



August 12, 2016

CALL AND NOTICE OF A REGULAR MEETING OF THE  
LEGAL, GOVERNMENT AND ENVIRONMENTAL AFFAIRS COMMITTEE  
OF THE  
BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY

NOTICE is hereby given that a regular meeting of the Legal, Government and Environmental Affairs Committee will be held Monday, August 15, 2016, at 10:30 a.m. (or immediately following the conclusion of the regular Airport Authority meeting), in the Burbank Room of the Bob Hope Airport, 2627 Hollywood Way, Burbank, California 91505.

The items to be discussed are listed on the attached agenda.

Sue Loyd, Assistant Board Secretary  
Burbank-Glendale-Pasadena Airport Authority

REGULAR MEETING  
OF THE  
LEGAL, GOVERNMENT AND  
ENVIRONMENTAL AFFAIRS COMMITTEE

Burbank Room  
Monday, August 15, 2016  
10:30 A.M. or Immediately Following  
the Conclusion of the  
Regular Airport Authority Meeting

***NOTE TO THE PUBLIC:*** Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the Authority to the Commission less than 72 hours prior to that meeting are available for public inspection at Bob Hope Airport (2627 Hollywood Way, Burbank) in the administrative office during normal business hours.

***As a result of the convening of this meeting of the Legal, Government and Environmental Affairs Committee, each Committee member is entitled to receive and shall be provided \$200.***

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***In accordance with the Americans with Disabilities Act of 1990, if you require a disability-related modification or accommodation to attend or participate in this meeting, including auxiliary aids or services, please call the Board Secretary at (818) 840-8840 at least 48 hours prior to the meeting.***

A G E N D A

1. Approval of Agenda
2. Public Comment
3. Approval of Minutes
  - a. July 11, 2016 ***[See page 1]***
4. Contracts and Leases
  - a. Airport Access and Facilities Use Agreement  
Class VIII Operators (Transportation Network Companies)
    - Staff Report Attached ***[See page 5]***

***At the November 2, 2015, meeting of the Airport Authority, the Commission approved the Interim Airport Access and Facilities Use Agreement Class VIII Operators for transportation network***

***companies as well as authorization for the Executive Director to execute or terminate Interim Agreements with TNCs on the Authority's behalf. Staff seeks a recommendation from the Committee to the Commission on a revised draft form of Airport Access and Facilities Use Agreement Class VIII Operators, a copy of which is attached, and authorization for the Executive Director to execute same.***

5. Closed Session

a. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Initiation of Litigation (California Government Code Section 54956.9(d)(4)): two potential cases

b. THREAT TO PUBLIC SERVICES OR FACILITIES  
(California Government Code Section 54957(a))

Consultation with Director, Public Safety

6. Adjournment

Subject to Approval

**MINUTES OF THE SPECIAL MEETING OF THE  
LEGAL, GOVERNMENTAL AND ENVIRONMENTAL AFFAIRS COMMITTEE  
BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY**

**MONDAY, JULY 11, 2016**

A special meeting of the Burbank-Glendale-Pasadena Airport Legal, Governmental and Environmental Affairs Committee was called to order on this date in the Airport Skyroom of the Authority, 2627 Hollywood Way, Burbank, California, at 11:48 a.m., by Chairman Wiggins.

AB 23 Disclosure: The Board Secretary announced that, as a result of the convening of this meeting of the Legal, Governmental and Environmental Affairs Committee, each Committee member is entitled to receive and shall be provided \$200.

**ROLL CALL**

**Present:** Commissioners Wiggins and Quintero.

**Absent:** Commissioner Madison

**Also Present:** Staff: Dan Feger, Executive Director; John Hatanaka, Senior Deputy Executive Director (arrived at 11:58 a.m.); Lucy Burghdorf, Director of Public Affairs and Communications; David Freedman, Director, Business Development and Administrative Services; Nerissa Sugars, Marketing and Business Development Specialist; and Rachel Warecki, Public Relations and Social Media Specialist

Airport Authority Counsel: Terence R. Boga of Richards, Watson and Gershon

Airport Authority Consultant: Gail M. Goldman of Gail M. Goldman Associates, LLC

**1. Approval of Agenda**

The agenda was approved as presented.

**2. Public Comment**

There were no public speakers.

**3. Approval of Minutes**

**a. June 20, 2016**

Draft minutes for the June 20, 2016, Legal, Governmental and Environmental Affairs Committee meeting were presented for approval.

**Motion**

Commissioner Quintero moved approval of the minutes, seconded by Commissioner Wiggins.

**Motion Approved**

The minutes were approved (2-0; one absent).

**4. Contracts and Leases**

**a. RITC Art Panels Project**

Staff presented to the Committee proposed recommendations from the Authority's art consultant, Gail M. Goldman, LLC, to satisfy the City of Burbank Art in Public Places requirement for the Regional Intermodal Transportation Center ("RITC") at the Airport.

The recommendations include specific physical materials and resources needed for the production and installation of six art panels on existing tube steel structures on the Hollywood Way side of the RITC and the commission of one artist who will design the images that appear on each panel.

One of the City of Burbank's ("City") conditions of approval for the RITC is that the entire project is subject to the requirements of the Art in Public Places program with a minimum investment calculated by the City of Burbank of \$377,198.

The Authority has spent approximately \$180,000 on the components that make up the six steel structures on which the panels will be placed, at approximately \$30,000 per panel. The City has yet to agree if it is going to credit the cost of those structures as part of the Art in Public Places program.

The Authority had previously committed to providing each of the cities of Burbank, Glendale and Pasadena with a \$50,000 stipend for the completion of one art column each that would reflect the respective cities for a total of \$150,000 for the three columns. The art consultant, however, recommended that one artist design all of the images with input from the three cities, with a consolidation of the funds.

Ms. Goldman has estimated the cost of providing art on the six columns to be approximately \$315,000 in total. Subject to the City's agreeing that the requirement can be met, in part, by the contribution of the structures and the balance by the applied art of \$180,000, in total, this would equal \$495,000.

Staff suggested that presentations be made to each of the three city councils to ensure there is an understanding and concurrence that each city will not receive a stipend to provide art for its respective column and that all funds will be combined.

Staff also suggested that a presentation be made to each cities' Art Commission so that there is a collaborative effort and one thematic type of artwork on the columns.

## **Motion**

Commissioner Quintero moved that the Committee recommend to the Commission that it concur with the recommendations made by the Authority's art consultant regarding the selection of art media/materials, the number of art columns to be covered, and the go-ahead to begin a selection process for an artist. The motion was seconded by Commissioner Wiggins.

## **Motion Approved**

The motion was approved (2-0; one absent).

### **b. IMG College, LLC, Marketing Agreement**

Staff presented to the Committee a proposed one-year marketing agreement with IMG College, LLC ("IMG") which would allow the Authority to maintain an advertising presence at the Rose Bowl Stadium while the Airport's marketing plan is being further developed. IMG is the marketing representative for both the Rose Bowl Operating Company and UCLA.

In June 2013, the Commission entered into a three-year agreement with IMG which included signage and production costs at a cost of \$300,000 annually, which expired June 30, 2016.

The proposed agreement is for approximately \$65,000 which includes production expenses associated with the preparation and installation of signs at the Rose Bowl Stadium and an additional \$5,000 for design and printing of a Hollywood Burbank Airport specific promotion piece for distribution at the Stadium. This promotion piece would be in the form of a postcard or placard to be distributed by Stadium staff to vehicles parked at the Stadium during one of the athletic events, which constitutes approximately 32,000 vehicles.

Staff advised the Airport will continue its designations "Proud Sponsor of UCLA Athletics" and "Official Airport of the Rose Bowl Stadium." The

agreement also includes three (3) fixed, year-round Stadium signs, exposure on ten (10) field-level LED signs during UCLA football games, a permanent presence on the Rose Bowl Stadium website, including print publications; one social media promotion; and one pre-recorded, 30-second radio spot to promote the Airport that will be aired in all UCLA football games on AM-570.

Staff recommended that the Committee recommend to the Commission that it approve the proposed one-year marketing agreement with IMG, authorize staff to issue a purchase order for an amount not to exceed \$65,000 and provide up to an additional \$5,000 for promotional material to be distributed at the Stadium, and authorize the Authority President to execute the agreement.

**Motion**

Commissioner Wiggins moved approval of Staff's recommendation, seconded by Commissioner Quintero.

**Motion Approved**

The motion was approved (2-0; one absent).

**6. Adjournment**

There being no further business, the meeting was adjourned at 12:15 p.m.

**STAFF REPORT PRESENTED TO THE  
BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY  
LEGAL, GOVERNMENT AND  
ENVIRONMENTAL AFFAIRS COMMITTEE  
AUGUST 15, 2016**

**AIRPORT ACCESS AND FACILITIES USE AGREEMENT  
CLASS VIII OPERATORS  
(TRANSPORTATION NETWORK COMPANIES)**

**SUMMARY**

At the November 2, 2015, meeting of the Airport Authority ("Authority"), the Commission approved the Interim Airport Access and Facilities Use Agreement Class VIII Operators ("Interim Agreement") for transportation network companies ("TNC") as well as authorization for the Executive Director to execute or terminate Interim Agreements with TNCs on the Authority's behalf. Staff seeks a recommendation from the Legal, Government and Environmental Affairs Committee to the Commission on a revised draft form of Airport Access and Facilities Use Agreement Class VIII Operators ("Revised Agreement"), a copy of which is attached, and authorize the Executive Director to execute same.

**BACKGROUND**

On September 19, 2013, the California Public Utilities Commission issued Decision 13-09-45, which adopted rules and regulations for TNCs. That decision defines a TNC as an organization that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using their personal vehicles. The decision established numerous safety and regulatory requirements for TNCs, including a prohibition on conducting operations on airport property without authorization by the airport owner.

In 2014 the Legislature enacted AB 2293 to amend the Passenger Charter-party Carriers' Act (Public Utilities Code Section 5351, et. seq.) to establish liability insurance coverage requirements for TNCs and their drivers. These requirements became effective on July 1, 2015.

The current Interim Agreement authorizes TNCs access to the Airport to pick-up passengers in the designated "TNC Pick-Up Area" on the north side of the entry lane of the ground floor of the short-term parking structure. TNCs are assessed a fee for picking up passengers at the applicable parking rate of \$3.00 for the first 30 minutes. The Interim Agreement currently allows TNC passengers to be dropped off at the curb in front of the terminal without charge.

Staff has drafted the form of a Revised Agreement that will continue to allow TNCs to drop off at the curb in front of the terminal with passenger pick-up occurring in the "TNC Pick-Up Area" in the short-term parking structure. Effective with the Revised Agreement, the Authority will begin to assess fees for drop-offs. The initial drop-off fee will be the same rate that is applied for a pick-up which is currently \$3.00 per transaction. Fees for pick-ups and drop-offs are subject to change with notice to the TNCs. The Revised Agreement also



imposes a requirement that each TNC establish a defined geo-fence around the specified southeast quadrant terminal area of the Airport to track the activity of its driver partners. Furthermore, the Revised Agreement includes a self-reporting requirement. Each TNC that currently operates at the Airport (Uber, Lyft, and Wingz) has been given an opportunity to review and comment on the Revised Agreement. With minor exceptions, staff believes it has addressed the TNCs' comments in the Revised Agreement.

## DETAILS

Key components of the Revised Agreement are as follows:

<u>Term:</u>	Three years with option to be renewed annually thereafter based on performance with 90 days' notice prior to the Expiration Date.
<u>Use:</u>	Provides TNCs access to the Airport for authorized commercial activities at approved designated areas.
<u>Geofence:</u>	Each TNC must establish a "geo-fence" that will monitor transactions at the Airport and verify payment of fees and compliance with the Agreement.
<u>Fee:</u>	Three dollars for each pick-up and each drop-off.
<u>Rules:</u>	Provides for the unloading at terminal curbside and loading at designated TNC Pick-Up Area in short-term parking structure. Vehicles must display trade dress while on Airport premises.

## IMPACT ON REVENUE

The average number of passenger pick-ups has been counted at approximately twenty per hour based on several spot checks undertaken at different dates and times. Assuming a one to one ratio for drop-offs and pick-ups, the estimated monthly gross revenue based on 40 transactions per hour at \$3.00 per transaction for 18 hours which is \$64,800, or \$777,600 annually. Approximately half of this amount represents an increase in revenue generated by assessment of a drop off fee.

## STAFF RECOMMENDATION

Staff seeks a Legal, Government and Environmental Affairs Committee recommendation to the Commission that it approves the revised form of Airport Access and Facilities Use Agreement Class VIII Operators for TNCs and authorizes the Executive Director to execute same with each TNC.

# **AGENDA ATTACHMENT**

**AIRPORT ACCESS AND FACILITIES USE AGREEMENT**

**CLASS VIII OPERATORS**

**BETWEEN**

**BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY**

**AND**

**[TNC name]**

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## EXHIBITS

- Exhibit “A” - Geo-Fence Boundaries
- Exhibit “B” - Diagram of TNC Drop-Off Area
- Exhibit “C” - Diagram of TNC Pick-Up Area
- Exhibit “D” - Non-Discrimination and Compliance with Federal Requirements
- Exhibit “E” - FAA Grant Assurances and Airport Use

# AIRPORT ACCESS AND FACILITIES USE AGREEMENT

## Class VIII Operators

THIS AIRPORT ACCESS AND FACILITIES USE AGREEMENT (“Agreement”) is dated [date] for reference purposes and is executed by the BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY, a California joint powers agency (“Authority”) and [TNC name], a [TNC state of formation and entity type] (“Operator”).

### RECITALS

A. The Authority is the owner and operator of the Bob Hope Airport (“Airport”) and has the right to control the conduct of commercial activities at the Airport and the means and methods of access to the Airport and its passenger terminal and other facilities.

B. Operator is a transportation network company as defined by Public Utilities Code Section 5431(a). Operator contracts with participating drivers, as defined by Public Utilities Code Section 5431(b), to use their personal vehicles to transport passengers to and from the Airport with rides arranged through Operator’s online enabled application (“Drivers”). Operator derives substantial commercial benefit from Drivers’ use of the Airport.

C. In order to conduct its business more efficiently and profitably, Operator wishes to obtain authorized access for Drivers to access the Airport for commercial purposes, including the right to use the Airport roads and facilities for transportation of passengers and their baggage and/or the right to utilize designated areas for the loading and unloading of passengers and their baggage.

E. In furtherance of the policy of the State of California to promote commerce and tourism at publicly owned and operated airports, the Authority has considered the public safety and convenience, the quality of facilities or services to be provided by Operator, the need to conserve Airport space and avoid duplication of facilities and services serving the Airport, the impact on the existing facilities of the Airport as an essential commercial and tourist service center, the need to avoid destructive competition that may impair the quality of Airport services to the public or lead to uncertainty, disruption or instability in the rendering of such services, the need to generate revenues for the maintenance and operation of the Airport facilities and services, and the need to replace established sources of revenue to the Authority that may be diminished as a result of the operation of Operator’s business.

F. Based upon the considerations described above, the Authority is willing to grant to Operator a Commercial Operator’s Access and Facilities Use License (“Commercial Access License”) that will provide Drivers with authorized access to designated portions of the Airport for commercial purposes, including the right to use the Airport roads and designated facilities for transportation of passengers and their baggage by car, provided that Operator enters into and complies with the terms of this Agreement.

G. In consideration of the issuance to Operator of the Commercial Access License, Operator is willing to enter into this Agreement and to accept and be bound by the terms and conditions set forth herein. Operator is further willing to take steps necessary to ensure that Drivers comply with the terms and conditions set forth herein.

**THEREFORE**, the parties agree as follows:

Issuance of Commercial Access License

The Authority and Operator enter into this Agreement, which shall constitute a Class VIII Commercial Access License for designated portions of the Airport.

1. Term; Termination.

1.1 Term. The term of this Agreement shall commence on \_\_\_\_\_, 2016 (“Commencement Date”) and, unless extended or sooner terminated, shall expire three (3) years after the Commencement Date (“Expiration Date”).

1.2 Request to Extend. Operator may request the Authority extend the term of this Agreement for successive periods of one (1) year each. In the event that Operator desires to extend the term of this Agreement, Operator shall submit to the Authority a new Application (on the Authority’s then current form) at least ninety (90) days prior to the then applicable Expiration Date. Operator understands and agrees that the Authority: (i) is under no obligation to extend the term of this Agreement and may agree or decline to do so in its sole and absolute discretion; and (ii) at any time and in its sole and absolute discretion, may elect to provide on an exclusive basis services of the type provided by Operator or may award exclusive rights or franchises to one or more providers of commercial facilities and/or services of the type provided by Operator.

1.3 Termination Upon Event of Default. The Authority shall have the right to terminate this Agreement immediately upon the occurrence of an Event of Default.

1.4 Termination Without Cause. Each party shall have the right to terminate this Agreement at any time without cause upon the delivery to the other party of at least thirty (30) days’ prior written notice.

1.5 Consequences of Expiration or Termination. Operator acknowledges that in the event this Agreement is terminated, Authority reserves the right to prohibit Drivers from accessing any or all portions of the Airport for commercial purposes. Within thirty (30) days following the expiration or termination of this Agreement, Operator shall pay to the Authority any and all undisputed, unpaid amounts incurred and/or otherwise payable by Operator to the Authority pursuant to this Agreement or any other obligation. Notwithstanding any other provisions of this Agreement, the provisions of this Section 1.5 and Sections 11, 12, 13, and 19 shall survive the expiration or termination of this Agreement.

2. Laws, Rules and Regulations.

2.1 Compliance with Laws, Rules and Regulations. Operator and Drivers shall comply with all applicable federal, state and local statutes, regulations, rules, ordinances

and governmental orders, including all Public Utilities Commission decisions relating to transportation network companies (collectively, “Laws”). Operator and Drivers shall also comply with all rules, regulations and orders of the Authority (“Rules and Regulations”), as the Rules and Regulations may be modified by the Authority at any time and from time to time, in the Authority’s sole and absolute discretion.

2.2 Fine Schedule. If Operator or a Driver violates any term of this Agreement, the Laws, or the Rules and Regulations, then the Authority may elect to impose administrative fines against Operator on a per violation basis in accordance with the schedule described below:

<b>Violations</b>	<b>Section(s)</b>	<b>Fine</b>
Failure to comply with Airport use regulations	4	\$100 per incident
Failure to adhere to Driver and vehicle requirements	5, 6	\$200 per incident
Failure to maintain required vehicle insurance requirements	10	\$100 per day per vehicle
Engage in other violations of this Agreement, the Laws, or the Rules and Regulations		\$100 per incident

The Authority, including the Burbank-Glendale-Pasadena Airport Police Department (“Police Department”), may issue a “notice of violation” to a Driver if the Driver has violated this Agreement, the Laws, or the Rules and Regulations. The notice of violation will be issued directly to the Driver, and a copy of the notice shall thereafter be forwarded to Operator. The Authority will forward accumulated notices of violation to Operator on a bi-monthly basis.

Operator shall remit payment for the fine to the Authority within thirty (30) days of receiving an invoice for the notice(s) of violation and a copy of the notice(s). If Operator fails to remit payment within thirty (30) days of receipt, then the fine amount shall be increased by fifty (50) percent. If Operator fails to remit payment within sixty (60) days of receipt, then the fine amount shall be increased by one hundred (100) percent. If Operator fails to remit payment within ninety (90) days of receipt, then the Authority may suspend Operator’s license to access the Airport pursuant to this Agreement until such time that all outstanding administrative fines are paid in full.

For purposes of the preceding paragraph, payment of any fine associated with a notice of violation shall not be considered late during such time when the notice of violation is in dispute. A notice of violation is in dispute during the pendency of the following process: (1) Operator shall identify in writing any notice(s) of violation reasonably claimed to be in dispute within ten (10) days of receipt; (2) Operator shall clearly state the reasons why the notice of violation was issued in error, which shall be supported by available evidence; and (3) the Authority’s Director of Business, Property & Administrative Services or his or her designee will review the notice of

violation and supporting evidence and render a decision on whether the notice of violation was or was not issued in error. The Director of Business, Property & Administrative Services' or his or her designee's decision shall be final and not subject to appeal. Operator shall remit payment for the fine to the Authority within thirty (30) days of the final decision. If Operator fails to remit payment within thirty (30) days of receipt, then the fine amount shall be increased according to the amounts set forth in the preceding paragraph.

The Authority's right to impose the foregoing fines shall be in addition to and not in lieu of any and all other remedies or rights available to the Authority. The Authority may amend the fine schedule at any time upon thirty (30) days' notice to Operator.

2.3 Suspension or Termination based on Multiple Violations. If Drivers receive fifteen (15) notices of violation within a sixty (60) day period, then the Authority may suspend Operator's license to access the Airport pursuant to this Agreement for a period of six (6) months from the date of the fifteenth such notice of violation. If the Authority exercises its right to suspend Operator, then the Authority shall first issue Operator a written notice of suspension. The six (6) month suspension shall begin to run on the date the fifteenth written notice is transmitted to Operator. The Authority will notify Operator at such point when Operator has accumulated fifteen (15) notices of violation within a sixty (60) day period and that the Authority may exercise its right to suspend Operator.

### 3. Permits and Licenses.

Operator and Drivers shall procure and maintain in effect at all times all required rights, licenses, permits, approvals, consents, authorizations and registrations from governmental authorities, including the Public Utilities Commission, and other third parties required for the conduct of business at the Airport. Upon the request of the Authority, Operator shall provide evidence thereof to the Authority. Upon execution of this Agreement, Operator shall deliver to the Authority, proof of Operator's current Public Utilities Commission operator's license or certificate.

### 4. Use of Airport

4.1 Establishment of Geo-Fence. Operator shall establish and maintain, at its own expense, a virtual perimeter known as a "Geo-Fence" with a boundary or boundaries defined by Geographic Information System coordinates as shown in Exhibit "A". The area enclosed within the Geo-Fence boundary shown on Exhibit A is defined as the "Geo-Fence Area." The Authority may change, alter, expand, or contract Exhibit "A" at any time upon thirty (30) days' written notice to Operator, and Operator shall adjust the Geo-Fence accordingly. At minimum, the Geo-Fence shall be capable of determining each instance when a Driver enters the ~~Airport~~Geo-Fence Area for the purpose of unloading or loading customers, and the location of each drop-off or pick-up within the Geo-Fence boundary or boundaries at all times. No Driver may pass through the Geo-Fence unless the Driver has been dispatched by the Operator's mobile app, for the purpose of unloading or loading customers in accordance with Sections 4.2 and 4.3, respectively.

4.2 Passenger Unloading. Drivers shall only unload customers within the portion of the Airport terminal curb designated as the "TNC Drop-Off Area," as depicted in



Exhibit “B” attached hereto. ~~The Authority may require~~ Operator ~~to~~shall pay an unloading fee each time a Driver enters the Airport property and unloads one or more customers at the curbside of the Airport terminal (“Unloading Fee”). A shared or pooled transaction, in which two or more separate customers share a single ride to the Airport, shall be subject to a single Unloading Fee charge. The initial Unloading Fee shall be \$3, which may be subject to change at the discretion of the Authority Commission. The Authority shall provide Operator thirty-five (35) days’ written notice before ~~imposing or~~ changing the amount of the Unloading Fee. Operator shall utilize the Geo-Fence and other systems to verify that the Unloading Fee is remitted to the Authority.

4.3 Passenger Loading. Drivers may only pick-up passengers under the following conditions: (1) Once a Driver has been dispatched by the Operator’s mobile app, he/she may enter the ~~Airport property~~Geo-Fence Area and proceed directly to the Airport short term parking structure; (2) the Driver shall enter the Airport parking structure and stop in the lane designated as the “TNC Pick-Up Area,” as depicted in Exhibit “C” attached hereto, to pick up a passenger; and (3) upon exiting the Airport parking structure, the Driver shall pay the applicable parking rate in accordance with the Authority’s parking fee schedule. Under no circumstance may Drivers conduct curbside pick-ups at the Airport terminal, stop outside the designated lane to load a passenger, or allow a passenger to enter a Driver’s vehicle directly from any Airport roadway. Operator shall utilize the Geo-Fence in order to verify compliance with this Section.

4.4 TNC Pick-Up and Drop-Off Areas. Operator acknowledges and agrees that the Authority, at any time and from time to time upon at least thirty (30) days’ prior written notice, may: (i) terminate, reduce, modify, relocate or otherwise change the TNC Pick-Up Area or TNC Drop-Off Area; (ii) limit the length of time Drivers may remain at the TNC Pick-Up Area or TNC Drop-Off Area; (iii) limit the number of Drivers permitted on the Airport premises at any one time; and (iv) vary such designations and limitations based on the time of day, the day of the week, the level of traffic congestion at the Airport, or other factors, all in the Authority’s sole and absolute discretion. In connection with each of the foregoing (i) through (iv), the Authority may from time to time establish and modify uniform rules and regulations regarding the use of such TNC Pick-Up Area or TNC Drop-Off Area, which rules and regulations shall be applied by the Authority in a non-discriminatory manner and shall be effective only upon at least thirty (30) days’ prior written notice. Operator acknowledges that the use of such TNC Pick-Up Area and TNC Drop-Off Area shall at all times be subject to the control of the Authority in its sole and absolute discretion. In no event shall a Driver leave unattended or cause to be left unattended any vehicle on any area of the Airport, except when a Driver is using the Airport for personal reasons unrelated to Operator’s commercial purposes.

4.5 Staging Prohibited. Drivers may not stage, wait, or park in any ~~area~~ of location inside the Airport ~~within the Geo-Fence~~ until a Driver has been dispatched by the Operator’s mobile app, except when a Driver is using the Airport for personal reasons unrelated to Operator’s commercial purposes. The Authority accepts no responsibility for or represents the availability of off-site locations suitable for Drivers to stage, wait, or park when not in operation on Airport property. Drivers must leave the Geo-Fence Area expeditiously after discharging customers.

4.6 Real Time Monitoring. In the event that the Authority establishes a system capable of collecting, viewing, and recording the number and location of Drivers within the Geo-Fence boundary or boundaries in real time, then Operator shall make available such real time information to the Authority in a format compatible with the Authority's system. The Authority will provide a written request to Operator for such information once it has established an operating system, and thereafter Operator shall promptly begin providing the information to the Authority. The Authority will coordinate with Operator to ensure its system is developed in such a manner as to be compatible with Operator's information systems.

4.7 Reporting. Operator shall provide the Authority with the following required data each time a Driver enters or exits the Geo-Fence with an active trip:

- a. Transaction type (i.e., drop-off, pick-up);
- b. Operator name;
- c. Date of drop-off or pick-up;
- d. Time of drop-off or pick-up;
- e. Time of entry;
- f. Time of exit;
- g. Geographical location (GPS coordinates) at Airport of drop-off or pick-up;
- h. Vehicle license plate number; and

Operator shall provide to the Authority a monthly report documenting the required data within twenty (20) days following the conclusion of each month. The Authority shall use this information for the purpose of verifying payment of Unloading Fees and parking charges and compliance with the terms of this Agreement, and all Laws, Rules and Regulations. The Authority may request additional information in the monthly reports so long as the information is reasonably capable of being obtained through the Geo-Fence or other feasible means available to Operator. If a monthly report or audit demonstrates that a Driver has conducted a passenger pick-up or drop-off at an unpermitted location, then Operator shall be responsible for all unpaid Unloading Fees and parking fees associated with the unpermitted passenger pick-up or drop-off. ~~Nothing~~The Authority will not impose fines for unpermitted passenger pick-ups or drop-offs identified solely in a monthly report; however, nothing in this paragraph shall relieve Operator of its obligation to pay any fines resulting from a notice of violation previously issued for ~~thean~~ unpermitted passenger pick-up or drop-off in accordance with Section 2.2. Operator shall not be required to provide a Driver's personally identifiable information as part of the monthly report, except that this limitation shall not prohibit the Police Department from obtaining information it is otherwise authorized to obtain by law.

4.8 Audits. Within 90 days after the end of the previous calendar year, Operator shall provide the Authority ~~a-certified~~an audited annual statement, in a form consistent with the monthly report, detailing all passenger drop-offs and pick-ups at the Airport within the

prior calendar year. In addition, the Authority reserves the right to periodically audit Operator's records with respect to its operation at Airport, but in no case more than twice per calendar year and only upon prior written notice by the Authority. For the term of this Agreement, all such audits shall take place in Operator's corporate offices within the state of California or at an otherwise agreed upon location. Operator shall allow the Authority to view all information reasonably necessary to verify Operator's compliance with this Agreement, as well as access historical information in both report and map format. The Authority shall be able to view all information required by this Agreement for Drivers.

4.9 Monthly Payment of Unloading Fees. All Unloading Fees payable to the Authority shall be paid by Operator to the Authority on a monthly basis. Monthly payments are due in full each month and shall be remitted via check or wire payable to the Authority. The monthly payments shall be supported by and submitted in conjunction with the monthly report described in Section 4.7 within twenty (20) days following the conclusion of each month.

## 5. Vehicles.

The following conditions shall apply to all vehicles owned or operated by a Driver while in service using the Operator's online enabled application.

5.1 Maintenance. Vehicles shall be maintained in an undamaged and safe operating condition. Vehicles shall be subject to inspection by the Authority while in use on Airport property as necessary to enforce the terms of this Agreement. Any vehicle inspection conducted by the Authority shall comply with the prohibition against discrimination as required under this Agreement and outlined in Exhibit "D". [The Authority's failure to inspect any vehicle shall not constitute a breach of this Agreement, failure to exercise any duty, or other improper action by the Authority. The Authority shall not be responsible for the condition or operation of any vehicle.](#)

5.2 Trade Dress. Vehicles present on the Airport premises shall conspicuously display Operator's trade dress on file with the Public Utilities Commission.

5.3 Vehicle Condition. Vehicles shall, at all times, be in a neat, clean and safe condition. Passenger seating areas shall be free of debris, trash and odors. Seating areas and interior surfaces shall be in good condition and free of rips and tears. The vehicle speedometer shall be in plain view of all passengers. Exteriors shall be clean, free of damage, and windows shall be clean. Vehicles not in compliance with the above may be denied access to the Airport.

## 6. Drivers.

Operator shall inform Drivers of their obligation to comply with all provisions of this Agreement, including all of the Rules and Regulations of the Authority relating to Airport traffic and the directions and instructions of Airport police and other Airport traffic enforcement personnel. Drivers shall wear clean and neat appearing clothing and shall exhibit courteous, polite and inoffensive conduct and demeanor. Upon objection from the Authority concerning the conduct, demeanor, or appearance of any Driver, Operator shall promptly and without delay take all steps necessary to correct or to remove the cause of the objection. The Authority's approval and removal rights under this Section shall be limited to conduct arising under this Agreement

and the Commercial Access License, and shall not constitute, or be construed to constitute, any right to terminate or cause the termination of or interference with any contractual relationship between Operator and its Drivers; nor shall the exercise of such approval or removal rights be deemed to have in fact caused or contributed to the termination of or interference with any contractual relationship between Operator and its Drivers.

7. No Interference.

Operator and Drivers shall not do or permit to be done anything which interferes with the free access to the streets, roads, parking lots, curb areas, entryways, exits, sidewalks or any other areas of the Airport, or in any way hinders or impairs the operation of the Airport. In addition, Operator and Drivers shall not hinder police, traffic enforcement, fire fighting or other emergency personnel in the discharge of their duties.

8. Nuisance.

Operator and Drivers shall not use or permit the use of any area of the Airport in any manner that will: (i) tend to create or permit any waste or a nuisance at the Airport; (ii) tend to disturb the Authority, any other transportation network companies, or any tenants, concessionaires, licensees, users or customers of the Airport or the general public; or (iii) increase the premiums for or cause the cancellation or termination of any insurance policies covering the Airport.

9. No Advertisement of Solicitation.

No Driver, employee, contractor, official or agent of Operator shall solicit business in any manner whatsoever upon any areas of the Airport, except by electronic means using Operator's mobile app. Operator shall not place or permit the placement of any advertisements, telephones or other facilities or equipment, or starters, skycaps, porters, booth personnel, agents or other personnel, in or on the curbs, sidewalks, terminal buildings or any other areas of the Airport, without prior approval from the Authority.

10. Insurance.

10.1 Transportation Network Company Insurance. Operator shall maintain transportation network company insurance in accordance with Public Utilities Code Section 5433. All Drivers must be included under Operator's transportation network company insurance. All Drivers must have valid automobile insurance meeting the minimum requirements for the State of California. Operator represents and warrants that its Drivers satisfy the requirements of this Section when operating on Airport property.

10.2 Commercial General Liability. Operator shall maintain Commercial general liability insurance written on an occurrence basis in an amount not less than One Million Dollars (\$1,000,000) for each occurrence and in the annual aggregate. Such coverage shall include premises/operations, broad form contractual, independent contractors, broad form property damage and personal injury.

10.3 Workers' Compensation. Operator shall maintain Workers' Compensation insurance written in accordance with California statutory limits.

10.4 Insurer Requirements. Each insurance policy required to be maintained by Operator pursuant to this Section shall be obtained from an insurance company authorized to conduct business in California and having a rating of not less than A-VIII in A.M. Best's Insurance Guide or otherwise acceptable to the Authority. To the extent permitted by law, use of self-insurance is deemed to satisfy Workers' Compensation insurance requirements under this Agreement.

10.5 Adjustment of Required Insurance. Operator acknowledges, understands and agrees that the types and amounts of insurance coverages required to be maintained by Operator pursuant to this Section may become inadequate during the term of this Agreement, and Operator agrees that it shall add or modify such insurance or coverages and increase such minimum limits of liability by such amounts as may be required at any time and from time to time by the Authority.

10.6 Certificates of Insurance. Concurrently with the execution and delivery of this Agreement, Operator shall deliver to the Authority certificates of insurance evidencing that all insurance has been obtained and is being maintained by Operator as required in this Section, together with copies of endorsements (i) requiring the insurers to give to the Authority at least thirty (30) days' prior written notice sent by registered mail of any cancellation, non-renewal or reduction in coverage (ten (10) days in the event of cancellation for nonpayment of premium), and (ii) with respect to the Operator's transportation network company insurance and commercial general liability insurance, covering (a) Operator and its officers, directors, employees, agents, representatives and contractors and any other persons and entities for whose acts or omissions Operator is responsible (collectively, "Operator Parties") as named insureds, and (b) the Authority, TBI Airport Management, Inc., as manager of the Airport, and each of the Cities of Burbank, Glendale and Pasadena, California, and their respective commissioners, officials, officers, directors, employees, agents, representatives and contractors (collectively, "Authority Parties") as additional insureds in a form acceptable to the Authority. The failure of Operator to provide such certificates of insurance, together with such endorsements, or the subsequent receipt by the Authority of a notice of cancellation, non-renewal or reduction in coverage under the insurance policy(ies) by Operator's insurance company(ies), unless Operator replaces such coverage with comparable coverage in accordance with the requirements of this Section, shall constitute an Event of Default. All insurance required to be maintained by Operator pursuant to this Section shall be primary insurance without right of contribution of any other insurance carried by or on behalf of any Authority Party and all policies shall be endorsed to this effect.

10.7 No Limitation of Liability. Operator acknowledges and agrees that the limits of liability provided in the insurance policies required to be maintained by Operator pursuant to this Section shall in no event be considered as limiting the liability of Operator under this Agreement.

10.8 Waivers of Subrogation Rights. All insurance policies required to be maintained by Operator pursuant to this Section, except workers' compensation insurance, shall

include, or be endorsed to provide, a waiver by the insurers of any rights of subrogation that the insurers may have at any time against any of the Authority Parties.

11. Indemnity.

To the fullest extent permitted by law, Operator shall defend, indemnify and hold harmless the Authority Parties from and against, any and all third party demands, claims, actions, proceedings, causes of action, damages, awards, penalties, fines, assessments, forfeitures, judgments, losses, liabilities, obligations, costs and expenses, including attorneys' fees (collectively, "Claims"), arising out of, resulting from or relating to or purported to have arisen out of, resulted from or to be related to, (i) any act or omission of Operator or any other Operator Parties under or in connection with this Agreement or otherwise in connection with the conduct or operation of Operator's ground transportation business at the Airport, except to the extent arising from or related to any grossly negligent act or omission or the willful misconduct of the Authority or the Authority Parties; (ii) any act or omission of Operator or any other Operator Party. Notwithstanding any other provision of this Section, each Authority Party seeking indemnification under this Section shall have the right to (x) approve of any legal counsel engaged by Operator or its insurance carrier to defend any Claim, (y) engage legal counsel of its own choice (a) in the event that such Authority Party determines that there is a conflict between the interests of Operator and/or its insurance carrier, on the one hand, and the interests of such Authority Party, on the other hand, with respect to any Claim; (b) in the event of any material disagreement as to the manner, method or handling of the defense of any Claim; and/or (c) otherwise to the extent such Authority Party determines is required to protect its interests with respect to any Claim, and the costs of such legal counsel described in (x) and (y) shall be paid for by Operator as part of its indemnity obligations under this Section.

12. Representations and Warranties of Operator.

Operator represents and warrants to the Authority, for its specific reliance thereon in executing this Agreement and issuing the Commercial Access License, that (i) all information contained in the Application is true, accurate and complete, (ii) this Agreement, the Commercial Access License and the consummation of the transactions contemplated hereby, have been duly authorized by Operator, (iii) no consents, approvals or authorizations of any other person or entity are required for the execution, delivery or performance of this Agreement or the Commercial Access License, and (iv) neither this Agreement nor the Commercial Access License violate or constitute a breach of any Law or any other agreement, contract, license, permit, instrument, judicial order or other document to which Operator is a party or to which it or its assets or properties are subject. Operator shall promptly and without delay notify the Authority in writing of any change in any of the information provided to the Authority in connection with this Agreement, the Commercial Access License or the Application, or if any of such information is or becomes false or misleading.

13. The Authority is Not Responsible.

Operator acknowledges that, except as specifically set forth herein, neither the Authority nor any other Authority Party has made any representation, warranty, covenant or agreement regarding the Airport, including any representations or warranties relating to its condition or operations. Operator hereby releases the Authority from and waives any and all claims and

liability for losses of, or damage to or loss of use of, Operator's property or injury to or death of any Operator Party, invitees or customers arising out of or in any way connected with the Operator's business or conduct under this Agreement, except for any such loss of or damage to property or injury to or death of Operator Party, invitees or customers caused by the gross negligence or willful misconduct of the Authority, its officers, agents, or employees.

#### 14. Default.

##### 14.1 Events of Default

Each of the following constitutes an Event of Default:

14.1.1 Failure to License. Any failure of Operator or an Operator Party to have any right, license, permit, approval, consent, authorization or registration necessary for the proper and lawful conduct of Operator's ground transportation business at the Airport pursuant to this Agreement or the Commercial Access License.

14.1.2 False or Misleading Information. Any representation or warranty made by Operator under or in connection with the Application or this Agreement shall prove at any time to have been incorrect, false or misleading.

14.1.3 Failure to Comply. Any violation of or failure to perform or comply with any of the covenants, agreements, obligations, conditions, provisions or restrictions contained in this Agreement or the Commercial Access License that is not cured by Operator within ten (10) days following written notice to Operator of such violation or failure.

14.1.4 Insolvency. The occurrence of any of the following: (i) Operator admits in writing its inability to pay its debts as they mature; (ii) Operator makes a general assignment for the benefit of creditors, or approves of, consents to or acquiesces in the appointment of a trustee, receiver or liquidator for itself or any portion of its assets; (iii) a trustee, receiver or liquidator is appointed for Operator, or for any substantial portion of its assets, without Operator's consent, and is not discharged within sixty (60) days after such appointment; (iv) any proceeding is commenced by Operator under any bankruptcy, reorganization, insolvency, readjustment of debt, arrangement, receivership or liquidation law or statute or the federal or any state government; or (v) any proceeding under any bankruptcy, reorganization, insolvency, readjustment of debt, arrangement, receivership or liquidation law or statute or the federal or any state government is instituted against Operator and remains undismissed for sixty (60) days, or Operator by any action or answer approves of, or consents to, any such proceeding or admits the material allegations respecting insolvency or its inability to meet its financial obligations or default in answering a petition filed in any such proceeding.

14.1.5 Excess Notice of Violations. Drivers' receipt of fifteen (15) notices of violation after Operator's completion of a suspension imposed pursuant to Section 2.3 above.

##### 14.2 Remedies

Upon the occurrence of any Event of Default, in addition to any and all other rights and remedies of the Authority, whether at law or in equity, the Authority shall have the right to terminate this Agreement and the Commercial Access License.

15. No Assignment.

15.1 General. Operator shall not in any manner, directly or indirectly, voluntarily or involuntarily or by operation of law or otherwise, assign, hypothecate, transfer or encumber this Agreement or the Commercial Access License, or any right hereunder or thereunder or delegate any duties or obligations under this Agreement or the Commercial Access License, directly or indirectly, voluntarily or involuntarily or by operation of law or otherwise without the Authority's prior written approval, which shall not be unreasonably withheld.

16. Non-Discrimination and Compliance with Federal Requirements.

Operator shall comply with the provisions of Exhibit "D" attached hereto and by this reference made a part hereof regarding nondiscrimination, as the same may be amended by the Authority from time to time.

17. Compliance with FAA Grant Assurances and Airport Use.

Operator acknowledges and understands that the Authority is obligated to comply with the provisions of Exhibit "E" attached hereto and made a part hereof constituting Federal Aviation Administration ("FAA") grant assurances. Operator agrees that neither Operator nor any of the other Operator Parties shall do anything that will cause or contribute to the violation by the Authority of any of the provisions of Exhibit "E".

18. Public Records. Any information that Operator provides to the Authority pursuant to this Agreement shall be considered private and confidential to the extent authorized by law. Notwithstanding the foregoing, Operator acknowledges that the Authority is subject to the California Public Records Act (the "Act") and that some or all of the information provided by Operator may be disclosable thereunder. In the event a public records act request for Operator's information is received, the Authority shall provide Operator with written or verbal notice of such request, prior to compliance. However, nothing herein shall prevent the Authority from complying with the requirements of the Act. The provisions of this Section shall survive the expiration or termination of this Agreement for any reason.

19. Miscellaneous.

19.1 Notices

All notices, requests, demands and other communications given, or required to be given under this Agreement and the Commercial Access License, shall be in writing, duly addressed to the parties as follows:

To Authority:     Executive Director  
                         BURBANK-GLENDALE-PASADENA  
                         AIRPORT AUTHORITY  
                         2627 Hollywood Way  
                         Burbank, CA 91505



To Operator:

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Any notices properly addressed, sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after they are deposited in the United States mail, postage prepaid. Notices shall be deemed delivered and received at the time delivered if properly addressed and delivered to the addresses set forth in this Section during normal business hours or personally delivered to the person to whose attention they are addressed or sent by confirmed telecopy to a party's regular business telecopier during regular business hours. Notice sent by any other manner shall be effective upon actual receipt of the addressee. Any party may change its address for purposes of this Section by giving notice to the other party as provided in this Section.

19.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous negotiations, understandings and agreements of the parties, including prior interim Airport access and facilities use agreements, with respect to the subject matter hereof. No supplement, modification or amendment of this Agreement, or discharge of any of the obligations hereunder, shall be binding unless executed in writing by the parties hereto.

19.3 Severability. If any portion of any provision of this Agreement, or any one or more such provisions, is hereafter declared invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remainder of such provision or of any other provisions of this Agreement.

19.4 Governing Law. This Agreement shall be construed, interpreted and applied in accordance with the laws if the State of California and, to the extent applicable, the rules and regulations of the FAA.

19.5 Remedies; Waiver. The rights and remedies set forth herein shall be cumulative and in addition to any other remedies which may be available under any other agreement between the parties or at law or in equity. The exercise of any remedy shall not be deemed to be an election of remedies. No waiver of any breach or default shall be construed as a continuing waiver of any provision or as a waiver of any other or subsequent breach of any provision contained in this Agreement, and no waiver shall be binding unless executed in writing by the party making the waiver.

19.6 Modification. Except as otherwise provided in this Agreement, no change or modification of the terms or provisions of this Agreement shall be deemed valid unless in writing and signed by both parties.

19.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

19.8 Attorneys' Fees. In the event of any action or proceeding to enforce or construe any of the provisions of this Agreement, the prevailing party in any such action or proceeding shall be awarded costs and reasonable attorneys' fees in the defense, prosecution or appeal thereof as a part of the judgment eventuating in such action.

19.9 Time. Time shall be of the essence in complying with the terms, conditions and provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Type or print name of Operator:

\_\_\_\_\_

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

Authorized Signature

Name of signer: \_\_\_\_\_

Title of signer: \_\_\_\_\_

BURBANK-GLENDALE-PASADENA  
AIRPORT AUTHORITY

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

Authorized Signature

Name of signer: \_\_\_\_\_

Title of signer: \_\_\_\_\_

EXHIBIT "A"

GEO-FENCE BOUNDARIES

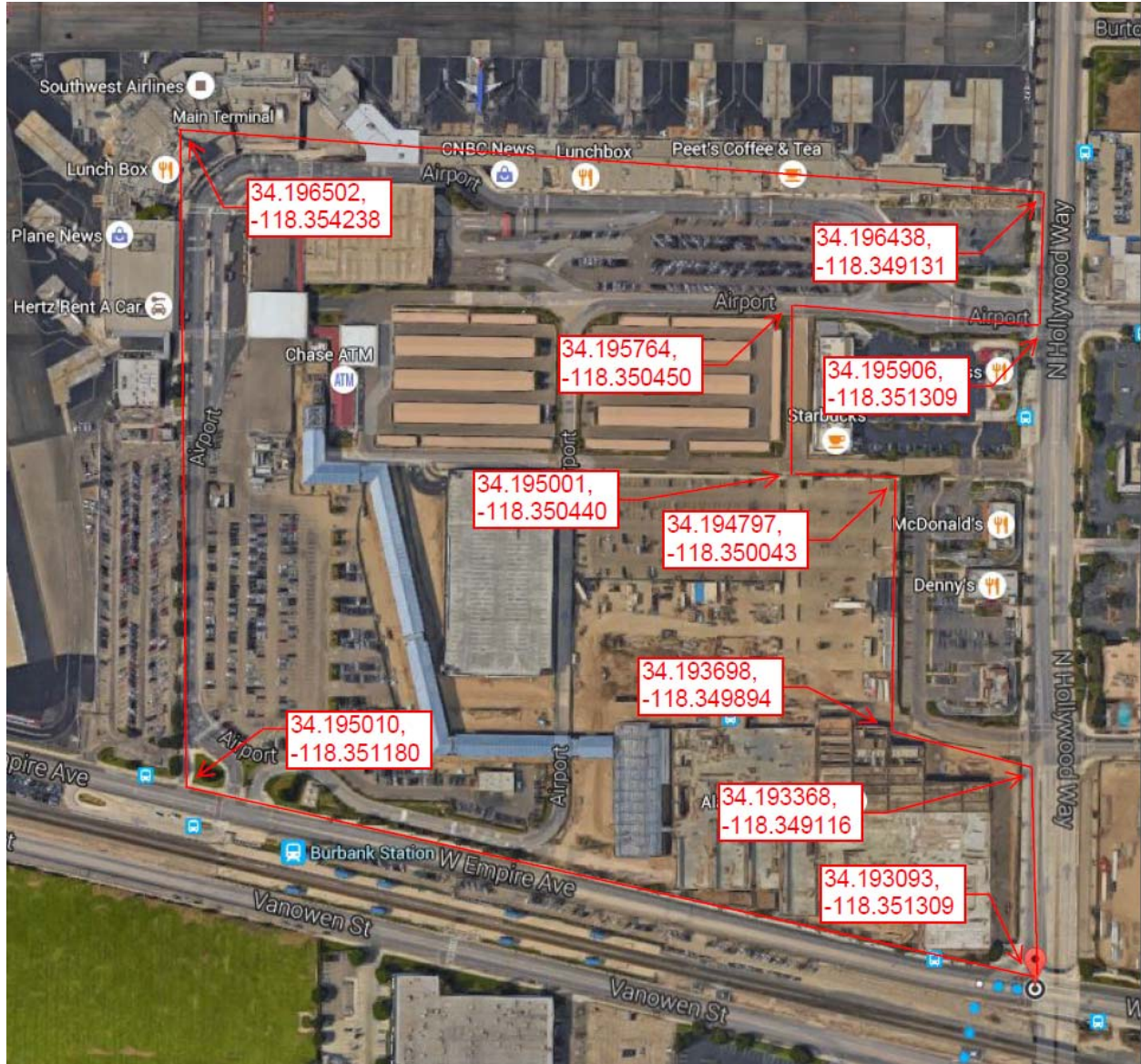
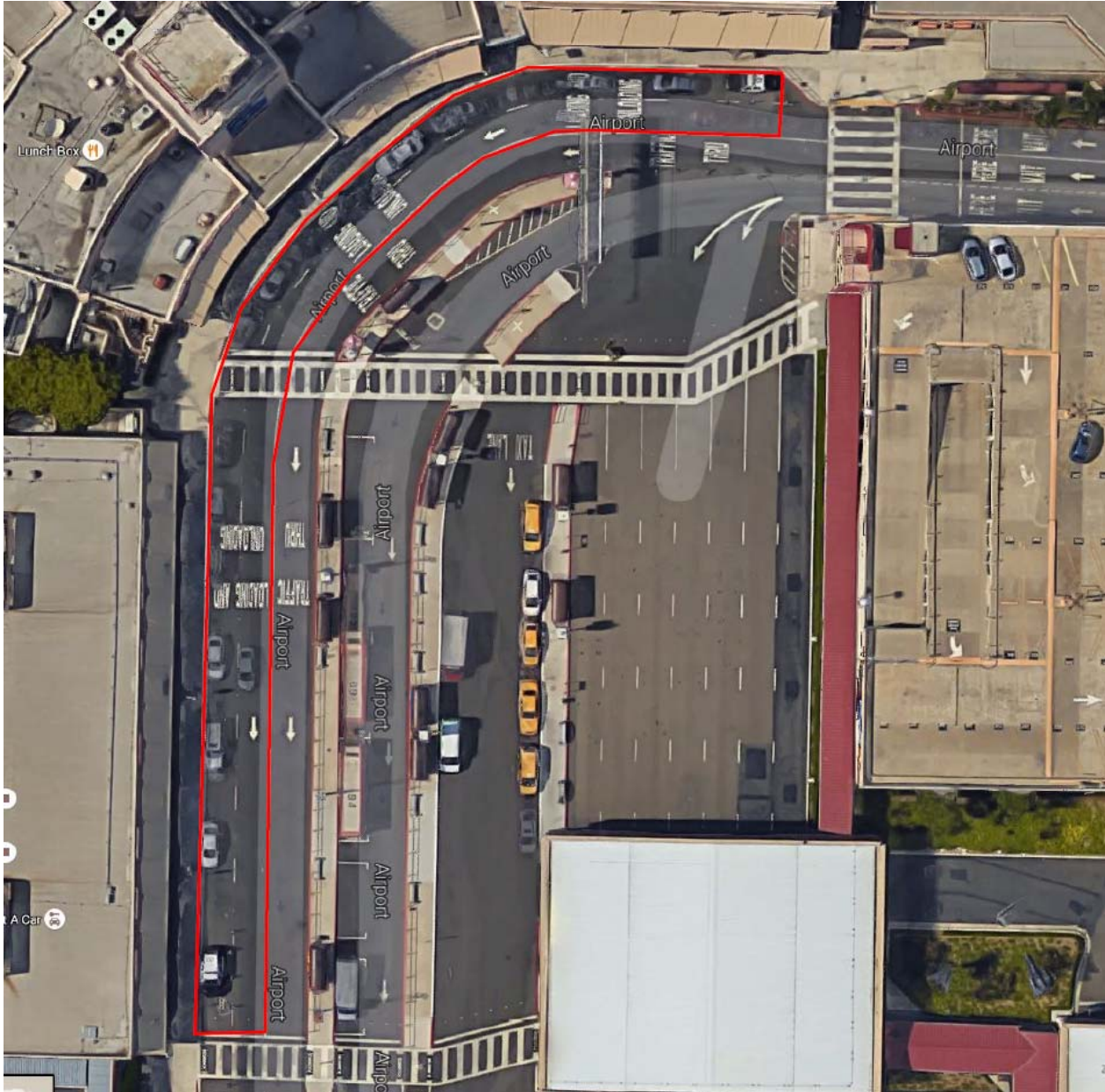




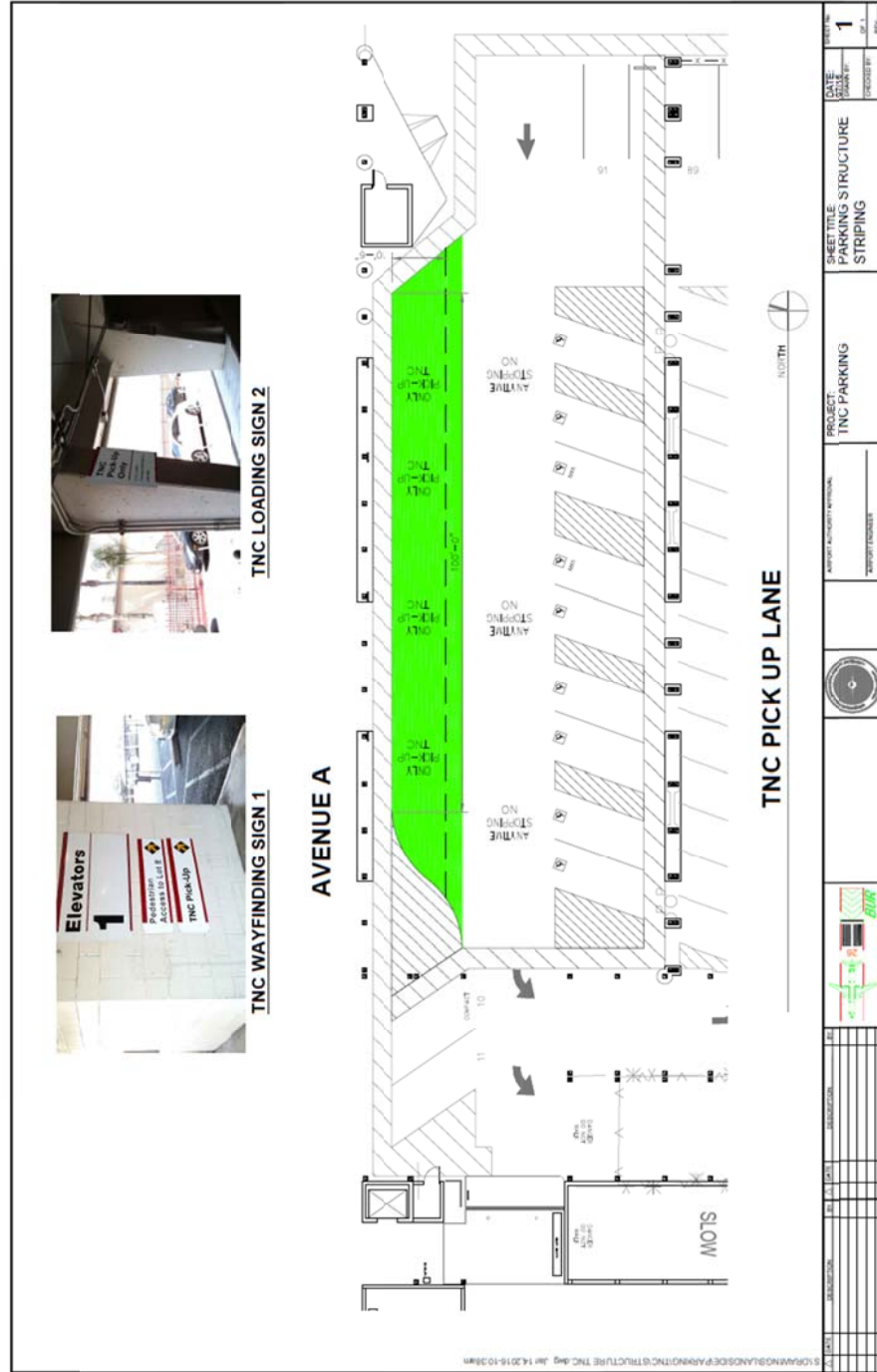
EXHIBIT "B"

DIAGRAM OF TNC DROP-OFF AREA



# EXHIBIT "C"

## DIAGRAM OF TNC PICK-UP AREA



## EXHIBIT "D"

### FAA GRANT AGREEMENT ASSURANCES - NONDISCRIMINATION

During the performance of the Agreement, Operator agrees as follows:

1. Compliance with Regulations. Operator shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, 49 CFR Part 21, which are herein incorporated by reference and made a part of the Agreement.

2. Nondiscrimination. Operator shall not discriminate on the grounds of race, color, or national origin in the selection and retention of its employees. Operator shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Nondiscrimination Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Nondiscrimination Regulations.

3. Information and Reports. Operator shall provide all information and reports required by the Nondiscrimination Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish this information, Operator shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

4. Sanctions for Noncompliance. In the event of Operator's noncompliance with the nondiscrimination provisions of the Agreement, the Authority shall impose such contract sanctions as it or the FAA may determine to be appropriate, including but not limited to:

4.1 Withholding of payments to Operator under the Agreement until Operator complies, and/or

4.2 Cancellation, termination or suspension of the Agreement, in whole or in part.

## EXHIBIT "E"

### FAA GRANT AGREEMENT ASSURANCES

#### **A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

#### **B. Duration and Applicability.**

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

**C. Sponsor Certification.**

The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.**

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

**Federal Legislation**

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.<sup>1 2</sup>
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.<sup>1</sup>
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))



- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.<sup>1</sup>
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.<sup>1</sup>
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.<sup>1</sup>
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.<sup>1</sup>
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.<sup>1</sup>
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.<sup>2</sup>
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

### **Executive Orders**

- a. Executive Order 11246 - Equal Employment Opportunity<sup>1</sup>
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>
- f. Executive Order 12898 - Environmental Justice

## **Federal Regulations**

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].<sup>4, 5, 6</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.<sup>1</sup>
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.<sup>1</sup>
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).<sup>1</sup>
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.<sup>3</sup>
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.

- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 — Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.<sup>1 2</sup>
- q. 49 CFR Part 26 — Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 — Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.<sup>1</sup>
- s. 49 CFR Part 28 — Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 — Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 — Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

### **Specific Assurances**

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

### **Footnotes to Assurance C.1.**

<sup>1</sup> These laws do not apply to airport planning sponsors.

<sup>2</sup> These laws do not apply to private sponsors.

<sup>3</sup> 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

<sup>4</sup> On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and

Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

- <sup>5</sup> Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- <sup>6</sup> Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

## **2. Responsibility and Authority of the Sponsor.**

### **a. Public Agency Sponsor:**

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

### **b. Private Sponsor:**

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

## **3. Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

**4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

**5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

**6. Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

**7. Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

**8. Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

**9. Public Hearings.**

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

**10. Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

**11. Pavement Preventive Maintenance.**

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

**12. Terminal Development Prerequisites.**

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

**13. Accounting System, Audit, and Record Keeping Requirements.**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project

supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

**14. Minimum Wage Rates.**

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

**15. Veteran's Preference.**

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

**16. Conformity to Plans and Specifications.**

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved



plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

**17. Construction Inspection and Approval.**

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

**18. Planning Projects.**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on

the part of the Secretary to approve any pending or future application for a Federal airport grant.

**19. Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-
  - 1) Operating the airport's aeronautical facilities whenever required;
  - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
  - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

**20. Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

**21. Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of

the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

**22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
  - 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations

substantially similar to those already imposed on air carriers in such classification or status.

- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

### **23. Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any

exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

**24. Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

**25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
  - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
  - 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value

of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

- 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

## **26. Reports and Inspections.**

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

- 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

**27. Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

**28. Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

**29. Airport Layout Plan.**

- a. It will keep up to date at all times an airport layout plan of the airport showing
  - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;

- 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
  - 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
  - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

### **30. Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.



b. Applicability

- 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
- 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The (**Name of Sponsor**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
  - a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

### **31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the

earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or

owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

**32. Engineering and Design Services.**

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

**33. Foreign Market Restrictions.**

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

**34. Policies, Standards, and Specifications.**

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated \_\_\_\_\_ (the latest approved version as of this grant offer) and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

**35. Relocation and Real Property Acquisition.**

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.

- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

**36. Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

**37. Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

**38. Hangar Construction.**

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-

- 1) Describes the requests;

- 2) Provides an explanation as to why the requests could not be accommodated; and
  - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

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