

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement (“*Agreement*”) is entered into this 17th day of May, 2016, by and between the Williamson County, Texas, a Texas political subdivision, (“*County*”), and United Parcel Service, Inc., an Ohio corporation and BT-OH, LLC, an Ohio limited liability company (BT-OH, LLC and United Parcel Service, Inc. shall be referred to collectively herein as “*UPS*”).

WHEREAS, the County hereby establishes an economic development program authorizing the County Judge to enter into this Agreement with UPS in recognition of the positive economic benefits to the County through UPS’s development of approximately 50.535 acres of land, as more particularly described on the attached Exhibit A (“*Property*”) as a distribution facility containing approximately one-hundred thousand (100,000) square feet of office and warehouse space, the (“*Project*”); and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 381 of the Texas Local Government Code whereby UPS intends to construct, develop and operate the Project in conformance with the City of Round Rock’s development approvals for the Project, and;

WHEREAS, UPS intends to invest approximately \$70,000,000.00 in improvements to real property and additions to personal property in the County; and

WHEREAS, UPS intends to hire for the Project at least 314 new full-time and/or full-time equivalent employees as defined by Section 2.4 of this Agreement; and

WHEREAS, the County agrees to provide performance-based Economic Incentive Payments (as defined below) to UPS to defray a portion of the Project’s costs;

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and UPS agree as follows:

1. **Authority.** The County’s execution of this Agreement is authorized by Chapter 381 of the Texas Local Government Code and constitutes a valid and binding obligation of the County in the event UPS proceeds with the development of the Project. The County acknowledges that UPS is acting in reliance upon the County’s performance of its obligations under this Agreement in making its decision to commit substantial resources and money to develop the Project.

2. **Definitions.**

2.1 “*Ad Valorem Property Tax*” means the County’s ad valorem property tax paid by UPS to the County on the value of the Project. The term Ad Valorem Property Tax does not include any property taxes paid on the Property, as defined below.

2.2 “*Economic Incentive Payment(s)*” (“*EIPs*”) means all of the payments required to be paid by the County to UPS pursuant to this Agreement.

2.3 “*Effective Date*” is the date this Agreement is executed to be effective by the County and UPS.

2.4 “*Full Time Equivalent Employee*” (“*FTE*”) means a combination of employees, each of whom individually is not a full-time employee because they are not employed on average at least 35 hours per week, but who, in combination, are counted as the equivalent of a full-time employee. FTE’s shall include original hires or their replacements over time.

2.5 “*Program*” means the economic development program established by the County pursuant to Chapter 381 of the Texas Local Government Code under this Agreement to promote local economic development and stimulate business and commercial activity within the County.

2.6 “*Project*” means UPS’s planned development of the Property which shall consist of a distribution facility. The Project shall include approximately one hundred thousand (100,000) square feet of office and warehouse space.

2.7 “*Property*” means approximately 50.535 acres of land more particularly described in **Exhibit C**.

2.8 “*Recapture Liability*” means the total amount of all EIP’s that are paid as result of this Agreement that are subject to recapture by the County from UPS in the event of an UPS default.

3. **Term.** This Agreement shall become enforceable upon its Effective Date. This Agreement shall terminate upon UPS’s receipt of five (5) years of EIP’s pursuant to this Agreement.

4. **Rights and Obligations of UPS.** In consideration of the County’s compliance with this Agreement, UPS agrees as follows:

4.1 **Compliance with Development Regulations and Other Ordinances.** UPS shall comply with the City of Round Rock’s development approval processes and shall develop the Project on the Property in compliance with City ordinances, development regulations, and other City and State development requirements.

4.2 **Improvements and Additions to Real and Personal Property.** UPS agrees to spend a cumulative total of at least \$70,000,000.00 in improvements to real property and additions to personal property within the County no later than December 31, 2018 and maintain real property, improvements, and business personal property within the County with a historic cost of \$70,000,000.00 during the Term of this Agreement.

4.3 **Postponement of Additions to Real and Personal Property.** In the event that UPS is unable, for any reason, to complete the proposed Improvements by December 31, 2018, as set forth by Section 4.2 of this Agreement, UPS may request in writing a one (1) year extension to comply with all remaining obligations of Section 4.2 to complete construction of the

Improvements by December 31, 2019. UPS must submit to the County a written notification of its request for the extension by November 30, 2018. If UPS elects to provide the County written notification for the extension, the County agrees and acknowledges that all other UPS obligations in this Agreement are postponed and extended by one (1) calendar year.

4.4 Provision of Jobs. Within one year after the City issues a Certificate of Occupancy for the Project, UPS agrees to employ in the Project at least 314 full-time employees and/or FTEs and to retain said employees and/or FTEs (or their replacements) for the full term of this Agreement and for the avoidance of doubt, hours worked by full-time employees can be counted towards FTEs.

4.5 Salaries and Benefits. UPS agrees that the full-time jobs will have an average annual salary of at least \$50,000 in addition to industry standard benefits.

4.6 Job Compliance Affidavit. UPS agrees to provide to the County an annual Job Compliance Affidavit for each calendar year during the term of this Agreement. The County reserves the right to reduce the EIP's due to UPS on a pro-rated basis, if UPS fails to employ 314 employees and/or FTEs as stated in 4.3, above, but in no event will the County be obligated to reimburse any EIP's if UPS fails to employ less than 290 FTE's. The County shall have the right, following reasonable advance notice to UPS, to audit UPS's records to verify that this obligation has been satisfied.

4.7 UPS Accounting. UPS shall maintain complete books and records showing its compliance with its obligations under this Agreement, which books and records shall be deemed complete if kept in accordance with generally acceptable accounting principles as applied to Texas corporations. Such books and records shall be available for examination by the duly authorized officers or agents of the County during normal business hours upon request made not less than ten (10) business days prior to the date of such examination. UPS shall maintain such books and records throughout the term of this Agreement and for four (4) years thereafter.

4.8 Submission of Data. Within sixty (60) days following the end of each calendar year, UPS shall submit to the County the Job Compliance Affidavit and a schedule detailing the Ad Valorem Property Tax for such calendar year. As backup for the schedule, UPS shall submit the following:

- (a) A copy of all property tax receipts for the Project, including amended reports, filed by UPS for that calendar year showing the Ad Valorem Property Tax paid ;
- (b) Such other data as the parties mutually determine reasonably appropriate to evidence the Ad Valorem Property Tax paid.

5. Rights and Obligations of the County. In consideration of UPS's compliance with this Agreement, the County agrees as follows:

5.1 Economic Incentive Payments.

5.1.1 EIP's Based on Ad Valorem Property Tax. County shall pursuant to Chapter 381 of the Texas Local Government Code, but subject to the conditions set

out herein, make annual EIPs to UPS within thirty (30) days after UPS submits to the County the Job Compliance Affidavit and Ad Valorem Tax schedule for such calendar year as required in **Section 4.8** above. The EIPs are to be calculated as follows:

(a) Calculations will be based upon Ad Valorem Property Tax actually paid by UPS and collected by the County;

(b) The EIPs will be an amount equal to the percentage of the Ad Valorem Property Tax actually paid for each calendar year as set forth below:

<u>Year</u>	<u>Percentage of Property Tax Paid</u>
2019	50%
2020	50%
2021	50%
2022	50%
2023	50%

5.2 Payments Subject to Future Appropriations. Although certain payments under this Agreement are calculated based on a formula applied to Ad Valorem Property Taxes, this Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to UPS. The payments to be made to UPS, 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 52a 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. In the event that the County does not appropriate funds in any fiscal year for payments due under this Agreement, such failure shall not be considered a default under **Section 6.3**, and the County shall not be liable to UPS for such payments otherwise due during such fiscal year; however, the term of this Agreement shall be extended one (1) year for each year the County fails to appropriate funds for payments otherwise due under this Agreement. UPS shall also have the right but not the obligation to rescind this Agreement. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

5.3 EIP Recapture. In the event the County terminates this Agreement as a result of UPS's default, the County may recapture and collect from UPS the Recapture Liability. UPS shall pay to the County the Recapture Liability within thirty (30) days after the County makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which UPS may be entitled. Notwithstanding anything herein to the contrary, such Recapture Liability

shall not exceed, in the aggregate, an amount equal to all EIPs that were paid pursuant to this Agreement from the Effective Date to the date of termination (together with interest thereon to be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). The County shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

6. Miscellaneous.

6.1 Mutual Assistance. The County and UPS will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law, or taxes or assessments attributable to the Property.

6.2 Representations and Warranties. The County represents and warrants to UPS that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. UPS represents and warrants to the County that it has the requisite authority to enter into this Agreement.

6.3 Default. If either the County or UPS should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If the County remains in default after notice and opportunity to cure, UPS shall have the right to pursue any remedy at law or in equity for the County's breach. If UPS remains in default after notice and opportunity to cure, the County's remedy shall initially be limited to suspension of the EIPs that accrue after the date of such default until such default is cured. After any such default is cured, the County shall promptly forward any such suspended payment to UPS. If UPS's default is not cured within sixty (60) days after UPS's receipt of a second notice of default from the County that clearly and conspicuously indicates the County's intention to terminate this Agreement, the County may terminate this Agreement by giving UPS written notice of such termination prior to the date UPS cures such default. Any EIPs from County to UPS which is not timely paid by County (unless due to UPS's default) shall accrue interest at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty from the date such EIPs are due until paid. Any funds owed by UPS to the County which are not timely paid by UPS shall accrue interest at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty from the date such funds are due until paid.

6.4 Attorney's Fees. In the event any legal action or proceeding is commenced between the County and UPS to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

6.5 **Entire Agreement.** This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the County and UPS.

6.6 **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

6.7 **Assignment.** UPS may assign all or part of its rights and obligations to a third party with the express written consent of the County (which consent shall not be unreasonably withheld, conditioned or denied). If the proposed assignee is an affiliated entity under the common control of the assignor, the County shall consent to an assignment if the assignor is in compliance with all terms of this Agreement. A collateral assignment of this Agreement under the terms of a loan shall not be an assignment for purposes of this Section.

6.8 **Amendment.** This Agreement may be amended by the mutual written agreement of the parties.

6.9 **Termination.** In the event UPS elects not to proceed with the Project as contemplated by this Agreement, UPS shall notify the County in writing of such election, and this Agreement and the obligations on the part of both parties shall thereafter be deemed terminated and of no further force or effect. Notwithstanding the above, in the event UPS does not substantially complete the construction of the Project and open for the business by December 31, 2019 (subject to delays caused by an event of force majeure), the County may terminate this Agreement by giving UPS notice thereof prior to the date the Project is opened for business.

6.10 **Notice.** Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to County: Williamson County Judge
710 Main Street, Suite 101
Georgetown, TX 78664
Email: Dgattis@wilco.org

If to UPS: Shane Simpson
West Region Tax Manager 1331 S. Vernon St.
Anaheim, CA 92805
Phone: (714) 502-2570
Email: shanesimpson@ups.com

and

Chris Bearden
Corporate Real Estate
United Parcel Service
55 Glenlake Pkwy
Atlanta, GA 30328
Phone: (404) 828-6270
Email: cbearden@ups.com

With required copies to:
Duff & Phelps
919 Congress Ave. #1450
Austin, TX 78701
Attn: Michael Lateur
Phone: (512) 671-5575
Email: Michael.Lateur@duffandphelps.com

Either party may designate a different address at any time upon written notice to the other party.

6.11 **Interpretation.** Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

6.12 **Applicable Law.** This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

6.13 **Severability.** In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.14 **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

6.15 **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

6.16 **Force Majeure.** Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (an "*event of*

force majeure”). An *event of force majeure* for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*

6.17 **Exhibit.** The following **Exhibit A** are attached and incorporated by reference for all purposes:

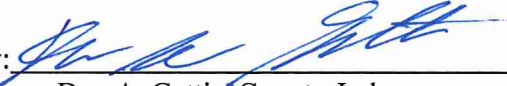
Exhibit A: UPS Property Description

6.18 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The County, its past, present and future officers, elected officials, employees and agents of the County, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

EXECUTED to be effective as of the 17th day of May, 2016 (the “*Effective Date*”).

(SIGNATURES ON FOLLOWING PAGES)

WILLIAMSON COUNTY, TEXAS,

By: 

Dan A. Gattis, County Judge

ATTEST:



Nancy Rister, County Clerk

UNITED PARCEL SERVICE, INC.
an Ohio corporation

By: Wry
Its: Asst Treasurer

Date: 5/16/16

BT-OH, LLC

an Ohio limited liability company

By: Wny

Its: Asst Treasurer

Date: 5/16/14

EXHIBIT A

(The "Property Description")

50.535 acre tract out of the MEMUCAN HUNT SURVEY, ABSTRACT NO. 314 and WILLIAM BARKER SURVEY, ABSTRACT NO. 107, in Williamson County and Travis County, Texas and embracing all of that certain called 2.101 acre tract conveyed to DAUGHERTY FAMILY REGISTERED LLP #1, of record in Document No. 2015046052, Official Public Records of Williamson County, Texas (OPRWCT), and all of that tract conveyed to DAUGHERTY FAMILY REGISTERED, LLP #1 in Document No. 9667310, OPRWCT, and that 17 acre tract conveyed to DAUGHERTY FAMILY REGISTERED LIMITED LIABILITY PARTNERSHIP #1 in Document No. 9667311, OPRWCT, and that called 82.93 acre tract conveyed to DAUGHERTY FAMILY LIMITED PARTNERSHIP #1 in Document No. 9667308, OPRWCT, SAVE AND EXCEPT, that called 51.65 acre tract described in a Memorandum of Contract to CONTINENTAL HOMES OF TEXAS, L.P., of record in Document No. 2015102511, OPRWCT.