

**EXHIBIT 5**

**FINANCE DOCUMENTS**

- Exhibit 5A: List of Initial Financing Documents
- Exhibit 5B: Form of Direct Agreement
- Exhibit 5C: Calculation of Refinancing Gain
- Exhibit 5D: Form of Opinion from LAWA's Legal Counsel
- Exhibit 5E: Form of Opinion from Developer's Legal Counsel
- Exhibit 5F: Base MaxAP Adjustment for Base Interest Rate Fluctuation and Credit Spread Risk Mitigation

**EXHIBIT 5A**

**LIST OF INITIAL FINANCING DOCUMENTS**

***[NOTE TO PROPOSERS: TO BE PROVIDED AT FINANCIAL CLOSE]***

**PART A: INITIAL FINANCING AGREEMENTS**

**PART B: INITIAL SECURITY DOCUMENTS**

## **EXHIBIT 5B**

### **FORM OF DIRECT AGREEMENT**

**THIS DIRECT AGREEMENT** dated as of [\_\_\_\_\_] (“**Direct Agreement**”) among the City of Los Angeles, a municipal corporation, acting by order of and through its Board of Airport Commissioners (“**City**”), [\_\_\_\_\_] (“**Developer**”), and [\_\_\_\_\_] (“**Collateral Agent**”), as trustee or collateral agent (in such capacity, together with its successors in such capacity, the “**Collateral Agent**”) for the Lenders (as defined in the DBFOM Agreement).

#### **WHEREAS**

(A) City and Developer have entered into that certain Design-Build-Finance-Operate-Maintain Agreement dated as of [\_\_\_\_\_] (the “**DBFOM Agreement**”) for the Automated People Mover Project (the “**Project**”), which DBFOM Agreement contemplates Developer obtaining financing or Refinancing for the Project from third parties,

(B) City’s Department of Airports, known as Los Angeles World Airports (“**LAWA**”), is responsible for the management and administration of this Direct Agreement on behalf of City,

(C) In order to enable Developer to finance certain activities and certain obligations with respect to the Project, the Lenders have agreed to make available debt facilities, on the terms set out in the Financing Agreements and Security Documents, for the purpose of financing the Project, subject to provision of certain assurances from LAWA regarding Lender’s and Collateral Agent’s rights in the event of an Event of Default or Developer Default,

(D) In reliance on such assurances, and on this Direct Agreement, Lenders have agreed to make available such financing or Refinancing facilities for the purpose of financing or Refinancing all or part of the Project, and

(E) The execution of this Direct Agreement by City in favor of the Collateral Agent is a condition precedent to such financing or Refinancing facilities being made available to Developer by Lender.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual terms and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, each of City, Developer and Collateral Agent hereby agree as follows:

#### **1. DEFINITIONS AND INTERPRETATION**

Capitalized terms used but not otherwise defined in this Direct Agreement and references used but not construed in this Direct Agreement have the respective meanings and constructions assigned to such terms in the DBFOM Agreement. In addition, the following terms have the meanings specified below:

**City** has the meaning given to it in the Preamble.

**Control Agreement** means the Control Agreement, dated as of the date hereof, by and among Developer, City and Custodian, with respect to the Handback Requirements Reserve Account.

**Cure Period** means the period starting on the date of the receipt of the LAWA Notice and ending on the earlier of the Step-in Date or 90 days after the expiration of any cure periods provided to Developer under the DBFOM Agreement; provided, however, if the Collateral Agent is prohibited from curing any non-monetary default or from substituting Developer with the Substituted Entity by any process, stay or injunction issued by any Governmental Entity or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Developer, then the time period specified herein for curing a default shall be extended for the period of such prohibition.

**Custodian** means [\_\_\_\_\_], as custodian under the Control Agreement.

**DBFOM Agreement** has the meaning given to it in the recitals to this Direct Agreement.

**Default** means an Event of Default as defined in any Financing Agreement or any event or circumstance specified in any Financing Agreement which would (with the expiration of a grace period, the giving of notice, the lapse of time, the making of any determination under the Financing Documents or any combination of any of the foregoing) be an Event of Default.

**Discharge Date** means the date on which all of the obligations of Developer under the Financing Documents have been irrevocably discharged in full to the satisfaction of the Collateral Agent.

**Event of Default** means an Event of Default as defined in any Financing Agreement.

**LAWA** has the meaning given to it in the recitals to this Direct Agreement.

**LAWA Notice** has the meaning given to it in Section 6.1.

**Lender Notice** has the meaning given to it in Section 7.1.

**Project** has the meaning given to it in the Recitals.

**Project Account** means [\_\_\_\_\_].

**Property** means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

**Revival Date** has the meaning given to it in Section 14.1.

**Step-in Date** has the meaning given to it in Section 10.1.

**Step-in Notice** has the meaning given to it in Section 9.1.

**Step-in Party** has the meaning given to it in Section 9.2.

**Step-in Period** means the period from and including the Step-in Date until the earliest of:

- (a) the Substitution Effective Date;

- (b) the Step-out Date;
- (c) the date of termination of the DBFOM Agreement by LAWA in accordance with this Direct Agreement and the DBFOM Agreement;
- (d) the date of the expiration or early termination of the Term under the DBFOM Agreement; and
- (e) 12 months after the Step-in Date,

provided, however, that if the Collateral Agent is prohibited from curing any nonmonetary default after the Step-in Date or from substituting Developer with the Substituted Entity by any process, stay or injunction issued by any Governmental Entity or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Developer, then the time periods specified herein for curing a default shall be extended for the period of such prohibition.

**Step-out Date** means the date upon which the notice period set forth in any Step-out Notice expires.

**Step-out Notice** has the meaning given to it in Section 11.

**Substitute Accession Agreement** means the agreement to be entered into by a Substituted Entity pursuant to Section 13.1.

**Substituted Entity** means any Person selected by Lenders and approved by LAWA in accordance with Section 12 to perform all or a portion of Developer's obligations and succeed to the applicable Developer's rights under the Contract Documents.

**Substitution Effective Date** has the meaning given to it in Section 13.1.

**Substitution Notice** has the meaning given to it in Section 12.2.

## 1.1 Interpretation

Unless the context otherwise clearly requires:

- (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;
- (b) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;
- (c) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";
- (d) The word "will" shall be construed to have the same meaning and effect as the word "shall";
- (e) Any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified

(subject to any restrictions on such amendments, supplements or modifications set forth herein);

- (f) Any reference herein to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be;
- (g) The words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Direct Agreement in its entirety and not to any particular provision hereof;
- (h) All references herein to Sections and Schedules shall be construed to refer to Sections of and Schedules to this Direct Agreement. Any Schedules to this Direct Agreement are an integral part hereof. The provisions of this Direct Agreement shall prevail over the provisions of any Schedules to the extent of any inconsistency;
- (i) The headings used in this Direct Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Direct Agreement; and
- (j) "Winding-up", "liquidation", "dissolution", "insolvency", "adjustment" or "reorganization" of a Person and references to the "liquidator", "assignee", "administrator", "receiver", "custodian", "conservator", "sequestrator" or "trustee" of a Person shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, insolvency representatives or officers under the law of the jurisdiction in which such Person is incorporated, organized or constituted or any jurisdiction in which such Person or, as the case may be, insolvency representative or officer carries on business including the seeking of winding up, liquidation, dissolution, reorganization, administration, arrangement, adjustment or relief of debtors.

## 2. REPRESENTATIONS AND WARRANTIES

### 2.1 LAWA represents and warrants to the Collateral Agent that:

- (a) **Organization; Power and Authority.** City is a municipal corporation, duly formed and validly existing under the laws of the State of California and its Charter. City has the power and authority to execute this Direct Agreement and the DBFOM Agreement; and LAWA has the power and authority to perform the provisions hereof and thereof.
- (b) **Authorizations, Enforceability.** This Direct Agreement and the DBFOM Agreement have been duly authorized by City and delivered by LAWA, and this Direct Agreement and the DBFOM Agreement constitute legal, valid and binding obligations of LAWA, enforceable against LAWA in accordance with their terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- (c) **No Default.** As of the date of the execution of this Direct Agreement, there is no LAWA Default. LAWA is not aware of any Developer Default, and there exists no event or condition of which LAWA is aware that would, with the giving of notice or passage of time or both, constitute such a Developer Default or LAWA Default.

**2.2** The Collateral Agent represents and warrants to City that:

- (a) **Organization; Power and Authority.** The Collateral Agent is a [\_\_\_\_\_], duly organized and validly existing under the laws of [\_\_\_\_\_] and has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute, and deliver this Direct Agreement and to perform each and all of the obligations of the Collateral Agent provided for under this Direct Agreement.
- (b) **Authorizations, Enforceability.** This Direct Agreement has been duly authorized by the Collateral Agent, and this Direct Agreement constitutes a legal, valid and binding obligation of the Collateral Agent, enforceable against the Collateral Agent in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). The Collateral Agent is duly authorized by the Lenders to enter into this Direct Agreement on behalf of the Lenders and to validly bind the Lenders to the terms and conditions hereof.

**3. CONDITIONS AND LIMITATIONS RESPECTING LENDERS' RIGHTS**

**3.1** No Financing Agreement or related Security Document shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Direct Agreement, unless the Financing Agreement and related Security Document are in compliance with Section 4.

**3.2** No Financing Agreement or Security Document relating to any Refinancing shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Direct Agreement, unless the Refinancing is in compliance with Section 4.4 (Refinancing) of the DBFOM Agreement.

**3.3** No Financing Agreement or Security Document shall be binding upon LAWA in the enforcement of its rights and remedies as provided herein and by Law, and no Lender shall be entitled to the rights, benefits and protections of this Direct Agreement, unless and until LAWA has received a copy (certified as true and correct by the Collateral Agent) of the original thereof bearing, if applicable, the date and instrument number or book and page of recordation or filing thereof, including a copy of a specimen bond, note or other obligation (certified as true and correct by the Collateral Agent) secured by such Security Document, together with written notice of the address of the Collateral Agent to which notices may be sent. In the event of an assignment of any such Financing Agreement or Security Document, such assignment shall not be binding upon LAWA unless and until LAWA has received prior written notice and a certified copy thereof, which copy shall, if required to be recorded, bear the date and instrument number or book and page of recordation thereof, together with written notice of the assignee thereof to which notices may be sent. In the event of any change in the identity of the Collateral Agent, such change shall not be binding upon LAWA unless and until LAWA has received a written

notice thereof signed by the replaced and substitute Collateral Agent and setting forth the address of the substitute Collateral Agent to which notices may be sent.

**3.4** No Lender shall be entitled to the rights, benefits and protections of this Direct Agreement unless the Financing Agreements in favor of the Lender are secured by senior or first priority Security Documents.

#### **4. MANDATORY TERMS OF PROJECT DEBT, FINANCING AGREEMENTS AND SECURITY DOCUMENTS**

Project Debt, Financing Agreements and Security Documents, and any amendments or supplements thereto, shall comply with the following terms and conditions:

**4.1** The Security Document may only secure Project Debt the proceeds of which are used exclusively for the purpose of:

- (a) performing the Work, including designing, permitting, building, constructing, improving, equipping, modifying, operating, maintaining, reconstructing, restoring, rehabilitating, renewing, insuring or replacing the Project and staffing, administering and managing Developer;
- (b) making Distributions, but only from the proceeds of refinancings permitted under the DBFOM Agreement;
- (c) Rescue Refinancing, including making protective advances intended to prevent or remedy a default under this Direct Agreement or a Financing Agreement or both;
- (d) refinancing any Project Debt described in subsections (a), (b), or (c) above, including paying the reasonable costs of closing the Refinancing (including Lender fees, advisor fees and the fees of legal counsel);
- (e) to fund reserves relating to the Project;
- (f) paying closing costs, financing costs and fees with respect to Project Debt;
- (g) paying principal or interest on existing Project Debt;
- (h) paying reasonable development fees to Developer-Related Entities or to the APM Fixed Facilities Contractor, the APM Fixed Facilities Designer, the APM Operating System Supplier or any of their respective Affiliates for services related to the Project;
- (i) making payments due under the Contract Documents to LAWA or any other Person; and
- (j) making payment of Taxes owed by Developer;

**4.2** The Security Document may only secure Project Debt and Financing Agreements issued and executed by (a) Developer or a Developer-Related Entity, (b) its permitted successors and assigns, (c) a special purpose entity that owns Developer but no other material assets and has



purposes and powers limited to the Project and the Work, or (d) any special purpose subsidiary wholly owned by such entity;

**4.3** No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against Developer's Interest shall extend to or affect the fee simple interest of LAWA in the Project or the Site or improvements thereto or LAWA's rights or interests under the Contract Documents;

**4.4** LAWA shall not have any obligation to any Lender pursuant to the DBFOM Agreement, except for the express obligations to Lenders set forth in this Direct Agreement or any other instrument or agreement signed by LAWA in favor of such Lender or Collateral Agent, provided that the Collateral Agent has notified LAWA of the existence of its Security Documents;

**4.5** Each Financing Agreement and Security Document shall require that the Collateral Agent deliver to LAWA, concurrently with delivery to Developer or any other Person, any notice of default or notice of election or enforcement of remedies, including an election to sell or foreclose, notice of sale or foreclosure or other notice required by Law or by the Security Document in connection with the exercise of remedies under the Financing Agreement or Security Document; and

**4.6** No Financing Documents shall grant to the Lender any right to apply funds in the Handback Requirements Reserve Account or to apply proceeds from any Handback Requirements Letter of Credit to the repayment of Project Debt, to any other obligation owing the Lender or to any other use except the uses set forth in Section 8.7.3 (Use of Handback Requirements Reserve Account) of the DBFOM Agreement, and any provision purporting to grant such right shall be null and void; provided, however, that the foregoing shall not preclude any Lender or Substituted Entity from, following foreclosure or transfer in lieu of foreclosure, automatically succeeding to all rights, claims and interests of Developer in and to the Handback Requirements Reserve Account.

## **5. AGREEMENTS, CONSENT TO SECURITY AND SUBORDINATION OF SECURITY**

**5.1** LAWA acknowledges notice and receipt of copies of the Initial Financing Documents. Notwithstanding anything in the DBFOM Agreement to the contrary, but subject to Sections 3 and 4 of this Direct Agreement, LAWA:

- (a) consents to (i) the assignment by Developer to the Collateral Agent of all of Developer's right, title and interest in, and under the DBFOM Agreement and the Contracts to which Developer is a party, and (ii) the granting by each Equity Member to the Collateral Agent of a security interest in such Equity Member's equity interest in Developer, in each case pursuant to the terms and provisions of the applicable Initial Security Documents; and
- (b) agrees that such assignment and grant of security interests, and the execution by Developer and City of this Direct Agreement and the performance of their respective obligations hereunder, in each case, does not (i) constitute a Developer Default or any other breach by Developer of the DBFOM Agreement, (ii) with the giving of notice or lapse of time, or both, constitute a Developer Default or any other breach by Developer of the DBFOM Agreement, or (iii) require the consent of LAWA except as provided herein.

**5.2** Except as expressly contemplated in the DBFOM Agreement, while any Security Document is in effect, no agreement between City and Developer for the modification or amendment of the DBFOM Agreement that in any way could reasonably be expected to have a material adverse effect on the rights or interests of the Lender(s) shall be binding on the Lender(s) under such Security Document without the Collateral Agent's consent.

**5.3** As long as any Project Debt secured by any Security Document shall remain outstanding, LAWA shall promptly provide the Collateral Agent with a copy of any notice it sends to Developer concerning an actual or potential Developer Default.

**5.4** Except as set forth in this Direct Agreement, LAWA shall not be precluded from or delayed in exercising any remedies, including termination of the DBFOM Agreement due to the accumulation of Noncompliance Points during the Step-in Period and LAWA's rights to cure Developer Default at Developer's expense; provided, however, LAWA shall not be entitled to exercise its right of termination due to Noncompliance Points accumulated prior to such step in.

**5.5** Neither City nor any officer, employee, agent or representative of City shall have any liability whatsoever for payment of the principal sum of any Project Debt, any other obligations issued or incurred by Developer or a Developer-Related Entity in connection with the DBFOM Agreement or the Project, or any interest accrued thereon or any other sum secured by or accruing under any Financing Document. Except for a violation by City of its express obligations to Lenders under this Direct Agreement, no Lender is entitled to seek any damages or other amounts from City, whether for Project Debt or any other amount. LAWA's review of any Financing Documents or other Project financing documents is not a guarantee or endorsement of the Project Debt, any other obligations issued or incurred by Developer or a Developer-Related Entity in connection with the DBFOM Agreement or the Project, and is not a representation, warranty or other assurance as to the ability of Developer or a Developer-Related Entity to perform its obligations with respect to the Project Debt or any other obligations issued or incurred by Developer or a Developer-Related Entity in connection with the DBFOM Agreement or the Project, or as to the adequacy of the Payments to provide for payment of the Project Debt or any other obligations issued or incurred by Developer in connection with the DBFOM Agreement or the Project. The foregoing does not affect LAWA's liability to Developer under Article 17 of the DBFOM Agreement for Termination Compensation that is measured in whole or in part by outstanding Project Debt.

**5.6** The Collateral Agent consents to the grant of security by Developer to City of a first priority security interest in the Handback Requirements Reserve Account (or in any Handback Requirements Letter of Credit delivered by Developer in accordance with Section 8.7.5 (Handback Requirements Letters of Credit) of the DBFOM Agreement in lieu of establishing a Handback Requirements Reserve Account).

## **6. LAWA NOTICE OF TERMINATION AND EXERCISE OF REMEDIES**

**6.1** LAWA shall give the Collateral Agent written notice (a "**LAWA Notice**"):

- (a) promptly upon becoming aware of the occurrence of any event giving rise to a Developer Default, LAWA's right to terminate or give notice terminating the DBFOM Agreement pursuant to Section 17.3.1 (Developer Defaults Triggering LAWA Termination Rights) of the DBFOM Agreement, or exercise any rights under Section 16.2.3 (Remedies for Failure to Meet Safety Standards or Perform

Safety Compliance), 16.2.4 (LAWA Step-in Rights) or 16.2.7.1 of the DBFOM Agreement; or

- (b) promptly upon becoming aware of the occurrence of any event giving rise to LAWA's right to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the DBFOM Agreement.

**6.2** A LAWA Notice shall specify:

- (a) the unperformed obligations of Developer under the DBFOM Agreement and grounds for termination of, or suspension of performance or the other rights all as referred to in Sections 17.3.1 (Developer Defaults Triggering LAWA Termination Rights), 16.2.3 (Remedies for Failure to Meet Safety Standards or Perform Safety Compliance), 16.2.4 (LAWA Step-in Rights) or 16.2.7.1 under the DBFOM Agreement, in detail sufficient to enable the Collateral Agent to assess the scope and amount of any liability of Developer resulting therefrom;
- (b) any other unperformed obligations of Developer of which LAWA is aware as of the date of such LAWA Notice;
- (c) all amounts due and payable by Developer to LAWA under the DBFOM Agreement on or before the date of such LAWA Notice and which remain unpaid at such date and the nature of Developer's obligation to pay such amounts; and
- (d) the amount of Developer's payment obligation to LAWA that LAWA reasonably foresees will arise during the applicable Cure Period.

**6.3** LAWA shall update its LAWA Notice to reflect unperformed obligations of Developer under the DBFOM Agreement that have been identified or that have arisen and amounts payable by Developer to LAWA that become due, in each case, after the date of the LAWA Notice but prior to the proposed Step-in Date.

## **7. LENDER NOTICE**

**7.1** The Collateral Agent shall give LAWA notice (a "**Lender Notice**") via written correspondence and email, with a hardcopy and electronic copy to Developer, promptly upon becoming aware of the occurrence of any Default or Event of Default (whether or not a LAWA Notice has been served relating to the same event). The hardcopy Lender Notice shall be sent to LAWA via certified or registered mail, return receipt requested.

**7.2** The Collateral Agent shall specify in any Lender Notice the circumstances and nature of the Default or Event of Default to which Lender Notice relates.

**7.3** Subject to Section 7.5, LAWA shall, following receipt of a Lender Notice of the occurrence of any Event of Default and until further notice from the Collateral Agent pursuant to Section 7.9, make any payments required to be made by LAWA to Developer under the DBFOM Agreement to a Project Account designated by the Collateral Agent.

**7.4** Subject to Section 7.5, LAWA shall, following receipt of a Lender Notice of the occurrence of any Event of Default and until further notice from the Collateral Agent pursuant to

Section 7.9, make any payment of any termination sum calculated in accordance with Article 17 of the DBFOM Agreement required to be made to Developer under the DBFOM Agreement to a Project Account designated by the Collateral Agent.

**7.5** LAWA's obligations under Sections 7.3 and 7.4 are subject to the following:

**7.5.1** The Collateral Agent shall provide to LAWA the following information: (a) the individual responsible for administering the account designated by the Collateral Agent, including his or her position; (b) the mailing address of such individual; and (c) the telephone, fax and e-mail address of such individual.

**7.6** All sums paid as provided in Sections 7.3 and 7.4 shall be deemed paid to Developer under the DBFOM Agreement and shall constitute a complete discharge of LAWA's relevant payment obligations to Developer. LAWA shall have no liability, whatsoever, for any delay in processing any payment request pursuant to Sections 7.3 or 7.4., provided that such delay does not extend 20 days beyond the date of LAWA's certified, return-receipt or registered mail receipt of the Lender Notice.

**7.7** The Collateral Agent shall promptly notify LAWA via written correspondence and email of any decision to accelerate amounts outstanding under the Financing Documents or to exercise any enforcement remedies under the Financing Documents.

**7.8** Neither the Collateral Agent nor the Lender shall exercise any right it may have pursuant to the Security Documents to assign, transfer or otherwise dispose of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents to the extent the exercise of such rights would constitute a Refinancing and Developer has failed to comply with the requirements of Section 4.4 of the DBFOM Agreement.

**7.9** The Collateral Agent shall promptly notify LAWA via written correspondence and email, with a hardcopy and electronic copy to Developer, of a full cure of an Event of Default that is the subject of a Lender Notice.

**7.10** Following receipt of a Lender Notice of the occurrence of an Event of Default until delivery of a further notice under Section 7.9 with respect to any full cure of such Event of Default, the Collateral Agent shall have the right to deliver to LAWA a Step-in Notice as provided in Section 9.

## **8. NO TERMINATION DURING CURE PERIOD**

**8.1** LAWA agrees not to take any of the following actions prior to the expiration of any applicable Cure Period:

- (a) terminate or give notice terminating the DBFOM Agreement or exercise any rights under Sections 10.3 (Letters of Credit), 10.4 (Guarantees), 16.2.3 (Remedies for Failure to Meet Safety Standards or Perform Safety Compliance), 16.2.4 (LAWA Step-in Rights), 16.2.6 (Performance Bond), 16.2.7 (Suspension of Work), or 17.3.1 (Developer Defaults Triggering LAWA Termination Rights) of the DBFOM Agreement or in respect of the APM Fixed Facilities Contract, the APM Fixed Facilities Designer Contract, the APM Operating System Contract or any O&M Contract;

- (b) suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the DBFOM Agreement; or
- (c) take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of Developer or for the composition or readjustment of Developer's debts, or any similar insolvency procedure in relation to Developer, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Developer or for any part of Developer's Property;

provided that such agreement of LAWA shall not prevent LAWA from taking actions which are permitted under this Direct Agreement on a Revival Date in respect of any other prior Developer Default or other breach by Developer of the DBFOM Agreement which has occurred and has not been remedied or waived.

**8.2** During any Cure Period, without giving a Step-in Notice, the Collateral Agent shall have the right (but shall have no obligation), at its sole option and discretion, to perform or arrange for the performance of any act, duty, or obligation required of Developer under the DBFOM Agreement, or to cure any default of Developer thereunder, which performance by the Collateral Agent shall be accepted by LAWA in lieu of performance by Developer and in satisfaction of Developer's obligations under the DBFOM Agreement. To the extent that any default of Developer under the DBFOM Agreement is cured and/or any payment liabilities or performance obligations of Developer are performed by the Collateral Agent during the Cure Period, such action shall discharge the relevant liabilities or obligations of Developer to LAWA. Subject to the terms of this Direct Agreement, the Collateral Agent's right to cure any default of Developer as provided in this Section 8.2 may be exercised after the expiration of relevant cure period granted to Developer in Section 16.1.2 (Cure Periods) of the DBFOM Agreement.

## **9. STEP-IN NOTICE**

**9.1** Upon the issuance of a LAWA Notice or a Lender Notice of the occurrence of any Event of Default, the Collateral Agent may give a written notice (a "**Step-in Notice**") under this Section 9 to LAWA at any time during the Cure Period in the case of the issuance of a LAWA Notice or at any time following the receipt by LAWA of a Lender Notice, provided that the Event of Default to which Lender Notice relates is continuing.

**9.2** The Collateral Agent shall nominate, in the Step-in Notice: (a) the Collateral Agent, a Lender or any of their respective Affiliates; or (b) any Person, subject to approval by LAWA in accordance with Section 12, and the person so nominated being referred to as the "**Step-in Party**."

## **10. RIGHTS AND OBLIGATIONS ON STEP-IN**

**10.1** On and from the date of the receipt of the Step-in Notice and the approval of LAWA to the appointment of the Step-in Party if required by Section 9.2 ("**Step-in Date**") and during the Step-in Period, the Step-in Party shall be:

- (a) entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to Developer under the DBFOM Agreement and this Direct Agreement;

- (b) entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Party under this Direct Agreement; and
- (c) liable for the performance of all of Developer's obligations under the DBFOM Agreement and this Direct Agreement arising on or after the Step-in Date.

**10.2** Without prejudice to Section 14 (Revival of Remedies), during the Step-in Period, LAWA shall:

- (a) not terminate or give notice terminating the DBFOM Agreement or exercise any rights under Sections 10.3 (Letters of Credit), 10.4 (Guarantees), 16.2.3 (Remedies for Failure to Meet Safety Standards or Perform Safety Compliance), 16.2.4 (LAWA Step-in Rights), 16.2.6 (Performance Bond), 16.2.7 (Suspension of Work), or 17.3.1 (Developer Defaults Triggering LAWA Termination Rights) of the DBFOM Agreement or in respect of any the APM Fixed Facilities Contract, the APM Fixed Facilities Designer Contract, the APM Operating System Contract or any O&M Contract, unless the grounds for termination or giving notice of termination pursuant to Section 17.3.1 of the DBFOM Agreement or exercising its rights under Section 16.2.3, 16.2.4 or 16.2.7 of the DBFOM Agreement are failure by the Step-in Party to perform Developer's obligations under the DBFOM Agreement;
- (b) not suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the DBFOM Agreement, unless the grounds for suspension of performance are failure by the Step-in Party to perform Developer's obligations under the DBFOM Agreement;
- (c) not take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of Developer or for the composition or readjustment of Developer's debts, or any similar insolvency procedure in relation to Developer, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Developer or for any part of Developer's Property;
- (d) continue to make payments required to be made to Developer under the DBFOM Agreement to a Project Account designated by the Collateral Agent; and
- (e) endorse or pay over, as directed by the Collateral Agent, any checks received by LAWA with respect to, or funds drawn by LAWA under, the Performance Bond; provided that the Collateral Agent reimburse LAWA for any Losses incurred by LAWA in attempting to cure the Developer Default as and to the extent: (i) LAWA is entitled to such reimbursement pursuant to the DBFOM Agreement; (ii) LAWA has promptly notified the Collateral Agent of such Losses at or prior to the time of endorsement or payment and (iii) the Collateral Agent's obligation to reimburse LAWA for such Losses do not exceed the proceeds from any such security.

**10.3** LAWA shall owe its obligations under the DBFOM Agreement and this Direct Agreement to Developer and the Step-in Party jointly; provided that:

- (a) the receipt of, or performance by LAWA in favor of, either such Step-in Party or Developer shall be a good and effective discharge of LAWA's obligations under this Direct Agreement and the DBFOM Agreement;
- (b) the Collateral Agent shall be entitled at any time by notice in writing to LAWA to direct (such direction being binding on the Collateral Agent, LAWA and Developer) that, at all times during the Step-in Period, the Step-in Party shall be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with LAWA under the DBFOM Agreement and this Direct Agreement; and
- (c) any amount due from Developer to LAWA under the DBFOM Agreement or this Direct Agreement as of the Step-in Date and notified to such Step-in Party prior to the Step-in Date shall be paid to LAWA on the Step-in Date, failing which LAWA shall be entitled to exercise its rights under the DBFOM Agreement in respect of the amount so due and unpaid.

**10.4** Developer shall not be relieved from any of its obligations under the DBFOM Agreement or this Direct Agreement, whether arising before or after the Step-in Date, by reason of the Step-in Party exercising the rights provided herein, except to the extent provided in Section 8.2 and Section 11.

## **11. STEP-OUT**

A Step-in Party may, at any time, by giving not less than 30 days' prior written notice ("**Step-out Notice**") to LAWA terminate its obligations to LAWA under this Direct Agreement, in which event such Step-in Party shall be released from all obligations under this Direct Agreement, except for any obligation or liability of the Step-in Party arising during the Step-in Period. The obligations of LAWA to the Step-in Party under this Direct Agreement shall also terminate on the Step-Out Date. Notwithstanding the foregoing, this Direct Agreement shall continue to remain effective according to its terms after the Step-Out Date if the Step-in Party is the Collateral Agent or a Lender.

## **12. SUBSTITUTION ENTITIES AND SUBSTITUTION PROPOSALS**

**12.1** Any payment to be made or action to be taken by the Collateral Agent as a prerequisite to keeping the DBFOM Agreement in effect shall be deemed properly to have been made or taken by the Collateral Agent if such payment is made or action is taken by a Substituted Entity proposed by the Collateral Agent and reasonably approved by LAWA. LAWA shall have no obligation to recognize any claim to Developer's Interest by any person or entity that has acquired Developer's Interest by, through, or under any Security Document or whose acquisition shall have been derived immediately from any holder thereof, unless such person or entity is a Substituted Entity reasonably approved by LAWA in accordance with this Section 12.

**12.2** The Collateral Agent may give a notice ("**Substitution Notice**") under this Section 12 in writing to LAWA at any time:

- (a) during any Cure Period;
- (b) during any Step-in Period; or

- (c) after delivery of a Lender Notice of the occurrence of any Event of Default and prior to delivery by the Collateral Agent to LAWA of a further notice under Section 7.9.

**12.3** In any Substitution Notice, the Collateral Agent shall notify LAWA that it intends to designate a Substituted Entity.

**12.4** The Collateral Agent shall, as soon as practicable, provide to LAWA the information regarding the proposed Substituted Entity and any third party entering into a material subcontract with such Substituted Entity as required by this Section 12, including:

- (a) the name and address of the proposed Substituted Entity;
- (b) the names of the proposed Substituted Entity's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;
- (c) the manner in which it is proposed to finance the proposed Substituted Entity and the extent to which such financing is committed;
- (d) copies of the proposed Substituted Entity's most recent financial statements (and if available such financial statements shall be for the last three financial years) or in the case of a newly-formed special purpose company its opening balance sheet;
- (e) a copy of the proposed Substituted Entity's formation documents;
- (f) details of the resources available to the proposed Substituted Entity and the proposed Substituted Entity's appropriate qualifications, experience and technical competence available to the proposed Substituted Entity to enable it to perform the obligations of Developer under the DBFOM Agreement;
- (g) the names of the proposed Substituted Entity's directors and any key personnel who will have responsibility for the day-to-day management of its participation in the Project;
- (h) a rectification plan providing details of the plan to rectify Developer's breaches with respect to the breaches which are capable of being rectified by the Substituted Entity;
- (i) such other information, evidence and supporting documentation concerning the identity, financial resources, pre-qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors as LAWA may reasonably request; and
- (j) such evidence of organization, authority, incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as LAWA may reasonably request.

**12.5** LAWA will approve or disapprove a proposed Substituted Entity within 45 days after it confirms receipt from the Collateral Agent of a request for approval together with the information



required under Section 12.4. LAWA will evaluate the financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to LAWA's requests for qualifications for concession or similar agreements for comparable projects and facilities.

**12.6** LAWA shall have no obligation to approve the proposed Substituted Entity:

- (a) unless the Collateral Agent demonstrates to LAWA's reasonable satisfaction that:
  - (i) the proposed Substituted Entity and its contractors collectively have the financial resources, qualifications and experience to timely perform Developer's obligations under the Contract Documents and Key Contracts to which Developer is a party; (ii) the proposed Substituted Entity and its contractors, each of their respective direct and indirect beneficial owners, any proposed key personnel, each of their respective officers and directors and each of their respective affiliates have a good and sound background and reputation (including the absence of criminal, civil or regulatory claims or actions against any such Person, and each such Person's adherence to Good Industry Practice, contract terms and applicable standards regarding past or present performance on comparable projects); and (iii) the proposed Substituted Entity and its contractors are in compliance with LAWA's rules, regulations and adopted written policies regarding pre-qualification and organizational conflicts of interest;
- (b) if there are unremedied breaches under the DBFOM Agreement and there is no rectification plan reasonably acceptable to LAWA with respect to the breaches which are capable of being rectified by the Substituted Entity;
- (c) if any proposed security interests to be granted by the proposed Substituted Entity to the Collateral Agent and/or the Lender in addition to (or substantially different from) the security interests granted to the Collateral Agent and/or the Lender under the Initial Financing Documents materially and adversely affect the ability of the Substituted Entity to perform Developer's obligations under the Contract Documents or have the effect of increasing any liability of LAWA, whether actual or potential (unless a Rescue Refinancing is concurrently proposed, in which case the Lenders' Liabilities may increase by up to 10%);

**12.7** If LAWA fails to give its approval or disapproval within 60 days of the date on which LAWA has confirmed it has received the information specified in Section 12.4 in respect of any proposed Substituted Entity, or any extension thereof by mutual agreement of LAWA and the Collateral Agent, the approval of LAWA shall be deemed to have been given.

**12.8** The Collateral Agent may request approval of more than one Substituted Entity. The Collateral Agent may request approval at any time or times. Any approval by LAWA of a Substituted Entity shall expire (unless otherwise agreed in writing by LAWA) one year after the approval is issued if the Substituted Entity has not succeeded to Developer's Interest within that period of time. LAWA may revoke an approval if at any time prior to succeeding to Developer's Interest the Substituted Entity ceases to be in compliance with LAWA's rules and regulations regarding organizational conflicts of interest. If the Substituted Entity succeeds to Developer's Interest, then LAWA shall not be entitled to terminate due to Noncompliance Points accumulated by Developer prior to its replacement by the Substituted Entity, provided the

Noncompliance that resulted in such Noncompliance Points are being cured by the Substituted Entity as quickly as practicable using commercially reasonable efforts. Once all Noncompliances have been cured, LAWA shall cancel any Noncompliance Points accrued prior to succession.

**12.9** Notwithstanding the foregoing, any entity that is wholly owned by a Lender or group of Lenders shall be deemed a Substituted Entity, without necessity for LAWA approval, upon delivery to LAWA of documentation proving that the entity is duly formed, validly existing and wholly owned by the Lender, including a certificate signed by a duly authorized officer of each Lender in favor of LAWA certifying, representing and warranting such ownership.

### **13. SUBSTITUTION**

**13.1** If LAWA approves (or is deemed to have approved) a Substitution Notice pursuant to Section 12, the Substituted Entity named therein shall execute a duly completed Substitute Accession Agreement substantially in the form attached to this Direct Agreement as Schedule A and submit it to LAWA (with a copy thereof to the other parties to this Direct Agreement) and such assignment shall become effective on and from the date on which City countersigns the Substitute Accession Agreement (the “**Substitution Effective Date**”) or the date that is 10 days after the date LAWA receives the completed Substitute Accession Agreement if City fails to sign the Substitute Accession Agreement.

**13.2** As of the Substitution Effective Date:

- (a) such Substituted Entity shall become a party to the DBFOM Agreement and this Direct Agreement in place of Developer who shall be immediately released from its obligations arising under, and cease to be a party to, the DBFOM Agreement and this Direct Agreement from and after Substitution Effective Date;
- (b) all of Developer's obligations and liabilities under the DBFOM Agreement and under this Direct Agreement arising from and after the Substitution Effective Date shall be immediately and automatically transferred to the Substituted Entity;
- (c) such Substituted Entity shall exercise and enjoy the rights and perform the obligations of Developer under the DBFOM Agreement and this Direct Agreement; and
- (d) LAWA shall owe its obligations (including any undischarged liability with respect to any loss or damage suffered or incurred by Developer prior to the Substitution Effective Date) under the DBFOM Agreement and this Direct Agreement to such Substituted Entity in place of Developer, subject to LAWA's right to offset any losses or damages suffered or incurred by LAWA as provided under the DBFOM Agreement and this Direct Agreement.

**13.3** LAWA shall use its reasonable efforts to facilitate the transfer to the Substituted Entity of Developer's obligations under the DBFOM Agreement and this Direct Agreement.

**13.4** The Substituted Entity shall pay to LAWA on the Substitution Effective Date any amount due to LAWA under the DBFOM Agreement and this Direct Agreement, including LAWA's reasonable costs and expenses incurred in connection with (a) Developer's default and termination, (b) LAWA's activities with respect to the Project during any period LAWA was in

possession of the Project, and (c) the approval of the Substituted Entity, all as of the Substitution Effective Date and notified to such Substituted Entity prior to the Substitution Effective Date. LAWA's receipt of the payment pursuant to this Section 13.4 shall be a condition precedent to the Substitution Effective Date.

**13.5** As of the Substitution Effective Date:

- (a) any right of termination suspended by virtue of Section 8.1 shall be of no further effect and LAWA shall not be entitled to terminate or suspend performance of the DBFOM Agreement and this Direct Agreement by virtue of any act, omission or circumstance that occurred prior to such Substitution Effective Date; and
- (b) City shall enter into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Developer shall be replaced as a party by the Substituted Entity.

**14. REVIVAL OF REMEDIES**

**14.1** If a LAWA Notice has been given, the grounds for that notice are continuing and have not been remedied or waived and:

- (a) as of the end of the Cure Period, no Step-in Notice has been given and no Substituted Entity becomes a party to the DBFOM Agreement and this Direct Agreement; or
- (b) the Step-in Period ends without a Substituted Entity becoming a party thereto,

Then, from and after the date such Cure Period or such Step-in Period, as the case may be, expires (the "**Revival Date**"), LAWA shall be entitled to:

- (i) act upon any and all grounds for termination or suspension available to it in relation to the DBFOM Agreement in respect of defaults under the DBFOM Agreement not remedied or waived;
- (ii) pursue any and all claims and exercise any and all remedies against Developer; and
- (iii) if and to the extent that it is then entitled to do so under the DBFOM Agreement, take or support any action of the type referred to in Section 16.2 (LAWA Remedies for Developer Default) of the DBFOM Agreement.

**15. NEW PROJECT AGREEMENT**

**15.1** If:

- (a) the DBFOM Agreement is rejected by a trustee or debtor-in-possession in, or terminated as a result of, any bankruptcy or insolvency proceeding involving Developer, or
- (b) a Developer Default under Sections 16.1.1(k) or 16.1.1(l) of the DBFOM Agreement occurs with respect to any Equity Member with a material financial

obligation owing to Developer for a Committed Investment, and Equity Members' obligations relating to Developer or the Project are rejected by a trustee or debtor-in-possession in, or terminated as a result of any bankruptcy or insolvency proceeding involving such Equity Member and, within 90 days after such rejection or termination, the Collateral Agent shall so request and shall certify in writing to LAWA that it intends to perform the obligations of Developer as and to the extent required under the DBFOM Agreement,

City will execute and LAWA will deliver to the Collateral Agent (or any Substituted Entity satisfying the requirements of this Direct Agreement if directed to do so by the Collateral Agent) a new project agreement. Such new project agreement shall contain conditions, agreements, terms, provisions and limitations which are the same as those of the DBFOM Agreement, except for any obligations that have been fulfilled by Developer, any party acting on behalf of or stepping-in for Developer or LAWA prior to such rejection or termination. References in this Direct Agreement to the "Agreement" shall be deemed also to refer to any such new project agreement.

## **16. RECEIVERS**

**16.1** The appointment of a receiver at the behest of Developer shall be subject to LAWA's prior written approval in its sole discretion. The appointment of a receiver at the behest of any Lender shall be subject to the following terms and conditions:

- (a) LAWA's prior approval shall not be required for the appointment of the receiver or the selection of the Person to serve as receiver;
- (b) whenever any Lender commences any proceeding for the appointment of a receiver, the Collateral Agent shall serve on LAWA not less than ten (10) days' prior written notice of the hearing for appointment and of the Lender's pleadings and briefs in the proceeding;
- (c) LAWA may appear in any such proceeding to challenge the selection of the Person to serve as receiver, but waives any other right to oppose the appointment of the receiver; and
- (d) LAWA may at any time seek an order for replacement of the receiver by a different receiver.

**16.2** No receiver appointed at the behest of Developer or any Lender shall have any power or authority to replace the APM Fixed Facilities Contractor, the APM Fixed Facilities Designer, the APM Operating System Supplier, the APM Fixed Facilities O&M Provider, or the APM Operating System O&M Provider except by reason of default or unless the replacement is a Substituted Entity reasonably approved or deemed approved by LAWA.

## **17. ESTOPPEL CERTIFICATES**

**17.1** At any time and from time to time, within 30 days after written request of any Lender or proposed Lender, LAWA, without charge, shall certify by written instrument duly executed and acknowledged, to any Lender or proposed Lender as follows:

- (a) as to whether the DBFOM Agreement has been supplemented or amended, and if so, attaching a copy of such supplement or amendment to such certificate;
- (b) as to the validity and force and effect of the DBFOM Agreement against LAWA, in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and the general principles of equity;
- (c) as to the existence of any Developer Default of which it has actual knowledge;
- (d) as to the existence of events which, by the passage of time or notice or both, would constitute a Developer Default, to LAWA's actual knowledge;
- (e) as to the then accumulated amount of Noncompliance Points;
- (f) as to the existence of any Claims by LAWA regarding the DBFOM Agreement; and
- (g) as to the Effective Date and the expiration date of the Term.

**17.2** LAWA shall deliver the same certified, written instrument to a Substituted Entity or proposed Substituted Entity within fifteen (15) days after receiving its written request, provided that the request is delivered to LAWA either before the proposed Substituted Entity succeeds to Developer's Interest or within sixty (60) days after the Substituted Entity has succeeded to Developer's Interest.

**17.3** Any such certificate may be relied upon by, and only by, the Lender, proposed Lender, Substituted Entity or proposed Substituted Entity to whom the same may be delivered, and the contents of such certificate shall be binding on LAWA.

## **18. GENERAL**

**18.1** Neither the Lender nor the Collateral Agent shall have any obligation hereunder to extend credit to LAWA or any contractor to LAWA at any time, for any purpose.

**18.2** For so long as any amount under the Financing Documents is outstanding, LAWA shall not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation of the DBFOM Agreement or any interest therein by Developer, other than as specified in the DBFOM Agreement or this Direct Agreement.

## **19. TERMINATION**

This Direct Agreement shall remain in effect until the earlier to occur of (a) the Discharge Date; (b) the time at which all of LAWA's obligations and liabilities have expired or have been satisfied in accordance with the terms of the DBFOM Agreement and this Direct Agreement; and (c) any assignment to a Substituted Entity has occurred under Section 13 and City shall have entered into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Developer has been replaced as a party by the Substituted Entity.

## **20. EFFECT OF BREACH**

Without prejudice to any rights a party may otherwise have, a breach of this Direct Agreement shall not of itself give rise to a right to terminate the DBFOM Agreement.

## **21. NO PARTNERSHIP**

Nothing contained in this Direct Agreement shall be deemed to constitute a partnership between the parties to this Direct Agreement. None of the parties shall hold itself out contrary to the terms of this Section 21.

## **22. REMEDIES CUMULATIVE; NO WAIVER**

No failure or delay by LAWA, the Lenders or the Collateral Agent (or their designee) in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The remedies provided herein are cumulative and not exclusive of any remedies provided by law and may be exercised by the Lenders, the Collateral Agent or any designee, transferee or assignee thereof from time to time. In no event shall any provision of this Direct Agreement or any consent to any departure by any party therefrom be effective unless such waiver is permitted by Section 23, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

## **23. AMENDMENT**

No amendment, modification or waiver of any provision of this Direct Agreement, or consent to any departure herefrom by any party to this Direct Agreement, shall be effective against any party to this Direct Agreement unless the same shall be in writing and signed by the party against whom enforcement is sought, and then such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

## **24. SUCCESSORS AND ASSIGNS**

**24.1** No party to this Direct Agreement may assign or transfer any part of its rights or obligations hereunder without the consent of the other parties, save that the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Financing Documents. In connection with any such assignment or transfer, City agrees to enter into a new Direct Agreement with the successor Collateral Agent on terms that are substantially the same as those of this Direct Agreement.

**24.2** This Direct Agreement shall be binding upon and inure to the benefit of the parties to this Direct Agreement and their respective successors and permitted assigns.

## **25. COUNTERPARTS**

This Direct Agreement may be executed in any number of counterparts, each of which shall be identical and all of which, taken together, shall constitute one and the same instrument, and the parties may execute this Direct Agreement by signing any such counterpart. Transmission by facsimile or electronic mail of an executed counterpart of this Direct Agreement shall be deemed to constitute due and sufficient delivery of such counterpart, to be followed thereafter by an

original of such counterpart. The Parties, in the manner specified by City, may sign this Direct Agreement electronically.

## 26. SEVERABILITY

If, at any time, any provision of this Direct Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## 27. NOTICES

**27.1** Any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Direct Agreement (each, a notice) to a party must be given via written correspondence and email. All notices will be validly given if given on a Business Day to each party at the following address:

To LAWA: Deputy Executive Director - LAMP  
7301 World Way West  
10th Floor  
Los Angeles, CA 90045

with copies to: Department of Airports  
1 World Way  
Post Office Box 92216  
Los Angeles, CA 90009

To Developer: [Address]  
Attention: [\_\_\_\_]  
E-Mail: [\_\_\_\_]

with copies to: [Address]  
Attention: [\_\_\_\_]  
E-Mail: [\_\_\_\_]

To the Collateral Agent: [\_\_\_\_]  
[Address]  
Attention: [\_\_\_\_]  
Email: [\_\_\_\_]

**27.2** A notice shall be deemed to have been given on the earliest of:

- (a) date of receipt, if delivered in person;
- (b) date of receipt (confirmed by automatic answer back or equivalent evidence of receipt), if validly transmitted electronically before 3:00 p.m. (local time at the place of receipt) on a Business Day;

- (c) one Business Day after delivery to the courier properly addressed, if delivered by overnight courier; and
- (d) four Business Days after deposit with postage prepaid and properly addressed, if delivered by United States certified or registered mail.

**27.3** Each of the parties will notify each other via written correspondence and email of any change of address, such notification to become effective 15 days after notification.

## **28. GOVERNING LAW AND JURISDICTION**

**28.1** The venue for any litigation arising out of, relating to or resulting from any matter relating to this Direct Agreement shall be the Torrance Branch of the Los Angeles County Superior Court.

**28.2** This Direct Agreement shall be governed by and construed in accordance with the laws of the State of California, any applicable federal law, the Los Angeles City Charter, and the ordinances, regulations, codes, and Executive Orders enacted and/or promulgated pursuant thereto.

**28.3** Each of Developer, LAWA and the Collateral Agent irrevocably consents to service of process by personal delivery, certified mail, postage prepaid or overnight courier. Nothing in this Direct Agreement will affect the right of any party to serve process in any other manner permitted by law.

**28.4** Each of LAWA, Developer and the Collateral Agent (a) certifies that no representative, agent or attorney of another party has represented, expressly or otherwise, that such party would not, in the event of a proceeding, seek to enforce the mutual waivers in this Section 28 and (b) acknowledges that it has been induced to sign, or change its position in reliance upon the benefits of, this Direct Agreement by, among other things, the mutual waivers and certifications in this Section 28.

## **29. CONFLICT WITH PROJECT AGREEMENT**

In the event of any conflict or inconsistency between the provisions of this Direct Agreement and the DBFOM Agreement, the provisions of this Direct Agreement shall prevail.

**IN WITNESS WHEREOF**, each of the parties to this Direct Agreement has caused this Direct Agreement to be duly executed by its duly authorized officer as of the date first written above.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



[ \_\_\_\_\_ ]**[Collateral Agent]**

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

Name: \_\_\_\_\_

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

**[INSERT DEVELOPER'S NAME]**

CA Contractors License No.: \_\_\_\_\_

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

Name: \_\_\_\_\_

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

**CITY OF LOS ANGELES**

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

Chief Executive Officer  
Los Angeles World Airports

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

Chief Financial Officer  
Los Angeles World Airports

**Approved as to Form**  
**Michael N. Feuer, City Attorney**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Assistant/Deputy City Attorney

**Attest:**

By: \_\_\_\_\_  
Secretary (Signature)

Print Name: \_\_\_\_\_

[SEAL]

**SCHEDULE A**  
**Form of Substitute Accession Agreement**

[Date]

To: City of Los Angeles, Department of Airports, known as Los Angeles World Airports  
For the attention of: Contracting Officer and Chief Counsel  
[Lender and other parties to Financing Agreements to be listed]  
[insert address]  
For the attention of: [\_\_\_\_\_]

From: [Substituted Entity]

**AUTOMATED PEOPLE MOVER PROJECT**  
**SUBSTITUTE ACCESSION AGREEMENT**

Ladies and Gentlemen:

Reference is made to the Design-Build-Finance-Operate-Maintain Agreement, dated as of [\_\_\_\_\_] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**DBFOM Agreement**") between the City of Los Angeles ("**City**"), a municipal corporation, acting by order of and through its Board of Airport Commissioners, and [\_\_\_\_\_] ("**Developer**") and the Direct Agreement, dated as of [\_\_\_\_\_] 20[\_\_\_] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Direct Agreement**") among City, Developer and [\_\_\_\_\_] as Collateral Agent. Terms defined in the Direct Agreement and not otherwise defined herein have the respective meanings set forth in or incorporated into in the Direct Agreement.

1. We confirm that we are a Substituted Entity pursuant to Section 13 of the Direct Agreement.
2. We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the DBFOM Agreement and the Direct Agreement as a Substituted Entity and, accordingly, shall have the rights, powers and obligations of Developer under the DBFOM Agreement and the Direct Agreement.
3. Our address, telephone number and address for electronic mail for the purpose of receiving notices are as follows:  
[Contact details of Substituted Entity]
4. This Substitute Accession Agreement is subject to and shall be construed and interpreted in accordance with the laws of the State of California, any applicable federal law, the Los Angeles City Charter, and the ordinances, regulations, codes, and Executive Orders enacted and/or promulgated pursuant thereto.

The terms set forth herein are agreed to:

[Substituted Entity]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Agreed for and on behalf of:

**CITY OF LOS ANGELES**

By: \_\_\_\_\_  
Chief Executive Officer  
Los Angeles World Airports

By: \_\_\_\_\_  
Chief Financial Officer  
Los Angeles World Airports

**Approved as to Form**  
**Michael N. Feuer, City Attorney**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Assistant/Deputy City Attorney

**Attest:**

By: \_\_\_\_\_  
Secretary (Signature)

Print Name: \_\_\_\_\_

[SEAL]

## **EXHIBIT 5C**

### **CALCULATION OF REFINANCING GAIN**

#### **1. Calculation of the Refinancing Gain**

The total amount of Refinancing Gain equals  $(A - B)$ , as calculated in accordance with this Exhibit 5C, provided that such amount is greater than zero. Each of the variables used to calculate Refinancing Gain shall be determined as follows:

##### **1.1 Create a Pre-Refinancing Financial Model**

Developer shall create a pre-Refinancing financial model (the “Pre-Refinancing Financial Model”) by updating the Financial Model then in effect for actual and projected Project Financial Performance so as to be current immediately prior to the Refinancing, but excluding the impact of the current Refinancing. The Pre-Refinancing Financial Model shall take into account any Refinancing that qualifies as an Exempt Refinancing (under clause (a) of the definition of Exempt Refinancing) exactly as it was reflected in the Base Case Financial Model. In the Pre-Refinancing Financial Model, the resulting net present value of Distributions projected from the anticipated date of the Refinancing through to the end of the Term, discounted at the Original Equity IRR, shall be the value of “B”.

##### **1.2. Create a Post-Refinancing Financial Model**

Developer shall create a post-Refinancing financial model (the “Post-Refinancing Financial Model”) by updating the Pre-Refinancing Financial Model for the impact of the Refinancing, including costs reasonably incurred to achieve the Refinancing. In the Post-Refinancing Financial Model, the resulting net present value of Distributions projected from the anticipated date of the Refinancing through to the end of the Term, discounted at the Original Equity IRR, shall be the value of “A”.

#### **2. Calculating LAWA’s 50% Entitlement**

##### **2.1 Create a Final Refinancing Financial Model**

**2.1.1** Developer shall create a final refinancing financial model by updating the Post-Refinancing Financial Model to reflect the impact of the amounts and timing of the payment(s) (or credits) to be made to LAWA under Section 4.5 of the Agreement, such that the net present value of such payments, discounted at the Original Equity IRR, is equal to 50% of the amount equal to  $(A - B)$ . The resulting nominal post-tax equity internal rate of return shall be deemed to be the “Refinancing Equity IRR.”

**2.1.2** If the Refinancing Equity IRR is lower than the Original Equity IRR, then Developer shall adjust the amounts and timing of the payment(s) (or credits) to be made to LAWA under Section 4.5 of the Agreement, such that the Refinancing Equity IRR would be increased to a level up to, but not in excess of, the Original Equity IRR.

### **3. Mutual Agreement and Financial Model Update**

Subject to the mutual agreement by Developer and LAWA of the Refinancing Gain calculations and entitlement amount, Developer shall prepare a Financial Model Update to the Financial Model then in effect in accordance with Section 4.7.2 of the Agreement that incorporates actual and projected Project Financial Performance, the impact of the Refinancing and the sharing of the Refinancing Gain.

**EXHIBIT 5D**

**FORM OF OPINION FROM LAWA'S LEGAL COUNSEL**

**[LAWA Letterhead]**

**[Insert Address of Developer and Lender(s)]**

\_\_\_\_, 2018

Ladies and Gentlemen:

I am a Deputy City Attorney assigned to provide counsel to the Department of Airports of the City of Los Angeles, California ("**LAWA**"), and as such have advised LAWA in connection with the execution by the City of Los Angeles (the "**City**") of:

(i). the Design-Build-Finance-Operate-Maintain Agreement for the Automated People Mover Project dated as of [\_\_\_\_], 2018 (the "**Agreement**") by and between the City and [\_\_\_\_], a [\_\_\_\_] (the "**Developer**"); and

(ii). the Direct Agreement dated as of [\_\_\_\_], 2018 (the "**Direct Agreement**") by and between the City, the Developer and [\_\_\_\_] (in such capacity, together with its successors in such capacity, the "**Collateral Agent**") the Collateral Agent for the Lenders (as defined below) pursuant to that certain credit agreement dated as of the date hereof (the "**Senior Credit Agreement**"), among the Developer, [\_\_\_\_] (the "**Lender[s]**"), and [\_\_\_\_], as administrative agent.

The agreements in clauses (i) – (ii) are collectively referred to hereinafter as the "**City Agreements**".

We have examined executed originals or copies identified to our satisfaction of each of the City Agreements. We have further examined such other documents proceedings, certificates and other materials as we have deemed necessary in order to render the opinions expressed herein.

With respect to the various factual matters material to my opinion, we have relied upon certificates and representations of the City, LAWA and other public officials. We have assumed the due execution and delivery, pursuant to due authorization of the City Agreements by parties other than the City and LAWA, the validity and binding effect thereof as to such other parties and the genuineness of all signatures (other than those of the City) on all documents seen or reviewed by us, the authenticity of all documents submitted to us as originals and the conformity with the original documents of all documents submitted to us as copies.

Whenever an opinion expressed herein is stated to be to my knowledge, or known to me, it means that, during the course of my representation of the City, I have not acquired information giving me actual knowledge of the existence or absence of the facts forming the basis for such opinion, and that, except to the extent expressly set forth herein I have not conducted an independent investigation to determine the existence or absence of such facts.

Based on the foregoing, I am of the opinion that:

1. Section 371(b) of the Los Angeles City Charter and Ordinance No. 183585 have been

- duly enacted and are in full force and effect.
2. The City of Los Angeles is a charter city and municipal corporation duly organized and validly existing under the Constitution of the State of California.
  3. The City is duly organized and operating pursuant to the Los Angeles City Charter and had and has, as the case may be, the full legal capacity, right, power and authority to enter into, carry out and perform its obligations under the City Agreements, subject to the limitations and conditions set forth therein.
  4. Each of the City Agreements has been duly authorized, executed and delivered by the City, and such documents are legal, valid and binding instruments of the City and are enforceable against the City in accordance with their terms, except as enforceability may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (b) principles of equity, whether considered at law or in equity, (c) the sovereign immunity of the City; provided that sovereign immunity shall not bar the enforcement of claims presented in accordance with the provisions of the applicable City Agreement and California law, so long as such claims are based on contractual rights, and (d) the limitations and conditions set forth herein.
  5. The execution and delivery by the City of the City Agreements and the performance of its obligations under the City Agreements are within its powers and do not and will not conflict with, or constitute a breach or result in a violation of (a) any existing constitutional or statutory provision of the State of California, (b) to my knowledge, any existing agreement or other instrument to which the City is a party or by which it is bound, or (c) to my knowledge, any existing order, rule, regulation, judgment, decree ordinance of any court, government or governmental authority having jurisdiction over the City as applicable or its properties.
  6. All official action required to be taken by the City and all consents, approvals, authorizations or orders of or filings with or notice to, any governmental or regulatory authority necessary to authorize and enable the City to execute and deliver the City Agreements or to perform LAWA's obligations thereunder (other than acts under the City Agreements that may be taken by LAWA in the future) have been taken and obtained, subject to the limitations and conditions set forth herein.
  7. There is no litigation at law or in equity or any proceeding before any court or governmental agency, to my knowledge, pending or threatened with respect to (a) the organization or existence of the City, (b) the City's authority to execute or deliver the City Agreements, (c) the validity or enforceability of the City Agreements, (d) the authority or the ability of LAWA to perform its obligations under such documents, (e) the title of the officers executing any such documents, or (f) any authority or proceeding relating to the execution and delivery of such documents.

The opinions expressed in this letter are limited to the opinions expressly stated, and no other opinions should be inferred. The opinions are expressed only as of the date hereof.

Sincerely,

*[Insert Signature]*



**EXHIBIT 5E**

**FORM OF OPINION FROM DEVELOPER'S LEGAL COUNSEL**

***[Insert Firm Letterhead]***

***[Insert LAWA Address]***

***[Insert Lender Addressees]***

\_\_\_\_, 2018

Ladies and Gentlemen:

We [ ] (“**Firm**”) have acted as special counsel to [ ], a [ ] (the “**Developer**”) in connection with the Design-Build-Finance-Operate-Maintain Agreement for the Automated People Mover Project dated as of [ ], 2018 (the “**Agreement**”) between the City of Los Angeles (“**City**”) and the Developer (Contract # \_\_\_\_). This opinion is being furnished pursuant to Section 3.2.4.1 of the Agreement. Capitalized terms used herein without definition have the meanings ascribed to such terms in the Agreement.

In connection with the opinions contained herein, we have examined executed counterparts, or copies of such executed counterparts certified or otherwise identified to our satisfaction, of:

- (i) the Agreement;
- (ii) the Direct Agreement, by and between the City, the Developer and the Collateral Agent;
- (iii) the Equity Members Funding Agreements;
- (iv) the the APM Fixed Facilities Contract, the APM Fixed Facilities Designer Contract and the APM Operating System Contract; and
- (v) the Financing Documents.

***[add other agreements, if necessary]***

Collectively, (i) through (vi) above shall be hereinafter referred to as the “**Transaction Documents**”.

We have further examined and relied upon the accuracy of original, certified, conformed, photocopied or telecopied copies of such records, agreements, certificates and other documents as we have deemed necessary or appropriate to enable us to render the opinions expressed herein. In all such examinations we have assumed the genuineness of signatures on original documents and the conformity to such original documents of all copies submitted to us as certified, conformed, photocopied or telecopied copies. We have further assumed that none of such documents has been subsequently rescinded, revoked, restated, modified or amended

in any way other than by documents that have been submitted to us. We have made no independent inquiry or investigation of any factual matters or circumstances relevant to the opinions herein set forth, but instead have relied solely upon the accuracy of oral or written statements and representations of officers and other representatives of the Developer, statements, representations and warranties made in the Transaction Documents.

In our examination, we have assumed, without independent investigation, the following:

- (i) the Transaction Documents have been duly authorized, executed and delivered by each party thereto (other than the Developer);
- (ii) that each party (other than the Developer) to each Transaction Document is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and has full power and authority to enter into and to carry out its obligations under such Transaction Document;
- (iii) the authorization, execution and delivery by each party (other than the Developer) of each Transaction Document to which it is a party does not, and such party's performance thereunder will not, breach, conflict with, or constitute a violation of, (i) the organizational documents, bylaws or similar governing documents of such party or (ii) any laws or any writ, order, injunction or decree of any court or governmental authority or any provision of any agreement or instrument to which such party or its properties may be bound;
- (iv) that each Transaction Document is the legal, valid and binding obligation of each party thereto (other than the Developer) enforceable against such party in accordance with the terms of such Transaction Document;
- (v) the legal capacity and competency of all Persons signing the Transaction Documents on behalf of the parties thereto (other than the Developer); and
- (vi) that each party to the Transaction Documents (other than the Developer) has all necessary governmental consents, approvals, licenses or permits required in order to execute and deliver the Transaction Documents to which it is a party.

The opinions set forth below that make reference to, or are stated to be qualified by, the expression "to our knowledge" or any expression of similar import are limited to the current actual knowledge of the individual attorneys at this Firm who have devoted substantial attention to the representation of the Developer in connection with the preparation, negotiation, execution and delivery of the Transaction Documents (but not the knowledge of any other attorney of this Firm or any constructive or imputed knowledge of any information, whether by reason of our representation of the Developer or otherwise). We have not undertaken an independent investigation to determine the accuracy of any such statement, and any limited inquiry undertaken by us during the preparation of this letter should not be regarded as such an investigation.

Based upon the foregoing and our examination of such questions of law as we have deemed necessary or appropriate, and subject to limitations and qualifications set forth below, it is our opinion that:

1. The Developer is a [limited liability company] duly formed, duly organized and validly existing under the laws of [\_\_\_]. The Developer is duly qualified to do business and is in good standing under the laws of California, with the requisite power and all required licenses to carry on its present activities and the activities proposed to be undertaken by the Developer pursuant to the Transaction Documents.
2. The execution and delivery by the Developer of the Transaction Documents and the performance by the Developer of its obligations thereunder are within its powers and have been duly authorized by all necessary corporate actions of the Developer, each person executing such Transaction Documents on the Developer's behalf has been duly authorized to execute and deliver each such document on Developer's behalf and such Transaction Documents have been duly executed and delivered by the Developer.
3. Each of the Transaction Documents has been duly executed and delivered by the Developer.
4. Each of the Transaction Documents constitutes a valid and binding agreement of the Developer, enforceable against the Developer in accordance with the terms thereof.
5. Neither the execution and delivery by the Developer of the Transaction Documents nor the performance by the Developer of any of its obligations thereunder violates its [certificate of formation or limited liability company agreement].
6. Neither the execution and delivery by the Developer of the Transaction Documents nor the performance by the Developer of any of its obligations thereunder, result in a breach of or constitute a default under any agreement, indenture, mortgage, deed of trust or other instruments to which the Developer is a party.
7. There is no litigation at law or in equity or any action, suit, proceeding, or investigation before any court or governmental agency, to our knowledge, pending or threatened, which challenges the Developer's authority to execute, delivery or perform, or the validity or enforceability of, the Transaction Documents, or which challenges the authority of the Developer's representative from executing the Transaction Documents.

Our opinions are subject to the following additional assumptions, limitations and qualifications:

A. Our opinions are subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general principles of equity. Without limiting the foregoing qualifications, the opinions expressed herein do not purport to cover, and we express no opinion with respect

to, the applicability of Section 548 of the federal Bankruptcy Code or any comparable provision of state law, including the provisions relating to fraudulent conveyances.

B. Indemnities, rights of contribution, exculpatory provisions, provisions in respect of rights to liquidated damages, penalties or punitive damages, waivers of rights and provisions requiring arbitration of disputes may be limited on public policy grounds or may be prohibited by law.

C. Certain of the remedies in the Transaction Documents may be limited or rendered unenforceable by applicable law. In our opinion, however, applicable law does not render the remedies afforded by the Financing Documents inadequate for the practical realization by the Lenders of the principal benefits intended to be provided by the Financing Documents.

D. We express no opinion with respect to any provision of the Transaction Documents that purports to require a prevailing party in a dispute to pay attorney's fees and expenses, or other costs, to a non-prevailing party.

E. We express no opinion as to the enforceability of any agreements in any Transaction Document by the parties thereto to agree in the future upon any matter.

This letter speaks only as of the date hereof, and we disclaim any undertaking to update this letter to take into account any future changes of fact or law. The opinions expressed herein are solely for your benefit, and may not be relied on in any manner or for any purposes by any other Person without our written consent, and are not to be used, circulated, quoted, published or otherwise referred to or disseminated for any other purpose.

Very truly yours,

[Insert Signature]

## EXHIBIT 5F

### BASE MaxAP ADJUSTMENT FOR BASE INTEREST RATE FLUCTUATION AND CREDIT SPREAD RISK MITIGATION

To facilitate the adjustment process described in this Exhibit, Developer and LAWA will collaboratively prepare a Financial Model closing protocols document that will set forth additional details for how the calculations set forth in this Exhibit will be applied to the Base Case Financial Model and the Key Ratios therein.

#### **1. Base Interest Rate Fluctuations**

**1.1** Promptly following Financial Close, Developer shall update the Base Case Financial Model in effect as of the Effective Date to:

- (a) reflect 100% of the changes to the Base Interest Rates that have occurred during the Bond Rate Protection Period or Bank Debt Rate Protection Period (as applicable), including any change in term structure and coupon structure of any Bond Financing;
- (b) solve for the lowest possible MaxAP;
- (c) maintain the Equity IRR to be equal to the Original Equity IRR; and
- (d) satisfy all Key Ratios in the Base Case Financial Model.

**1.2** The MaxAP resulting from the update to the Base Case Financial Model in accordance with Section 1.1 will be the Base Interest Rate adjusted Base MaxAP (“**MaxAP<sub>BIRBase</sub>**”) and the resulting Financial Model will be referred to herein as “**BIR Financial Model**”).

#### **2. Credit Spread Fluctuations**

**2.1** If Developer is not eligible for Credit Spread Risk Mitigation:

- (a) Developer shall bear 100% of the impact (either positive or negative) on its Original Equity IRR for changes in credit spreads over the Bond Rate Protection Period;
- (b) the remainder of this Section 2 and Section 3 of this Exhibit 5F do not apply to Developer; and
- (c) MaxAP<sub>BIRBase</sub> calculated pursuant to Section 1 will become the interim Base MaxAP (“**MaxAP<sub>INTERIM</sub>**”) used in the final Financial Model solve required under Section 4.

**2.2** If Developer is eligible for Credit Spread Risk Mitigation, Developer shall calculate the following, in each case, to achieve the lowest possible applicable MaxAP and maintain the Original Equity IRR at the same levels reflected in Developer’s Base Case Financial Model while its Key Ratios remain in compliance with the Financing Agreements and consistent with the Base Case Financial Model:

- (a) **“MaxAP<sub>BASELINE</sub>”** by updating the BIR Financial Model (which was prepared in accordance with Section 1 of this Exhibit 5F) with the applicable Baseline Credit Spreads (if different from those already in BIR Financial Model);
- (b) **“MaxAP<sub>PRICING</sub>”** by updating the Base Case Financial Model with the actual Bond Financing pricing and the actual net proceeds, coupon and term structure as of the Bond Pricing Date; and
- (c) the upper boundary (**“MaxAP<sub>UPPER</sub>”**) and lower boundary (**“MaxAP<sub>LOWER</sub>”**) between which Developer shall bear the full impact of changes in credit spreads (the **“No-Mitigation Range”**), calculated as follows:
  - (i) MaxAP<sub>UPPER</sub> shall be the greater of MaxAP<sub>BIRBase</sub> and MaxAP<sub>BASELINE</sub>,  

$$\text{MaxAP}_{\text{UPPER}} = \text{Maximum} ( \text{MaxAP}_{\text{BIRBase}}, \text{MaxAP}_{\text{BASELINE}} )$$

and
  - (ii) MaxAP<sub>LOWER</sub> shall be the lessor of MaxAP<sub>BIRBase</sub> and MaxAP<sub>BASELINE</sub>  

$$\text{MaxAP}_{\text{LOWER}} = \text{Minimum} ( \text{MaxAP}_{\text{BIRBase}}, \text{MaxAP}_{\text{BASELINE}} )$$

### 3. Adjustments to the Base MaxAP for Base Interest Rate fluctuation and Credit Spread Risk Mitigation

Developer shall, subject to LAWA’s review and approval, calculate the MaxAP<sub>INTERIM</sub> to be used in Section 4, in accordance with one of the following scenarios:

- (a) if MaxAP<sub>PRICING</sub> is above the No-Mitigation Range, then MaxAP<sub>INTERIM</sub> shall be MaxAP<sub>BIRBase</sub> plus 85% of the difference between the MaxAP<sub>PRICING</sub> and the higher of the MaxAP<sub>BASELINE</sub> and MaxAP<sub>BIRBase</sub>:
 

if MaxAP<sub>PRICING</sub> > MaxAP<sub>UPPER</sub>, then  

$$\text{MaxAP}_{\text{INTERIM}} = \text{MaxAP}_{\text{BIRBase}} + 85\% \times ( \text{MaxAP}_{\text{PRICING}} - \text{MaxAP}_{\text{UPPER}} )$$
- (b) if MaxAP<sub>PRICING</sub> is below the No-Mitigation Range, then MaxAP<sub>INTERIM</sub> shall be MaxAP<sub>BIRBase</sub> reduced by 85% of the difference between the MaxAP<sub>PRICING</sub> and the lower of the MaxAP<sub>BASELINE</sub> and MaxAP<sub>BIRBase</sub>:
 

if MaxAP<sub>PRICING</sub> < MaxAP<sub>LOWER</sub>, then  

$$\text{MaxAP}_{\text{INTERIM}} = \text{MaxAP}_{\text{BIRBase}} + 85\% \times ( \text{MaxAP}_{\text{PRICING}} - \text{MaxAP}_{\text{LOWER}} )$$
- (c) if MaxAP<sub>PRICING</sub> falls on or within the No-Mitigation Range, then there will be no further adjustment to MaxAP<sub>BIRBase</sub> and MaxAP<sub>INTERIM</sub> will equal MaxAP<sub>BIRBase</sub>.
 

if ( MaxAP<sub>PRICING</sub> ≤ MaxAP<sub>UPPER</sub> AND MaxAP<sub>PRICING</sub> ≥ MaxAP<sub>LOWER</sub> ), then  

$$\text{MaxAP}_{\text{INTERIM}} = \text{MaxAP}_{\text{BIRBase}}$$

Tables 3A and 3B below illustrate the scenarios described in Section 3.

**Table 3A - Scenario A**

After adjusting for movements in Base Interest Rates, the Base MaxAP is equal to or lower than the Base MaxAP calculated using the Baseline Credit Spreads (also adjusted for movements in Base Interest Rates).

		<b><u>Pricing Outcomes:</u></b>		
		<b>(i)</b> MaxAP <sub>PRICING</sub> is above the No-Mitigation Range	<b>(ii)</b> MaxAP <sub>PRICING</sub> is below the No-Mitigation Range	<b>(iii)</b> MaxAP <sub>PRICING</sub> falls on or within the No-Mitigation Range
		MaxAP <sub>PRICING</sub> ↑		
MaxAP <sub>BASELINE</sub>				↓ MaxAP <sub>PRICING</sub>
MaxAP <sub>BIRBase</sub>				↑
			↓ MaxAP <sub>PRICING</sub>	
		MaxAP <sub>BIRBase</sub> is increased by 85% of the difference between MaxAP <sub>BASELINE</sub> and MaxAP <sub>PRICING</sub>	MaxAP <sub>BIRBase</sub> is decreased by 85% of the difference between MaxAP <sub>BIRBase</sub> and MaxAP <sub>PRICING</sub>	No adjustment made to MaxAP <sub>BIRBase</sub>

**Table 3B - Scenario B**

After adjusting for movements in Base Interest Rates, the Base MaxAP is higher than the Base MaxAP calculated using the Baseline Credit Spreads (also adjusted for movements in Base Interest Rates).

		<u>Pricing Outcomes:</u>		
		(i) MaxAP <sub>PRICING</sub> is above the No-Mitigation Range	(ii) MaxAP <sub>PRICING</sub> is below the No-Mitigation Range	(iii) MaxAP <sub>PRICING</sub> falls on or within the No-Mitigation Range
		MaxAP <sub>PRICING</sub> ↑		
MaxAP <sub>BIRBase</sub>				↓ MaxAP <sub>PRICING</sub>
MaxAP <sub>BASELINE</sub>				↑
			↓ MaxAP <sub>PRICING</sub>	
		MaxAP <sub>BIRBase</sub> is increased by 85% of the difference between MaxAP <sub>BIRBase</sub> and MaxAP <sub>PRICING</sub>	MaxAP <sub>BIRBase</sub> is decreased by 85% of the difference between MaxAP <sub>BASELINE</sub> and MaxAP <sub>PRICING</sub>	No adjustment made to MaxAP <sub>BIRBase</sub>

**4. Financial Model Update and Base MaxAP revision**

**4.1** On the date of Financial Close, Developer shall update and solve the Base Case Financial Model then in effect with the following:

- (a) MaxAP<sub>INTERIM</sub>, calculated in accordance with Section 2.1 or Section 3, as applicable;
- (b) actual Project Debt pricing, including net proceeds, Base Interest Rates, credit spreads, coupons and term structure as of the Bank Debt Pricing Date or Bond Pricing Date, as applicable;
- (c) all other changes in terms of financing assumed between those indicated in the Bid Financial Model submitted with Developer’s Financial Proposal and in Developer’s financial plan as set forth in the Financing Documents as of the Financial Close Date; and
- (d) all other changes required to be reflected in the Financial Model as result of any steps taken under Section 3.4.2 of the Agreement.



**4.2** The financial model resulting from the update to the Base Case Financial Model in accordance with Section 4.1 shall be proposed by Developer to LAWA as the Financial Model Update described in Section 3.3.1 of the Agreement and, upon execution of the amendment agreement referred to in Section 3.3.2 of the Agreement: (i) the resulting financial model shall become the “Financial Model”; (ii) the projected MaxAP for the first Operating Year (annualized to be a 12-month period) therein will become the new “Base MaxAP” (and “Base Capital MaxAP” and “Base Operating MaxAP” shall also be amended); and (iii) the internal rate of return on equity therein shall become the “Equity IRR.”