City of Burbank

Memorandum

Date: February 13, 2015

From: Mark Scott, City Manager and Amy Albano, City Attorney

Subject: City's Position on Replacement Terminal

The City Council directed release of the attached Memo and Council Position Paper on the Burbank-Glendale-Pasadena Airport Authority's proposed replacement passenger terminal.

City of Burbank

Memorandum

Date: February 13, 2015

To: Honorable Mayor and City Council Members

From: Mark Scott, City Manager and Amy Albano, City Attorney

Subject: City's Position Paper on Replacement Terminal

The purpose of this memo is to give an overview of the City Council's position concerning a 14-gate replacement terminal proposed by the Burbank-Glendale-Pasadena Airport Authority (Authority).

The Authority proposes to build a 14 gate, 355,000 sq. ft. replacement terminal (Replacement Terminal) on the Adjacent Property (part of the former Lockheed B-6 property; see map attached), and City agrees this is the preferred location. But to build there, the Authority needs approvals from both the City Council and the voters.

The Council over the past several months has been negotiating with the Authority for a change in governance of the Airport Authority – enhancing Burbank's role in governing the Airport – in exchange for release of a City-owned easement that prohibits any airport development on the Adjacent Property. The City's objective in this effort is to bring long term peace in our relationship with the Authority and to implement protections, which would make such a peace possible. There are other terms and conditions necessary to any agreement to allow a replacement terminal, but the governance change is the most important.

The Authority publicly released the terms of a proposed arrangement on February 6, 2015. While much of the Authority's proposal is desirable, the City Council does not agree with some key terms of that proposal, as explained in more detail later in this memo. The City made its position clear to the Authority several times since November, when the Council first received their proposal. Council reaffirmed rejection of the Authority's proposal during a Special Council Meeting on February 8, 2015.

It is important to note, that prior to any City agreements being finalized or entitlements granted for construction of the Replacement Terminal on the Adjacent Property, an Environmental Impact Report (EIR) for the proposed Replacement Terminal must be completed, public hearings held and a

development agreement prepared. Even if Council were to approve such an agreement and entitlements, Burbank voters would have the final say pursuant to Measure B. (Measure B requires a public vote to validate any agreements by or discretionary act of the Council for an expanded or relocated airport terminal project.) This entire process could take at least a year once preparation of the EIR begins again.

The Council unanimously has endorsed a position that it believes will both protect the residents of Burbank and achieve a long-term harmonious relationship with the Authority. The City Council is willing to support releasing the City's easement to allow a Replacement Terminal on the Adjacent Property in exchange for the following key protections, as outlined below.

Change in Airport Governance:

The Authority is a separate governmental entity created and regulated by a Joint Powers Agreement (JPA) among the cities of Burbank, Glendale and Pasadena. The JPA provides for a 9-member Commission – three from each city - that oversees the Airport.

Both the City and Authority proposed that the JPA be amended so that in the future certain actions cannot be taken unless there is an affirmative vote by at least two Commissioners from each City (i.e. consensus voting). This concept of consensus voting is already part of the JPA and there is a short list of actions which require consensus voting. Unfortunately, today, there are critically important decisions about the airport, which could be made by a bare majority vote of 5 Commissioners. This means all 3 Burbank Commissioners could vote no, but the action would still pass. The City believes that the following actions are so important that there must be a consensus of the three cities' appointees before they may be taken:

- Any increase in the number of commercial airline passenger gates above 14.
- Creation or construction of any remote parking positions for airline passenger aircraft.
- Approval of any expansion of the existing terminal, any expansion of the Replacement Terminal beyond 355,000 sq. ft., or any relocation of airline passenger related airport functions from the Replacement Terminal.
- Amendment to the Authority's noise rules or a change in enforcement except to implement a mandatory curfew.
- Amendment to the Authority's voluntary curfew or change in enforcement.
- Abandonment of the Authority's support for federal legislation to allow a mandatory curfew.
- Approval of the purchase of real property or any easement in real property except for airspace, utility or avigation easements.

- Approval of an airport management contract or lease with a term over 35 years.

The City and Authority have already agreed in concept to all of these protections, but the parties have gotten bogged down in some details of each of these measures. Even so, the Authority and City negotiators were very close to reaching a final agreement on these points.

Council proposed, and the Authority has agreed, that these governance protections would go into effect upon a valid affirmative Measure B vote or resolution of litigation validating the Measure B vote.

Despite agreement on many key elements, there remains a major sticking point around the governance provisions. The Council believes that these protections should apply regardless of where a Replacement Terminal is built. In essence, the City position is that the arrangement would give the Authority the ability to build one 14-gate, 355,000 sq. ft. replacement terminal *anywhere* on the Airport. Toward this end, the Council agreed that consensus voting would not be applied to Commission decisions concerning development of the Replacement Terminal. In exchange the Council wants the governance protections to remain in effect, as long as construction of a Replacement Terminal has started anywhere on the Airport.

The Authority wants the governance protections only to remain in effect if a replacement terminal is built *on the Adjacent Property*, but not if it's built elsewhere on the Airport. Under the Authority's proposal the governance protections remain in effect during the life of a Development Agreement but would end when the Development Agreement ends. The Council believes that it is better to tie these governance measures to *any* Replacement Terminal rather than to a specific Development Agreement. That approach will ensure a more permanent harmonious relationship, will ensure that the Authority can build the Replacement Terminal without City opposition and will ensure long term protections for Burbank.

There are other technical, legal elements that would be necessary in the wording of any "deal," but the City has made it clear to the Authority that the governance provisions are the crucial points. Attached to this memo is a separate sheet listing some of the other elements necessary for approval of the Replacement Terminal, as well as the City's full position paper on the Replacement Terminal.

Trust Property:

The Trust Property is an approximate 58 acre site, also part of the former Lockheed B-6 property (see map). The Authority originally sought development entitlements for this property (the so-called "Opportunity Site" project). However, on February 6, 2015, the Authority announced its intention to withdraw its

application for development entitlements for the Trust Property and to sell the property.

The documents which created the Trust for this property set forth specific requirements for the sale of this property. The City supports these arrangements, which have been in effect for more than 15 years:

- By March 15, 2015, Authority must stop all uses of the Property for commercial purposes.
- Beginning March 15, 2015, City and Authority are required to meet and confer on the best way to sell and redevelop the Property.
- By September 10, 2015, Authority must begin marketing the Property for sale.

Adjacent Property Easement:

As mentioned above, the City holds an easement (a property interest) which controls how the Adjacent Property can be used. In exchange for the governance provisions outlined above, and upon substantial completion of the approved Replacement Terminal on the Adjacent Property the City will release its easement.

Conclusion:

In conclusion, the Council is looking forward to a continuing dialogue with the Authority on this important matter. The City reiterates that it believes a Replacement Terminal is best suited for the Adjacent Property and hopes the Authority, residents and Council can reach an agreement that allows construction of a Replacement Terminal while guaranteeing long term protections for Burbank.

Other Positions Supported by Both Parties

Elements of Replacement Terminal:

a. Approximately 355,000 sq. ft.; 14 gates; on the Adjacent Property plus approximately 3 acres of the Trust Property
b. Separate utility building, airfield service building and replacement cargo building; replacement fire station
c. New terminal loop road from Hollywood Way & Winona (over Parking Lot A and small part of Trust Property)
d. New parking structures (mostly on Adjacent Property; 4,000 spaces total)
e. Cap on public passenger parking spaces (equal to existing parking)
f. Authority Office building – tenant improvements on Aviall Site
g. Taxiway (these are not runways) A, C and G extensions
h. Taxiway A and C airfield road extensions

Development Agreement Term:
There will be a new Development Agreement to allow construction of the Replacement Terminal on the Adjacent Property with a term of 10 years and up to three 5-year extensions.

Parking Tax:
Transient parking tax charged at Airport parking lots will remain at current rate of 12% for the term of the new Development Agreement and any extensions.

3 Acres of Trust Property:
City and Authority will allow a 3-acre portion of the Trust Property to be used for the Replacement Terminal project. These 3 acres are necessary for the loop road into the Replacement Terminal and to accommodate one of the parking structures.

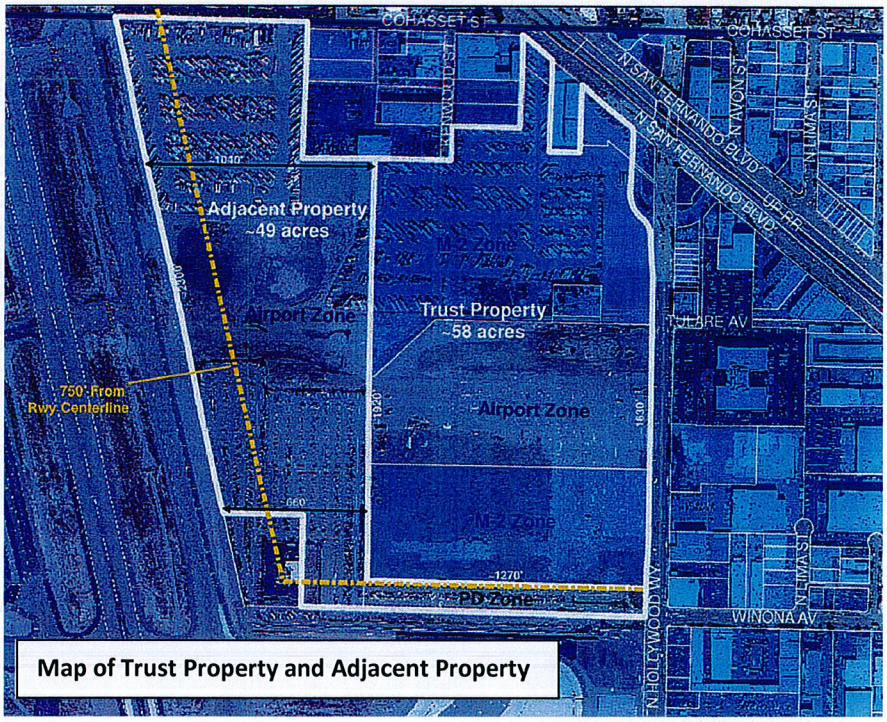
Termination of Governance Protections:
Governance provisions would terminate if the City does any of the following:

- sues the Authority (or helps a third party in suing the Authority) to stop a Replacement Terminal; or
- seeks to require new approvals over other Airport property; or
- exercises more zoning power than City already has over Airport property.

The parties have agreed in concept, but still need to work through the details, that individual governance provisions may be invalidated by a court or the Federal Aviation Administration, as being a violation of law or causing the Authority to be ineligible for federal funding.

Council Approvals pursuant to Public Utilities Code §21661.6:
Under this state statute, the Authority is obligated to seek City approval over the use of certain parcels. Authority will request approval for use of the Adjacent Property, the 3-acre portion of the Trust Property and the Aviall Property (a separate parcel next to the Adjacent Property) for the proposed Replacement Terminal. Any City approvals will expire upon expiration of the Development Agreement unless the Authority has begun construction of the Replacement Terminal on the Adjacent Property.

Existing Terminal:
The existing terminal and parking structure will be demolished within 12 months of occupancy of the Replacement Terminal.



Map of Trust Property and Adjacent Property

BURBANK'S POSITION PAPER
PROPOSED REPLACEMENT TERMINAL
February 13, 2015

The City Council unanimously supports this position paper concerning the Airport Authority's proposed replacement terminal.

JOINT POWERS AGREEMENT AMENDMENTS

1. Amendments for Consensus Voting: The Joint Powers Agreement (JPA) will be amended to require consensus voting (i.e., affirmative votes by two Commissioners appointed by each City) for the following actions:
   a. Absent a consensus vote, the Commission shall not increase the number of commercial airline passenger gates above 14.
   b. Absent a consensus vote, the Commission shall not create or construct any remote parking positions for air carrier aircraft.
   c. Absent a consensus vote, the Commission shall not approve any expansion of the existing terminal, any expansion of the replacement terminal beyond 355,000 sq. ft., nor any relocation of airline passenger related airport functions from the replacement terminal.
   d. Absent a consensus vote, the Commission shall not amend the Authority's noise rules or change the manner of enforcement except to implement a mandatory curfew. As used herein "mandatory curfew" means a prohibition against takeoffs and landings similar to the current voluntary curfew with similar exceptions, but applicable to all aircraft.
   e. Absent a consensus vote, the Commission shall not amend the Authority's voluntary curfew or change the manner in which it has been applied since the voluntary curfew was adopted, except to implement the mandatory curfew as defined above in 1.d.
   f. Absent a consensus vote, the Commission shall not abandon its support for congressional authorization for the imposition of the mandatory curfew, as described above in 1.d. This obligation does not preclude the Commission from opposing legislation that would mandate the imposition of noise and/or access restrictions that exceed the mandatory curfew.
   g. Absent a consensus vote, the Commission shall not approve the acquisition of either a fee simple interest in real property or an easement in real property except for the following: airspace, utility or avigation easements.
   h. Absent a consensus vote, the Commission shall not approve an airport management contract or lease with a maximum term in excess of 35 years.

2. Delegation: The consensus voting requirements and prohibitions of the JPA amendments shall be binding on any successor or assignees of the Commission including the Airport's management company. Any successor or assignee that seeks to take an action that would otherwise require a consensus vote of the

Commission shall be precluded from taking such action until the Commission has approved it by a consensus vote. Airlines shall not constitute a successor or assignee of the Commission.

3. Exceptions: The consensus voting requirements shall not apply to any of the following: (1) the development of a 14-gate replacement terminal at any location and (2) any project that has been approved by the Burbank City Council and, if necessary, the Burbank electorate.

4. Effective Date: The JPA amendments will go into effect upon a valid affirmative Measure B vote or resolution of any litigation validating the Measure B vote.

5. Termination: All of the JPA amendments shall automatically be terminated and of no force or effect without further action by the Cities or the Authority if any of the following occurs:
   a. City of Burbank sues the Authority to or otherwise seeks to assert PUC §21661.6 authority over the Air Traffic Control Tower site (APN 2466-10-906), C-1 site (APN 2466-19-904) and portion of the northwest quadrant near the t-hangars (APN 2466-11-904); or
   b. City of Burbank sues the Authority or monetarily supports a third party lawsuit or intervenes in a lawsuit on behalf of third-party plaintiffs to stop or impede construction of a 355,000-square-foot replacement passenger terminal with no more than 14 gates.
   c. Burbank City Council or the Burbank electorate does any of the following without the consent of the Authority: (1) amends the General Plan or changes the zoning of any Authority property currently designated or zoned Airport (2) amends the Zoning Ordinance to impose, or adopts any other ordinance, rule or regulation that imposes, a discretionary approval requirement on the construction of an airport passenger terminal; (3) interprets any existing ordinance, rule or regulation to require new or additional discretionary approvals for an airport passenger terminal project; or (4) amends the Zoning Ordinance or takes any other action that changes the development standards for the development of an airport passenger terminal or airport parking lot.
   d. The replacement terminal Development Agreement has expired without construction having started on a replacement terminal anywhere on the Airport. If the Authority thereafter commences construction of a replacement terminal anywhere on the Airport, then the JPA amendments shall automatically be reinstated and of full force and effect without further action by the Cities or the Authority.

6. Termination of Individual Amendments: An individual JPA amendment shall automatically be terminated and of no force or effect without further action by the Cities or the Authority if any of the following occurs:

a. (1)The FAA (whether or not in a federal Part 13 or Part 16 proceeding) issues a decision stating that the specific JPA Amendment, either as written or as applied, violates a federal grant assurance or federal law after an administrative hearing thereunder. (2) A federal district court or state superior court issues a decision stating that the specific JPA amendment, either as written or as applied, violates a federal grant assurance, federal law, or state law.
b. In the event such FAA, federal district court, or state superior court decision is reversed by a final appellate court decision, the specific JPA amendment shall automatically be reinstated and of full force and effect without further action by the Cities or the Authority. Moreover, the Authority agrees that it will argue in any of the above proceedings that the amendment in question does not violate any grant assurance or federal law. The Authority further agrees to pursue any appeal which exists as a matter of legal right in such proceedings in an effort to defend the legality of the amendment in question.
c. During the pendency of any such appeal, the Authority shall not take another vote on the subject of the challenged vote or which would otherwise be subject to affected JPA amendment.

Replacement Terminal Development

7. Replacement Terminal Elements: A new Development Agreement will authorize a replacement terminal with the following elements:
a. Approximately 355,000 sq. ft.; 14 gates; on the Adjacent Property plus approximately 3 acres of the Trust Property;
b. Separate utility building, airfield service building and replacement cargo building; replacement fire station;
c. New terminal loop road from Hollywood Way & Winona (over Parking Lot A and small part of Trust Property);
d. New parking structures (mostly on Adjacent Property; 4,000 spaces total);
e. Cap on public passenger parking spaces (equal to existing parking);
f. Authority Office building – tenant improvements on Aviall Site;
g. Taxiway A, C and G (these are not runways) extensions; and
h. Taxiway A and C airfield road extensions.

8. Site Plan: The Development Agreement shall incorporate a site plan that need not be tied to the ALP but that has been reviewed by the FAA and that shows only those properties that are subject to PUC 21661.6 approval.

9. General Plan Amendments and Zoning: Authority will seek General Plan amendments and rezoning of the following:
a. M-2 to Airport zone for portion of the 3 acres of Trust Property used for loop road and parking structure;
b. Amendment of PD to Airport zone for loop road entrance strip area (southerly part of current Parking Lot A);

c. Amendment to Airport zone for two Aviall parcels.

10. CA Public Utilities Code §21661.6 Approvals:
    a. Authority will apply for PUC 21661.6(a) approval for use of the Adjacent Property, the 3-acre portion of the Trust Property and the Aviall Property. The approval granted in this subsection shall expire upon expiration of the DA unless the Authority has begun construction of a replacement terminal on the Adjacent Property.
    b. Authority will apply for PUC 21661.6(e) approval for change in use of Parking Lots B and C, and A-1 North to the extent necessary.
    c. City agrees that neither now nor in the future will it seek, require, or withhold any permit or approval based on the absence of PUC 21661.6(a) or (e) review or approval for use of the following Authority parcels: Air Traffic Control Tower site (APN 2466-10-906), C-1 site (APN 2466-19-904) and portion of the northwest quadrant near the t-hangars (APN 2466-11-904).

11. Development Agreement: A new Development Agreement that approves construction of the Replacement Terminal on the Adjacent Property will be for a term of 10 years with up to three 5-year extensions at the Authority's discretion without any approval necessary from the City.

12. Existing Terminal: The existing terminal and parking structure will be demolished within 12 months of occupancy of the replacement terminal.

13. Parking Lots:
    a. A portion of Lot A will be used for parking per the replacement terminal site plan. Lot B will be closed for all uses and Lot C will be closed for airport parking.
    b. Existing valet and close-in parking will be reconfigured; and City will give PUC 21661.6(e) approval to the extent necessary.

14. No Buildings Area: A defined area will be shown on a map and as an exhibit to the Development Agreement which would show the areas where construction of buildings would not be permitted, consistent with existing FAA Advisory Circulars that prohibit such construction.

Other Commitments and Approvals

15. Transient Parking Tax: The Burbank City Council shall not increase the transient parking tax as applied to Authority parking lots above the current rate of 12% and no voter initiative to do so shall be applicable to Authority parking lots for the term of the DA and any extension thereto.

16. Retention of 3 Acres of Trust Property: Pursuant to Section 8.1 of the Restated Trust Property Easement and Section 7 of the Escrow and Trust Agreement, the

City shall issue a Termination Instrument that enables the 3-acre portion of the Trust Property to be used for the replacement terminal project. Pursuant to Section 3.2(b) of the Escrow and Trust Agreement, the City and the Authority shall execute joint written instructions to the trustee to allow the conveyance of the 3-acre portion of the Trust Property to the Authority. The Termination Instrument and the conveyance deed shall be recorded concurrently with a covenant by which the Authority agrees to not use Lot B for any purpose other than a vacant runway protection zone.

17. Disposition of Trust Property: The Trust Property (minus the 3 acres) will be disposed of pursuant to the terms of the Escrow and Trust Agreement and Restated Trust Property Easement; Authority's use of the Property for commercial purposes shall cease as of March 15, 2015.

18. Adjacent Property Easement: The City will release the Adjacent Property easement upon substantial completion of the approved replacement terminal on the Adjacent Property.