

ATTACHMENT D
DRAFT DEVELOPMENT AGREEMENT



**City Attorney's Office
City of Burbank**

Amy Albano, City Attorney

Memorandum

Date: June 21, 2016
To: Honorable Mayor and Council Members
From: Amy Albano, City Attorney *aaa*
Subject: **Review Draft Development Agreement and Legal Documents for Bob Hope Airport Replacement Terminal Project**

RECOMMENDATION

Review and give direction, if any, on the draft Development Agreement (Ex. A), Amendments to the Burbank-Glendale-Pasadena Airport Authority ("Authority") Joint Exercise of Powers Agreement (JPA) Amendments (Ex. B) and Modification of Easement (Ex. C) for the Bob Hope Airport Replacement Terminal Project; note and file this Report.

BACKGROUND

The Burbank-Glendale-Pasadena Airport Authority (Authority) proposes the following: a 14-gate, 355,000-square-foot replacement terminal and replacement parking on either the Adjacent Property or Southwest Quadrant of the Airport; airport-related service buildings; fire station; terminal access road; extensions of taxiways and internal roads; closing parking lots A, B and the reuse of parking lot E; demolition of existing terminal and adjacent parking structure; if the replacement terminal is located on the Southwest Quadrant, then general aviation facilities will be moved from the Southwest Quadrant to the Adjacent Property to make room for the replacement terminal (collectively "Airport Replacement Terminal Project" or "Project"). To move forward with the Project, the Authority needs approvals from both the City Council and Burbank voters.

On November 9, 2015 the Authority endorsed Bob Hope Airport Replacement Terminal Conceptual Term Sheet and on November 16th, the City Council considered and likewise endorsed the Conceptual Term Sheet. The Conceptual Term Sheet is a simpler, thirty-thousand foot view of elements that serve as the cornerstone of any legal documents for approval of a 14-gate replacement terminal.

The Authority issued a Draft Environmental Impact Report (EIR) for the Project on April 29, 2016. City staff presented the Draft EIR to the Council and Planning Board during a joint meeting on May 16, 2016. On June 7th, the Council approved the City's comment letter to the Draft EIR. The public comment period on the Draft EIR ended on June 13, 2016.

During the Joint Meeting on May 16th, staff also introduced Council and the Board to the various legal documents needed for City approval of the Project and went over the major deal points of the Development Agreement for the Project.

PROCESS

It is important to note, that prior to any City Council consideration of the Development Agreement or entitlements for construction of the Replacement Terminal Project, the Final Environmental Impact Report (FEIR) for the Project must be released and public hearings held on the Project. The Authority is planning to release the Final EIR by the end of June. The Planning Board is scheduled to consider the Final EIR, Development Agreement and minor Planned Development amendments for the Project at a special meeting on July 7, 2016. The City Council public hearings on the project are scheduled for July 25th and July 26th. Second reading and adoption of any ordinances, as well as calling the Measure B election, is scheduled for August 1st, instead of Tuesday, August 2nd, which is National Night Out. If Council calls the election on August 1st, then Burbank voters would have the final say on the approvals as required by Measure B at the November 8th, Presidential election. (Measure B requires a public vote to validate any agreements with the Airport Authority or discretionary acts of the Council for an expanded or relocated airport terminal project.)

DISCUSSION

Development Agreement: The major terms are outlined below.

- Effective Date – 90 days after declaration of affirmative Measure B vote or end of litigation.
- Term 20 years.
- Vested right to construct the Replacement Terminal Project in accordance with the Development Agreement and its Conditions of Approval on either Adjacent Property or Southwest Quadrant.
- Building Official Duties – City performs unless City is not acting in accordance with §4.8 (b) of the Development Agreement as determined by a 3rd party neutral Building Official and City does not conform, then Building Official duties will be assigned to the County of Los Angeles. If County is unable, then Glendale or Pasadena.
- Existing terminal and adjacent parking structure demolished within 1 year of Replacement Terminal opening.
 - No new structures unless consistent with FAA standards (which prohibit all buildings on site of existing terminal and parking structure).
- Transient Parking Tax – capped at 15% until the terminal is opened
- Documents City's interpretation of permitted uses in Airport Zone and gives Community Development Director authority to interpret the Airport Zone permitted

uses to include other compatible uses. Provides flexibility as to allowed uses inside the Replacement Terminal.

- Vests not only the right to build the Replacement Terminal Project, but also vests the current zoning and General Plan land use designation for the entire Airport during the term.
- Airport is eligible for demolition credit even though some demolition will happen after construction
 - Refund only after all demolition occurs including existing terminal/parking structure
- Design Process for Replacement Terminal and Parking Structure and Design Standards covering:
 - Parking structures, screening, sidewalks, landscape and miscellaneous.
 - Special process to insure community involvement on design aspects of replacement terminal.
- Standard Conditions of Approval (the Conditions of Approval attached to the Development Agreement are still being vetted.)

Change in Airport Governance: The Authority is a separate governmental entity created and regulated by a Joint Powers Agreement (JPA) among the cities of Burbank, Glendale and Pasadena. The JPA provides for a 9-member Commission – three from each city - that oversees the Airport Authority. All three cities and Authority proposed that the JPA be amended so that in the future certain actions may only be taken if there is an affirmative vote by at least two Commissioners from each City (i.e. super majority voting), as follows:

- Any increase in the number of commercial airline passenger gates above 14.
- Creation or construction of any remote parking positions for airline passenger aircraft.
- Approval of any expansion of the existing terminal, any expansion of the Replacement Terminal, or any relocation of airline passenger related functions from the Replacement Terminal.
- Amendment to the Authority's noise rules or a change in enforcement except to implement a mandatory curfew.
- Amendment to the Authority's voluntary curfew or change in enforcement.
- Abandonment of the Authority's support for federal legislation to allow a mandatory curfew.
- Approval of the purchase of real property except for aviation easements.
- Approval of an airport management contract or lease with a term over 35 years.

The effective date of the amendment is the same as for the Development Agreement. The amendment also allows each city to decide if it wishes to stagger the terms of its appointees to the Authority Commission. The amendment provides for the delegation of Building Official duties as provided in the Development Agreement and allows either the City of Glendale or Pasadena or Los Angeles County to act as Building Official for the Replacement Terminal Project. The amendment also allows the Cities of Glendale and Pasadena jointly to sue the City for a material breach of the Development Agreement

with the remedy to suspend the super majority vote provisions during the period of breach or until the terminal opens, whichever is earlier. This remedy only takes effect if the City is found to be in material breach. Lastly, there is a mechanism to follow if the Federal Aviation Administration or another third party challenges either a super majority vote or provision as being a violation of federal law or federal grant assurances.

Adjacent Property Easement:

The City holds an easement (a property interest) which controls how the Adjacent Property can be used. The Easement prohibits the Adjacent Property to be used for Airport purposes. In exchange for the JPA amendments outlined above, if the City Council approves the Replacement Terminal Project and the voters ratify that approval, then the easement will be modified to allow construction of the Replacement Terminal. If the Authority selects the Adjacent Property for the location of the Replacement Terminal and begins construction, then once the foundation is poured and one exterior wall is erected, the City will terminate its easement. If the Replacement Terminal is located on the Southwest Quadrant, then the current general aviation facilities totaling 215,771 square feet will be relocated to the Adjacent Property and the easement will be modified to allow that relocation. However, the easement prohibition on any other airport-related uses will remain in place.

CONCLUSION

The Council is not being asked to make any final decisions on the Project. Rather, after the public hearing(s) on the Project, Council will consider as a Responsible Agency, the Final EIR and consider approval of the Development Agreement, the modification to the Adjacent Property easement, the JPA Amendments, CA Public Utilities Code Section 21661.6 approvals and minor amendments to the two applicable Planned Developments. Council is requested to give any direction as to the legal documents presented and to note and file this report.

EXHIBITS

- Exhibit A – Draft Development Agreement
- Exhibit B – Draft JPA Amendments
- Exhibit C – Draft Modification of Adjacent Property Easement

Exhibit A

Draft Development Agreement

EXHIBIT A

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

City of Burbank
275 East Olive Avenue
P.O. Box 6459
Burbank, California 91510
Attention: City Clerk

This document is exempt from the payment of a recording fee
pursuant to Government Code Section 27383

**DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BURBANK
AND
THE BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY**

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THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into this ___ day of _____, 2016 ("Execution Date"), by and between the CITY OF BURBANK, a charter city and municipal corporation (the "City"), and the BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY, a joint powers agency (the "Authority"). The City and the Authority are from time to time hereinafter referred to individually as a "party" and collectively as the "parties."

RECITALS

A. The purposes of this Agreement are to: (i) give to the Authority a vested right to all City discretionary approvals needed for the Authority's Replacement Terminal Project (defined in Section 4.1 and the attached Exhibit C) at the Bob Hope Airport (the "Airport") subject to voter approval required by Burbank Municipal Code ("Municipal Code") Section 2-3-112¹ ("Measure B"); and (ii) provide greater certainty and predictability in future relations between the parties.

B. The Authority is the owner and operator of the Airport, an approximately 555-acre airport serving scheduled air carriers from the existing 14-gate passenger terminal, general aviation, and military air operations. The majority of the Airport property, approximately 455 acres, is located within the City's jurisdictional boundaries. The Airport property located within the City's boundaries is depicted on the attached Exhibit A and legally described on the attached Exhibit B (the "Property"). The remainder of the Airport lies within the City of Los Angeles.

C. The Authority was formed in 1977 and currently operates the Airport pursuant to the September 15, 1991 "Amended and Restated Joint Exercise of Powers Agreement Among the Cities of Burbank, Glendale and Pasadena Creating an Agency to be Known as the Burbank-Glendale-Pasadena Airport Authority" (as amended, the "JPA"). Section 3 of the JPA sets forth certain powers and duties of the Authority, which include the powers "to acquire, operate, repair, maintain, improve and administer the Airport Facility, including, without limitation, the acquisition, development, operation, repair, maintenance, improvement, renovation, construction, reconfiguration and administration of the properties and facilities thereof, and ... all other powers enumerated in the [Joint Exercise of Powers Act, Government Code Section 6500 et. seq.] and California Government Code Section 6546.1, as the same now exists or may hereinafter be amended."

¹ "No approval by the City of Burbank of any agreement between the City and the Burbank-Glendale-Pasadena Airport Authority for a relocated or expanded airport terminal project, or any other discretionary act by the City relating to the approval of a relocated or expanded airport terminal project shall be valid and effective unless previously approved by the voters voting at a City election."

D. The parties executed a March 15, 2005 "Development Agreement Between the City of Burbank and the Burbank-Glendale-Pasadena Airport Authority Relating to the Bob Hope Airport" (as amended, the "2005 Development Agreement"). In the 2005 Development Agreement, among other things, the Authority agreed to neither construct nor take steps needed for the construction of a new or relocated passenger terminal building and the City agreed to not initiate a master plan, specific plan, and comprehensive plan or rezoning that would affect the location or development of a new or relocated passenger terminal building. The 2005 Development Agreement also recognized that the parties had established an informal working group to explore land use options for the Airport after expiration of such Agreement.

E. In furtherance of that joint and cooperative effort, the parties now desire to seek voter approval of the Replacement Terminal Project, which includes the replacement of the existing 14-gate 232,000 square-foot passenger terminal and adjacent four-level public parking structure with a new 14-gate 355,000 square-foot passenger terminal and new parking facilities for users of the terminal (public and employee). The Replacement Terminal Project also includes demolition of the existing passenger terminal and adjacent parking structure after construction is complete.

F. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature enacted Government Code Section 65864 et seq. (the "Development Agreement Statute"), which authorizes the City to enter into an agreement with any person or entity having a legal or equitable interest in real property to establish certain development rights regarding the development of such property.

G. Pursuant to Government Code Section 65865, the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements. Such rules and regulations are codified at Burbank Municipal Code Section 10-1-1997 et seq. (the "Development Agreement Ordinance"). This Agreement has been processed, considered, and executed in accordance with the Development Agreement Ordinance.

H. Through Municipal Code Section 10-1-201 et seq. (the "Zoning Ordinance"), the City has established regulations controlling the uses of land, the uses and locations of structures, the height and bulk of structures, the appearance of certain uses and structures, and other matters. Pursuant to Municipal Code Section 10-1-905, the City may establish in a development agreement an alternative development review method for structures erected in an Airport Zone. With the exception of two Planned Development zones (comprising approximately 31 acres) and two M-2 zoned parking lots, the remaining portion of the Property has an Airport Zone designation.

I. The Authority has concluded and represents that the terms of this Agreement are consistent with its obligations to the federal government set forth in grant agreements, including its obligations to operate the Airport, to maintain financial self-sufficiency, to preserve its rights and powers, and to pursue the Replacement Terminal Project in a manner that is reasonably consistent with local plans.

J. This Agreement encourages the development of the Replacement Terminal Project by providing the Authority with a great degree of certainty of its ability to economically and expeditiously complete the development effort. By entering into this Agreement, the City desires to give to the Authority, to the fullest extent possible under the law, a vested right to all City discretionary approvals needed for the completion of the Replacement Terminal Project, (collectively the "Project Approvals"), which includes this Agreement and the following:

(1) **CEQA Compliance.** The Replacement Terminal Project was analyzed and examined in a Final Environmental Impact Report (State Clearinghouse No. 2015121095) (the "EIR") prepared by the Authority as lead agency. At a duly noticed public hearing on July 11, 2016, the Authority Commission adopted Resolution No. _____ which certified the EIR in accordance with California Environmental Quality Act ("CEQA") Guidelines Section 15090, adopted findings in accordance with Public Resources Code Section 21081 and CEQA Guidelines Section 15091, adopted a Statement of Overriding Considerations in accordance with CEQA Guidelines Section 15093, and imposed certain mitigation measures on its project approvals by adopting a Mitigation Monitoring Plan in accordance with CEQA Guidelines Section 15097, which mitigation measures are incorporated herein by reference. At a duly noticed public hearing on _____, __, 2016, the Burbank City Council ("City Council") considered the information in the EIR prior to taking action on the Replacement Terminal Project, and adopted findings with respect to the environmental impacts of the Replacement Terminal Project.

(2) **Modification To Amended And Restated Grant of Easements, Declaration Of Use Restrictions And Agreement For Adjacent Property.** On _____, __, 2016, following a duly noticed public hearing, the City Council approved a Modification to Amended and Restated Grant of Easements, Declaration of Use Restrictions and Agreement for Adjacent Property (the "Easement Modification"). The Easement Modification maintains the existing prohibition on structures, construction or development projects to expand or enlarge the Airport on the Adjacent Property (defined in Article 1) until such time as the Authority records a memorandum memorializing its selection of a location for the replacement passenger terminal at the Airport. Additionally, the Easement Modification provides for certain other authorized uses, which uses are contingent upon the replacement passenger terminal location selected by the Authority. A copy of the Easement Modification is attached as Exhibit D.

(3) **Public Utilities Code Section 21661.6(e) Land Use Plan Amendments (Adjacent Property and A-1 North).** On _____, __, 2016, following a duly noticed public hearing, the City Council adopted Resolution Nos. _____ and _____, which, respectively, granted approval to the Authority under Public Utilities Code ("PUC") Section 21661.6(e) to modify the respective plans for the use of the Adjacent Property and the use of the A-1 North Property (defined in Article 1). Copies of Resolutions Nos. _____ and _____ are attached as Exhibits E and F, respectively.

(4) **Planned Development Zone Amendments (Lot A and A-1 North).** On _____, __, 2016, following duly noticed public hearings, and review and

recommendation by the Burbank Planning Board (the "Planning Board"), the City Council adopted Ordinance Nos. _____ and _____, which, respectively, approved Planned Development zone changes for Lot A on the Adjacent Property and for the A-1 North Property (collectively the "PD Zoning"). The PD Zoning is consistent with the Burbank General Plan (the "General Plan"). Copies of Ordinance Nos. _____ and _____ are attached as Exhibits G and H, respectively.

(5) **Conditions of Approval**. Certain Project Approvals, as well as this Agreement, were approved subject to "Conditions of Approval," which, for purposes of this Agreement, shall also be considered included in any reference to the Project Approvals. The Conditions of Approval are set forth in the attached Exhibit I.

(6) **Alternative Development Review Method and Design Requirements**. The City Council approved an alternative development review method and certain design requirements for the Replacement Terminal Project. The alternative development review method and design requirements are set forth in Section 4.7 and the attached Exhibit J.

(7) **Project Design Features**. The Authority approved the Replacement Terminal Project subject to certain project design features set forth in the attached Exhibit K.

K. The City finds, and the parties agree, that the terms and provisions of this Agreement are consistent with the General Plan. Specifically, the permitted and planned use and development of the Property provide for orderly and controlled use and development consistent with the goals, policies, and other provisions of the General Plan.

L. On _____, __, 2016, following a duly noticed public hearing, the Planning Board adopted Resolution No. _____, recommending that the City Council approve this Agreement.

M. On _____, __, 2016, following a duly noticed public hearing, the City Council took the following actions: (i) as responsible agency, considered the EIR and the environmental effects of the Replacement Terminal Project as shown in the EIR, and made findings required by CEQA Guidelines Section 15091; (ii) made appropriate findings that the provisions of this Agreement are consistent with the General Plan; and (iii) introduced Ordinance No. _____ approving and authorizing the execution of this Agreement subject to its effectiveness being contingent upon ratification by Burbank voters at a Measure B election. On _____, __, 2016, the City Council adopted Ordinance No. _____.

N. The City is considering, concurrently with this Agreement, approval of a JPA amendment concerning governance of the Authority as summarized in the attached Exhibit L, and the City is considering a ballot measure to comply with Measure B. The JPA amendment requires approval by the Cities of Glendale and Pasadena. This Agreement, the Easement Modification, and the JPA amendment are integral parts of the

deal to give the Authority a vested right to construct the Replacement Terminal Project and give the City protection against future expansion of the Airport.

O. Over the course of the last two decades, the parties have disagreed about the extent to which the Zoning Ordinance, the City's other regulatory restrictions, and PUC Section 21661.6 apply to the Property. The parties, however, agree that it is in their mutual interest to hold in abeyance any such disagreements (or potential legal claims and positions based upon such disagreements) for the Term of this Agreement (defined in Section 2.3). If the Authority does not commence the construction of a replacement terminal building pursuant to the Project Approvals and this Agreement, then the parties are no longer bound to hold in abeyance any such disagreements. Nothing contained herein is intended to: (i) constitute an acceptance of the other party's legal claims or positions on such matters; (ii) waive or estop a party from asserting those claims or positions during the Term in connection with matters not covered by this Agreement, or from asserting those claims or positions after the termination or expiration of this Agreement; or (iii) negate any prior waiver of those claims or positions.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the parties agree as follows:

ARTICLE 1

DEFINITIONS

"A-1 North Property" shall mean the portion of the Property identified as such on Exhibits A and B.

"Adjacent Property" shall mean the portion of the Property identified as such on Exhibits A and B.

"Authority" shall mean the Burbank-Glendale-Pasadena Airport Authority.

"Authority Executive Director" shall mean the Burbank-Glendale-Pasadena Airport Authority Executive Director or such person's designee.

"BMC" shall mean the Burbank Municipal Code.

"City" shall mean the City of Burbank.

"City Building Official" shall mean the Burbank Building Official or such person's designee.

"City Clerk" shall mean the Burbank City Clerk or such person's designee.

"City Manager" shall mean the Burbank City Manager or such person's designee.

"City Council" shall mean the Burbank City Council or such body's designee.

"Community Development Director" shall mean the Burbank Community Development Director or such person's designee.

"County" shall mean the County of Los Angeles.

"Effective Date" shall have that meaning set forth in Section 2.2.

"Existing Development Regulations" shall have that meaning set forth in Section 4.2(b).

"FAA" shall mean the Federal Aviation Administration.

"Force Majeure" shall have that meaning set forth in Section 13.2(a).

"JPA" shall have that meaning set forth in Recital C.

"Measure B" shall mean BMC Section 2-3-112.

"Planning Board" shall mean the Burbank Planning Board.

"Project Approvals" shall have that meaning set forth in Recital J.

"Project Design Features" shall mean the project design features set forth in Exhibit K.

"Property" shall have that meaning set forth in Recital B.

"PUC" shall mean California Public Utilities Code.

"Replacement Terminal" shall mean the newly constructed 14-gate passenger terminal of no more than 355,000 square feet to be sited on either the Adjacent Property or the Southwest Property pursuant to Section 4.1, Section 5.5, and Exhibit C.

"Replacement Terminal Project" shall have that meaning set forth in Section 4.1 and Exhibit C.

"Southwest Property" shall mean the portion of the Property identified as such on Exhibits A and B.

"Term" shall have that meaning set forth in Section 2.3.

"TSA" shall mean the Transportation Security Administration.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Benefits; Consideration. In consideration of the mutual benefits of providing certainty to each party as to the rights, duties, limitations and

obligations of the other party with respect to the development and use of the Replacement Terminal Project during the Term, and in consideration of the mutual benefits to be derived from this Agreement, as more fully set forth in the Recitals, the parties have agreed to enter into this Agreement.

Section 2.2 Effective Date. This Agreement shall become effective, and the obligations of the parties shall be effective, upon the occurrence of both of the following: (i) the Los Angeles County Registrar-Recorder/County Clerk certifies the results of the November 8, 2016, Measure B ballot measure to the City Council and the City Council declares an affirmative Measure B vote resulting in the ratification of such ordinance and all other City discretionary approvals for the Replacement Terminal Project; and (ii) either (a) passage of 90 days following the affirmative Measure B vote without the filing of a lawsuit challenging the validity of the Measure B election or any City or Authority actions related to the Project; or (b) resolution of each such lawsuit by a court of competent jurisdiction in a final decision that upholds the challenged matter(s). If there is no such lawsuit, then the effective date shall be February 7, 2017. If there is such a lawsuit, then the effective date shall be the date on which a final decision of a court of competent jurisdiction has upheld the challenged matter(s). The City Clerk shall manually insert the effective date in the following blank space prior to recordation of this Agreement: (Effective Date is _____.) If Burbank voters do not approve the Measure B ballot measure, or if a lawsuit challenging the validity of the Measure B election or any City or Authority actions related to the Project is sustained by a final decision of a court of competent jurisdiction and there is no appeal thereof, then Ordinance No. _____ and this Agreement will never become effective and shall have no force or effect and shall be considered to be void ab initio.

Section 2.3 Term. This Agreement shall have a term (the "Term") that commences on the Effective Date and extends to the earlier of the following dates:

- (a) That date which is twenty years after the Effective Date; or
- (b) That date agreed upon by the parties for an early termination of this Agreement; or
- (c) That date on which the Authority abandons or otherwise commits to construct a replacement passenger terminal on a location on the Property that is a different location from the Replacement Terminal Project described in Section 4.1 and Exhibit C of this Agreement.

Section 2.4 Binding Effect; Covenants Run with the Land. From and after the Effective Date, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective successors (by merger, reorganization, consolidation or otherwise), lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective

successors, lessees, and assigns. All of the provisions of this Agreement shall constitute covenants running with the land.

ARTICLE 3

OBLIGATIONS OF AUTHORITY AND CITY

Section 3.1 Obligations of Authority. In consideration of the City's entering into this Agreement, the Authority agrees that it will comply with this Agreement, its Mitigation Monitoring Plan, the Project Approvals, and the Project Design Features. The parties acknowledge that the execution of this Agreement by the City is a material consideration for both the Authority's acceptance of, and agreement to comply with, the terms and conditions of this Agreement and the Project Approvals.

Section 3.2 Obligations of City. In consideration of the Authority's entering into this Agreement, the City agrees that it shall comply with this Agreement, and the City agrees that it shall act on all Authority applications pursuant to the Existing Development Regulations, subject to the terms, conditions and exceptions contained herein.

ARTICLE 4

VESTED RIGHT TO DEVELOPMENT OF REPLACEMENT TERMINAL PROJECT

Section 4.1 Project Definition; Phasing Schedule.

(a) **Project Definition.** The Replacement Terminal Project is defined as: the construction of a 14-gate 355,000 square-foot replacement passenger terminal, ancillary improvements including parking facilities (public and employee), a replacement airline cargo building, a ground service equipment maintenance building, and a replacement aircraft rescue and firefighting/police/emergency operations center building; demolition of the existing 14-gate 232,000 square-foot passenger terminal and adjacent existing four-level public parking structure; and, depending on the site of the replacement passenger terminal, relocation of some general aviation uses. The Replacement Terminal Project is more specifically described in Exhibit C. This Agreement approves the Adjacent Property and the Southwest Property as alternative, mutually exclusive, sites for the Replacement Terminal. The Authority is required to designate, and shall have absolute discretion to select, either of these sites, but not both, for the Replacement Terminal location in accordance with Section 5.5.²

² This Agreement provides the Authority a vested right to construct either the Adjacent Property Full-Size Terminal development option or the Southwest Quadrant Full-Size Terminal development option evaluated in the EIR, even if the Authority chooses to build a replacement passenger terminal that is less than 355,000 square-foot in size. The Southwest Quadrant Same-Size development option evaluated in the EIR is not part of this Agreement.

(b) Phasing Schedule. The parties acknowledge that construction phasing for the Replacement Terminal Project will vary based upon, among other things, the Authority's selection of a Replacement Terminal location. The schedules below are illustrative only and the Authority shall have absolute discretion to construct the Replacement Terminal Project at any time during the Term.

CONSTRUCTION SCHEDULE/PHASING FOR THE ADJACENT PROPERTY 5 YEAR PROJECT		
DESCRIPTION	ANTICIPATED CONSTRUCTION DATE	PHASING YEAR(S)
Close Parking Lot A	2020-2023	Year 0-3
Construct Replacement Terminal and Parking Structures	2020-2023	Years 0-3
Construct Aircraft Rescue and Fire Fighting Station (ARFF)	2023-2025	Years 3-5
Construct Ground Service Equipment Maintenance Building and Air Cargo Building	2023-2025	Years 3-5
Demolish Existing Terminal and Parking Structure	2023-2024	Years 3-4
Demolish Air Cargo Building	2023-2024	Years 3-4
Close Parking Lots B and E	2023	Year 3
Relocate Perimeter Service Road and Security Fence	2023	Year 3
Extend Taxiways A and C	2024-2025	Years 4-5

CONSTRUCTION SCHEDULE/PHASING FOR THE SOUTHWEST PROPERTY 7 YEAR PROJECT		
DESCRIPTION	ANTICIPATED CONSTRUCTION DATE	PHASING YEAR(S)
Construct General Aviation	2018-2020	Years 0-2
Construct Air Freighter	2018-2020	Years 0-2
Demolish Existing General Aviation and Air Freighter	2020	Year 2
Construct Replacement Terminal and Parking Structures	2020-2023	Years 2-5
Construct Aircraft Rescue and Fire Fighting Station	2023-2025	Years 5-7
Construct Ground Service Equipment Maintenance Building and Air Cargo Building	2023-2025	Years 5-7
Demolish Existing Terminal and Parking Structure	2023-2024	Years 5-6
Demolish Air Cargo Building	2023-2024	Years 5-6

Close Parking Lots A, B and E	2023	Year 5
Relocate Perimeter Service Road and Security Fence	2023	Year 5
Extend Taxiways A and C	2024-2025	Years 6-7

Section 4.2 Vested Right; Applicable Land Use Regulations.

(a) Except as limited by Section 4.4, the Authority shall have the vested right: (1) to develop the Replacement Terminal Project in accordance with the Project Approvals, the Existing Development Regulations, and this Agreement; and (2) to the Existing Development Regulations applicable to the Replacement Terminal Project.

(b) For purposes of this Agreement, "Existing Development Regulations" shall mean: (i) the ordinances, resolutions, rules, regulations, and official policies of the City governing the permitted and conditionally permitted uses of the Replacement Terminal Project, the density and intensity of use of the Replacement Terminal Project, the rate and timing of development including permit and approval processing procedures, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to the development of the Replacement Terminal Project; (ii) all other land use regulations applicable to the Replacement Terminal Project that are contained in the Project Approvals, the Existing Development Regulations not inconsistent with the Project Approvals, and this Agreement, which were in full force and effect as of the Effective Date.

(c) In the event of a conflict between the Existing Development Regulations, the Project Approvals and this Agreement, the terms of the Project Approvals shall prevail over the Existing Development Regulations, and the terms of this Agreement shall prevail over both the Project Approvals and the Existing Development Regulations. The Authority's vested right to develop the Replacement Terminal Project shall include the right, if necessary, to rebuild the Replacement Terminal Project if damaged from a Force Majeure.

Section 4.3 Conflicting Enactments. Except as provided in Section 4.4, after the Effective Date, any newly enacted law or change in or to the Existing Development Regulations that would, absent this Agreement, otherwise be applicable to the Replacement Terminal Project and which would conflict in any way with or be more restrictive than the Existing Development Regulations ("Conflicting New Law"), regardless of the manner in which the same is enacted and regardless of whether enacted by a legislative body or other means, shall not be applied by the City to the Property. A Conflicting New Law shall include any new enactment that: (i) limits, reduces or otherwise changes the use, density, intensity or timing of the development of the Replacement Terminal Project; (ii) imposes new categories of development impact fees; (iii) imposes new discretionary review processes or procedures which do not presently apply to the Replacement Terminal Project; (iv) alters existing discretionary review processes or procedures not otherwise applicable to the Replacement Terminal Project in such a manner that they would apply to Replacement

Terminal Project; or (v) increases the number of required parking spaces or affects the number of parking spaces permitted by this Agreement. The Authority, in its sole discretion, may give the City written notice of its choice to have a Conflicting New Law applied to the Property, in which case such Conflicting New Law shall be deemed to be an Existing Development Regulation.

Section 4.4 **Reservation of City's Power to Regulate.** This Agreement shall not preclude the City or Burbank voters, by subsequent action, from enacting or imposing any new law that does not conflict with the Project Approvals, Existing Development Regulations or this Agreement ("Non-Conflicting New Law"). Further, the following whenever enacted shall apply to the development and use of the Replacement Terminal Project:

(a) **Uniform Codes.** Uniform building, electrical, mechanical, fire and similar codes based upon uniform codes (including any City amendments) adopted in, or incorporated by reference into the BMC, as may be enacted or amended thereafter and as in effect on a citywide basis.

(b) **Application Processing Fees.** Application processing fees and charges imposed by the City on a citywide basis, and in accordance with the Mitigation Fee Act (Government Code Section 66000 et seq.), to cover the estimated reasonable cost to the City of processing applications under the Existing Development Regulations.

(c) **Utility Fees.** Standard and non-discriminatory utility fees and other related utility rates, including, but not limited to, hook-up charges and aid-in-construction fees, in accordance with the applicable electrical or water rates and rules in effect at the time of application for service. Notwithstanding the preceding sentence, the City shall afford the Authority the opportunity to negotiate preferential utility rates comparable to those charged to similarly situated large users.

(d) **Federal, State, County, and Multi-Jurisdictional Laws and Regulations.** Federal, state, county and multi-jurisdictional laws and regulations which the City is required to enforce against the Property or the Authority. If the applicable federal, state, county, or multi-jurisdictional law or regulation precludes compliance with one or more of the provisions of this Agreement or is inconsistent with any of the Project Approvals, then such provisions of this Agreement or Project Approvals shall be modified or suspended as may be necessary to comply with such federal, state, county, or multi-jurisdictional law or regulation.

(e) **Citywide Public Health and Safety Regulations.** Citywide public health and safety regulations that may be in conflict with the Project Approvals or the Existing Development Regulations but which are necessary to protect the public from an immediate threat to the public health and safety that meets all of the following criteria: (i) arises after the execution of this Agreement; (ii) does not arise from either development at the Airport consistent with the terms of this Agreement or operations of the Airport that are typical of operations at commercial airports; and (iii) does not regulate aircraft noise or aircraft emissions. In the event the City adopts a citywide public health and safety

regulation which the Authority believes will have an adverse effect on the Authority and its rights and benefits from this Agreement, then, upon request of the Authority, the City Manager and the Authority Executive Director shall meet to discuss the effects of the regulation on the Authority and the applicability of the regulations to the Authority under this Agreement. By discussing the applicability of the regulations, neither party waives any remedies under this Agreement or at law or in equity.

Section 4.5 **Impact Fees; Demolition Credits.**

(a) Impact Fees. The Authority shall pay the City's Community Facilities Fees, also known as impact fees, which are in effect at the time of issuance of any building permit for the Replacement Terminal Project. These fees are applicable whether or not the City or some other entity is acting as the building official and issuing building permits for the Replacement Terminal Project. Such fees shall be payable at the time of building permit issuance. Any new categories of impact fees shall be considered to be a Conflicting New Law as to the Replacement Terminal Project only, but not as to future projects on the Property.

(b) Demolition Credits. The City shall treat certain demolition work required for the Replacement Terminal Project as eligible for the City's demolition credit program pursuant to this Section and BMC Section 10-1-2211, even though some of the demolition is being done after construction. The anticipated demolition credit will be calculated by the Authority in consultation with the City Building Official. The City shall refund the demolition credit portion of the fees paid by the Authority upon the completion of all demolition eligible for the credit. This anticipated demolition credit is subject to the following conditions: (i) demolition of the existing terminal and adjacent parking structure shall occur no later than one year after opening the Replacement Terminal to the public; (ii) once demolition of the final structure eligible for the credit has occurred, the City shall refund the full amount of the eligible demolition credit to the Authority within 30 days of written notification by the Authority and verification by the City Building Official; and (iii) credits are available only if the entire Replacement Terminal Project is constructed in accordance with Section 4.1 and Exhibit C; no partial demolition credits shall be given. Furthermore, if demolition of the existing terminal fails to occur within the time set forth in this Section, the Authority shall not be entitled to any demolition credit and the Authority's failure to demolish the same shall be a material breach of this Agreement.

Section 4.6 **Airport Zone Permitted Uses.**

(a) The existing City Use List (BMC Section 10-1-502) specifies Airport Zone permitted uses including:

- (1) "Aircraft fabrication, testing, servicing."
- (2) "Aircraft landing fields, for aircraft, helicopters, runways, control towers, etc."
- (3) "Air passenger facilities."

- (4) "Wireless Telecommunications Facilities pursuant to BMC section 10-1-1118."

(b) The parties desire to document the City's interpretation of such Airport Zone permitted uses, and such interpretation shall be the official interpretation for the Term. The Community Development Director in his/her sole discretion may interpret the Airport Zone permitted uses to include other compatible uses. The following uses are included within the definitions of such Airport Zone permitted uses:

- (1) Aircraft fabrication, testing, servicing, specifically including the following:
 - (A) Aircraft modification.
 - (B) Aircraft engine and engine run-up testing.
 - (C) Aircraft maintenance.
- (2) Aircraft landing fields, for aircraft, helicopters, runways, control towers etc., specifically including the following:
 - (A) Aircraft hangars.
 - (B) Aircraft ramps.
 - (C) Aircraft runways.
 - (D) Aircraft runway safety areas.
 - (E) Aircraft taxiways.
 - (F) Aircraft taxiway safety areas.
 - (G) Aircraft service roads.
 - (H) Aircraft perimeter fences and barriers.
 - (I) Aircraft fueling facilities.
 - (J) Aircraft ground service equipment maintenance facilities.
 - (K) Air cargo facilities and ancillary uses.
 - (L) Emergency response facilities such as fire and police facilities.
 - (M) Airport navigation aids, radar, communications and surveillance equipment.

- (N) Air traffic control towers and associated navigation aids, radar, communications and surveillance equipment operated by the FAA.
- (3) Air passenger facilities, specifically including the following:
 - (A) Airline ticket counters, airline or Authority offices, passenger and baggage screening, signage, and use of corridor space.
 - (B) Airport-related vehicle parking.
 - (C) Car rental facilities and associated incidental uses (including car wash, marshalling, fueling, and maintenance facilities).
 - (D) Concessions for food and beverages (including alcoholic beverages), personal services, retail sales, and incidental commercial uses.
 - (E) General aviation facilities including passenger lounges, pilot lounges, Authority or general aviation provider offices, and incidental commercial uses normally associated with general aviation facilities such as catering or ground transportation.
 - (F) Law enforcement facilities.

Section 4.7 Design Requirements.

(a) Community Input. The Authority shall provide written notice to every City household and to the City Council announcing the public design process for the Replacement Terminal and parking structures (public and employee) including a schedule of community meeting dates. The Authority shall advertise at a minimum in print, social media and web sites any of these required community meetings at least two weeks prior to any such meeting. No final design decision by the Authority that will be the basis for construction plans for the Replacement Terminal and parking structures (public and employee) may occur except at a noticed public hearing.

(b) Specific Requirements. The specifics of the design values, design standards, and design process for the Replacement Terminal and parking structures (public and employee) are set forth in the attached Exhibit J.

Section 4.8 Building Official Duties.

(a) Building Permit Applications. The City shall either through its own actions, or by contract authorize another entity or contractor ("Issuing Entity") to comply with this section. Upon submission by the Authority of all appropriate applications and

processing fees for any demolition permit, grading permit, building permit, other development permit, or certificate of occupancy for the Replacement Terminal Project (collectively, the "Application"), the City shall promptly commence and diligently complete all steps necessary to act on the Application, including the approval of the Application to the extent that it complies with this Agreement and the Existing Development Regulations.

(b) Building Permit Review; Certificate Submission. The issuance of any permit or certificate of occupancy in response to an Application is deemed ministerial. The City or Issuing Entity may deny an Application only if the Application does not comply with this Agreement and the Existing Development Regulations. The City, upon satisfactory completion by the Authority of all required administrative procedures, actions and payments of appropriate processing fees, if any, shall, in a timely fashion, proceed to complete all required steps necessary for the implementation of this Agreement and the development by the Authority of the project site. Prior to each request for a building permit, the Authority shall provide the City with a compliance certificate ("Compliance Certificate") in a form created by the Authority and approved by the City Manager, which shall describe the Application's consistency with the Project Approvals and this Agreement. The Compliance Certificate shall be distributed to relevant City departments for review and concurrence. The City shall use its best efforts to complete any ministerial review within 30 days of receipt of a completed Application from the Authority (and receipt of a completed Compliance Certificate if the Application is for a building permit).

(c) Transfer of Building Official Duties. Notwithstanding any other provision of this Agreement (including Article 10), if the Authority determines that the City has failed to process an Application in accordance with Section 4.8(b), then by notice to the City the Authority may require that the disputed matter be submitted to the Building Official from the City of Santa Ana, City of Santa Clarita, or City of Thousand Oaks ("Other Building Official") for nonbinding mediation. The Authority shall have sole discretion to select which city's building official shall serve as the Other Building Official.

Upon receipt of the request, the Other Building Official shall, within fourteen (14) days, hold an informal meeting with representatives of the City and Authority to review the disputed matter and obtain input, and within ten (10) days after that meeting, render a decision on the dispute. If the Other Building Official finds that the City is not in compliance with Section 4.8(b), then the Other Building Official also shall identify the action(s) that must be taken for the City to be in compliance. If the City fails to take such action(s) within 14 days, then the Authority may require the City to transfer building official duties for the Replacement Terminal Project to Los Angeles County pursuant to the City's June 1, 2012 General Services Agreement with the County or any successor contract. If the County refuses to perform building official duties for the Replacement Terminal Project, then the City shall transfer such duties to the City of Glendale or the City of Pasadena.

After completion of the nonbinding mediation process set forth in this Section, the Authority shall have the right seek judicial review of the City's alleged failure to process an Application in accordance with Section 4.8(b) and, if applicable, the City's failure to transfer building official duties in accordance with this Section.

(d) Intent. The intent of the parties, if there is a transfer of Building Official duties, is that the County (or City of Glendale or City of Pasadena), acting as Issuing Entity, would hire outside inspectors, with the City's approval, to perform all building official duties, including all plan check duties, all building related inspections (including electrical and plumbing inspections) and issuance of all permits and certificate of occupancies as to all construction and demolition related permits for all structures which are part of the Replacement Terminal Project. The County (or City of Glendale or City of Pasadena) will manage the outside building contractors. The City will work closely with the outside contractors hired by the County (or City of Glendale or City of Pasadena) to assist where necessary, so that construction of the Replacement Terminal Project can occur in an expeditious manner.

(e) Fees. The use of an outside contractor or other outside Issuing Entity (including the County, the City of Glendale, or the City of Pasadena), will not relieve the Authority from paying all normal and customary permits fees to the City, as well as the cost of such outside Issuing Entity and any of such entity's fees. All costs required by the Issuing Entity and outside consultants shall be paid for by Authority prior to the commencement of any work by such outside Issuing Entity.

Section 4.9 Construction of Replacement Terminal Project. Nothing in this Agreement shall be construed as requiring the Authority to develop the Replacement Terminal Project or any phase thereof, or to do so in any particular time frame, except as provided in this Agreement, and any failure to develop the Replacement Terminal Project or any phase thereof shall not be deemed a default by the Authority of the obligations set forth in this Agreement. Notwithstanding the preceding, if Authority begins construction of the Replacement Terminal, then any failure by the Authority to complete the demolitions specified in Section 4.1 and Exhibit C shall be deemed a default by the Authority.

Section 4.10 Dedications. The City shall not require a fee simple dedication by the Authority of any real property as a condition of the Replacement Terminal Project. This section shall not bar the City from requiring easements on Authority real property where easements are required to allow the City to provide required improvements (including sidewalk improvements) or utilities.

ARTICLE 5

OTHER OBLIGATIONS

Section 5.1 Maintenance of Object-Free Area and Building Restriction Line. The Authority shall not construct on the southeast quadrant of the Airport in the area identified in the attached Exhibit M any new buildings or structures unless such construction is consistent with standards set forth in FAA or TSA regulations, orders, and advisory circulars applicable from time to time. The Authority shall not seek a modification or waiver from the FAA or TSA of any such standards. This obligation shall survive expiration of this Agreement.

Section 5.2 Curfew Legislation. The parties shall continue to support legislation that authorizes the lawful imposition of the mandatory curfew that was sought by the Authority's application under 14 C.F.R. Part 161 to the FAA, which is set forth on the attached Exhibit N.

Section 5.3 Acknowledgment of Grandfathered Properties.

(a) The City acknowledges that the Authority is not obligated to obtain City approval pursuant to PUC Section 21661.6 for Airport Zone permitted uses of APN 2466-10-906 (Air Traffic Control Tower Site). The City shall not require the Authority to process a PUC Section 21661.6 land use plan application to authorize any use of or to change the use of this property. This acknowledgement shall survive the termination or expiration of this Agreement.

(b) The Authority and City disagree as to whether PUC Section 21661.6 applies to APN 2466-19-904 (C-1 Site) and APN 2466-11-904 (portion of Northwest Quadrant near T-Hangars) and requires submittal of a plan to City for approval pursuant thereto. The parties agree that it is in their mutual interest to hold in abeyance any such disagreements (or potential legal claims and positions based upon such disagreements) for the Term, but only if the Authority complies with the terms of this Agreement and does not construct the Replacement Terminal on a site other than as specified in Section 4.1 and Exhibit C and does not construct the Southwest Quadrant Same-Size Terminal development option evaluated in the EIR. Nothing contained herein is intended to: (i) constitute an acceptance of the other party's legal claims or positions on the applicability of PUC Section 21661.6; (ii) waive or estop a party from asserting those claims or positions during the Term in connection with matters not covered by this Agreement, or from asserting those claims or positions after the termination or expiration of this Agreement; or (iii) negate any prior waiver of those claims or positions. For the Term, so long as Authority is in compliance with this Agreement and does not construct the Replacement Terminal on a site other than as specified in Section 4.1 and Exhibit C and does not construct the Southwest Quadrant Same-Size Terminal development option evaluated in the EIR, the City will not assert its authority, if any, pursuant to PUC Section 21661.6 over APN 2466-19-904 (C-1 Site) and APN 2466-11-904 (portion of Northwest Quadrant near T-Hangars).

Section 5.4 Covenant of Cooperation. No party shall do anything which shall have the effect of materially harming or injuring the right of the other party to receive the benefits provided for in this Agreement. Each party shall refrain from doing anything which would render its performance under this Agreement impossible. Each party shall do everything which this Agreement contemplates that such party shall do in order to accomplish the objectives and purposes of this Agreement. The parties shall cooperate and deal with each other in good faith, and shall assist each other in the performance of the provisions of this Agreement.

Section 5.5 Authority Designation of Replacement Terminal Location. The Easement Modification authorizes the Authority to formally designate either, but not both, the Adjacent Property or the Southwest Property as the location for the

Replacement Terminal. If such selection is made during the Term, as provided in the Easement Modification, then the Project Approvals and Conditions of Approval relevant to the selected site shall be applicable to the Replacement Terminal Project. Consistent with the provisions of the Easement Modification, this Agreement authorizes only one site for the Replacement Terminal. If a selection is not made pursuant to the Easement Modification during the Term, then this Agreement shall expire without the development of the Replacement Terminal Project. Once a site is designated, nothing herein precludes the Authority from constructing a replacement terminal up to 355,000 square feet or less.

Section 5.6 **Transient Parking Tax.** The City shall not seek or support voter approval for an increase in the transient parking tax above 15% prior to the Replacement Terminal being opened.

ARTICLE 6

SCOPE OF CITY LAND USE POWERS OVER AIRPORT ZONED PROPERTY

Section 6.1 **Intent.** During the last ten years, the parties had agreed to peaceably disagree about the extent of the City's land use powers on Airport-zoned property in the City of Burbank. Similar to the agreement memorialized in the 2005 Development Agreement, the parties agree that it is in their mutual benefit to hold in abeyance any such disagreement (or potential legal claims and positions based upon such disagreements) for the Term. Nothing contained herein is intended to: (i) constitute an acceptance of the other party's legal claims or positions on such matters; (ii) waive or estop a party from asserting those claims or positions during the Term in connection with matters not covered by this Agreement during the Term, or from asserting those claims or positions after the termination or expiration of this Agreement; or (iii) negate any prior waiver of those claims or positions.

Section 6.2 **Vested Rights to Zoning Ordinances and General Plan Land Use Designations.** The Authority has vested rights in the zoning designations and General Plan land use designations applicable to the Property on the Effective Date. The City shall interpret Airport Zone permitted uses in the manner set forth in Section 4.6 and such interpretation shall be vested in the Property during the Term. The City further agrees not to impose any development standards or design requirements in the Airport Zone (or applicable to that zone) as to the Property, except that the standards and requirements in Section 4.7 and Exhibit J shall apply to the Property and the Replacement Terminal Project during the Term. The City further agrees to not apply any historic resource designation or historic district designation to the Property without the Authority's consent. During the Term, the City further agrees to not amend or repeal the Property's General Plan land use designations or zoning designations. The Authority may waive this Section by submitting an application for a zoning amendment, historic resource designation, historic district designation, or general plan amendment.

Section 6.3 Airfield Improvements. This Agreement does not require the Authority to obtain any ministerial or discretionary approvals from the City for the construction and/or maintenance of airfield improvements that are subject to the operational control of, and approval by the FAA, including runway and taxiway construction, rehabilitation and maintenance projects.

ARTICLE 7

AMENDMENT

Section 7.1 Minor Amendment of Project Approvals. The Project Approvals may be amended or modified, from time to time, in the following manner:

(a) Upon the written request of the Authority, the Community Development Director shall determine: (1) whether the requested amendment or modification (the "Modification Request") is Minor, as determined by the Community Development Director in his or her sole discretion; and (2) whether the Modification Request is consistent with this Agreement. If such revisions do not result in any new, significant, or potentially significant environmental impacts not studied in the EIR, and if the Community Development Director determines that the Modification Request is in substantial conformance with this Agreement, then the Modification Request shall be approved by the Community Development Director as an "Administrative Amendment" without a public hearing. In such event, this Agreement and its pertinent exhibits shall be automatically amended without further action by the parties; however, the parties shall record of a Memorandum of Administrative Amendment.

For purposes of this section, the term "Minor" shall not include any amendment that affects or relates to: (i) the Term and uses that are not allowed in Section 4.6; (ii) reservation or dedication of land; (iii) application processing, (iv) monetary contributions; (v) Conditions of Approval to which the Community Development Director is not authorized by those Conditions or otherwise to make minor amendments; (vi) increase of the number of gates; or (vii) number of parking spaces. Any amendment for the aforementioned shall be processed as a major amendment, as set forth below.

(b) Notwithstanding the foregoing, no Administrative Amendment will be effective until after 30 days' notice to the City Council and posting in the same manner as agendas. If any member of the City Council requests consideration of such Administrative Amendment within the 30-day notice period, then the Administrative Amendment will not be effective unless there is a final determination by the City Council affirming the Community Development Director's determination that the Modification Request warranted treatment as an Administrative Amendment. In the event a member of the City Council requests consideration of a proposed Administrative Amendment, staff will agendize the matter for City Council discussion within 30 days of such request. This 30-day notice provision shall not apply to time-sensitive decisions during construction. In such a case, time-sensitive Administrative Amendments will be effective upon approval by the Community Development Director, and the City Council shall be given notice following the Community Development Director's decision. Notwithstanding the

foregoing, whenever possible, in the interest of expediting the Replacement Terminal Project for the benefit of both the Authority and the City, the City shall use its best efforts to make all determinations regarding a Modification Request as stated herein, in a prompt fashion as time is of the essence.

(c) The City Manager on behalf of the City, and the Authority Executive Director on behalf of the Authority, may enter into any implementing agreements, ancillary agreements or discretionary actions necessary to carry out or comply with the Project Approvals and this Agreement. Any such agreements are not subject to a Measure B vote.

Section 7.2 Major Amendment of This Agreement. This Agreement may be amended from time to time by mutual consent of the parties in accordance with Government Code Sections 65867, 65867.5, and 65868. This amendment process may be subject to a Measure B election.

ARTICLE 8

COOPERATION IN THE EVENT OF LEGAL CHALLENGE

Section 8.1 Defense Obligation. If a third party initiates an administrative or judicial proceeding challenging the execution of this Agreement, the legality of this Agreement, or any actions taken to comply with this Agreement (except for CEQA related challenges), then the parties shall take the following actions:

(a) Defend vigorously this Agreement, the authority of either of the parties to execute this Agreement, or any action to comply with this Agreement, and oppose and defend against any attempt to prevent either of the parties from performing any of the requirements contained in this Agreement.

(b) Prosecute fully such defense or opposition set forth above and, if the judicial, administrative or other action proceeding is not dismissed voluntarily, obtain a final order or decision from the judicial, administrative, or other decision maker.

Section 8.2 Support Obligation (for Non-CEQA Challenges). Each of the parties shall support any request by the other to intervene or participate in any such judicial, administrative or other action or proceeding. Each of the parties promptly shall provide the other with a copy of any correspondence, complaint, filings, pleadings, court orders or other non-privileged writing concerning an administrative or judicial proceeding or action described herein.

Section 8.3 Expenses (for Non-CEQA Challenges). Each of the parties shall be responsible for its expenses incurred in defending against any third-party challenge, except for an action relating to CEQA.

Section 8.4 CEQA Challenges. As to any action that relates to or involves a challenge related to CEQA, the Authority shall defend and indemnify the City against

the CEQA challenge. Such defense shall be provided by counsel selected by the Authority and approved by the City, which approval shall not be unreasonably withheld.

ARTICLE 9

REVIEW FOR COMPLIANCE

Section 9.1 Annual Review.

(a) On or before the first anniversary of the Effective Date, and on or before each anniversary date during the Term, the City shall independently review the good faith compliance by the Authority with the terms of this Agreement. The Authority shall provide annually, on written request by the City, a written report indicating: (i) whether the Authority is complying in good faith with the terms of the Agreement; and (ii) a summary of development and mitigation planned, undertaken or completed as authorized or required by the Agreement. The City's review of the Authority's compliance shall be conducted by the Community Development Director and shall be limited in scope to compliance with the terms of this Agreement pursuant to Government Code Section 65865.1, provided that, if the Authority or City Council imposes a mitigation monitoring or reporting program pursuant to CEQA which is to be completed simultaneously with the annual review of this Agreement, then the scope of the annual review may include the status of implementation of ongoing mitigation measures that are the Authority's responsibility pursuant to the EIR.

(b) At the conclusion of this review, the Community Development Director shall in writing make findings and determinations, on the basis of substantial evidence in the record, if the Authority has not complied in good faith with the terms of this Agreement. If the Community Development Director finds and determines that the Authority has not complied with such terms, then the City may send notice of apparent default pursuant to this Agreement.

(c) The City shall deliver to the Authority a copy of all public staff reports and public documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning the Authority's performance hereunder, at least 20 days prior to any such periodic review.

(d) In the event that the City fails to either conduct the annual review or notify the Authority in writing (following the time during which the review is to be conducted) of the determination as to the Authority's compliance or noncompliance with the terms of this Agreement and such failure remains uncured as of 60 days following the anniversary of the Effective Date in any year during the Term, then such failure shall be deemed an approval by the City of the Authority's compliance with the terms of this Agreement for that Annual Review period.

(e) With respect to any year for which an Annual Review of compliance with this Agreement is conducted and compliance is approved, or with respect to any year in which the City is deemed to approve of the Authority's compliance with this Agreement

pursuant to the preceding paragraph, the City, upon request of the Authority, shall provide the Authority with a written Notice of Compliance, pursuant to Section 9.2.

Section 9.2 **Notice of Compliance.**

(a) Within 30 days following any written request that the Authority may make from time to time, the City shall execute and deliver to the Authority a "Notice of Compliance," in recordable form, duly executed and acknowledged by the City, that certifies:

(1) That this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification.

(2) That there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default.

(b) The failure of the City to deliver such a Notice of Compliance within such time shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the Authority and that there are no uncured defaults in the performance of the Authority, except as may be represented by the Authority. Each party shall have the right, at its sole discretion, to record the Notice of Compliance.

ARTICLE 10

DEFAULT; DISPUTE RESOLUTION; REMEDIES

Section 10.1 **Applicability.** This Article applies solely to disputes arising out of this Agreement. This Article is inapplicable to disputes arising out of the JPA (which the Authority is not a party to) and is inapplicable to disputes arising out of any other contract to which the Authority is a party including the Easement Modification and the Authority's federal grant assurances unless such dispute is related to this Agreement. This Article does not apply to disputes arising under Section 4.8, which are subject to resolution as specified in that Section 4.8.

Section 10.2 **Remedies for Defaults.**

(a) Notice of Default. In the event of a failure by either party substantially to perform any material term or provision of this Agreement, the non-defaulting party shall have those rights and remedies provided herein, provided that the non-defaulting party has first provided to the defaulting party a written notice of default identifying with specificity the nature of the alleged default and the manner in which the default may satisfactorily be cured.

(b) Cure of Default. Upon the receipt of the notice of default, the alleged defaulting party shall promptly commence to cure, correct, or remedy the identified default at the earliest reasonable time after receipt of the notice of default and shall complete the

cure, correction or remedy of such default not later than 20 days after receipt of notice thereof; provided, however, if the breach of this Agreement is not reasonably susceptible of being cured within such 20 day period, then a default shall exist only if the cure of such breach is not commenced within the 20 day period or thereafter is not diligently prosecuted to completion. To facilitate a resolution of the alleged default, the City Manager and the Authority Executive Director shall meet within ten business days after receipt of the notice of default to attempt to find an appropriate cure for the default and to otherwise resolve the parties' dispute.

(c) **Dispute Resolution Panel.** In the event that a default is not cured, or the cure has not commenced within the 20-day period specified in paragraph (b) of this Section 10.2, either party must submit the alleged default and any differences arising from the alleged default to an informal dispute resolution panel (the "Panel") consisting of one retired judge appointed by each party and a third member agreed upon by both parties who shall be a professional with at least ten years' experience in land use and airport planning. The Panel shall be selected within ten days after either party notifies the other party that the dispute over the default has not been cured. In the event the parties are unable to agree on the third member, then the two appointed members shall select the third member within seven days after expiration of the ten-day period. The Panel shall meet and hold an informal hearing on the dispute within ten days of appointment. Each party shall be entitled to submit a written statement of its position regarding the dispute to the Panel at or before the hearing, and each party shall be entitled to make an oral presentation to the Panel during the hearing, which presentation shall not exceed 30 minutes in length. The Panel may establish rules of procedure for the administration of this process. Not later than 20 days after the Panel's first meeting on the alleged default and dispute, the Panel shall make a determination whether a default has or has not occurred and shall propose a resolution of the dispute. The Panel shall have no power to impose any resolution or specific action and its decisions shall not be binding on the parties. The parties shall review the Panel's proposed resolution and the City Manager shall meet with the Authority Executive Director at least one time within ten days after issuance of the Panel's proposed resolution to seek to resolve the dispute. If the parties are unable to resolve the dispute after such meeting, or if one party fails to cooperate or participate in the dispute resolution process, the parties may proceed to invoke any other remedies at law or in equity or as set forth in Section 10.3.

(d) **No Legal Proceedings During Alternative Dispute Resolution.** In order to ensure that the alternative dispute resolution procedures of this Section are used before a court challenge over a dispute arises, the parties shall proceed in accordance with this Section and neither party may proceed with any other remedies at law, equity or as specifically contemplated under this Agreement until the process set forth in this Section has been completed. During any period that a default has been alleged and the procedures in this Section are being complied with, the curing party shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default shall exist and the noticing party shall take no further action. Notwithstanding the preceding provisions of this paragraph, nothing contained herein is intended to abrogate either party's ability to seek extraordinary relief from the courts to compel or enjoin another party's action when irreparable harm will be caused by

the delay in completing the alternative dispute resolution procedures of this Section, or when other grounds for extraordinary relief are satisfied, as provided in Code of Civil Procedure Section 526 or other applicable provisions of law.

(e) Traditional Remedies. Upon completion of the procedures contained in paragraphs (a) – (c) of this Section 10.2, or upon the mutual written waiver of the procedures of this Section, either party may institute legal proceedings to seek relief for the default of the other Party.

Section 10.3 Remedies for Defaults.

(a) Legal Remedies. In the event of an uncured default by a party, the non-defaulting party, at its option, and only after the procedures and steps specified in Section 10.2 have been completed or mutually waived in writing by both parties, may institute legal action to cure, correct, or remedy such default, enjoin any threatened or attempted violation, or to seek specific performance or other relief to enforce the terms of this Agreement. Neither party shall be entitled to monetary damages for breach of this Agreement or consequential damages incurred that are the result of that breach.

(b) Remedies Available to Prevailing Party in Litigation. The parties agree that in the event that litigation is commenced by one party against the other party over an alleged default of this Agreement, after the procedures specified in Section 10.2 have been satisfied, that the prevailing party shall have the following remedies, in addition to any other remedies available at law or equity:

(1) If the City is the defaulting party and the Authority is the prevailing party in both the determination of the Panel pursuant to Section 10.2 and the succeeding litigation, then notwithstanding Section 2.3, the Tem shall automatically be extended for an amount of time equivalent to the time between the commencement of litigation (defined herein as the date the action has been both filed and served) and the date that judgment has been entered in the case.

(2) If the Authority is the defaulting party and the City is the prevailing party in both the determination of the Panel pursuant to Section 10.2 and the succeeding litigation, then notwithstanding Section 2.3, the Tem shall automatically be extended for an amount of time equivalent to the time between the commencement of litigation (defined herein as the date the action has been both filed and served) and the date that judgment has been entered in the case.

Section 10.4 Remedies to Challenge Termination. In the event this Agreement is terminated pursuant to the provisions of BMC Section 10-1-19116, the Authority may institute legal action in law or in equity to enjoin or invalidate such termination, to enforce the provisions of this Agreement, or to seek alternative relief at law or equity as provided for in Section 10.3. In no event shall the prevailing party in litigation to challenge such termination be entitled to monetary damages for the termination or consequential damages incurred that are the result of the termination.

Section 10.5 **Governing Law; Litigation Matters.** Any action in law or equity brought by a party for purposes of enforcing or interpreting this Agreement shall be brought in a court of competent jurisdiction within the State of California. The parties reserve their respective rights to contest whether state or federal law governs any issue.

ARTICLE 11

NOTICES

Section 11.1 Method of Notice.

(a) Any notice or communication ("Notice") required hereunder by a party must be in writing, and may be given either personally, or by registered or certified mail (return receipt requested), or by fax or email as long as a copy is sent via first class mail, postage prepaid. If given by registered or certified mail, a Notice shall be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as a party to whom Notices are to be sent; or (ii) five days after the registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or delivered by fax or email, a Notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party may at any time, by giving ten days written notice to the other party, designate any other address in substitution of the address to which such Notice shall be given.

(b) Notices shall be given to the Parties at their addresses set forth below:

If to the City to: City of Burbank
275 E. Olive Avenue
Burbank, CA 91502
Attention: Community Development Director

With a copy to: Office of City Attorney
City of Burbank
275 E. Olive Avenue
Burbank, CA 91502
Attention: City Attorney

If to the Authority to: Burbank-Glendale-Pasadena Airport Authority
2627 Hollywood Way
Burbank, CA 91505
Attention: Executive Director

With a copy to: Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071
Attention: Burbank-Glendale-Pasadena Airport Authority

ARTICLE 12
ASSIGNMENT

Section 12.1 Authority's Rights.

(a) Except as otherwise provided below, the Authority may not assign or delegate any of its rights, duties or obligations under this Agreement ("Assignment") without the prior consent of the City, which consent may not be unreasonably withheld. When requesting approval of a proposed Assignment, the Authority shall provide the City with evidence of the proposed assignee's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the City to evaluate the proposed assignee. In considering such a request, the City may consider the following factors, but is not limited thereby: (i) the quality of the proposed assignee; (ii) the proposed assignee's past performance and experience as an airport terminal operator; and (iii) the proposed assignee's current financial condition. In the event of the City's approval of a requested Assignment, the Authority shall be released of all of its obligations and liabilities under this Agreement with respect to the Property so conveyed as of the date the City approves the Assignment. Measure B is not applicable to any such transfer.

(b) The Authority may designate in a lease agreement any tenant as its agent for the purpose of acting on behalf of the Authority with respect to the rights under this Agreement without the prior consent of the City, in which event: (i) the City shall acknowledge such agency relationship for the purposes of this Agreement; and (ii) the Authority shall not be relieved of any of its obligations under this Agreement with respect to the leased Property.

(c) In the event that the City approves an Assignment pursuant to this section in connection with a sale or transfer in fee of a portion of the Property, any rights assigned in connection with such conveyance shall be allocated to the purchaser(s) or transferee(s). If the requested Assignment is approved, the parties will cooperate to appropriately document the Assignment.

Section 12.2 Mortgagee Protection. This Agreement shall not prevent or limit the Authority, or its lessees or assignees, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. The City acknowledges that the lender(s) providing such financing may require a Notice of Compliance pursuant to Section 9.2. Upon request, any mortgagee of a mortgage or a beneficiary of a deed of trust ("Mortgagee") of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.

(b) If the City timely receives a request from a Mortgagee requesting a copy of any notice of default given to the Authority under the terms of this Agreement, then the City shall provide a copy of that notice to the Mortgagee within ten days of sending the notice of default to the Authority. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(c) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of the Authority arising prior to acquisition of title to the Property by such Mortgagee, except that any such Mortgagee or its successors or assigns shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary obligations due under this Agreement for the Property, or portion thereof, acquired by such Mortgagee have been paid to the City and all defaults cured hereunder.

ARTICLE 13

MISCELLANEOUS

Section 13.1 **No Agency, Joint Venture or Partnership.** It is specifically understood and agreed that the Authority shall have full power and exclusive control over the Property subject only to the obligations of the Authority under this Agreement. This Agreement does not create or form an agency relationship, joint venture or partnership between the parties, and the parties agree that nothing contained herein shall be construed as creating any such relationship.

Section 13.2 **Force Majeure.**

(a) Neither party shall be deemed to be in default where delays or failures to perform are due to Force Majeure. For purposes of this Agreement, the term Force Majeure shall mean the following: strikes, lockouts or labor disputes, acts of God, acts of enemies or hostile governmental action, civil commotion, insurrection, revolution, sabotage, fire or other casualty, a taking of a whole or a portion of the Property by condemnation or eminent domain, or any material delay in the issuance of approvals by the City, the state or the federal government that is in no way attributable to any act or omission of one of the parties and not related to any financial liability on the part of the parties. Any party intending to rely upon Force Majeure to forgive performance shall give Notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on.

(b) In the event the Replacement Terminal is destroyed or so substantially damaged that it is not habitable as a result of Force Majeure, nothing contained herein shall preclude the Authority from: (i) reconstructing the Replacement Terminal within its then existing footprint or substantially within the then existing footprint and no larger than the existing footprint and square footage; (ii) constructing an emergency temporary passenger terminal building, buildings or structures; or (iii) using another existing building, buildings or structures as an emergency temporary passenger terminal. Any reconstructed or temporary terminal building shall be constructed in accordance with the applicable law in effect at the time. The emergency temporary building or structure or the temporary use of an existing building or structure shall be permitted only for such period of time that is required to rebuild, repair or restore the Replacement Terminal to usable condition and shall, in no event, provide for a larger footprint or more square footage or more aircraft gates or parking positions than the then-existing Replacement Terminal.

Section 13.3 Nonliability of City and Authority Officers, Employees and Consultants. No official, officer, employee, agent, representative, consultant or independent contractor of the City or the Authority, acting in his or her official capacity, shall be personally liable to the City or the Authority, or any successor or assign, for any loss, costs, damage, claim, liability, or judgment, arising out of or in connection with this Agreement, or for any act or omission on the part of the City or the Authority.

Section 13.4 No Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought and referring expressly to this Section 13.4. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof, except as expressly provided herein. No waiver by either party of any of the covenants or conditions to be performed by the other party shall be construed or deemed a waiver of any succeeding breach or nonperformance of the same or other covenants and conditions hereof.

Section 13.5 Severability. If any clause, sentence, paragraph, section, article, term, provision, covenant or condition of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining clauses, sentences, paragraph, sections, articles, terms, provisions, covenants and conditions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

Section 13.6 Further Assurances; Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement and other Project Approvals in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Section 13.7 Time is of the Essence. Time is of the essence with respect to this Agreement, the Project Approvals, and the rights and limitations contained herein and with respect to each and every term and provision hereof, it being understood that the parties have specifically negotiated the dates for the completion of each obligation and the termination of each restriction herein.

Section 13.8 Construction. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might apply. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa; the masculine gender includes the feminine and vice versa; "shall" is mandatory, "may" is permissive; and "include," "includes," and "including" are illustrative and nonexhaustive.

Section 13.9 Captions and References. The captions of sections of this Agreement are solely for the convenience of reference, and shall be disregarded in the construction and interpretation of this Agreement. Unless otherwise indicated reference herein to a "Recital," "Article," "paragraph," "Section," "Subsection" or "Exhibit" are to the Recitals, Articles, paragraphs, Sections, Subsections and Exhibits of this Agreement.

Section 13.10 Recitals and Exhibits Incorporated; Entire Agreement. The Recitals to this Agreement and all the exhibits attached to this Agreement are, by this reference, incorporated into this Agreement and made a part hereof. This Agreement, consisting of 31 pages, and including 14 exhibits, all of which are attached hereto, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and this Agreement supersedes all previous negotiations, discussions and agreements between the parties, and parole evidence of any prior or other agreement shall not be permitted to contradict or vary the terms hereof.

Section 13.11 Instructions to City Clerk Regarding "Execution Date" and "Effective Date". The City Clerk shall insert or cause to be inserted the date in the introductory paragraph of this Agreement before the words "(Execution Date)" which is the date on which the last of the two parties executed this Agreement. The City Clerk shall insert or cause to be inserted the "Effective Date" in accordance with and as specified in Section 2.2.

Section 13.12 Recordation of Agreement. No later than ten days after the Effective Date, the City Clerk shall record at the Authority's expense an executed original of this Agreement in the Official Records of the County of Los Angeles.

Section 13.13 Counterparts. This Agreement may be executed in counterpart originals, duplicate originals, or both, each of which is deemed to be an original for all purposes.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

“CITY”

CITY OF BURBANK,
a charter city and municipal corporation

“AUTHORITY”

BURBANK-GLENDALE-PASADENA
AIRPORT AUTHORITY,
a joint powers agency

Jess Talamantes, Mayor

Frank Quintero, President

Ron Davis, Interim City Manager

Dan Feger, Executive Director

ATTEST:

ATTEST:

Zizette Mullins, City Clerk

Sue Loyd, Board Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Office of the City Attorney

General Counsel

Amy Albano, City Attorney

Richards, Watson & Gershon
A Professional Corporation
By: Terence Boga

Special Counsel

Special Counsel

Kaplan Kirsch & Rockwell LLP
By: Peter J. Kirsch

McDermott, Will & Emery
By: Tom Ryan