

**FUNDING COMMITMENT AND ACCESS FEE AGREEMENT FOR THE RUSTY
ALLEN AIRPORT BETWEEN THE CITY OF LAGO VISTA, TX AND
RUSTY ALLEN AIRPORT PROPERTY OWNERS ASSOCIATION, INC.**

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STATE OF TEXAS :
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COUNTY OF TRAVIS :

This Funding Commitment and Access Fee Agreement (the "Agreement") for the Rusty Allen Airport is entered into and effective as of the 1st day of March, 2009, by and between the City of Lago Vista, Texas, a Texas home-rule municipal corporation (the "City"), as the owner of the Rusty Allen Airport (the "Airport"), and the Rusty Allen Airport Property Owners Association, Inc., a Texas non-profit corporation ("RAAPOA"), who hereby contract, covenant and agree as follows:

Whereas, the City and RAAPOA entered into the Funding Commitment and Agreement for the Rusty Allen Airport dated March 1, 1999; and

Whereas, the Funding Commitment and Agreement dated March 1, 1999 expired on February 28, 2009.

NOW THEREFORE, for and in consideration of the foregoing, together with other good and valuable consideration, the terms, conditions and mutual covenants listed in this Agreement:

Article 1.

Consideration and Services By City.

Section 1. Airport Operation and Management. The City has established

and provided for the operation and management of the Airport. The City shall continue to fund and provide for the operation, management, continuation or termination of the Airport as found appropriate, from time to time, by the city council of the City.

Subject to annual appropriations, the city agrees to provide the following services under normal conditions precluding the occurrence of any catastrophic event including but not limited to:

1. Maintaining City owned runways, taxiways, airplane parking ramps and car parking lots in an operable condition.
2. Mowing the grass on the City owned airport property in accordance with city codes.
3. Maintaining and keeping all lighting in an operable condition to include runway lights, rotating beacon, PAPI (precision approach path indicator) and ramp lighting in accordance with FAA standards for day, night VFR and IFR conditions and pay for the electricity to operate same.
4. Maintaining the AWOS (Automatic Weather Observing System) in an operable condition and all associated equipment and paying for the electricity and telephone service to operate same. In addition, keep and pay for the AWOS maintenance agreement with TxDot.
5. Maintain drainage on City owned airport property in an operable manner

Section 2. Capital Improvements. The City may, as appropriate in the judgment of the city council, from time to time seek state and federal grants for improvement of the Airport.

Article 2.

Consideration And Performance By the RAAPOA.

Section 1. Cancellation of Agreements. The RAAPOA agrees the City's cancellation of the Lease and the O&M Agreement were material benefits to the RAAPOA and continue as good and sufficient consideration for the promises, covenants, agreements and commitments by the RAAPOA pursuant to this Agreement. The RAAPOA further agrees the modifications and amendments made to the First Agreement by this Agreement are good and sufficient consideration for this Agreement.

Section 2. Operating Payments to City. The RAAPOA shall, annually during the term of this Agreement, assess and collect funds and dues from its members sufficient for RAAPOA to pay the annual use fee provided in Section 3 to be paid by RAAPOA to the City.

Section 3. Annual Use Fee. The RAAPOA shall pay the City the sum of Twenty Thousand Dollars (\$20,000.00) on or before July 1st each year during the term of this Agreement. Such use fee shall be used by the City to fund and pay a portion of the annual operating and maintenance expenses of the Airport, runways and taxiways.

The first payment will be due sixty days after this agreement is signed and all payments thereafter will be due on July 1st through 2019.

Section 4. Additional Maintenance Assessments. During the term of this Agreement, in addition to the annual use fee described in Section 3, the RAAPOA will pay the City one half of the cost and expense incurred by the City in excess of two thousand dollars (\$2,000.00) but not reimbursed through some other means of any necessary major maintenance or repair of the runway, taxiway or related facilities; provided; however, that the City will make all reasonable efforts to secure funding for such maintenance and repairs through TxDot or other grants or

insurance claims. The RAAPOA will assess and collect such additional funds and dues from its members sufficient for RAAPOA to make any payments required under this Section.

Section 5. Cost of Improvements. The RAAPOA shall during the term of this Agreement collect from its members and pay to the City sufficient funds and monies to fund and pay the cost of all necessary and useful capital improvements that are made to the existing Airport environment that are not paid and funded by a state or federal grant. As a general rule financial participation by the RAAPOA on grant supported Capital Projects shall be limited to five percent (5%) of the total project cost unless both parties agree to other financial arrangements. Nothing herein, shall preclude the City or the RAAPOA from funding Capital Improvement on or around the Airport which are not supported by grants or that may be funded in entirety by the City or the RAAPOA; however, all Capital Improvements undertaken at the Airport are subject to the approval of the City.

Section 6. Collection of Funds. The RAAPOA shall during the term of this Agreement use all reasonably available lawful means, including but not limited to filing suit, enforcement of liens, foreclosure and denial of membership privileges, to collect from its members funds sufficient to meet its obligations pursuant to this Article 2.

The RAAPOA shall have the authority to determine and collect tenant aircraft parking fees from all property owners and airplane owners utilizing the airport; provided that fees charged to non-property owners shall be approved by the City Council.

**Article 3.
General Provisions.**

Section 1. Term. The term of this Agreement shall be 120 months, beginning on the 1st day of March 2009, and expiring at 12:00 P.M. local time on the last day of February 2019.

Section 2. City Funding. Any and all funding by the City of Lago Vista under this agreement is subject and limited to annual appropriations as approved by the City Council. If for any fiscal year the City does not appropriate funds sufficient in the judgment of the City Council to perform the City's obligations under Article 1, Section 1, the RAAPOA may terminate this Agreement.

If the city ,materially reduces, or does not provide. the services listed in Article 1, Section 1. the Annual use fee as stated in Article 2, Section 3, shall be amended accordingly.

Section 3. Airport Property. All property, real or personal, and all assets, equipment, furniture and fixtures presently or hereafter located on the grounds and property of the Airport shall, as between the City and the RAAPOA, be and remain the property of the City. All assets, equipment, furniture, fixtures and supplies purchased with funds and monies paid by the RAAPOA to the City pursuant to this Agreement shall be and become assets and property of the City immediately upon the purchase or other acquisition of such assets or property.

Section 4. Entire Agreement. This Agreement embraces the entire agreement between the parties hereto and no statement, remark, agreement, or understanding either oral or written, not contained herein shall be recognized or enforced, except that this Agreement may be modified by a written addendum by and between the City and the RAAPOA. Effective as of the date of the execution of this Agreement by both parties, all other contracts, agreements and leases by and between the City and the RAAPOA are cancelled.

Section 5. Miscellaneous. (a) For the purpose 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.

(b) The captions and headings are inserted solely for convenience of reference and are not part of nor intended to govern, limit, or aid in the construction of any provision hereof.

(c) The parties to this Agreement acknowledge and agree that they are the principals to the Agreement and have the power, right, and authority to enter into this Agreement and are not acting as an agent for the benefit of any third party.

(d) This Agreement shall be governed by the laws of the State of Texas and construed thereunder and venue of any action brought under this document shall be in Travis County, Texas.

(e) If any section, paragraph, sentence, or phrase entered in this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, such illegality or unenforceability shall not affect the remainder of this Agreement which can be given effect without the illegal or unenforceable section, paragraph, sentence, or phrase and to this end, the provisions of this Agreement are declared to be severable.

(f) The recitals hereinabove are incorporated herein and made a part of this contract.

(g) Save and except for conduct, e.g. intentional wrongful action, that

may not be insured against, or that is commonly excepted from insurance coverage, the City shall be solely responsible for any liabilities or claims that may arise from or with respect to the performance, or non-performance, of the duties and responsibilities of the Parties with respect to the operation and maintenance of the Airport; provided that this provision shall not be construed to create, establish or support any benefit, right or claim for or on behalf of any third party. This provision is solely for the benefit of the City and the RAAPOA, and the City will obtain and maintain such liability insurance or risk pool coverage as the City finds necessary and reasonable to insure the City and its officers and employees against any claim or cause of action arising out of the operation and maintenance of the Airport.

EXECUTED and effective, as of the 1st day of July 2009.

City of Lago Vista, Texas
Owners

Rusty Allen Airport Property
Association, Inc.

Randy Kruger, Mayor
President