commissioners Court.

(j) "Completed" means that improvements have been constructed and are ready and able to be occupied for the intended use of such improvements.

(k) "Comptroller" means the Texas Comptroller of Public Accounts.

(l) "County Auditor" means Lisa Smith, the Bastrop County Auditor, or her successor.

(m) "County Responsible Office" means [the Office of the County Auditor].

(n) "County Sales and Use Taxes" means, with respect to any calendar year or portion thereof referenced, any and all sales and use taxes remitted to County by the Comptroller with respect to any and all transactions in, on or from the Project during said tax year or portion thereof referenced, including, without limitation, sales and use taxes remitted to County as the result of County's imposition of a county sales and use tax pursuant to the County Sales and Use Tax Act (Texas Tax Code, Chapter 323), the County Development District Act (Texas Local Government Code, Chapter 383), or any other law that authorizes the collection of a sales and use taxes by the County, and any modifications, amendments, supplements, replacements or modifications to any of them.

(o) "Effective Date" means the date that the latter of County and Company has fully executed this Agreement.

(p) "Governmental Authority" means any Federal, State, or local governmental entity having jurisdiction.

(q) "Governmental Rule" means any applicable law, rule or regulation of a Governmental Authority.

(r) "Infrastructure Agency" means, collectively, any state agency, authority or board, or any political subdivision, authority, public corporation, body politic, or governmental instrumentality, and any nonprofit corporation acting on behalf of or as an instrumentality of any of those entities.

(s) "Infrastructure Improvements" means the improvements to be constructed within the Project, which are generally described on Exhibit B attached to this Agreement under the heading "Infrastructure Improvements."

(t) "Parties" means collectively the County and Company, and "Party" means the County or Company, as the case may be.

(u) "Phase One of the Airport Improvements" means that portion of the Airport Improvements described as such on Exhibit A attached hereto.

(v) "Phase One of the Commercial Improvements" means that portion of the Commercial Improvements described as such on Exhibit A attached hereto.

(w) "Program Grant" means any of the grants to be paid to Company by County under or pursuant to this Agreement and includes Ad Valorem Grants and Sales and Use Grants.

(x) "Program Grant Funds" means all money to be paid to Company pursuant to the terms of this Agreement.

(y) "Program Grant Term" means the period beginning on [January 1, 2010] and ending on the Termination Date of this Agreement.

(z) "Project" means the Property and the proposed development contemplated to be constructed and installed in, on, under, through, across and within the Property, including, without limitation, an Airport, Commercial Improvements, Infrastructure Improvements and any additional or supporting improvements, facilities and equipment hereafter constructed on the Property.

(aa) "Property" means the land on which the Project will be developed as described on Exhibit A attached to this Agreement.

(bb) "Regular Ad Valorem Taxes" means with respect to any property tax year all ad valorem property taxes collected by County on Taxable Property for that tax year other than "Special Road and Bridge Ad Valorem Taxes" and "Rollback Ad Valorem Taxes" collected that year.

(cc) "Rollback Ad Valorem Grant" has the meaning set forth in Subsection 4(a)(i).

(dd) "Rollback Ad Valorem Taxes" means with respect to any property tax year, all ad valorem property taxes collected by County on Taxable Property for that tax year because during that tax year the Taxable Property became ineligible to be valued pursuant to one or more of Subchapters C, D, E, F, G or H of Chapter 23 of the Texas Tax Code.

(ee) "Sales and Use Grant" has the meaning set forth in Subsection 4(a)(iii).

(ff) "Special Road and Bridge Ad Valorem Taxes" means with respect to any property tax year, all ad valorem taxes collected by the County on Taxable Property for that tax year pursuant to Article VIII, Section 9, Texas Constitution, and Section 256.052, Texas Transportation Code, for the further maintenance of county roads.

(gg) "Taxable Property" means all taxable real and personal property (including (1) aircraft, (2) facilities and equipment used to repair, maintain, operate, service, equip and improve aircraft or to support other aviation-related activities and (3) other business use property) located in the Project which is subject to a levy of Regular Ad Valorem Taxes by County.

(hh) "Taxable Transactions" means all transactions in the Project which are subject to assessment for County Sales and Use Taxes.

(ii) "Termination Date" means December 31, 2039.

(jj) "Term of this Agreement" means the period described in Section 2(d).

Section 2. General Terms.

(a) **Statutory Authorization.** County is authorized to enter into this Agreement under Section 381.004, Texas Local Government Code, in order to stimulate, encourage and develop business location and commercial activity in Bastrop County, Texas.

(b) **Purpose.** The purpose of this Agreement is to make certain grants to Company and to agree with Company on certain additional matters all in order to stimulate and encourage business location and commercial activity in Bastrop County, to create more job opportunities in Bastrop County and the State of Texas, to build the sales and property tax base of Bastrop County and promote a cooperative relationship with the private sector businesses that will bring capital intensive, job creating or both projects to Bastrop County.

(c) **Findings.** The Commissioners Court finds that the terms of this Agreement and the Project (a) constitute a program for state and local economic development and to stimulate, encourage, and develop business location and commercial activity and (b) will result in substantial immediate and long-term financial benefit to Bastrop County and significant financial benefit to other taxing entities within Bastrop County and to the State of Texas. The Commissioners Court also finds that the development of the Project as described herein will stimulate economic development

within an area of Bastrop County which is or has been considered to be economically disadvantaged as determined by the Commissioners Court.

(d) Term of this Agreement. County and Company acknowledge and agree that, unless earlier terminated by the Parties pursuant to the provisions of this Agreement, the "Term of this Agreement" shall commence on the Effective Date and continue until such period of time has expired after the Termination Date as shall be necessary to include the time required to compute and pay the amount of any Program Grant Funds which cannot be determined and paid to Company on or prior to the Termination Date. Notwithstanding that the Term of this Agreement may extend beyond the Termination Date, the Program Grant Term shall not be so extended.

(e) Administration of Agreement. This Agreement shall be administered for County by the County Responsible Office, and all information provided by Company and County to the other shall be provided through the County Responsible Office.

Section 3. Entire Agreement.

(a) All Agreements. All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

(b) Recitals. All recitals set forth above are incorporated herein by reference for all purposes.

(c) Attachments. All attachments attached to this Agreement, as listed below, are incorporated herein for all purposes:

- (i) Exhibit A – Property
- (ii) Exhibit B – General Description of the Project

Section 4. Program Grants.

(a) Program Grant. Subject to, and pursuant to the terms and conditions set forth in, this Agreement, County agrees to make grants to the Company and County does hereby grant to the Company the following amounts:

- (i) Rollback Ad Valorem Grants. County hereby grants to and County shall pay to Company an amount equal to seventy-five percent (75%) of the Rollback Ad Valorem Taxes for any tax year that occurs during the Program Grant Term (the "Rollback Ad Valorem Grant").
- (ii) Regular Ad Valorem Grants. For each property tax year during the Program Grant Term, County hereby grants to and County shall pay to Company an amount equal to seventy-five percent (75%) of the excess of

the Regular Ad Valorem Taxes for the tax year over the Base Year Regular Ad Valorem Taxes (the "Ad Valorem Grant").

- (iii) Sales and Use Grants. For each calendar year during the Program Grant Term, County hereby grants to and County shall pay to Company an amount equal to seventy-five percent (75%) of the excess of the County Sales and Use Taxes for that year over the Base Year County Sales and Use Taxes (the "Sales and Use Grant").

(b) Continuing Taxation. During the Term of this Agreement, the Taxable Property and Taxable Transactions shall be subject to all County taxation and to all other applicable taxation. Nothing herein shall be construed as an abatement of any taxes.

(c) Tax Protests. In the event a taxpayer other than Company timely and properly protests or contests Regular Ad Valorem Taxes, Rollback Ad Valorem Taxes, and the taxable value of Taxable Property, or any of the foregoing, the obligation of County to pay Program Grant Funds shall not be abated hereunder; however, if any protest or motion with BCAD results in a final determination that changes the amount of any ad valorem taxes which have already been paid to County, County shall notify Company of such determination promptly and the Program Grant Funds payable to the Company for such tax year shall be adjusted (increased or decreased as the case may be) accordingly with any payment to or by the Company being due not later than thirty (30) days after the date the amount of the adjustment is determined and the Company notified thereof. If there are no further Program Grant Funds to be paid, then the Party owed an adjustment shall pay the amount of adjustment directly by the other Party within sixty (60) days after the adjustment is finalized and said Party receives written notice of said adjustment. Company shall notify County in writing in the event of a protest or contest by Company; and County shall notify Company in writing in the event of a protest or contest by a taxpayer other than Company.

(d) Other Agreements. County agrees it will not enter into any Economic Development Agreements or other arrangements affecting any of the Project that have the effect of reducing the amount of the property tax and sales tax revenues if that reduction will adversely affect the amount of (or impair the ability of County to pay) the Program Grant Funds to Company hereunder without Company's prior written consent thereto.

Section 5. Determination of Program Grant Funds.

(a) Procedures to Determine and Pay Program Grant Funds. For each tax year during the Program Grant Term, County shall pay to Company by check or wire transfer (pursuant to directions delivered to the County Responsible Office) the amounts of the respective Program Grants according to the procedures set forth in this Section 5.

- (b) Notification and Payment of Amount of Program Grant Funds.

- (i) Ad Valorem Grants and Rollback Ad Valorem Grants. On or before the last day of February of each year during the Term of this Agreement, County shall notify Company in writing (an "Ad Valorem Notice") of its

calculation of the amount of Program Grant Funds due to Company by County for the immediately preceding tax year for Ad Valorem Grants and Rollback Ad Valorem Grants and shall accompany said Ad Valorem Notice with the proper amount of Program Grant Funds due for said year. The Ad Valorem Notice shall show the information and amounts used by County in the calculation of the Program Grants covered by said Ad Valorem Notice.

- (ii) County Sales and Use Grants. Within thirty (30) days after County receives each report and payment of sales and use taxes collected by the Comptroller for the County, County shall deliver to Company statements of the County Sales and Use Taxes (a "County Sales and Use Tax Notice") included in the period covered by the report from the Comptroller, and shall accompany said County Sales and Use Tax Notice with the proper amount of the Sales and Use Grant due for the period covered by said County Sales and Use Tax Notice, together with the information and amounts used by County in calculation of the amount of the Sales and Use Grant for that period. County shall make all reasonable efforts to cause the Comptroller to separately state the amount of County Sales and Use Taxes for each period covered by a remittance of sales and use taxes payable to the County. In the event that the Comptroller will not provide sufficient information on the amount of County Sales and Use Taxes included in each period's report and remittance to County, the Parties shall select and share the costs to engage a qualified consultant to prepare reasonable projections of the amount of County Sales and Use Taxes for each period.
- (iii) Issues in Grant Funds Notice. Each Ad Valorem Notice and Sales and Use Notice is herein referred to as a "Grant Funds Notice." If Company identifies any errors or omissions in a Grant Funds Notice, Company will advise County of such items within sixty (60) days after the later of the date on which Company receives said Grant Funds Notice or obtains information previously unknown to Company which reveals said error or omission. All payments of Program Grant Funds to Company pursuant to and on the dates set forth in Section 5(b) shall be subject to the adjustment for any error or omission identified by a Party. If the original amount of a Sales and Use Grant paid is changed following the determination of any error or omission, the adjustment shall be paid by the Party owing the other party the adjustment within thirty (30) days following the final determination.

Section 6. Program Grant Funds Subject to Future Appropriation.

- (a) This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for payment to Company.

(b) All payments or expenditures made by the County under this Agreement are subject to the County's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.

(c) The payments to be made to Company, or other expenditures under this Agreement, if paid, shall be made solely from annual appropriations from the general funds of the County or from such other funds of the County as may be legally set aside for the implementation of Article III, Section 52-a of the Texas Constitution or Chapter 381 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the County under applicable Texas law, subject to any applicable limitations or procedural requirements.

(d) In the event the County does not appropriate funds in any fiscal year for payment due or expenditures under this Agreement, the County shall not be liable to Company for such payments or expenditures unless and until appropriation of said funds is made; provided, however, that Company, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligations under this Agreement for the year in respect to which said un-appropriated funds relate.

(e) To the extent there is a conflict between this Section 6 and any other language or covenant in this Agreement, this Section 6 shall control, except as set out in Subsection 6(f) below.

(f) Notwithstanding any other clause or covenant in this Agreement to the contrary, this Agreement shall not be subject to this Section 6, if Texas Constitution Article III, Section 52-a, as amended, permits the removal of this Section 6 without rendering this Agreement, or a portion hereof, void, voidable, or invalid. In such event, this Section 6 shall not govern this Agreement or portion hereof, and this Agreement, or such portion, shall be interpreted and enforced as if this Section 6 were not contained in this Agreement.

Section 7. Company Performance.

(a) **Project.** The Project shall include the development on portions of the Property of the following elements: (i) the Airport; (ii) Commercial Improvements; and (iii) Infrastructure Improvements.

(b) **Required Project Development.** Company agrees to comply with the following requirements:

(i) **Construction of Airport.**

(A) **Commencement.** Company agrees to use commercially reasonable efforts to cause construction of Phase One of the Airport Improvements and the portions of the Infrastructure Improvements required to use and operate Phase One of the Airport Improvements to Commence no later than _____, 20__.

(B) Completion. Company agrees to use commercially reasonable efforts to cause construction of the Phase One of the Airport Improvements and said portions of the Infrastructure Improvements to be Completed no later than _____, 20__, subject to force majeure.

(ii) Construction of Commercial Improvements.

(A) Commencement. Company agrees to use commercially reasonable efforts to cause construction of Phase One of the Commercial Improvements and the portions of the Infrastructure Improvements required to use and operate Phase One of the Commercial Improvements to Commence no later than _____, 20__.

(B) Completion. Company agrees to use commercially reasonable efforts to cause construction of Phase One of the Commercial Improvements and said portions of the Infrastructure Improvements to be Completed no later than _____, 20__, subject to Force Majeure.

(c) W-9 Taxpayer Identification Form. Company shall provide County with an Internal Revenue Service Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations, and a statement of entity status in a form satisfactory to the County Auditor before any Program Grant Funds may be paid to the Company.

Section 8. Mutual Assistance; County Cooperation and Assistance.

(a) To ensure that each Party realizes and obtains the economic benefits contemplated by this Agreement (regardless of changes in public policy, the law or taxes or assessments attributable to Company facilities), County and Company will take or cause to be taken such actions as are commercially reasonable, necessary or appropriate (i) to carry out the terms and provisions of this Agreement and (ii) to aid, support and assist each other in carrying out such terms and provisions.

(b) In addition to County's agreement to aid, support and assist Company in carrying out the terms and provisions of this Agreement to ensure that Company realizes and obtains the economic benefits contemplated by this Agreement (regardless of changes in public policy, law or taxes or assessments attributable to Company facilities) and in recognition of the substantial benefits that the County will realize and obtain as a result of the successful completion of the Project (including the fulfillment of an essential community purpose), upon the request of Company, County shall cooperate and assist Company in (i) the creation, implementation, administration and use of such Infrastructure Agencies as shall be deemed reasonable, necessary or appropriate for the planning, design, acquisition, development, construction, equipment, operation and financing of the Project on the most beneficial and economic terms reasonably available, and (ii) any Company application to an Infrastructure Agency for such approvals, consents or permits and any regulatory, financial or other forms of assistance as shall be

deemed reasonable, necessary or appropriate for the planning, design, acquisition, development, construction, equipment, operation and financing of the Project.

Section 9. Claims Notification. If any claim, or other action, including proceedings before an administrative agency (collectively, a "Claim"), is made or brought by any person, firm, corporation, or other entity against Company or County relating to the enforcement of this Agreement, the Party with notice of the Claim shall give written notice to the other Party of the Claim within three (3) business days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a Claim, or that instituted or threatened to institute the Claim; the basis of the Claim; the court or administrative tribunal, if any, where the Claim was instituted; and the name or names of any person against whom a Claim is being made or threatened. The Party with notice of the Claim shall furnish to the other Party copies of all pertinent papers received by that Party with respect to a Claim unless prohibited by Governmental Rule.

Section 10. Termination. This Agreement shall terminate and, except as expressly provided herein, obligations on the part of both Parties shall be deemed terminated and of no further force or effect, upon the occurrence of any one or more of the following:

- (i) Company elects not to proceed with the Project as contemplated by this Agreement prior to the first receipt by Company of Program Grant Funds and Company notifies County of said election in writing prior to the first payment of Program Grant Funds is received by Company;
- (ii) the execution by all Parties of a written agreement terminating this Agreement;
- (iii) at the option of a Party in the event the other Party materially breaches any of the terms or conditions of this Agreement and such breach is not cured within ____ () days after written notice thereof, or, if such breach is not susceptible of cure within said ____ days, then within such period of time as is reasonably necessary for the breaching Party to cure said default if the breaching Party commences the cure thereof within said ____ day period of time and thereafter diligently pursues the cure to completion;
- (iv) to the extent, but only to the extent a Program Grant agreed to be made by County herein is found to be invalid or illegal by a court of competent jurisdiction and no appeal thereof is timely or successfully taken and the conditions or provisions of said Program Grant cannot be revised or altered to cure the basis for said decision;
- (v) to the extent, but only to the extent a Program Grant agreed to be made by County herein becomes invalid or illegal pursuant to Federal or State legislation and the conditions or provisions of said Program Grant which render said Program Grant invalid or illegal cannot be revised or altered to cure the invalidity or illegality; or
- (vi) the Expiration of the Term of this Agreement.

Section 11. Representations and Warranties.

(a) **Representations of Company.** Company hereby makes the following representations, warranties and covenants to County as of the Effective Date:

- (i) **Existence.** Company is a limited liability company duly created and validly existing under the laws of the State of Texas. Company has all requisite power and authority to enter into this Agreement.
- (ii) **Authorization.** The execution, delivery and performance by Company of this Agreement have been duly authorized by all necessary action and will not violate the organizational documents of Company. The execution of this Agreement by Company does not require any consent or approval that has not been obtained, including, without limitation, the consent or approval of any Governmental Authority.
- (iii) **Enforceable Obligations.** Assuming due authorization, execution and delivery by each signatory Party hereto and thereto, this Agreement, all documents executed by Company pursuant hereto and all obligations of Company hereunder and thereunder are enforceable against Company in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditor's rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).
- (iv) **No Legal Bar.** The execution and performance by Company of this Agreement does not and will not violate any provisions of any contract, agreement, instrument or current Governmental Rule to which Company is a party or is subject.
- (v) **Litigation.** There are no legal actions or proceedings pending or, to the knowledge of Company, threatened against Company which, if adversely determined, would materially and adversely affect the ability of Company to fulfill its obligations under this Agreement.

(b) **Representations of County.** County makes the following representations, warranties and covenants to Company as of the Effective Date:

- (i) **Existence.** County is a political subdivision of the State of Texas.
- (ii) **Authorization.** Pursuant to Chapter 381 of the Texas Local Government Code, County has all requisite power and authority to enter into this Agreement and perform all of its obligations hereunder. The execution and performance by County of this Agreement has been duly authorized by the Commissioners Court and does not require the consent or approval of any other person which has not been obtained, including, without limitation, any other Governmental Authority.

- (iii) Enforceable Obligations. Assuming due authorization, execution and delivery by each Party hereto and thereto, this Agreement, each document executed by County pursuant hereto and all obligations of County hereunder and thereunder are enforceable against County in accordance with their terms.
- (iv) No Legal Bar. The execution and performance by County of this Agreement does not and will not violate any provisions of any contract, agreement, instrument or current Governmental Rule to which County is a party or is subject.
- (v) Litigation. There are no legal actions or proceedings pending or, to the knowledge of County, threatened against County which, if adversely determined, would materially and adversely affect the ability of County to fulfill its obligations under this Agreement.

Section 12. Notices.

(a) Requirements. Except as otherwise specifically noted herein, any notice required or permitted to be given under this Agreement by one Party to the other shall be in writing and may be given by any reasonable means. A written notice given under this Agreement to a Party by hand delivery shall be deemed given upon delivery to the address of the Party set forth in this Section 12; shall be deemed given upon deposit with the United States Postal Service as a registered or certified item or an overnight courier for next business day delivery, in either case provided the notice is enclosed in a sealed wrapper, properly addressed to the Party at the address for said Party set forth in this Section 12, with all postage or delivery charges prepaid; or shall be deemed given upon transmission if sent by facsimile transmission and the receiving facsimile machine sends confirmation of the receipt and the transmitting machine records said date and time on a printed confirmation page; or shall be deemed given upon transmission by electronic mail through use of the Internet if the transmission is confirmed by sending a written copy of the electronic mail message concurrently with the transmission of said electronic mail message by another reasonable means; or shall be deemed to have been given when received at the delivery address of the Party to whom said notice is given if delivered by another reasonable means.

(b) County Address. The address of County for all purposes under this Agreement shall be:

Honorable Ronnie McDonald (or his successor in office)
County Judge
804 Pecan Street
Bastrop, TX 78602

with copies to:

[Office of the County Auditor]

(c) Company Address. The address of the Company for all purposes under this Agreement and for all notices hereunder shall be:

Central Texas Airport, LLC

Austin, TX _____
Attention: James Carpenter

with copy to:

Jerry Kyle, Jr.
Andrews Kurth LLP
111 Congress Avenue, Suite 1700
Austin, Texas 78701

(d) Change of Address. A Party may change the address for notice to it by giving written notice of the change in compliance with this Section 12.

Section 13. Miscellaneous Provisions.

(a) Written Amendments Only. Unless specifically provided otherwise in this Agreement, any change to the terms of this Agreement or any attachments to it shall be made in writing and signed by both Parties.

(b) Law and Venue. This Agreement is governed by the laws of the State of Texas and all obligations under this Agreement shall be performable in Bastrop County, Texas. It is expressly understood that any lawsuit, litigation, or dispute arising out of or relating to this Agreement will take place in State Court in Bastrop County.

(c) Attorneys' Fees. In the event that either Party should default under any of the provisions of this Agreement and the other Party should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting Party herein contained, the defaulting Party agrees to pay to the non-defaulting Party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting Party.

(d) Independent Contractor. The Parties expressly acknowledge and agree that Company is an independent contractor and assumes all of the rights, obligations and liabilities applicable to it as an independent contractor. No employee of Company shall

be considered an employee of County or gain any rights against County pursuant to County's personnel policies. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party. The relationship of County and Company under this Agreement is not and shall not be construed or interpreted to be a partnership, joint venture or agency. The relationship of the Parties shall be an independent contractor relationship. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party.

(e) No Third Party Beneficiaries. This Agreement sets out the agreements and obligations between County and Company only, and does not obligate the Parties in any way to, nor create any third party beneficiary rights for, any third parties.

(f) Assignment. Except as expressly provided herein, Company may not assign this Agreement without the prior written approval of County, which approval County shall not unreasonably withhold, condition or delay. Notwithstanding the foregoing to the contrary, Company may assign this Agreement to (i) any entity resulting from a merger or consolidation with Company; (ii) any entity succeeding to substantially all the business and assets of Company; (iii) any entity which is a subsidiary or affiliate of Company or (iv) any entity from time to time providing financing of the Project or a portion thereof and Company shall have the right to pledge, encumber or otherwise pledge as security or assign its rights under this Agreement. For purposes of this Agreement, an affiliate shall mean an entity controlled by Company, or which controls Company, or which is under common control with Company. Written notice of such assignment shall be provided to County prior to the assignment.

(g) Binding Agreement. Subject to Section 13(f), this Agreement shall be binding upon the successors, assigns, administrators, and legal representatives of the Parties to this Agreement.

(h) Computation of Time. If the last day of any period of time set forth in this Agreement falls on a Saturday, Sunday or a day that County has declared a holiday for its employees (each, an "Excluded Day") said last day shall be automatically extended to the next day that is not an Excluded Day.

(i) Numbers and Gender. Words of any gender in this Agreement shall be construed to include any other gender and words in either number shall be construed to include the other unless the context in this Agreement clearly requires otherwise.

(j) Headings. The headings at the beginning of the various provisions of this Agreement have been included only to make it easier to locate the subject matter covered by that section or subsection, and are not to be used in construing this Agreement.

(k) Non-Waiver of Default. One or more acts of forbearance by any Party to enforce any provision of this Agreement or any reimbursement, payment, act or omission by any Party shall not constitute or be construed as a waiver of any breach or default of any other Party which then exists or may subsequently exist.

(l) **Reservation of Rights.** If any Party to this Agreement breaches this Agreement, the other Party shall be entitled to any and all rights and remedies provided for by Texas law and any applicable Federal laws or regulations. All rights of either Party under this Agreement are specifically reserved and any payment, reimbursement, act or omission shall not impair or prejudice any remedy or right to said Party. The exercise of or failure to exercise any right or remedy in this Agreement or in accordance with law upon the other Party's breach of the terms, covenants, and conditions of this Agreement, or the failure to demand the prompt performance of any obligation under this Agreement, shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken or not taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

(m) **Severability.** Subject to Subsection 10(a)(iv), if any portion of this Agreement is ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision thereof and the remainder of it shall remain valid and binding and as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

(n) **Force Majeure.** Neither Party shall be liable to the other Party for delays in performance or failures to perform under this Agreement caused by Force Majeure. "Force Majeure" means any delay resulting from causes beyond the reasonable control of a Party, including, without limitation, any delay caused by: (i) "acts of God," (ii) fires, (iii) earthquakes, (iv) floods, (v) explosions, (vi) declared or undeclared wars or police actions, (vii) riots, (viii) mob violence or terrorism, (ix) strikes, (x) condemnation, (xi) moratorium or other governmental delays, (xii) newly enacted governmental laws, regulations or controls, (xiii) inclement weather, or (xiv) unavailability of labor, materials or governmental permits. Such delays or failures to perform shall extend the period of performance until the Force Majeure has been removed or passed. Notwithstanding the foregoing to the contrary, inability to make a payment when due under this Agreement shall not constitute Force Majeure, nor shall any Force Majeure act to excuse the obligation of, or extend the time for, either Party to make a payment due to the other Party hereunder.

(o) **Multiple Originals.** This Agreement may be executed by the Parties in multiple counterparts, including by electronic means, each one being considered an original for all purposes and all such counterparts constituting one and the same instrument.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below, to be effective as of the Effective Date.

BASTROP COUNTY, TEXAS

CENTRAL TEXAS AIRPORT, LLC

By: _____
Ronnie McDonald,
County Judge

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

DRAFT- 8/31/09

EXHIBIT A

PROPERTY

EXHIBIT B

DESCRIPTION OF THE PROJECT

THE AIRPORT AND PHASE ONE OF THE AIRPORT IMPROVEMENTS:

COMMERCIAL IMPROVEMENTS AND PHASE ONE OF THE COMMERCIAL IMPROVEMENTS:

INFRASTRUCTURE IMPROVEMENTS: