

MUTUAL COOPERATION AND SETTLEMENT AGREEMENT

This Mutual Cooperation and Settlement Agreement (“Agreement”) is made by and between the City of Carlsbad (“City”), and the County of San Diego (“County”) (the City and the County shall be referred to collectively as the “Parties”), with respect to the following facts and issues:

WHEREAS, the County owns and operates the McClellan-Palomar Airport (“Airport”), located in the City of Carlsbad, California.

WHEREAS, on October 10, 2018, the County Board of Supervisors approved the McClellan-Palomar Airport Master Plan Update (“Airport Master Plan”) and certified the adequacy of the Final Program Environmental Impact Report for the Airport Master Plan (“EIR”).

WHEREAS, the County and City entered into an Agreement to Toll Statute of Limitations to toll the time period in which the City could bring a lawsuit to challenge the County’s approval of the EIR until December 9, 2018.

WHEREAS, on December 6, 2018, the City filed a lawsuit in San Diego Superior Court, Case No. 37-2018-00061565-CU-MC-CTL (“Action”) challenging the adequacy of the EIR under CEQA.

WHEREAS, the City and County believe it is in their mutual interest to settle the current litigation with a concrete commitment to cooperate and coordinate on matters concerning the Airport, within the limits on their respective legal powers. Any agreement would be subject to the dismissal with prejudice of the City’s litigation over CEQA compliance for the Airport Master Plan and agreement not to support any other litigation related to the approval of the Airport Master Plan.

THEREFORE, to avoid the substantial expense and inconvenience of litigation, and in consideration of the promises and agreements hereinafter set forth, IT IS HEREBY AGREED, by and between the Parties as follows:

1. Palomar Airport Advisory Committee. On January 9, 2019, the County amended Section 731 of the San Diego County Administrative Code to read as follows:

The [Palomar Airport Advisory Committee (Committee)] shall consist of nine members. The nine members shall be nominated by the Supervisor from the Fifth Supervisorial District and appointed by the Board of Supervisors. Of these nine members, one each must reside in the cities of Carlsbad, Vista, San Marcos and Oceanside and these cities may each identify one resident from their city as a

candidate for the Fifth Supervisorial District to consider for nomination to the Board of Supervisors. If any city fails to identify a resident as a candidate for consideration or the candidate is determined by the Fifth Supervisorial District to be unacceptable, the Fifth Supervisorial District may nominate a member of its own choice from the city. Five members shall be from the general public who reside within the Fifth Supervisorial District. No member shall be nominated or appointed who is a member of the governing body or planning commission or an employee of the County of San Diego, City of Carlsbad, City of Vista, City of San Marcos, or City of Oceanside. If a member of the Palomar Airport Advisory Committee becomes a member of the governing body or planning commission or an employee of the County of San Diego, City of Carlsbad, City of Vista, City of San Marcos, or City of Oceanside during their term of office, they shall be removed from the Committee and their position shall be declared vacant. No more than three members of the committee shall be financially interested in any business having a leasehold interest in Palomar Airport.

The City agrees that this amendment to Section 731 of the San Diego County Administrative Code satisfies its concerns regarding representation on the Committee.

2. Staff Meetings. The Parties will convene regular quarterly meetings between the Carlsbad City Manager (and/or a designated senior City representative) and the County's Director of Public Works (and/or a designated senior County representative) to discuss Airport-related matters of mutual interest. Other cities affected by the Airport will be invited to join in such meetings. The meetings shall take place on dates and times and at a location mutually agreeable to the Parties. In the event litigation is commenced between the Parties or a Party and a participating city over matters that are within the scope of the staff meetings, the meetings will not address any issues that are the subject of the dispute until the dispute is fully and finally resolved or, in the case of a dispute with a city, the city ceases attending while the dispute is ongoing.

3. County Immunities. The Parties agree that the County has immunities from City building and zoning ordinances and requirements pursuant to Government Code § 53090, et seq. The Parties further agree that the County's immunities may also apply to projects by airport lessees and contractors. Any agreement by the County to coordinate with the City or to voluntarily comply with CUP-172 shall not be construed as a waiver of any such immunities. The County will continue to voluntarily comply with CUP-172 and seek to require its airport tenants and contractors to comply with CUP-172 (to the extent that such compliance does not violate federal obligations, regulations or laws), but reserves the right to assert immunities on its behalf and on behalf of its tenants and

contractors to the extent provided by applicable law.

4. Regulatory Prohibitions. Notwithstanding any provision of this Agreement to the contrary, the County will not be required to expend any funds or take any actions that are prohibited or disapproved by the Federal Aviation Administration (“FAA”) or any other regulatory agency or by any local, State or federal law, regulation or requirement applicable to the County as an airport sponsor or in some other capacity. The County will not be required by this Agreement, either directly or indirectly, to take any action that would constitute (i) a violation of any assurances or other obligations contained in or made a part of any federal or State grant or other agreement, or (ii) constitute a waiver of the County’s immunities, police power or other authority.

5. Airport Master Plan Cooperation Efforts. Subject to Paragraph 4 above, the Parties will cooperate on the following items:

- a. In the EIR, the County agreed to implement certain design features, mitigation measures, and other measures for the Airport Master Plan. The County agrees to implement all commitments set forth in the EIR, including those contained in Responses to Comments, and all mitigation contained in the EIR mitigation monitoring program.
- b. As part of the project-specific elements in the future, the City will be given an opportunity to (i) provide review and input on project elements that may involve modification to slopes on County property surrounding the Airport, and (ii) provide input for improving the landscape conditions of the existing slopes on County property surrounding the Airport. Ultimate approval of any modifications to slopes or landscaping of slopes on County property surrounding the Airport is retained by the County.
- c. The City will be given an opportunity to review and comment on engineering design plans for any retaining wall and landscaping that may be required if future general aviation parking is constructed as depicted in Master Plan Update Exhibit 5.10, once engineering design plans for a retaining wall and any landscaping are available. Ultimate approval and implementation of the plans is retained by the County.
- d. As a means of coordinating airport development with the City, the County will voluntarily submit or cause to be submitted projects for development of the Airport to the City for review and comment and will continue requiring its tenants and contractors to submit applications for building permits. As used in this section, the term development shall not include the

operation, maintenance, permitting, leasing, licensing, or alteration of existing facilities where such work results in no or negligible expansion of the facilities.

- e. While reserving the County's immunities as set forth in Section 3 of this Agreement, the County will continue to coordinate with the City in an effort to ensure City requirements, including the City's Landscape Manual and Hillside Development Regulations, are taken into consideration.
- f. Once project-specific activities are proposed that would warrant construction noise mitigation measures, the County will coordinate with the City to consider City requirements and comments as the County deems applicable.
- g. The County will continue to work with, and educate, pilots on how best to minimize aircraft noise impacts. This includes continuing to maintain its expanded Voluntary Noise Abatement Procedures (VNAP) education and outreach with flight schools and pilot groups and airport tenants throughout the region. The County will continue to work with other local airports such as Gillespie Field and Montgomery Field to share the Airport's VNAP with pilots and to encourage pilots to be courteous visitors to the Airport. The County also will continue working with its aviation businesses to ensure their pilot briefing rooms are stocked with the latest VNAP publications. Existing VNAP signage has been improved at both ends of the runway to encourage and remind pilots to follow the VNAP.
- h. The County will install two additional noise monitors, one to the north of the runway and one to the west of the runway. The County may, in its sole discretion, remove and/or relocate the monitors, but will notify the City before doing so. The County will use data from the noise monitors to review noise concerns and share details with the public about specific noise events. Upon request, the County will discuss the monitoring results at the quarterly staff-level meetings, subject to the City's agreement to keep such monitoring results confidential.
- i. Throughout this section, any references to review, comment, coordination with, or notification to, the City (collectively "feedback") shall mean that the County or its tenants, as applicable, shall provide the City with at least 30 days to provide its feedback, but the County or its tenants, as applicable, may proceed after 30 days have expired. Such notice shall not be required to address a situation or condition that presents an immediate threat to life

or property. If the City provides substantive feedback during the 30-day period, the County or its tenants, as applicable, shall in good faith endeavor to address the City's feedback before proceeding and, if it chooses to proceed notwithstanding City feedback, it shall provide the City with a reasoned explanation of its decision before proceeding. Failure to proceed in the manner contemplated by this Section shall not itself be grounds for the invalidation of any approval given by the County for a project.

6. Property Purchases. Should the County contemplate purchase of additional property for the Airport, such a plan will first be discussed at the staff-level meetings in advance of any public process with the goal of reaching mutual agreement on process to avoid future disagreements or litigation. The City will not adopt the zoning ordinance amendment that it published for public review on January 18, 2019, or any similar ordinance that purports to create an airport boundary line or restrict the acquisition of interests in property for airspace protection or Airport safety zones. The City and County agree that the definition of "airport" and the scope of Public Utilities Code § 21661.6 is not addressed in this Agreement and no actions (or agreement not to act) under this Agreement shall be used by either party as evidence of either Party's concurrence with a particular interpretation of that Code section.

7. Sovereignty. The Parties respect each other's sovereignty, especially as it affects their respective authority with regard to the Airport and the Airport environs. The City recognizes the County's authority within the boundary of the Airport and the County recognizes the City's authority outside the boundary of the Airport. Both parties will endeavor to take actions that reflect mutual respect and to avoid disputes over their respective authority where possible. To that end and subject to and without waiving its immunities, the County will continue its business practice of adhering to the intent of CUP 172 and endeavoring to take actions to implement the Master Plan in a manner consistent with the CUP.

8. Dismissal of the Action. The City agrees to cooperate in order to dismiss the Action with prejudice in its entirety, by taking all necessary steps to secure such dismissal including, but not limited to, authorizing its counsel to first execute a request for dismissal with prejudice of the Action applicable to all claims and all individuals, with prejudice, to be filed with and executed by the court.

9. Release of All Claims. The City unconditionally, irrevocably and absolutely releases and discharges the County, all of the County's departments and offices, its Board of Supervisors, its attorneys, its current and former officers, employees, directors, and agents, and its successors and assigns, from all losses, liabilities, claims,

charges, demands and causes of action, known or unknown, suspected or unsuspected, arising out of the events and/or occurrences alleged in the Action.

10. No Assistance to Other Litigants: The Parties and the Parties' attorneys, officers, agents, employees and contractors, to the extent working on behalf of a party, shall not assist, aid or encourage any litigation related to the County's approval of the Airport Master Plan and EIR. Compliance with applicable law, such as responding to a valid Public Records Act request, would not violate this requirement.

11. No Admissions. By entering into this Agreement, the County makes no admission that it has engaged in any unlawful or tortious conduct. It is understood that the settlement is not an admission of liability, but is in compromise of disputed claims which remain untested; that there has been no final adjudication of the issues of law or fact herein; and that the Parties intend merely to avoid further litigation and expense by entering into this Agreement.

12. No Third-Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties, and it is not intended to create, nor shall be construed to create any rights or to benefit any other persons, or to be enforceable by any other person in any forum.

13. Dispute Resolution and Termination. In the event of a dispute arising out of or related to this Agreement, the Parties will attempt to resolve such dispute by mutual cooperation. Specifically, if a Party believes that the other Party has breached any provision in this Agreement, the Party asserting such breach ("Claimant") shall give the other Party ("Respondent") written notice of any such breach ("Initial Notice"). In the Initial Notice, the Claimant shall specify a date no later than 15 days after the date of the Initial Notice for the Parties to meet to try and resolve the dispute. If the Respondent objects to the meeting date set forth in the Initial Notice, the Parties will coordinate to select a mutually-agreeable date that is no later than 30 days after the date of the Initial Notice. If the Parties are unable to resolve the dispute within 60 days of the date of the written notice, either Party may terminate this Agreement by giving a written notice entitled "Notice of Termination" to the other Party.

14. Term. The initial term of this Agreement shall be for twenty (20) years from the Effective Date, unless terminated by a Party pursuant to Paragraph 13 above.

15. Notice. Any notice required or permitted to be delivered by any provision of this Agreement shall be in writing and shall be deemed to have been duly delivered (i) upon personal delivery, (ii) upon delivery by a reputable overnight courier service, or (iii)

five (5) days after delivered by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

i. To County:

The Director of the Department of Public Works
5510 Overland Ave., Suite 410
San Diego, CA 92123

With a copy to Office of County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101

ii. To City:

Scott Chadwick, City Manager
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

With a copy to

Celia A. Brewer, City Attorney
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

The Parties may, from time to time, change the person or address to which notices are provided by giving notice to the other Party in accordance with this Section.

16. Severability. Should it be determined by a court that any term of this Agreement is unenforceable, that term shall be deemed to be deleted. However, the validity and enforceability of the remaining terms shall not be affected by the deletion of the unenforceable term.

17. Applicable Law. The validity, interpretation and performance of this Agreement shall be construed according to the laws of the State of California.

18. Effective Date. This Agreement is effective when all of the parties have signed this Agreement.

19. Attorneys' Fees and Costs. The Parties to this Agreement agree that they will bear their own attorneys' fees, costs and all other expenses in connection with the Action and all claims released herein.

20. Binding on Successors. The Parties agree that this Agreement shall be binding on, and inure to the benefit of, their successors, heirs and/or assigns.

21. Cooperation. The Parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.

22. Joint Draft. Each party has had the opportunity to participate in the drafting and preparation of this Agreement. Any construction to be made in the Agreement or any of its terms or provisions shall not be construed against any one party.

23. Entire Agreement. This Agreement contains the entire agreement between Plaintiff, on the one hand, and the County, on the other hand, with respect to the subject matter thereof. It is agreed that there are no collateral agreements or representations, written or oral, between Plaintiff and the County, that are not contained in this Agreement.

The Parties to this Agreement, with the benefit of representation and advice of counsel, have read the foregoing Agreement and fully understand each and every provision contained herein.

WHEREFORE, the Parties have executed this Agreement on the date(s) shown below.

DATED:

CITY OF CARLSBAD
By: _____
Its: _____

DATED:

COUNTY OF SAN DIEGO
By: _____
Its: _____