

## **SETTLEMENT AGREEMENT**

### **LOS ANGELES INTERNATIONAL AIRPORT MASTER PLAN**

This Settlement Agreement is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between the Los Angeles World Airports, the Department of Airports of the City of Los Angeles ("LAWA"), and the Lennox School District, a California public school district ("District").

#### **RECITALS**

**A.** LAWA and the City of Los Angeles are considering a Master Plan Program for Los Angeles International Airport (LAX), which would guide development and construction at LAX in coming years.

**B.** In January, 2001, LAWA released for public comment a Draft EIS/EIR and the LAX Master Plan. In September, 2001, the District submitted its comments to the Draft EIS/EIR. In July, 2003, LAWA released a Supplement to the Draft EIS/EIR and LAX Master Plan. In November, 2003, the District submitted its comments to the Supplement to the Draft EIS/EIR. In June, 2004, LAWA released the Final LAX Master Plan and the Final Environmental Impact Report ("Final EIR"). In the Final EIR, LAWA identified the project known as "Alternative D" as the staff-recommended alternative. In September, 2004, LAWA released an Addendum to the EIR ("First Addendum"). The City Council of the City of Los Angeles is considering approval of the LAX Master Plan Program at its meeting scheduled for December 7, 2004. The District and LAWA anticipate a Notice of Determination to be filed in the near future, thus requiring any civil action challenging the adequacy of the Final EIR to be filed within 30 days thereafter.

**C.** The District has expressed legal and policy concerns regarding the proposed LAX Master Plan Program. Among other matters, the District contends that, in both sets of its comments, it identified certain alleged inadequacies in the Draft EIS/EIR and Supplement to the Draft EIS/EIR in both the impact and mitigation measure analysis in violation of the California Environmental Quality Act, the California CEQA Guidelines and applicable case law. LAWA and the District have agreed that it is in their mutual interest to resolve the concerns of the District through cooperation and settlement, rather than through litigation. With the resolution of these concerns, the District supports the LAX Master Plan Program.

#### **DEFINITIONS**

As used in this Agreement, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

**"Agreement"** shall mean this settlement agreement.

**“Alternative D”** shall mean the LAX Master Plan Alternative described and evaluated in the Master Plan EIR as “Alternative D.”

**“City”** shall mean the City of Los Angeles.

**“District”** shall mean the Lennox School District.

**“FAA”** shall mean the Federal Aviation Administration.

**“FAA Approval” or “FAA Determination”** with respect to LAWA’s funding of any of the programs and/or activities contemplated by this Agreement shall mean a determination by the FAA obtained by the Parties pursuant to the processes described in Section II.B.

**“General Fund”** shall mean the City of Los Angeles’ fund for deposit of general receipts, which are not restricted, such as property, sales, and business taxes and various fees; also functions as a set of sub-funds (primarily by departments) to track appropriations and expenditures.

**“LAWA”** shall mean Los Angeles World Airports.

**“LAX Master Plan”** shall mean the document approved by the City Council as a strategic framework for future improvements at LAX through 2015.

**“LAX Master Plan Program”** shall mean the entire program that comprises the initial approval and subsequent implementation of the LAX Master Plan, including the initial approval of all entitlements and other actions in conjunction with the City Council’s approval of the LAX Master Plan, including, but not limited to, the following:

- LAX Master Plan;
- LAX Plan;
- LAX Specific Plan;
- Other associated general plan amendments;
- LAX Zone and zone changes;
- Tentative Tract Map Nos. 54407, 54408 and 54409;
- LAX Master Plan EIR/EIS;
- Mitigation Monitoring and Reporting Program (MMRP) for the LAX Master Plan EIR/EIS;
- CEQA findings;
- Land Use Findings;
- Conceptual Approval of the Draft Relocation Plan;
- ALUC override findings;
- Statement of Overriding Considerations;
- ALUC inconsistency determination override approvals;
- Airport Layout Plan; and the
- Record of Decision (ROD) approved by the FAA for the ALP.

The LAX Master Plan Program shall also include subsequent LAWA and/or City Council approvals of all entitlements and other actions for any of the specific project components and activities that implement the LAX Master Plan.

With respect to the initial approval, the term LAX Master Plan Program shall refer to and include only the general framework of Alternative D that is encompassed within the LAX Master Plan. With respect to the subsequent approval of specific projects, the term LAX Master Plan Program shall refer to and include all Alternative D projects and any modified or substitute projects approved by LAWA and/or the City Council, so long as the projects are substantially consistent with Alternative D.

With respect to the FAA's ROD, the ROD shall refer to the documents comprising the FAA's final record of decision approving the ALP, including, but not limited to, the agency actions constituting the basis for the Clean Air Act general and transportation conformity determination, the Endangered Species Act biological opinion of no jeopardy, and the Coastal Zone Management Act consistency determination and consistency certification.

**“Master Plan EIR” or “Master Plan EIR/EIS”** shall mean, respectively, the “Final Environmental Impact Report” for the LAX Master Plan, dated April 2004, as supplemented by one or more EIR Addenda prior to certification of the EIR by the City Council, and the Final Environmental Impact Statement approved by the FAA in connection with its approval of the Airport Layout Plan.

**“Party”** shall mean the District and/or LAWA.

**“Released Claims”** shall mean any and all state and/or federal law based suits, petitions, claims, or causes of action challenging the sufficiency or legal validity of the LAX Master Plan Program and/or associated environmental documents.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth herein and other consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

### **SECTION I: AGREEMENT OVERVIEW**

**A. No Admission of Liability.** The Parties agree and acknowledge that this Agreement reflects a compromise and settlement of claims, disputes and differences between them which are denied and contested. The parties agree that neither this Agreement nor the payment of any monetary consideration, as provided herein, shall be construed as an admission by any Party of any liability of any kind to the other.

**B. Recitals True and Correct.** The above recitals are true and correct and are hereby incorporated as a part of this Agreement.

**C. Mutual Consideration.** The District's commitment to abide by terms of this Agreement is consideration for the LAWA's commitment to abide by terms of this Agreement. LAWA's commitment to abide by terms of this Agreement is consideration for the District's commitment to abide by terms of this Agreement.

**D. Agreement Lawful and Enforceable.** All Parties agree that this Agreement is lawful, enforceable, and binding on all Parties; agree to waive any challenges to the enforceability of this Agreement; and agree not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Agreement in any judicial action or proceeding.

**E. Headings Not Limiting.** Section and subsection headings contained herein are included for convenience only and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any section or subsection herein.

**F. Term of Agreement.** This Agreement shall be operative from the date of its approval by the Parties through December 31, 2015 or until the conclusion of the LAX Master Plan Program, whichever comes later, except that this Agreement shall expire under any circumstance by December 31, 2020.

**G. Third Party Beneficiaries.** This Agreement has no third party beneficiaries and no one other than the Parties shall have any rights to enforce any of the obligations created in this Agreement.

## **SECTION II: LAWA COMMITMENTS AND OBLIGATIONS**

**A. LAWA Funding of Certain District Mitigation Measures.** Subject to FAA Determination regarding the use of airport funds under the federal anti-revenue diversion laws, LAWA shall fund certain mitigation measures for the District identified in the attached Exhibit A ("Exhibit A measures").

1. The proposed LAWA funding amount designated on Exhibit A for each Exhibit A measure represents the District's good faith estimate of the appropriate portion of the overall costs that should be funded by LAWA of the various Exhibit A measures at the time of the commencement of the Agreement.

2. The total amount of these estimates, \$111,000,000.00 ("Total Funding Amount") shall constitute a ceiling for the total funding provided by LAWA. This Total Funding Amount shall not be adjusted for any reason, including, but not limited to, cost overruns, inflation, delays in starting or completing Exhibit A measures, etc.

3. Should another source of funding become available that does not require FAA approval, excluding the General Fund of the City of Los Angeles and other City-controlled sources of funds or restricted funds of the District or any funding pursuant to Section II.A.5, and the District shall notify LAWA of this availability, LAWA shall apply for and, if successful, utilize said alternative funding or revenue source to fund the Exhibit A measures or substitute measures LAWA need not expend any more than 75 staff hours annually in preparation of the applications.

4. Under no circumstances may any of LAWA's obligations under this Agreement require any expenditure from the City's General Fund or any other City-controlled source of funds.

5. The Parties agree that, because the funding pursuant to this Section shall be for mitigation measures necessitated by the operation of LAX, and not for standard school construction, the LAWA-provided funding is separate from and different in kind than any state funding that may be provided for new construction or modernization of any of the schools listed on Exhibit "A". Therefore, any state funding provided for new construction or modernization of any of the schools listed on Exhibit "A" shall not constitute an offset of funding under this Agreement.

**B. FAA Determination of Propriety of Proposed LAWA Funding Under Federal Anti-Revenue Diversion Laws.** LAWA represents to the District that its off-airport expenditures of airport revenues are subject to the federal anti-revenue diversion laws and regulations pertaining to commercial airports throughout the United States. Under these laws and regulations, the FAA has supervisory authority and, from time to time, determines that various proposed expenditures by airport proprietors may be subject to those anti-revenue diversion provisions and thus be subject to reimbursement. In order to provide the Parties with sufficient certainty that LAWA's expenditure of airport revenues to fund any proposed Exhibit A measures will not conflict with these anti-diversion provisions, the Parties will cooperate to develop a process to obtain expeditious FAA Determinations regarding the propriety of LAWA's funding the proposed Exhibit A measures under the federal anti-diversion laws. The Parties will also develop a mutually acceptable schedule for submitting proposed Exhibit A measures to the FAA, pursuant to which the initial group of Exhibit A measures that are anticipated to be implemented by the District first shall be submitted to the FAA within six months of the date of commencement of this Agreement, and all Exhibit A measures will be submitted to the FAA within two years of the date of commencement of this Agreement.

1. Notwithstanding any provision of this Agreement, LAWA shall not be required to make expenditures or take actions (i) that are prohibited by an FAA Determination or any other regulatory authority, or (ii) for which the FAA or any other federal agency makes a determination that the expenditures or actions

will result in withholding or demand for remittance of federal funds. When an FAA Determination is made, LAWA shall fulfill requirements of this Agreement consistent with the FAA Determination and the determination of any other regulatory authority.

2. In order to secure an FAA Approval or FAA Determination regarding LAWA's use of airport revenues to fund any Exhibit A measure:

(a) LAWA and the District will jointly prepare, and LAWA will present, a letter to the FAA requesting an advisory opinion on the whether the use by LAWA of airport revenue for a specific Exhibit A measure is an acceptable use of airport revenues under existing statutes, regulations and FAA policy guidance. The letter will request that, if the FAA determines the use of airport revenues for a specific Exhibit A measure is not acceptable, the FAA include in its written advisory opinion the grounds upon which the Agency has determined that the use of airport revenues for the proposed Exhibit A measure would constitute revenue diversion or other impropriety under existing statutes, regulations or policy guidance.

(b) If the FAA's advisory opinion indicates that use of airport revenues for any particular Exhibit A measure would constitute revenue diversion or other impropriety, then LAWA, with the District's consent, will take the following actions, in the order in which they appear in this agreement:

(i) Revise the request and/or the Exhibit A measure to meet the FAA criteria;

(ii) Work with the District Representative on a one-time adjustment to develop a substitute program or activity that the FAA has determined to be acceptable and that is designed to achieve an equivalent level of mitigation and/or benefit through an equivalent expenditure of airport revenues ("substitute measure"). If the FAA also determines that the proposed substitute program or activity may not be funded with airport revenues, LAWA will have no further obligation regarding the funding of that program or activity, except as specified in Section II.B.2(b)(iii) immediately below;

(iii) Provide further arguments in support of eligibility in a petition to FAA seeking a final agency determination on the use of airport revenue for the Exhibit A measure and/or the substitute measure.

3. To the extent that the FAA may determine that it is premature to approve a proposed Exhibit A measure because that measure is not ripe for approval, the measure will be resubmitted by LAWA when the District notifies LAWA that it believes that it has become ripe.

4. To the extent that the FAA Determination is that a proposed Exhibit A measure may be funded in its entirety by LAWA from airport revenues under the federal anti-diversionary laws, LAWA will fund that measure up to the full amount indicated in Exhibit A. To the extent the FAA may determine that only a portion of a proposed Exhibit A measure may be funded by LAWA from airport revenues, LAWA will fund that portion of the measure. To the extent that the FAA may determine that no portion of a proposed Exhibit A mitigation measure may be funded with airport revenues, LAWA will provide no funding from airport revenues for that measure. Under no circumstances will any City General Fund monies or any other City-controlled source of funds be expended pursuant to this Agreement.

**C. Responsible Official.** LAWA shall identify an official within LAWA who will be responsible for monitoring the performance of each program or activity that LAWA is obligated to perform under this Agreement (the "LAWA Responsible Official"). LAWA's Responsible Official shall meet with the District Representative at regularly scheduled meetings. It is anticipated that the meetings will be held monthly during the first year of this Agreement and bi-monthly thereafter. The LAWA Responsible Official shall provide the District Representative with a written report at each meeting regarding the progress to date in obtaining FAA Determinations regarding LAWA's funding of the proposed Exhibit A measures and substitute measures. The written reports shall be sufficiently detailed to reasonably demonstrate the efforts and progress made by LAWA to date, as well as the relevant responses of the FAA and other pertinent regulatory authorities. In LAWA's sole discretion, one or more of the Exhibit A measures or substitute measures may be added to the LAX Master Plan's Mitigation Monitoring and Reporting Program (MMRP) and monitoring of performance for these programs or activities may be carried out under the MMRP.

**D. Deficient Performance by the District.** If the LAWA official or division responsible for monitoring the District's implementation of the Exhibit A measures believes that the District's performance is deficient, that assessment shall be immediately transmitted to LAWA's Director, who shall transmit that assessment to the District's Representative within fourteen calendar days of receipt. The LAWA Responsible Official's notification of that assessment shall contain adequate detail to inform the District of the acts and/or omissions believed to be deficient. After following the applicable Enforcement mechanisms set forth in Section IV below, upon the ruling of the arbitrator or the court in LAWA's favor, LAWA may withhold further funding for the program or activity until reasonable and appropriate safeguards have been

implemented by the District to allow achievement of satisfactory performance of the District's obligations pursuant to this Agreement.

**E. Master Plan EIR Consistency with this Agreement.** LAWA shall work with its environmental consultants to expeditiously review the Master Plan EIR with respect to its discussion of the noise and other environmental impacts of the LAX Master Plan to determine whether any inconsistencies presently exist between the provisions of this Agreement and the Master Plan EIR's discussion. To the extent that the inconsistencies are determined to exist, LAWA and its consultants will prepare an Addendum for the consideration of the City Council prior to its certification of the Master Plan EIR. The Addendum will propose changes or modifications to the Master Plan EIR that resolve any inconsistencies.

**F. Phasing of LAWA Funding in Support of Exhibit A Measures.** Commencing in the LAWA fiscal year in which the first LAX Master Plan Program specific project (e.g., the South Airfield improvements) is approved by LAWA and the City Council, LAWA will provide the District with the sum of \$10 million each year until the earliest of the following events: (1) funding has been provided to the District for all Exhibit A measures and substitute measures for which a favorable FAA Determination has been obtained; (2) the Total Funding Amount has been reached; or (3) the LAX Master Plan Program has been suspended or completed. LAWA shall provide the \$10 million annual payment to the District within 90 days of the approval by the City Council of the first specific project and thereafter each annual payment shall be made by LAWA to the District within 90 days after the beginning of LAWA's fiscal year. If the remaining amount to be funded under (1) or (2) above is less than \$10 million, LAWA will provide the District with the lesser sum comprising the remaining amount to be funded. Once the first \$10 million payment is made to the District, in making subsequent annual \$10 million payments, LAWA shall first determine from the annual report provided to it by the District that the previous \$10 million payment has been fully expended in accord with the District's prior report to LAWA. Such determination shall be made within 30 days after LAWA's receipt of the annual report. If the full \$10 million has not been fully expended, LAWA will provide the District with the difference between \$10 million and the amount so expended and will credit the District with the remainder of the previous \$10 million and the next \$10 million annual installment. The District will be eligible for a further \$10 million credit or a lesser amount of credit in each year that its annual report shows that it has plans for expenditure of those funds within the next year or that it has committed and obligated \$10 million in funds or that lesser amount within the next year. LAWA will provide the District with any such credited funds when the District provides LAWA with one or more supplemental reports showing that the credited funds are needed for the next installment of Exhibit A measures or substantial measures and showing the proposed schedule and work program for the credited funds. After the first year, the LAX Master Plan Program will be considered suspended or completed for the purposes of this section if the amount expended on construction of any specific project in the LAX Master Plan Program in the immediately preceding LAWA fiscal year was less than \$10 million, provided that, if a further LAX Master Plan Program specific project is thereafter approved by the City Council with an anticipated construction

budget exceeding \$10 million, the LAX Master Plan Program will be deemed to have been merely in suspension and the \$10 million annual payment by LAWA to the District shall henceforth be resumed within 90 days of said specific project approval.

**G. Security-Related Items.** LAWA shall assist the District in the coordination and dissemination of appropriate information related to emergency preparedness and response of local law enforcement agencies, emergency response groups (e.g., Red Cross, Federal Emergency Management Agency) and the local communities in the event of an airport-related emergency. LAWA Police shall meet with the District to educate it regarding the best procedures for the District to implement for emergency response to protect its students.

**H. Community Programs.** LAWA shall work collaboratively with the District to support a variety of community programs, such as job training and academic programs. LAWA shall support and promote the creation of these programs and joint ventures. For the purposes of this section, LAWA's support of these programs does not include any obligation to provide funding or administrative support. It is understood between the Parties that the items in this Section shall not hinder or cause delay in securing funding or other approvals necessary for the adoption or implementation of the other terms of this Agreement.

### **SECTION III: DISTRICT COMMITMENTS AND OBLIGATIONS.**

**A. District Actions Related to Expenditure of LAWA-Provided Funds.** The District shall take all actions required of it by this Agreement. All funds provided by LAWA to the District for its expenditure on Exhibit A measures will be expended consistent with this Agreement and with any FAA Determinations regarding the federal anti-revenue diversion laws.

1. Within 60 days after the City Council approves the first specific project under the LAX Master Plan program and within 60 days after the start of each LAWA fiscal year, the District shall provide LAWA with a detailed financial plan and work program showing the anticipated planning, architectural, construction and other costs, as well as the anticipated scheduling, for the FAA approved Exhibit A measures that the District proposes will be funded with the first \$10 million LAWA payment. Thereafter, within 60 days after the beginning of LAWA's fiscal year, the District shall annually provide LAWA with a similar financial plan and work program regarding the anticipated costs and scheduling for the next \$10 million annual LAWA payment. The District shall expend all LAWA-provided funds in accord with those financial plans, scheduling and work programs and will provide LAWA with semi-annual reports on August 1<sup>st</sup> and March 1<sup>st</sup> describing the status of the District's expenditures of the LAWA-provided funds in support of the Exhibit A measures and/or substitute measures. The District's semi-annual reports shall be in sufficient detail to allow LAWA and/or the FAA to track all these expenditures and determine that they have, in

fact, been made for FAA-approved Exhibit A measures and/or substitute measures.

2. The District may also utilize funding pursuant to this Agreement for any other FAA approved Exhibit A or approved substitute measures, irrespective of a prior annual report, so long as the District first submits a supplemental report to LAWA and obtains the written approval of LAWA.

3. To the extent that the District makes any expenditure of LAWA-provided funds that is inconsistent with this Agreement and/or with any FAA Determination regarding the federal anti-revenue diversion laws, the District shall reimburse LAWA for the amount of said funds.

**B. Release of Claims.** The District hereby waives, releases, and forever discharges LAWA and the FAA from all Released Claims in full and final settlement of the Released Claims. The District's Release of Claims does not include any claims that the District may have against Caltrans or the County of Los Angeles with respect to transportation projects that may occasion a taking of any District property, irrespective of whether the taking may be occasioned by a Caltrans or County effort to implement a transportation improvement associated with the LAX Master Plan Program, except that in any possible litigation, the District shall not assert a claim based on the sufficiency or legal validity of the LAX Master Plan Program and/or associated environmental documents.

**C. Covenant Not to Bring Any Released Claim.** The District covenants that it will not file, prosecute, bring, or advance any suit, claim, or legal action of any kind against LAWA or the FAA based upon any Released Claim.

**D. Defense Against Released Claims.** This Agreement may be pleaded as a defense to, and may be used as the basis for an injunction against, prosecution of any Released Claim against LAWA or the FAA.

**E. District Representative.** The District shall designate one individual as the "District Representative" authorized to speak or act on behalf of the District for all purposes under this Agreement. The District Representative may designate one or more assistants to assist the Representative in speaking or acting on behalf of the District with respect to any specific program or activity or any other matter. The District shall provide LAWA with contact information for the District Representative upon request made to the addresses listed in the "Notice" section below. The District Representative shall meet with LAWA's Responsible Official at the regularly scheduled meetings and, on a semi-annual basis, shall provide LAWA with the written reports described in section III.A.1 above regarding the status of the District's implementation of each Exhibit A measure and/or substitute measure.

## SECTION IV: ENFORCEMENT

**A. Default.** Failure by either Party to perform any material term or provision of this Agreement, if not cured, shall constitute a default under this Agreement.

**B. Sixty-Day Right to Cure.** Except for Section IV.E, if the either Party believes that the other Party is in default of this Agreement, the party shall provide written notice to the other Party of the alleged default; offer to meet and confer in a good-faith effort to resolve the issue; and provide sixty days to cure the alleged default commencing at the time of the notice. Any notice given pursuant to this provision shall specify the nature of the alleged default, and, where appropriate, the manner in which the alleged default satisfactorily may be cured.

**C. Meet and Confer and Mediation.** To the extent that there is any disagreement regarding the adequacy of performance of either Party's obligations under this Agreement, the Parties will attempt to resolve the disagreements, first, at the regularly scheduled implementation meetings. If the Parties are unable to resolve any disagreement(s) at the regularly scheduled meetings, either of the Parties may request mediation of the disagreement(s). LAWA shall pay the reasonable costs of a mediator for the dispute resolution, and each Party will bear its own fees and other costs, if any.

**D. Remedies.** In the event that either Party is allegedly in default under the terms of this Agreement, then the other Party may elect, in its sole and absolute discretion, to waive the default or to pursue any of the following remedies: (1) binding arbitration, as described in this Section IV.D; or (2) judicial remedies, as described in this Section IV.D. These remedies may be pursued only after exhaustion of the thirty-day right to cure period and participation in the regularly scheduled implementation meeting processes described above, except where an alleged default may result in irreparable injury, in which case the party seeking relief may immediately pursue the remedies described in this section IV.D.

**1. Binding Arbitration.** Either Party may pursue binding arbitration to enforce any term of this Agreement that has been breached. Either Party may seek arbitration relief ordering, and the arbitrator shall have the power to order, affirmative equitable and/or affirmative injunctive relief, temporary or permanent, requiring the other Party to comply with this Agreement. The District may not seek arbitration relief ordering, and the arbitrator shall not have the power to order, LAWA to cease or suspend any operations of LAX, to cease or suspend implementation of Alternative D, or to cease or suspend any other LAWA program or activity. No Party may seek arbitration relief directing, and the arbitrator shall not have power to direct, the other Party to undertake any program or action except for those programs or actions provided for by this Agreement. No Party may seek arbitration relief awarding, and the arbitrator shall not have power to award, any money damages, although to the extent that funds may be required to be expended by LAWA to comply with its obligations under this Agreement, the arbitrator shall have power to compel LAWA to expend the funds and, to the extent that the District may have expended funds in a manner

inconsistent with the provisions of this Agreement and/or any FAA Determination regarding the federal anti-revenue diversion laws, the arbitrator shall have the power to compel the District to reimburse LAWA for the funds. The arbitrator may order termination for breach of this Agreement. Arbitration shall be conducted in Los Angeles, California, under the rules of the American Arbitration Association. LAWA shall pay the costs of the arbitrator. Each Party shall bear its own fees and other costs.

**2. Court Action.** Either Party may file a claim in the Los Angeles County Superior Court to enforce any term of this Agreement that has been breached. Either Party may seek judicial relief ordering, and the court shall have the power to order, affirmative equitable and/or affirmative injunctive relief, temporary or permanent, requiring the other party to comply with this Agreement. The District shall not seek judicial relief ordering, and the court shall not have the power to order LAWA to cease or suspend operation of LAX, to cease or suspend implementation of Alternative D, or to cease or suspend any other LAWA program or activity. No Party may seek judicial relief ordering, and the court shall not have power to direct, the other Party to undertake any program or action except for those programs or actions provided for by this Agreement. Neither Party may seek judicial relief ordering, and the court shall not have power to award, any money damages, although to the extent that funds may be required to be expended by LAWA to comply with its obligations under this Agreement, the court shall have power to compel LAWA to expend the funds and, to the extent that the District may have expended funds in a manner inconsistent with the provisions of this Agreement and/or any FAA Determination regarding the federal anti-revenue diversion laws, the court shall have the power to compel the District to reimburse LAWA for the funds. The court may order termination for breach of this Agreement. Each Party shall bear its own fees and costs of court enforcement.

**E. Remedies for District's Breach of Promise Not to Bring Suit on Released Claims.** If the District is allegedly in default of Section III.D of this Agreement, LAWA's responsibilities under this Agreement shall remain in effect until these responsibilities are suspended as described in this Section IV.B.

**1. Prompt Dismissal of Claim.** LAWA shall notify the District Representative in writing that the District is in default. The default shall be considered completely cured if, within ten days of the District Representative's receipt of notice, the court in which the claim in question was filed dismisses the suit or claim in question. If within that ten-day period the District has filed a motion to dismiss the claim but the court has not ruled on the motion, the ten-day period shall be extended for the time it takes the court to rule on the motion for dismissal.

**2. Board Action.** If a District default of Section III.D of this Agreement is not cured pursuant to Section IV.B, above, LAWA may elect,

through a public hearing and subsequent vote of the Board of Airport Commissioners, to suspend LAWA's performance of some or all of its requirements under this Agreement during pendency of the claim in question. If an arbitrator or court finds that a suspension by LAWA of its payment obligations is a breach of this Agreement by LAWA, LAWA may be ordered to retroactively perform pursuant to the terms and provisions of this Agreement, and this will otherwise remain in force.

## **SECTION V: CONDITIONS TO AND LIMITATIONS ON PARTIES' RESPONSIBILITIES.**

### **A. LAWA Responsibilities**

**1. Conditions Precedent.** Notwithstanding any other provision of this Agreement, LAWA shall have responsibilities under this Agreement only during the time the following conditions precedent are satisfied:

**a. District Not In Default.** The District has been adjudged by a court or arbitrator to be in default of any material term of this Agreement.

**b. Master Plan Approved and Permitted.** The City and the FAA have issued approvals for the program level plans, ordinances and other entitlements that authorize the commencement of the LAX Master Plan Program. No litigation has been filed by any person or entity challenging the LAX Master Plan, the Record of Decision (ROD) or any associated federal approval or any entitlement or permit that is necessary for the implementation of the LAX Master Plan Program, which has resulted in a currently effective court order rescinding, nullifying, enjoining or otherwise interfering with the implementation of the LAX Master Plan or its accompanying entitlements. If LAWA is precluded from implementing some or all of the LAX Master Plan Program by the refusal of an agency to issue an entitlement or permit, or by the issuance of a court order, LAWA will nonetheless comply with its obligations under this Agreement to the extent that those obligations are associated with portions of the LAX Master Plan Program that may still be implemented.

**2. Obligations Not Unlawful and Not in Conflict with Federal Anti-Diversion Laws.** No obligation incurred by LAWA under this Agreement shall commit LAWA to pursue or implement any program or activity that is unlawful under any federal or state law or regulation. LAWA shall not be obligated to fund any Exhibit A measure that the FAA determines would potentially conflict with federal anti-revenue diversion laws.

**3. Temporary Suspension of LAWA's Obligations Due to Extraordinary Financial Situation.** LAWA's financial obligations under this Agreement shall be suspended in either of the following circumstances:

(a) an extraordinary financial situation exists that was caused by circumstances outside of LAWA's normal budgetary control

(i) such that LAX-derived airport revenues in excess of LAX's basic operating budget and any debt service and other financial obligations do not exist in an amount sufficient to fund the obligations set forth in this Agreement; and

(ii) that the situation may likely result in a decline in annual LAX-derived operating revenues in excess of five percent of the then current fiscal year's operating budget, or \$50 million, whichever is less; or

(b) an extraordinary financial situation exists such that performing its obligations under this Agreement would necessarily result in:

(i) a violation of the financial covenants LAX has made to its creditors and lienholders in return for the extension of credit in the form of bonds, loans, letters of credit and other forms of financing necessary to maintain LAWA's overall financial stability; or

(ii) LAWA being financially unable to enter into any construction contract for a new LAX Master Plan Program project.

LAWA shall consult with the Coalition about the necessity for the suspension of its obligations and the estimated time period of the suspension. During the suspension period, LAWA shall consult with the Coalition each quarter regarding the status of its efforts to resolve pertinent financial problems and to develop outside sources of revenue to fund LAWA's financial obligations including grants from federal, state or regional agencies or from foundations or other third parties.

"Extraordinary financial situation" as used in this section means circumstances that include, but are not limited to, the type of financial circumstances that LAWA experienced following the events of September 11, 2001; a natural disaster such as an earthquake; or extended increased security deployments in response to external threats.

For purposes of this Section V.A.3, LAWA agrees that financial obligations under this Agreement are an integral component of the LAX Master Plan Program and that these obligations will have the same budgetary priority as LAX Master Plan Program project costs, such that new LAX Master Plan Program implementation projects shall not go forward while financial obligations of this Agreement are suspended pursuant to this Section V.A.3. Upon the conclusion of these extraordinary circumstances, LAWA will promptly resume performance of its financial obligations under this Agreement.

**B. District Responsibilities.**

Notwithstanding any other provision of this Agreement, the District shall have responsibilities under this Agreement only during the time the following conditions precedent are satisfied:

**1. LAWA Not In Default.** LAWA has not been adjudged by a court or arbitrator to be in default of any material term of this Agreement, provided that, even if LAWA were to be determined to be in default under this Agreement, the District would still have the obligation to expend any monies received to date by LAWA in accord with this Agreement and any FAA approvals.

**SECTION VI. MISCELLANEOUS**

**A. No Other Challenges.** The District represents and warrants that it has not filed any Released Claim.

**B. Notice.** All notices shall be in writing and shall be addressed to the affected Parties at the addresses set forth below. Notices shall be: (a) delivered by in person service to the addresses set forth below, in which case they shall be deemed delivered on the date of delivery, as evidenced by the written report of the courier service, or (b) sent by certified mail, return receipt requested, in which case they shall be deemed delivered three business days after deposit in the United States mail. Any Party may change its address or the name and address of its attorneys by giving notice in compliance with this Agreement. Notice of a change shall be effective only upon receipt. Notice given on behalf of a Party by any attorney purporting to represent a Party shall constitute notice by the Party if the attorney is, in fact, authorized to represent the Party. The addresses of the Parties and their attorneys are:

If to LAWA:

Kim Day  
Executive Director  
Los Angeles World Airports  
1 World Way  
P.O. Box 92216  
Los Angeles, California 90009-2216

with a copy to:

Claudia Culling  
Senior Assistant City Attorney  
General Counsel to the Airport Division  
1 World Way, Room 225  
Los Angeles, California 90009

If to District:

Bruce McDaniel, Ed.D  
Superintendent  
Lennox School District  
10319 Firmona Avenue  
Lennox, CA 90304

with a copy to:

Sima Salek  
Attorney  
Orbach, Huff + Suarez, LLP  
1901 Avenue of the Stars, Suite 575  
Los Angeles, CA 90067

**C. Legal Fees and Costs for Preparation.** Each Party shall bear its own legal fees and costs resulting from the preparation, negotiation, execution and enforcement of this Agreement.

**D. Materiality of Breach and Material Terms.** Any breach of any core term of this Agreement may, at the option of a non-breaching Party, be treated as a material default, subject to the Enforcement provisions of Section IV above.

**E. Waiver.** The waiver of any provision or term of this Agreement shall not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a default, shall not be deemed as a waiver of any provision or term of this Agreement.

**F. Time of the Essence.** Time is of the essence in this Agreement.

**G. Representation of Counsel.** Each of the Parties has been represented by counsel in the negotiation and drafting of this Agreement. Accordingly, this Agreement shall not be strictly construed against any party, and the rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Agreement.

**H. Interpretation.** Specific provisions of this Agreement shall take precedence over conflicting general provisions.

**I. California Law.** This Agreement shall be construed in accordance with the laws of the State of California. The venue for any enforcement judicial action shall be the Los Angeles Superior Court.

**J. Entire Agreement.** This Agreement contains the entire agreement between the Parties and supersedes any prior agreements, whether written or oral.

**K. Authority of Signatories.** The individuals executing this Agreement represent and warrant that they have the authority to sign on behalf of the respective parties.

**L. Binding and Enforceable Upon Signature.** As to any Party, this Agreement shall be binding upon, and as of the date of, the Party's execution of this Agreement. This Agreement shall be enforceable by any Party and each Party's respective successors and assigns.

**M. Amendments.** This Agreement may not be altered, amended or modified, except by an instrument in writing signed by the each of the Parties in existence at the time.

**N. Counterparts.** This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which shall constitute one and the same document.

**O. Reformation.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the Parties shall amend this Agreement and/or take other action necessary to achieve the intent of this Agreement to the extent consistent with the ruling of the court.

**P. Further Assurances.** Each Party covenants that it will take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings, that may be necessary or proper to achieve the purposes and objectives of this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement, including but not limited to, LAWA's efforts to prepare and present requests to the FAA for approval of the Exhibit A mitigation measures identified in this Agreement..

**Q. Effective Date.** This Agreement shall be effective upon execution by all parties.

**R. Severability.** Except for "core terms" set forth in this Section VI.R, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect.

**1. LAWA Core Terms.** If any of the following terms of this Agreement are held in final judgment by a court of competent jurisdiction to be invalid, void, or unenforceable, LAWA shall have the option of terminating this Agreement:

**Definitions:**

- Definition of “FAA Approval or FAA Determination”;
- Definition of “LAX Master Plan”;
- Definition of “LAX Master Plan Program”;
- Definition of “Master Plan EIR” and “Master Plan EIR/EIS”;
- Definition of “Released Claims”;

**Section II:**

- A. LAWA Funding of Certain District Mitigation Measures;
- B. FAA Determination of Propriety of Proposed LAWA Funding
- C. Responsible Official;
- D. Deficient Performance by the District;
- E. Master Plan EIR Consistency;
- F. Phasing of LAWA Funding;

**Section III**

- A. District Actions Related to Expenditure of LAWA-Provided Funds;
- C. Release of Claims;
- D. Covenant Not to Bring Any Released Claims;
- E. Defense Against Released Claims;

**Section IV:**

- A. Default;
- B. Thirty Day Right to Cure;
- D. Remedies;
- E. Remedies for District’s Breach of Promise Not to Bring Suit

**Section V:**

- A. LAWA Responsibilities;
- B. District Responsibilities;

**Section VI:**

- A. No Other Challenges;
- C. Legal Fees and Costs for Preparation;
- G. Representation of Counsel; and
- K. Authority of Signatories.

**2. District Core Terms.** If any of the following terms of this Agreement are held in final judgment by a court of competent jurisdiction to be invalid, void, or unenforceable, the District shall have the option of terminating this Agreement:

**Section II:**

- A. LAWA Funding of Certain Mitigation Measures.

**S. Successors and Agents.** This Agreement shall bind and inure to the benefit of the agents, assigns, and successors-in-interest of each Party. Any reference in this Agreement to a Party shall be deemed include any agents, assigns, and successors-in-interest of that Party, with respect to rights and/or responsibilities relevant to this Agreement.

IN WITNESS WHEREOF, the Parties here caused this Agreement to be duly executed by their respective authorized officers.

Dated: \_\_\_\_\_ LOS ANGELES WORLD AIRPORTS

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

KIM DAY  
Executive Director

Dated: \_\_\_\_\_ LENNOX SCHOOL DISTRICT

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

Title: \_\_\_\_\_