

Agreement

This agreement is made and entered into effective February 5, 2002, by the City of Long Beach, California ("City"), American Airlines, Inc., a Delaware corporation ("American"), JetBlue Airways Corporation, a Delaware corporation ("JetBlue"), and Alaska Airlines, Inc. an Alaska corporation ("Alaska") (collectively "the parties"). (In this agreement, American, Alaska and JetBlue are sometimes collectively referred to as "the party Air Carriers"). It is the mutual desire of the parties to resolve disputes between and among them in respect of certain matters relating to the City's administration of a City ordinance relating to the management and operation of Long Beach Municipal Airport and to obtain from the Federal Aviation Administration ("FAA") written concurrence to the resolution agreed to by the parties in respect of provisions of federal law potentially applicable to the dispute and over which FAA has enforcement or supervisory authority. In consideration of the respective covenants, conditions and other consideration contained or reflected in this agreement, the parties agree as follows:

1.0 Recitals

- 1.1 The City is the owner, operator and "proprietor" of Long Beach Municipal Airport ("the airport" or "LGB"), which is located within the corporate boundaries of the City. The airport is a public use airport serving scheduled commercial users, general aviation users, manufacturers and other aviation uses.
- 1.2 The airport is located in proximity to residential areas of the City which are potentially impacted by aircraft noise generated by aircraft operations at LGB. In order to control this potential impact, the City has exercised its proprietary powers to control aircraft noise by imposing various aircraft operating restrictions on persons using LGB for aircraft operations. These restrictions are currently implemented through Long Beach Municipal Ordinance, Chapter 16.43, §§16.43.010-16.43.120 (1995) ("the ordinance").
- 1.3 JetBlue, American and Alaska are all commercial air carriers possessing all necessary certificates and approvals by FAA to conduct scheduled commercial operations in the United States (and elsewhere).
- 1.4 The ordinance imposes limits on the number of daily departures permitted by scheduled commercial passenger and cargo operators, as well as other classes of aircraft operators. The ordinance provides that the City may allocate to commercial passenger and cargo operators a minimum of forty-one (41) daily departures (Ord. §16.43.060(E)(1)) (for convenience, referred to in this agreement as "regular departures"). In addition, if the combined noise levels of the Air Carriers using LGB are below defined CNEL levels for a twelve-month period, the City may, annually, allocate additional departures for a one-year period ("supplemental departures"). (Ord. §16.43.060(E)(2) and (4)). To the extent that any of the forty-one (41) regular

departures is unallocated to any Air Carrier, the regular departure is to be allocated under the ordinance "on a first-come, first-served" basis. (Ord. §16.43.060(E)(3)).

- 1.5 In April 2001, American was an incumbent carrier at LGB with an allocation of four (4) regular departures. Although Alaska had provided scheduled service at LGB in the past, it had withdrawn that service and was not an incumbent airline at LGB in April 2001. JetBlue did not operate scheduled service at LGB in April 2001. During April 2001, of the forty-one (41) Air Carrier departures authorized by the ordinance, only a total of fourteen (14) had been requested, and were allocated to and operated by Air Carriers.
- 1.6 In May 2001, in accordance with City Resolution C-27843, JetBlue requested and was awarded by the City a total of twenty-seven (27) regular departures which resulted in allocation to Air Carriers of all forty-one (41) permitted regular departures. In March 2002, JetBlue was operating three (3) of the allocated regular departures.
- 1.7 On February 22, 2002, American requested an allocation of four (4) additional regular departures. On March 29, 2002, Alaska requested an allocation of three (3) regular departures. Both American and Alaska contended that the City's allocation of twenty-seven (27) regular departures to JetBlue in May 2001, and the City's subsequent rejection of their requests, were unlawful and unconstitutional. Both the City and JetBlue contended that the allocation to JetBlue was completely lawful and constitutional and that there were no regular departures available for allocation to satisfy the requests of American and Alaska.
- 1.8 On June 15, 2002, the City entered into an agreement pursuant to the ordinance allowing American to use, temporarily, four (4) temporary departures not then being actively used by JetBlue ("the American temporary slot agreement"). This agreement is effective through March 6, 2003, and expires completely on that date.
- 1.9 The City subsequently participated in meetings attended by interested Air Carriers and representatives of the FAA in an effort to reach a resolution of the dispute between the parties regarding the allocation of regular departures. In those meetings and subsequent discussions between representatives of the parties to this agreement, the parties have reached an understanding resolving the dispute between them which is contained in this agreement and related documents.
- 1.10 The parties voluntarily enter into this agreement solely for the purpose of resolving the dispute between and among them without the need for litigation or quasi-judiciary administrative proceeding. This agreement does not constitute an admission by any of the parties to the agreement of any unlawful, unconstitutional or other wrongful conduct by them or anyone else; nor any admission by any party that the conduct or action of any other party was lawful or constitutional. Once executed

by all of the parties, however, this agreement, and each of its terms, provisions and conditions (including any conditions precedent to the performance required of any party under this agreement), shall be binding upon each of the parties.

2.0 Allocation of Regular Departures

2.1 JetBlue Return of Five Regular Departures

2.1.1 Upon its receipt of the letter described in Section 4.2 of this agreement, the City shall give oral notice and provide a copy by facsimile to JetBlue. Within three (3) working days of the City's notice to JetBlue, JetBlue will deliver to the City a letter which returns five (5) of the twenty-seven (27) regular departures presently allocated to JetBlue to the City for reallocation in accordance with this agreement. If the letter described in Section 4.2 is received by the City prior to March 6, 2003, the return shall be deemed to be effective on March 6, 2003, which (together with, and subject to, Section 2.3 of this agreement) will allow American to continue uninterrupted operation of the four (4) temporary departures presently allotted to it under the American temporary slot agreement.

2.1.2 Subject to the conditions of this agreement, including its receipt of the letters described in Sections 2.1 and 4.2 of this agreement, the City shall allocate three (3) regular departures to American and two (2) regular departures to Alaska to be effective on March 7, 2003.

2.2 American's Perfection of Additional Allocated Flights

American shall perfect the allocation made to it under Section 2.1.2 of this agreement in the manner, and within the time, permitted by the City's Flight Allocation Resolution.

2.3 Alaska's Perfection of Allocated Flights

2.3.1 Concurrent with its execution of this agreement, Alaska will make a written request to the City that it permit Alaska until February 15, 2004, to initiate service with its two (2) regular departures on a delayed basis pursuant to City Resolution C-27843, and the City shall grant this request.

2.3.2 Prior to February 14, 2004, and subject to Section 2.3.3 of this agreement, the two (2) regular departures allocated to Alaska pursuant to this agreement will be allocated on a temporary, interim basis, on terms substantially identical to those under which American is currently operating four (4) temporary slots at LGB (and subject to the rights specified in section 2.3.3 of this agreement) ("temporary departure agreements"). One (1) of the temporary departures

will be allocated to American and one (1) will be allocated to JetBlue. This temporary allocation will expire without further action of the City or anyone else on February 14, 2004.

2.3.3 At any time after April 1, 2003, and before November 1, 2003, Alaska may request permission from the City to operate the two (2) regular departures to be allocated to it under Section 2.1.2 of this agreement. Alaska must give written notice to the City, American and JetBlue of its intent to operate these two (2) regular departures at least ninety (90) days before the date on which Alaska intends to initiate service to Long Beach using the two (2) regular departures (which date cannot be before July 1, 2003). The date of initiation of service shall be specified in the written notice to the City, American, and JetBlue. Alaska's rights under this section must be exercised on both regular departures allocated to it, not just one. If Alaska exercises its rights under (and in compliance with) this section, the temporary departure agreements between the City and American, and the City and JetBlue, will expire completely and without recourse by American or JetBlue on the day before the date specified by Alaska in its written notice as the date it will initiate commercial passenger service with the two (2) regular departures.

2.3.4 If Alaska does not give notice under Section 2.3.3 of this agreement prior to November 1, 2003, Alaska must confirm in writing to the City its intention to initiate operation of the two (2) regular departures allocated to it under Section 2.1.2 of this agreement not later than February 15, 2004. Failure to provide the notice required by this subsection shall be deemed for all purposes to be an abandonment of the allocation to Alaska of regular departure authority under this agreement.

2.4 Abandonment of Regular Departure Allocation by American or Alaska

As consideration for JetBlue's agreement to return to the City previously allocated regular departures under Section 2.1 of this agreement, if, at any time prior to January 1, 2009, either American or Alaska abandons or cancels (within the meaning of City Resolution C-27843 (May 15, 2001)) the use at LGB of any regular departure allocated to them by the City under the terms of this agreement, such regular departure(s) shall be immediately reallocated by the City to JetBlue as regular departure(s) notwithstanding any other provision of this agreement or the ordinance, and notwithstanding any allocation waiting list maintained by the City in its implementation or administration of the ordinance. In the event American abandons or cancels (within the meaning of Resolution C-27843) use of any regular departure allocation, the first three (3) such abandoned regular departures shall be deemed to be regular departures allocated to American under this agreement.

3.0 Allocation of Supplemental Departures

The ordinance permits the City to allocate additional departures to Air Carriers under circumstances defined in the ordinance (Ord. §§16.43.60(E) and 16.43.050(A)) ("supplemental departures"). Supplemental departures, if permitted, are allocated: (i) only for one-year periods of time; (ii) only to the extent that the established Air Carrier noise budget has not been fully utilized during the prior year; (iii) and only to the extent that the Airport Manager determines, based upon his analysis of available noise data, that the allocation of supplemental departures will not cause the Air Carriers operating at LGB to exceed the maximum CNEL budget permitted for Air Carrier users under the ordinance during the year for which they are allocated.

Implementation of the supplemental departure provisions of the ordinance is only relevant when all forty-one (41) regular departures are fully allocated and used. This circumstance has not existed since adoption of the ordinance. However, implementation of this agreement could result in forty-one (41) Air Carrier regular departures being operated during calendar year 2003. As part of this settlement agreement, the parties have agreed to the following provisions implementing the supplemental allocation process under the ordinance.

3.1 Determination of Availability of Supplemental Departures

3.1.1 The City will perform and release for public review the noise analysis contemplated by its existing ordinance for the allocation of supplemental departures by October 15, 2003 and by October 15 of each succeeding year. The City Council will consider and act on the report by November 1, 2003, and by November 1 of each succeeding year. If supplemental slots are available for allocation as a result, the allocation will be effective on January 1, 2004, for use during calendar year 2004. The allocation of supplemental departures in subsequent years shall be made utilizing the same administrative procedure. Allocations of supplemental departures, if any, expire completely and without further action of the City on December 31 of each calendar year for which the supplemental departure allocation has been made.

3.1.2 For purposes of the allocation of supplemental departures for calendar year 2004, if any such departures are available, the allocation of the first supplemental departure on the priority supplemental departure waiting list (Section 3.2, below) shall be effective November 1, 2003, if, and only if, Alaska has exercised its rights under Section 2.3.3 of this agreement and initiated service at LGB with two (2) regular departures prior to December 31, 2003. This section shall not be applicable to the allocation of supplemental departures in any succeeding year.

3.2 Establishment of Supplemental Departure Waiting List

In order to facilitate the fair allocation of supplemental departures, the City will establish administrative procedures and a supplemental departure waiting list, as reflected in Attachment B to this agreement, and certain provisions of Attachment A to this agreement. These procedures will prioritize requests from Air Carriers for any available supplemental departures on a numbered departure-by-departure basis.

- 3.2.1 For calendar year 2004, if it is then operating regular departures at LGB, American will receive the #1 priority supplemental slot allocation position.
- 3.2.2 For calendar year 2004, if it is then operating regular departures at LGB, Alaska will receive the #2 priority supplemental slot allocation position.
- 3.2.3 For calendar year 2004, if it is then operating regular departures at LGB, JetBlue will receive the #3 priority supplemental slot allocation position.
- 3.2.4 For calendar years 2005 through 2008, the #1, #2 and #3 priority supplemental slot positions shall rotate among JetBlue, American and Alaska. Including calendar year 2004, the supplemental slot position priority schedule shall be as follows:

Calendar Year	Priority Slot Position		
	JetBlue	American	Alaska
2004	3	1	2
2005	1	2	3
2006	2	3	1
2007	3	1	2
2008	1	2	3

- 3.2.5 For calendar years 2004 through 2008, JetBlue will receive the #4 through #7 priority supplemental slot allocation positions, so long as it is operating regular departures at LGB.

4.0 Modification of Ordinance and FAA Concurrence

- 4.1 As part of this agreement, and subject to the provisions of Section 4.2, below, the City will make certain administrative modifications to the ordinance which facilitate the City's ability to realize the noise goals and limitations of the ordinance in a manner which is fair and reasonable to Air Carriers operating, or desiring to initiate operations at LGB, other airport users, the air traveling public and the citizens of the City of Long Beach. Those amendments are reflected in Attachment A to this agreement. The City contends that none of these amendments would adversely affect

aircraft safety or reduce Air Carrier operating capacity or opportunities below levels permitted as of November 5, 1990.

4.2 Prior to the City taking any action in implementation of this agreement, it must first receive a letter from the FAA Chief Counsel addressed to the City which states that FAA has reviewed this agreement and that, without qualification, full implementation of the terms of this agreement by the City and the parties:

4.2.1 Will not violate any provision of any grant agreement between the City and the United States or any related provision of federal law, or adversely affect any future application by the City to the FAA for federal grant funds or the authority to collect a passenger facility charge;

4.2.2 Is exempt from compliance with the Airport Noise and Capacity Act and Federal Aviation Regulation Part 161;

4.2.3 Will not be inconsistent with any other federal law obligations of the City for which FAA has enforcement responsibility or authority; and

4.2.4 Resolves, to the satisfaction of the FAA, any issues arising from federal aviation law relevant to, or resulting from the City's allocation of regular departures to JetBlue.

The parties agree to cooperate in providing FAA with any information it may request in connection with the issuance of this opinion and to cooperate in urging FAA to provide the required letter at the earliest possible time. If FAA fails to provide the letter to the City required by this section with the unqualified assurances required by this section by February 28, 2003, this agreement will be null and void and of no effect unless later expressly ratified by each of the parties.

4.3 The City will provide copies of the FAA letter to all parties.

5.0 Other Provisions

5.1 Entire Agreement

The City has separately entered into letter agreements with each of the Air Carrier parties to this agreement. In addition, the City has existing lease and related agreements with JetBlue and American as incumbent Air Carriers regarding the terms and conditions of their use of LGB. Comparable agreement(s) would be required of Alaska if and when it initiates service at LGB. Finally, the City has an existing agreement with American regarding its use of temporary departure authority for four departures which, by its terms, expires completely and without further action of the parties on March 6, 2003. Other than the referenced agreements, this agreement

constitutes the entire agreement of the parties in respect of the allocation of regular departures under the ordinance, and the allocation of regular departures to JetBlue and supercedes all prior agreements, understandings, negotiations and discussions, representations, commitments, proposals or offers regarding or relating to the subject matter of this agreement.

5.2 Waiver of Claims

Upon execution of this agreement by all parties, American, Alaska, JetBlue, their respective subsidiaries, affiliates, officers, directors, successors-in-interest and agents waive and release the City, its employees, officers, elected officials and agents from any and all losses, claims, causes of action, liability, complaints or petitions (judicial or administrative) existing on the first date the agreement is fully executed which are related to, or arise from the City's allocation of regular departures to JetBlue, or any related disputes or challenges to the City's actions in making regular departure or supplemental departure allocations under the ordinance. The parties acknowledge that they are waiving the provisions of California Civil Code Section 1542, which reads:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

5.3 No Assignment

Airlines understand, acknowledge and agree they may not assign or subcontract their rights or delegate their duties or any portion of their rights or duties, under this agreement, to any other person or entity. Any attempt at assignment or delegation shall be void, and any assignee or delegate shall acquire no right or interest by reason of such attempted assignment or delegation.

5.4 Amendments Must be in Writing

This agreement, including any exhibits, shall not be amended, nor any provision or breach hereof waived, except in writing signed by the parties which expressly refers to this agreement.

5.5 Venue

Any judicial action initiated by any party to enforce this agreement or to claim damages for any breach of this agreement shall be filed and prosecuted in a court of competent jurisdiction located within the State of California. To the extent that state

law is relevant to any such action or dispute, the validity, interpretation, and enforcement of this agreement and any dispute arising out of the relationship between the parties to this agreement, whether in contract, tort, equity, or otherwise, shall be governed by and construed pursuant to the laws of the State of California.

5.6 Costs and Fees

If there is any legal proceeding between the parties to enforce or interpret this agreement, or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees and court costs (including costs incurred in pursuing appeals).

5.7 Third Party Beneficiary

This agreement is intended by the parties to benefit themselves only and is not intended or designed or entered into for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this agreement.

5.8 Waiver

City will not, by any act, delay, omission, or otherwise be deemed to have expressly or impliedly waived any of its rights, powers or remedies unless the waiver is in writing and signed by an authorized officer of City. A waiver of City of any right, power, or remedy on any one occasion will not be construed as a bar to or waiver of any such right, power, or remedy that City would otherwise have on any future occasion, whether similar in kind or otherwise.

5.9 Termination of Agreement

Termination or expiration of this agreement shall not terminate rights or liabilities which accrued during the term of this agreement.

5.10 Headings

The use of headings in this agreement or the division of the provisions of this agreement into sections or paragraphs are for convenience only and are not part of this agreement and shall not affect the meaning or interpretation of this agreement. This agreement shall not be construed against any party as the drafter.

5.11 Authority to Execute Agreement

Each of the parties represents and warrants to each of the other parties that the person executing this agreement on their behalf has full and lawful authority to execute the agreement and bind the party for whom they have signed, and that each of the parties

has complied with all necessary procedures and laws in accepting and authorizing execution of this agreement.

5.12 Counterpart Signatures.

A signature on counterparts of this document shall constitute a signature of the original document, and signatures sent by facsimile are agreed to be valid and binding.

CITY OF LONG BEACH,
a municipal corporation

_____, 2003

By _____
City Manager

ALASKA AIRLINES, INC.,
an Alaska corporation

_____, 2003

By _____
Title: _____

_____, 2003

By _____
Title: _____

(signatures continue on following page)

(signatures continue from previous page)

**AMERICAN AIRLINES, INC.,
a Delaware corporation**

_____, 2003

By _____

Title: _____

**JETBLUE AIRWAYS CORPORATION,
a Delaware corporation**

_____, 2003

By _____

Title: _____

Approved as to form on _____, 2003.

ROBERT E. SHANNON, City Attorney

By _____

Deputy