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Founded 1866

September 9, 2014

Daphne A. Fuller  
Assistant Chief Counsel  
Airports & Environmental Law Division  
Office of the Chief Counsel  
Federal Aviation Administration  
800 Independence Avenue SW  
Washington, D.C. 20591

Re: Intergovernmental Agreement between Paulding County, GA,  
and Paulding County Airport Authority

Dear Ms. Fuller:

I am writing on behalf of our clients, Jordan Louie, Janice Louie, Robert Board, Mary Board, and Susan Wilkins, all residents of Dallas, Georgia, and Anthony Avery a resident of Temple, Georgia. All reside near the Paulding Northwest Atlanta Airport ("Airport"). The purpose of this letter is to transmit our clients' (the "Local Stakeholders") urgent request that the FAA immediate review and intervene to prevent a proposed transaction from occurring between Paulding County, Georgia (the "County") and the Paulding County Airport Authority (the "Authority") concerning the Paulding Airport.

The County and the Authority are contemplating an Intergovernmental Agreement ("IGA") that would transfer land owned by the County, which is the airport sponsor and the recipient of federal and state grants, to the Authority, the entity that is the airport operator and applicant for a Part 139 certificate. In addition to transferring this interest in real property, it is our understanding that the proposed IGA also contemplates that the Authority would assume the obligations of the airport sponsor for the operation of the airport, and would provide the County with facilities for non-aviation related "9-1-1" services at no charge. A copy of the proposed IGA is attached to this letter.

We believe it is important for the FAA to review and approve this IGA to assure its compliance with FAA legal requirements including grant assurances. A deed transfer from the County as airport sponsor to another entity requires advance FAA approval. My clients are mystified as to how the County purports

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to have the legal authority to effect this transfer (or even to agree to the transfer) without FAA approval. Section 6.7 of FAA Order 5190.6B seems to require such approval. Moreover, the delegation to the Authority does not adequately address issues involving reversion to the County at the end of the proposed 10-year term, or explain how the Authority could enter into a 40-year lease when it has only authority to lease for 10 years.

Although seemingly in the public interest, the 9-1-1- center raises revenue diversion issues as the IGA grants to the County the free use of airport property for non-aeronautical use. Thus, even if fair market value is somehow built into the payment from the County, as an institutional matter the FAA should require an explicit showing that fair market value is being achieved in these payments for use of the property.

As you already know, the Local Stakeholders are extremely concerned about the proposed commercialization of this small, general aviation airport. The prospect of accommodating large commercial jets at a facility only recently constructed as a general aviation airport is controversial, and has been surrounded by secrecy and lack of public involvement from the very outset. This proposed IGA is only the latest manifestation of significant actions involving the County and the Airport that arise fully formed without any public participation.

Accordingly, we ask that the FAA review the proposed IGA, the property transfer, and the proposed use to ensure consistency with grant assurance obligations. In addition, we ask that in light of the many other agreements involving the Airport and Silver Comet that extend well beyond the 10-year period of the proposed IGA, the FAA consider whether those agreements must be revised to reflect the Airport's limits to enter into such long-term agreements.

Thank you for your consideration, and as always, please do not hesitate to contact me if you have any questions.

Sincerely,

  
Peter R. Steenland, Jr.

cc: Winsome Lenfert  
Michael Fineman

INTERGOVERNMENTAL CONTRACT

**THIS INTERGOVERNMENTAL CONTRACT** (this “Contract”) is entered into as of \_\_\_\_\_ 1, 2014, by and between the **PAULDING COUNTY AIRPORT AUTHORITY** (the “Authority”) and **PAULDING COUNTY, GEORGIA** (the “County”).

WITNESSETH:

WHEREAS, the Paulding County Airport Authority (the “Authority”) is a political subdivision of the State of Georgia created and existing pursuant to a local act of the General Assembly of the State of Georgia (Ga. L. 1972, p. 3645, *et seq.*) (the “Act”); and

WHEREAS, under the Act, the Authority has the power (a) to maintain, operate and manage airports and landing fields for the use of aircraft, including any related buildings and the usual and convenient facilities appertained to such undertakings and (b) to make and execute contracts and other instruments necessary to exercise the powers of the Authority; and

WHEREAS, the County is a political subdivision of the State of Georgia created and existing under the laws of the State of Georgia; and

WHEREAS, under O.C.G.A. § 6-3-20, *et seq.*, the County has the power to operate and maintain airports and landing fields for the use of aircraft; and

WHEREAS, Article IX, Section III, Paragraph I(a) of the Constitution of the State of Georgia authorizes, among other things, any county, municipality or other political subdivision of the State to contract, for a period not exceeding fifty (50) years, with another county, municipality or political subdivision or with any other public agency, public corporation or public authority for joint services, for the provision of services, or for the provision or separate use of facilities or equipment, provided that such contract deals with activities, services or facilities which the contracting parties are authorized by law to undertake or to provide; and

WHEREAS, the Authority and the County propose to enter into this Contract, pursuant to which the Authority will agree to operate and maintain the Silver Comet Field at Paulding Northwest Atlanta Airport (the “Airport”) and provide additional airport services for the citizens of County and the County; and

WHEREAS, the County, in consideration of the Authority’s doing so, will agree to pay to the Authority from its general fund or from the proceeds of a tax levied on all taxable property located within the boundaries of the County, at such rate or rates as may be necessary to make the payments to the Authority for its services as called for pursuant to this Contract an amount equal to that set forth in Exhibit B attached hereto and made a binding part of this Contract.

NOW, THEREFORE, in consideration of the premises and undertakings as hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. Term.**

The term of this Contract shall commence on October 20, 2014 and shall expire on October 19, 2024.

**2. Representations, Warranties and Agreements of the Authority.**

The Authority makes the following representations, warranties and agreements as the basis for the undertakings on its part herein contained:

(a) The Authority is a public body corporate and politic duly created, organized and existing under the Constitution and laws of the State, including the Act. Under the provisions of the Act, the Authority is authorized to execute, deliver and perform its obligations under this Contract. The Authority has duly authorized the execution, delivery and performance of this Contract. This Contract is a valid, binding and enforceable obligation of the Authority.

(b) No approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery and performance of this Contract by the Authority, except as shall have been obtained as of the date hereof.

(c) The authorization, execution, delivery and performance by the Authority of this Contract do not violate the Act, the Authority's bylaws, any resolutions or ordinances of the County, or the laws or Constitution of the State and do not constitute a breach of or a default under any existing court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.

(d) The Authority is not in violation of the Act, its bylaws, any resolutions or ordinances of the County or the laws or Constitution of the State and is not in default under any existing court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.

**3. Representations, Warranties and Agreements of the County.**

The County makes the following representations, warranties and agreements as the basis for the undertaking on its part herein contained:

(a) The County is a political subdivision of the State of Georgia. Under the Constitution and laws of the State, the County is authorized to execute, deliver and perform its obligations under this Contract. The County has duly authorized the execution, delivery and performance of this Contract. This Contract is a valid, binding and enforceable obligation of the County.

(b) No approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery and performance of this Contract by the County, except as shall have been obtained as of the date hereof.

(c) The authorization, execution, delivery and performance by the County of this Contract do not violate the laws or Constitution of the State and do not constitute a breach of or a default under any existing resolution or ordinance, court order, administrative regulation, or

other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.

(d) The County is not in violation of the laws or the Constitution of the State and is not in default under any existing resolution or ordinance, court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.

#### **4. Scope of Services**

Pursuant to this Contract, the Authority shall provide the following services to the County and the citizens of the County:

(a) The Authority shall operate and maintain the Airport or cause the Airport to be operated and maintained economically, efficiently and in accordance with good business practices and in compliance with the terms of the laws, regulations and ordinances of any federal, state or county government having jurisdiction over the operation of such facilities. All compensation, salaries, fees and wages paid or caused to be paid by the Authority shall be reasonable, and no more persons will be employed to operate the Airport than are necessary. The Authority shall at all times maintain the Airport or cause the Airport to be maintained in a safe and serviceable condition in accordance with the standards set by applicable federal, state, and local laws and regulations and shall promptly repair, replace or restore any damage to the Airport or cause the proceeds from insurance from such damage or destruction to be applied in accordance with the terms hereof.

(b) The Authority agrees to provide airport service to the County and to the citizens of the County through the operation of the Airport. By virtue of the Authority providing this service, the County will eliminate the staffing of its own Airport Department.

(c) The Authority shall pay or cause to be paid the reasonable and necessary costs of operating, maintaining and repairing the Airport, including salaries, wages, employee benefits, the payment of any contractual obligations incurred pertaining to the operation of the Airport, cost of materials and supplies, rentals of leased property, real or personal, insurance premiums, audit fees, any incidental expenses and such other charges as may properly be made for the purpose of operating, maintaining and repairing the Airport in accordance with sound business practice.

(d) The Authority shall make an annual report to the County at the first July meeting of the County's Board of Commissioners. The report shall include expenditures made during the previous twelve (12) months as well as anticipated expenditures for the next twelve (12) months.

(e) The Authority shall provide an unimproved location for the County to house any fire protection services that the County deems necessary to serve the Airport. The County may also use this same location for providing fire protection and other emergency services to other areas of the county in the vicinity of the Airport. The County shall construct any improvements on the property that it deems necessary and shall pay no rent to the Authority for said location. The County shall be responsible for the utilities associated with the improved location. Additionally, the Authority shall provide space in the terminal building necessary to house any

law enforcement provided by the County to serve the Airport. The County shall pay rent for the use of the space in the terminal building and shall pay for any renovations it wishes to undertake.

## **5. Compensation**

(a) In consideration for the Authority providing the services listed in Section 4 hereof for the County and the citizens of the County, the County hereby agrees to pay to the Authority the amount set forth in Exhibit B attached hereto (the "Contract Payments"). Payments shall be made twice annually, the first payment of ½ the amount due that fiscal year per Exhibit B shall be made on July 1<sup>st</sup> of each year and the second payment of ½ the amount due that fiscal year per Exhibit B shall be made on January 1<sup>st</sup> of each year. The only exception will be in the initial year of this agreement, ½ the amount due for fiscal year 2015 shall be due on October 20, 2014, less any expenditures already paid by County for operation of the Airport during the 2015 fiscal year, and the second payment of ½ the amount due for fiscal year 2015 will be due on January 1<sup>st</sup>, 2015.

(b) The County further covenants and agrees that in order to make funds available for such purpose, it will, in its general revenue, appropriation and budgetary measures whereby its tax funds or revenues and the allocation thereof are controlled or provided for, include sums sufficient to satisfy any such Contract Payments that may be required to be made, whether or not any other sums are included in such measure, until all payments so required to be made shall have been made in full. The obligation of the County to make the Contract Payments shall constitute a general obligation of the County and a pledge of the full faith and credit of the County to provide the funds required to fulfill such obligation; provided, however, nothing herein contained shall be construed as limiting the right of the County to pay the obligations hereunder assumed out of its general funds or from other sources lawfully available to it for such purpose.

(c) In the event for any reason any such provision or appropriation is not made as provided in the preceding paragraph (b), then the fiscal officers of the County are hereby authorized and directed to set up as an appropriation on their accounts in the appropriate fiscal year the amounts required to pay the obligations which may be due from the general funds of the County. The amount of such appropriation shall be due and payable and shall be expended for the purpose of paying any such obligations, and such appropriation shall have the same legal status as if the County had included the amount of the appropriation in its general revenue, appropriation and budgetary measures.

(d) The obligation of the County to make Contract Payments hereunder may be enforced by the Authority. The covenants and agreements hereunder, including specifically the obligation to make the Contract Payments, shall be enforceable by specific performance; it being acknowledged and agreed by the Authority and the County that no other remedy at law is adequate to protect the interests of the parties hereto.

(e) In addition to the Contract Payments, the County shall remain as the Sponsor for current and future Airport Improvement Program (AIP) grants administered by the Federal Aviation Administration (FAA) and further agrees to take no action that is inconsistent with receiving or negatively affects such grants or any other federal or state grants to which the County or the Authority are eligible to receive in conjunction with the Airport. When required by

the grant provider, the County shall act as the administrator of any and all grants and shall forward any sums received to the Authority to be used by the Authority as required by the grant.

(f) In addition to the Contract Payments, the County agrees to make payments to the Authority or to any contractor authorized by the Authority, for airport expenses incurred by the Authority that are eligible for grant reimbursement from the Federal Aviation Administration, the Georgia Department of Transportation, or any other grant-awarding entity. The County shall be reimbursed from grant funds for the payment of any such expenses. In the event such expenses are not reimbursed to the County from grant funding, the Authority shall make reimbursement to the County for such expenses within 60 days of notification thereof. The County is under no obligation to make payments for any expenses which do not qualify for grant reimbursement. Additionally, the County shall have no obligation to make payments authorized by this paragraph if the outstanding reimbursable expense owed to the County exceeds \$500,000.00.

(g) In addition to the Contract Payments, the County agrees to provide sufficient police and fire protection to the Airport so as to enable the Authority to provide the services the Authority deems appropriate at the Airport including, but not limited to services required or in conjunction with a Part 139 Certification.

(h) In addition to the Contract Payments, the County shall transfer by deed approximately 168 acres of property described on the attached Exhibit A that it owns at the Airport to the Paulding County Airport Authority.

## **6. Miscellaneous**

### Notices.

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to the Authority:

Paulding County Airport Authority  
730 Airport Parkway  
Dallas, Georgia 30157  
Attention: Chairman  
Facsimile: (770) 505-4871

If to the County:

Paulding County Board of Commissioners  
240 Constitution Blvd.  
Dallas, Georgia 30132  
Attention: Chairman c/o County Manager  
Facsimile: (770) 443-7537

Any party, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Binding Effect.

This Contract shall inure to the benefit of and shall be binding upon the Authority, the County and their respective successors and assigns, subject, however, to the limitations contained in this Contract.

Severability.

If any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Amendments, Changes and Modifications.

The Contract may be amended from time to time only by an instrument in writing duly executed by the parties hereto.

Execution Counterparts.

This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Captions.

The captions and headings in this Contract are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Contract.

Law Governing Contract.

This Contract shall be governed by, and construed in accordance with, the laws of the State of Georgia.



IN WITNESS WHEREOF, the Authority and the County have caused this Contract to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

**PAULDING COUNTY AIRPORT  
AUTHORITY**

(SEAL)

By: \_\_\_\_\_  
Chairman

Attest:

\_\_\_\_\_  
Secretary

**PAULDING COUNTY, GEORGIA**

(SEAL)

By: \_\_\_\_\_  
Chairman

Attest:

\_\_\_\_\_  
Clerk



**IGA Exhibit B**

Agreement	Fiscal	County
Year	Year	Funding
1	2015	\$400,000
2	2016	\$375,000
3	2017	\$350,000
4	2018	\$325,000
5	2019	\$300,000
6	2020	\$275,000
7	2021	\$250,000
8	2022	\$225,000
9	2023	\$200,000
10	2024	\$175,000