

**City and County of San Francisco
Airport Commission
P.O. Box 8097
San Francisco, California 94128**

Modification No. 6

This Modification is made this 10th day of December 2021, in the City and County of San Francisco, State of California, by and between The Bank of New York Mellon Trust Company, N.A. (the “Trustee”), and the City and County of San Francisco, a municipal corporation (the “City”), acting by and through its Airport Commission (the “Commission”).

RECITALS

WHEREAS, City and Trustee have entered into the Agreement (as defined below); and

WHEREAS, on November 4, 1991, by Resolution No. 91-0197, the Commission awarded the Agreement to First Interstate Bank, Ltd. (now known as the Bank of New York Mellon Trust Company, N.A.) to provide bond trustee services in the amount of \$260,000; and

WHEREAS, bond trustee services are required pursuant to Resolution No. 91-0210, adopted by the Commission on December 3, 1991 (as subsequently amended and supplemented, the “1991 Master Bond Resolution”); and

WHEREAS, the 1991 Master Bond Resolution requires the services of a bond trustee so long as any of the Commission’s bonds are outstanding; and

WHEREAS, in accordance with the provisions of the 1991 Master Bond Resolution, the Trustee may serve as bond trustee until a replacement bond trustee is appointed by the Commission; and

WHEREAS, on December 4, 2001, the Commission adopted Resolution No. 01-0360 approving Modification No. 1 to the Agreement to increase the authorized not-to-exceed compensation amount by \$600,000, for a total contract authorization of \$860,000 to provide ongoing trustee services; and

WHEREAS, on February 6, 2007, the Commission adopted Resolution No. 07-0035 approving Modification No. 2 to the Agreement to increase the authorized not-to-exceed compensation amount by \$900,000, for a total contract authorization of \$1,760,000 to provide ongoing trustee services; and

WHEREAS, on November 15, 2011, the Commission adopted Resolution No. 11-0251 approving Modification No. 3 to the Agreement to increase the authorized not-to-exceed compensation amount by \$800,000, for a total contract authorization of \$2,560,000 to provide ongoing trustee services; and

WHEREAS, on February 7, 2017, the Commission adopted Resolution No. 17-0022 approving Modification No. 4 to the Agreement to increase the authorized not-to-exceed compensation amount by \$190,000, for a total contract authorization of \$2,750,000 to provide ongoing trustee services; and

WHEREAS, on June 1, 2018, the City and Trustee administratively modified the Agreement to amend Appendix A – Services to be Provided by Trustee to include additional services and to delete and replace in its entirety Appendix B – Bond Trustee Services – Calculation of Charges without increasing the not-to-exceed compensation amount through Modification 5; and

WHEREAS, City and Trustee desire to modify the Agreement on the terms and conditions set forth herein to increase the authorized not-to-exceed compensation and to update standard contractual clauses; and

WHEREAS, on December 7, 2021, by Resolution No. 21-0229 the Commission approved this Modification to the Agreement to increase the authorized not-to-exceed compensation amount by \$1,050,000, for a total contract authorization of \$3,800,000 to provide ongoing trustee services; and

WHEREAS, on _____, 2022, by Resolution No. _____ the Board of Supervisors approved this Modification to the Agreement, and retroactively approved the Agreement and prior Modifications; and

WHEREAS, approval for this Modification was obtained when the Department of Human Resources approved PSC 4023-98/99 on September 23, 2021;

NOW, THEREFORE, Trustee and the City agree as follows:

1. Definitions. The following shall apply to this Modification:

a. **Agreement.** Contract No. 9186 dated March 1992, between the Trustee and the City, as previously amended by the following modifications, and as amended by this Modification:

Modification No. 1, dated December 4, 2001,
Modification No. 2, dated February 6, 2006,
Third Amendment to Contract No. 9186, dated April 1, 2012,
Modification No. 4, dated April 1, 2017, and
Modification No. 5, dated June 1, 2018.

b. **Other Terms.** Terms not used and not defined in this Modification shall have the meanings assigned to such terms in the Agreement.

c. **“City Data”** means all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, City instructions to the Trustee, trust account statements, and Confidential Information.

d. Confidential Information

d.1 **“Confidential Information”** means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 *et seq.*); the California Confidentiality of Medical Information Act (Civil Code § 56 *et seq.*); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and Administrative Code Chapter 12M (“Chapter 12M”).

d.2 **“Confidential Information”** also means any and all nonpublic information, whether written, electronic, or oral, concerning or relating to San Francisco International Airport (the “Airport”) technology, computer, or data systems, processes, or procedures, or Critical Infrastructure Information or Protected Critical Infrastructure Information as defined under the Homeland Security Act

of 2002 and 6 CFR §29.2, which information or access to such information is supplied by the Airport or on behalf of the Airport to Trustee or otherwise acquired by Trustee during the course of dealings with the Airport. Additionally, "Confidential Information" includes security or security-related information, whether or not such information constitutes sensitive security information ("SSI") as provided under 49 CFR Part 1520. In the event Trustee acquires SSI, it shall treat such information in conformance with federal law and the provisions of this Agreement.

d.3 "Confidential Information" is confidential regardless of whether such information is in its original form, a copy, or a derivative product. "Derivative" means written or electronic material that is, to the actual knowledge of the Trustee, created from or with, or based on Confidential Information (i.e., a report analyzing Confidential Information shall also be considered Confidential Information). Confidential Information shall also mean proprietary, trade secret or other protected information, identified as Confidential Information by the Airport.

e. **Digital Signature** means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

2. Subsection (a) of **Section 4. Compensation** of the Agreement is hereby deleted in its entirety and replaced with **New Section 4. Compensation** to read as follows:

(a) For the complete and satisfactory performance of the services detailed in Appendix A attached to the Agreement, the City will pay the Trustee for all expenses as detailed in Appendix B attached to the Agreement. For purposes of certification by the Controller, the total compensation will be the original contract amount of \$260,000, plus the approved increment of \$600,000 pursuant to Resolution No. 01-0360, plus the approved increment of \$900,000 pursuant to Resolution No. 07-0035, plus the approved increment of \$800,000 pursuant to Resolution No. 11-0251, plus the approved increment of \$190,000 pursuant to Resolution No. 17-0022, plus the approved increment of \$1,050,000 pursuant to Resolution No. 21-0229 for a total of \$3,800,000.

3. **Section 7. Notices to the Parties** is hereby amended to add **Section 7.1.** as follows:

7.1 The Parties consent to the use of Digital Signatures, affixed using the City's DocuSign platform (provided that, the DocuSign signature status must be "valid" and include the DocuSign Certificate of Completion), to execute this Agreement and all subsequent modifications.

4. **Section 19. Limitations on Contribution** is hereby deleted in its entirety and replaced with **New Section 19. Limitations on Contribution** to read as follows:

19. Limitations on Contributions. By executing this Agreement, Trustee acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code ("Section 1.1.126"), which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Trustee's board of directors; Trustee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership

interest of more than 10% in Trustee; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Trustee. Trustee certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

5. **Section 25. Sugar-Sweetened Beverage Prohibition** has been deleted in its entirety and replaced with **New Section 25. Distribution of Beverages and Water** hereby added to the Agreement, as follows:

25. **Distribution of Beverages and Water.**

25.1 **Sugar-Sweetened Beverage Prohibition.** Trustee agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by Administrative Code Chapter 101, as part of its performance of this Agreement.

25.2 **Packaged Water Prohibition.** Trustee agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

6. **New Section 31. Withholding** is hereby added to the Agreement, as follows:

31. **Withholding.** Trustee agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Trustee further acknowledges and agrees that City may withhold any payments due to Trustee under this Agreement if Trustee is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Trustee, without interest, upon Trustee coming back into compliance with its obligations.

7. **New Section 33. Incorporation of Recitals** is hereby added to the Agreement, as follows:

33. **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

8. **New Section 35. Notification of Legal Requests** is hereby added to the Agreement, as follows:

35. **Notification of Legal Requests.** Trustee shall, as soon as reasonably practicable after it receives the request, notify City upon receipt of any subpoenas, service of process, discovery requests and other legal requests ("Legal Requests") related to all City Data, or which in any way might reasonably require access to City Data, provided that such notification is not prohibited by law or regulation. Trustee shall not respond to Legal Requests related to City without first notifying City (unless such notification is prohibited by law or regulation) other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Notwithstanding the foregoing, the Trustee is in no event required to notify the City of requests for City Data by government agencies or regulators having or claiming to have jurisdiction or regulatory authority over the Trustee or any of its affiliates and requesting such information in the normal course of its regulatory oversight of Trustee.

9. **New Section 36. Data and Security** is hereby added to the Agreement, as follows:

36. Data and Security

36.1 Nondisclosure of City Data, Private or Confidential Information

36.1.1 Protection of Private Information. If this Agreement requires City to disclose "Private Information" to Trustee within the meaning of Administrative Code Chapter 12M ("Chapter 12M"), Trustee and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services; provided, however, that notwithstanding anything to the contrary herein or in San Francisco Administrative Code Chapter 12M, the foregoing shall not be construed to prohibit (i) disclosure of any and all information that is or becomes publicly known, or information obtained by Trustee from sources other than the other parties hereto, (ii) disclosure of any and all information (A) if required to do so by any applicable rule or regulation, (B) to any government agency or regulatory body having or claiming authority to regulate or oversee any aspects of Trustee's business or that of its affiliates, (C) pursuant to any subpoena, civil investigative demand or similar demand or request of any court, regulatory authority, arbitrator or arbitration to which Trustee or any affiliate or an officer, director, employee or shareholder thereof is a party or (D) to any affiliate, independent or internal auditor, agent, employee or attorney of Trustee having a need to know the same, provided that Trustee advises such recipient of the confidential nature of the information being disclosed, or (iii) any other disclosure authorized by the City in transaction documents that it executes in connection with this Agreement. Trustee is subject to the enforcement and penalty provisions in Chapter 12M.

36.1.2 Confidential Information. In the performance of Services, Trustee may have access to City Data and /or City's Confidential Information, the disclosure of which to third parties may damage City. If City discloses City Data or Confidential Information to Trustee, such information must be held by Trustee in confidence and used only in performing the Agreement. provided that, notwithstanding anything herein to the contrary, the foregoing shall not be construed to prohibit (i) disclosure of any and all information that is or becomes publicly known, or information obtained by Trustee from sources other than the City, (ii) disclosure of any and all information (A) if required to do so by any applicable rule or regulation, (B) to any government agency or regulatory body having or claiming authority to regulate or oversee any aspects of Trustee's business or that of its affiliates, (C) pursuant to any subpoena, civil investigative demand or similar demand or request of any court, regulatory authority, arbitrator or arbitration to which Trustee or any affiliate or an officer, director, employer or shareholder thereof is a party, in accordance with Section 35, or (D) to any affiliate, independent or internal auditor, agent, employee or attorney of Trustee having a need to know the same, provided that Trustee advises such recipient of the confidential nature of the information being disclosed, or (iii) any other disclosure authorized by the City in transaction documents or written instructions that it executes in connection with this Agreement or the Master Bond Resolution. Trustee shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own Confidential Information.

36.2 Payment Card Industry ("PCI") Requirements – Not applicable

36.3 Business Associate Agreement – Not applicable

36.4 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City. Any intellectual property of the Trustee created by the Trustee to provide services hereunder (such intellectual property, "New BNY Mellon Intellectual Property"), shall not be

deemed City Data or a derivative work of City Data for the purposes of this Section 36.4; provided, however, that such New BNY Mellon Intellectual Property shall not contain or reference any City Data.

36.5 Management of City Data and Confidential Information

36.5.1 Access to City Data. City shall at all times have access to and control of all City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost. Trustee shall retain and preserve City Data consistent with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Trustee, independent of where the City Data is stored, or such longer period as may be consistent with the Trustee's policies and procedures.


36.5.2 Use of City Data and Confidential Information. Trustee agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence, except as otherwise permitted or required hereunder. Trustee shall not use or disclose City Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Access to City's Confidential Information must be strictly controlled and limited to Trustee's staff assigned to this project on a need-to-know basis only. Trustee is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Trustee's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Trustee, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

36.5.3 Disposition of Confidential Information. Upon termination of Agreement or request of City, Trustee shall as soon as practicable return copies of all Confidential Information identified by the City, with the understanding that the Trustee must retain originals and copies of such Confidential Information for its records.

10. **Effective Date.** Each of the changes set forth in this Modification shall be effective on and after the date of this Modification.

11. **Legal Effect.** Except as expressly changed by this Modification, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	TRUSTEE THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
By: _____ Ivar C. Satero, Airport Director	 _____ Authorized Signature
Attest:	Josephine Libunao _____ Printed Name
By _____ Kantrice Ogletree, Secretary Airport Commission	Vice President _____ Title
Resolution No: 21-0229 _____	The Bank of New York Mellon Trust _____ Company Name
Adopted on: December 7, 2021 _____	0000009793 _____ City Supplier Number
Approved as to Form:	50 Fremont Street, Suite 3900 _____ Address
David Chiu City Attorney	San Francisco, CA 94105 _____ City, State, ZIP
By _____ Brooke D. Abola Deputy City Attorney	415-263-2418 _____ Telephone Number
	95-3571558 _____ Federal Employer ID Number

