

RECORDING REQUESTED BY  
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MAIL TO:

City Clerk  
City of Burbank  
275 E. Olive Avenue  
P.O. Box 6459  
Burbank CA 91510

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Space Above This Line for Recorder's Use

**THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF BURBANK  
AND THE BURBANK-GLENDALE-PASADENA  
AIRPORT AUTHORITY RELATING  
TO THE BOB HOPE AIRPORT**

Three Year Extension and Amendment

### THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Third Amendment to the Development Agreement (this "Third Amendment") is entered into as of the 12<sup>th</sup> day of October, 2011, by and between the CITY OF BURBANK, a charter city and municipal corporation (the "City"), and the BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY, a California joint powers agency organized and existing pursuant to Government Code Section 6500 et seq. (the "Authority"), and is an amendment to a Development Agreement between the City and the Authority dated March 15, 2005.

#### RECITALS

A. Pursuant to California Government Code Sections 65864-65869.5, the City and the Authority entered into a Development Agreement (the "Agreement"), effective March 15, 2005, to provide greater certainty and predictability in relations between the City and the Authority and to provide for a mutually acceptable balance between the type and extent of projects that will meet the Authority's expected needs during the term of the Agreement and the desire of the Parties to avoid actions and development which may, or could be perceived to, adversely affect the City, its residents and owners of property in the vicinity of the Bob Hope Airport. The Agreement was recorded as Instrument No. 050643306 on March 21, 2005 in the Office of the Los Angeles County Recorders.

B. Two prior amendments to the Agreement have been approved by the Parties. The First Amendment was approved by the City on August 24, 2010 and allows a regional intermodal transportation center ("RITC") on a portion of the A-1 North Property. The Second Amendment was approved by the City on August 24, 2010 and allows for the acquisition, ownership and modification of a Train Station Parking Lot.

C. The Agreement acknowledges that the implementation of the Agreement will require a close degree of cooperation between the Parties, and Section 4.2(c) of the Agreement specifically provides that the Parties understand that the Airport Land Use Working Group is directed to discuss options for proceeding upon the expiration of the Term of the Agreement and to consider future use of the Trust Property upon sale by the Trustee.

D. In accordance with Section 4.2(c) of the Agreement, the Airport Land Use Working Group has been meeting to explore "Future Land Use Options", as defined in the Agreement, for proceeding past the expiration of the Agreement.

E. The Parties now desire to engage in a public outreach and visioning process to plan for the future of the Bob Hope Airport, which process is generally described in Exhibit A to this Third Amendment. In order to maintain and continue the certainty and predictability in relations created by the Agreement during the outreach process and to provide sufficient time to complete the outreach process and consider Future Land Use Options, the Parties find it necessary to extend the term of the Agreement for three years beyond its current expiration, so as to extend the term until March 15, 2015. In addition, the Parties desire to allow for public discussion of a wide variety of issues during the outreach process and find it necessary to modify the Agreement to allow for that discussion.

F. On July 25, 2011, following a duly noticed public hearing, the Planning Board adopted Resolution No. 3232, recommending that the City Council approve this Third Amendment.

G. At a duly noticed public meeting on August 1, 2011, the Authority Commission considered the information in the previously adopted Mitigated Negative Declaration together with an

Addendum No. 1 thereto that was prepared in connection with the approval of this Third Amendment, made findings as required by the California Environmental Quality Act ("CEQA"), and approved this Third Amendment.

H. At a duly noticed public hearing opened on August 16, 2011 and continued and closed on September 8, 2011, the City Council considered the information in the previously adopted Mitigated Negative Declaration together with Addendum No. 1 thereto that was prepared in connection with the approval of this Third Amendment, made findings as required by CEQA, and approved this Third Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. This Third Amendment shall be effective when City Ordinance No. 3819 that approves this Third Amendment is effective.

2. Section 1.45 of the Agreement is amended to add the following new subsections (e) and (f):

"(e) RITC Approvals. Ordinance No. 3788, Resolution No. 28,190, First Amendment to Development Agreement, and any future modifications to the RITC as may be sought by the Authority and approved by the City.

"(f) Train Station Parking Lot. Resolution No. 29,189 for land acquisition and, upon acquisition of the property contemplated in Resolution No. 29,189, Ordinance No. 3789, Ordinance No. 3790, Resolution 29,189, Second Amendment to Development Agreement, and any future modifications to the Train Station Parking Lot as may be sought by the Authority and approved by the City."

3. The last sentence of Section 1 of the First Amendment to Development Agreement is amended to read as follows:

"In no event, shall this Agreement provide any rights to develop the project approved herein after March 15, 2015, the expiration date of vesting rights; however, it is not the intent of the parties to impair any common law vesting rights subsequent to the expiration date."

4. Section 2.3 of the Agreement is amended to read as follows:

"Section 2.3 Term. This Agreement shall have a term (the "Term") that commenced on the Effective Date and extends to March 15, 2015."

5. Section 3.7 of the Agreement is hereby deleted in its entirety and replaced with the following:

"Section 3.7 No New Terminal. The Authority has no plans to, does not intend to, and hereby agrees not to construct a new or relocated passenger terminal building for ten (10) years from the Effective Date of the Agreement. Nothing herein shall preclude the Authority from: (a) discussing proposals or plans with the City, City staff, other government agencies' staffs, or the Airport Land Use Working Group pursuant to Section 4.2 (c); (b) engaging in a public outreach process, as generally described in Exhibit A to the Third Amendment, that includes a discussion of Future Land Use Options

(which may include a new or relocated passenger terminal building), and (c) preparing, publicly discussing, and taking action on plans and related documents, including documents required by CEQA, the National Environmental Policy Act ("NEPA") or both laws, for any such improvements, with the prior consultation of the Airport Land Use Working Group, provided that any plans and related documents for any Future Land Use Option arising from the public outreach process that are prepared by the Authority shall be subject to the other limitations and requirements of this Agreement, including but not limited to, City review and approval pursuant Section 3.6."

6. Section 4.4 of the Agreement is hereby deleted in its entirety and replaced with the following:

"Section 4.4 City Planning of Airport Property.

"(a) As material consideration and an inducement to the Authority to enter into this Agreement, the City agrees not to unilaterally plan for a new or relocated passenger terminal building during the Term of this Agreement. As used in this section, "unilaterally plan for a new or relocated passenger terminal building" shall mean any of the following actions if undertaken without the approval of the Authority during the Term of this Agreement: (1) publicly announce preparation of a master plan, specific plan, comprehensive plan, rezoning or other land use regulation that provides specific development standards or other specific requirements that affect the location or development of a new or relocated passenger terminal building; (2) commence public review or publicly announce the intention to prepare any environmental document related to a master plan, specific plan, comprehensive plan, rezoning, or other land use regulation that provides specific development standards or other specific requirements that affect the location or development of a new or relocated passenger terminal building; or (3) take any action that, pursuant to law, or as a requirement of any other approval, establishes a requirement for the Authority to take any public action or public position on a plan or plans for a new or relocated passenger terminal building. For purpose of this section, a "plan or rezoning that provides specific development standards or other specific requirements that affect the location or development of a new or relocated passenger terminal building" shall include, without limitation, (A) development standards governing the construction of a new or relocated passenger terminal building and (B) parking standards and locations required to be constructed in conjunction with a new or relocated passenger terminal building. As used in this section, "unilaterally plan for a new or relocated passenger terminal building" shall not include: (v) a zoning requirement that conditions certain development on preparation of a specific plan provided that the zoning does not require the specific plan to include discussion of a new or relocated passenger terminal building; (w) a zoning requirement that requires a use permit or other discretionary entitlement prior to the construction of a new or relocated passenger terminal building; (x) general plan amendments that do not directly or indirectly amend goals and policies that specifically mention new, replacement or relocated air passenger terminals; (y) a public outreach process, as generally described in Exhibit A to the Third Amendment, that includes discussion of Future Land Use Options (which may include a new or relocated passenger terminal building); and (z) the preparation, public discussion and review of plans and related documents for any Future Land Use Option arising from the public outreach process described in (y), including documents required by CEQA, NEPA or both laws, provided that any New Law shall comply with Sections 3.4, 3.5 and any other limitations and requirements of the Agreement.

"(b) During such time as the Authority's commitments set forth in Section 3.7 remain in effect, should the City unilaterally plan for a new or relocated passenger terminal building, the Authority shall immediately be discharged of the commitments set forth in Section 3.7."

7. Section 7.1 of the Agreement is hereby amended to add the following additional

Paragraphs (f) through (i):

“(f) Following the effective date of the Third Amendment, the Authority shall, as part of its report to the City described in Section 7.1(a) hereof, provide a statement and explanation of the progress made on the public outreach process, as generally described in Exhibit A to the Third Amendment. If the Authority has determined, and provided an explanation, that sufficient progress has not been made on the public outreach process, it may provide notice of the removal and effectiveness of the provisions of the Third Amendment amending Sections 3.7 and 4.4 of this Agreement (“Notice of Removal”).

“(g) Following the effective date of the Third Amendment, the City shall, as part of its findings and determinations described in Section 7.1(b) hereof, provide a statement and explanation of the progress made on the public outreach process, as generally described in Exhibit A to the Third Amendment. If the City has determined, and provided an explanation, that sufficient progress has not been made on the public outreach process, it may (if the Authority has not already done so) provide a Notice of Removal.

“(h) Sixty days following provision of a Notice of Removal, the provisions of the Third Amendment amending Sections 3.7 and 4.4 of this Agreement shall expire of their own accord, their effectiveness shall be void and such Sections of this Agreement shall be removed and replaced with the language in effect immediately prior to the effectiveness of the Third Amendment, unless the Party providing such Notice of Removal has, in consultation with the other Party, revoked such Notice within the sixty day period. Sixty days following provision of a Notice of Removal that has not been revoked, the Parties shall discontinue any actions or efforts authorized by the provisions of the Third Amendment amending Sections 3.7 and 4.4 of this Agreement.

“(i) The Parties agree and acknowledge:

“(1) The process described in Paragraphs (f) through (i) of this Section 7.1 is intended to be self executing, and is not subject to the provisions of Burbank Municipal Code Section 10-1-19115 through 10-1-19116;

“(2) The expiration of the effectiveness of the provisions of the Third Amendment amending Sections 3.7 and 4.4 of this Agreement is the sole and exclusive remedy for a determination by either party that sufficient progress has not been made on the public outreach process; and

“(3) A determination by either party that sufficient progress has not been made on the public outreach process shall not constitute a failure of either Party to perform a material term or provision of this Agreement and shall not constitute a default that provides remedies to either party under Article VIII of this Agreement.”

8. No Other Changes. Except as expressly provided to the contrary in this Third Amendment, the Agreement, and as amended by the First and Second Amendments, shall remain in full force and effect as written.

9. Recordation of Amendment. No later than ten (10) days after the Effective Date, the City Clerk shall record an executed original of this Agreement in the Official Records of the County of Los Angeles.

IN WITNESS WHEREOF, the Authority and City have executed this Third Amendment as of the date first hereinabove written.

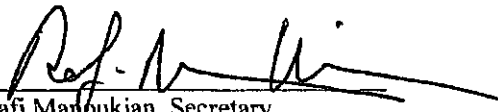
[APPROPRIATE NOTARIAL ATTESTATION TO BE ADDED]

"AUTHORITY"

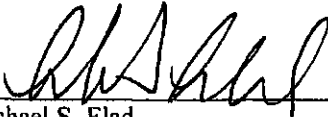
BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY

  
\_\_\_\_\_  
Don Brown  
President of the Board of Airport Commissioners

ATTEST:

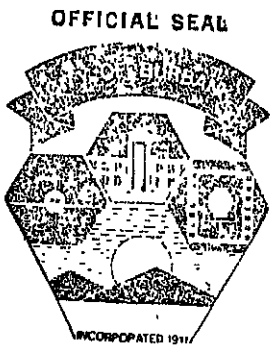
  
\_\_\_\_\_  
Rafi Marjokian, Secretary

"CITY"  
CITY OF BURBANK, a charter city  
and municipal corporation

By:   
\_\_\_\_\_  
Michael S. Flad  
City Manager

Attest:

  
\_\_\_\_\_  
Margarita Campos, CMC, City Clerk



Approved as to Form and Legal Content  
Dennis A. Barlow, City Attorney

  
\_\_\_\_\_  
By: Mary F. Riley  
Senior Assistant City Attorney

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Los Angeles

On October 3, 2011, before me, \_\_\_\_\_  
Date

Sue Loyd, Notary Public  
Here Insert Name and Title of the Officer

personally appeared Don Brown  
Name(s) of Signer(s)

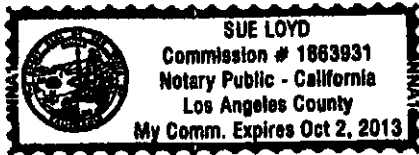
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

*Sue Loyd*



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document*

**Description of Attached Document**

Title or Type of Document Third Amendment to the Development Agreement Between the City of Burbank and the Burbank-Glendale-Pasadena Airport Authority Relating to the Bob Hope Airport  
Document Date \_\_\_\_\_ Number of Pages \_\_\_\_\_

Signer(s) Other Than Named Above. \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name \_\_\_\_\_

- Individual
- Corporate Officer — Title(s) \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer Is Representing \_\_\_\_\_

Signer's Name \_\_\_\_\_

- Individual
- Corporate Officer — Title(s) \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer Is Representing \_\_\_\_\_

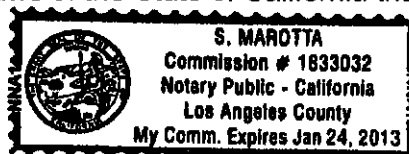
**ACKNOWLEDGMENT**

State of California        }ss  
County of Los Angeles    }

On **October 6, 2011**, before me, **S. Marotta, Notary Public**, personally appeared **Michael S. Flad**, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



S. Marotta  
Signature of Notary

**OPTIONAL INFORMATION**

**Description of Attached Document**

Title or Type of Document: **Third Amendment to the Development Agreement Between the COB and the Burbank-Glendale-Pasadena Airport Authority Relating to the Bob Hope Airport**

Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer—Title: \_\_\_\_\_
- Partner--     Limited     General
- Attorney in Fact     Trustee
- Guardian or Conservator
- Other: **City Manager**

Signer is Representing: **City of Burbank**



## LXHIBIT A

### **Proposed Public Outreach Program for Bob Hope Airport**

- Authority and City approve Third Amendment to Development Agreement. (approximately August 2011)
- Airport Land Use Working Group (ALUWG) conducts base-line public opinion research / surveys among the community and other affected parties regarding airport issues (approximately September to December 2011)
- The City and the Authority (through the ALUWG) develop a facilitated public outreach process for the purpose of defining a planning vision for the future of the Airport in its relationship to Burbank and the region. This process will be based on three principles: (1) joint public outreach and planning for future development at the airport; (2) changes to the governance of the Authority; and (3) voter approval of proposed plans derived from this process as required by Measure B. (approximately First Quarter 2012)
- ALUWG implements first phase of facilitated public outreach plan. (approximately First and Second Quarter 2012)
- ALUWG evaluates and prepares a written report describing the results of the first phase of the public outreach process. (approximately Second Quarter 2012)
- ALUWG develops recommendations for further action, if any, based on the results of the outreach effort. (approximately beginning of Third Quarter 2012)
- If further actions are part of recommendations, prepare necessary documents, plans and steps needed to implement those actions. (approximately beginning of First Quarter 2013)
- If a land use development proposal results from the outreach effort and that proposal requires federal and state environmental analysis, develop a project description and begin the environmental review process.
- The final step will be to implement additional steps, including voter approval as appropriate, depending on the results of prior steps and actions.