

FORM OF CONTINUING DISCLOSURE CERTIFICATE

The Continuing Disclosure Certificate (the “Disclosure Certificate”) is executed and delivered by the Port Commission of the City and County of San Francisco (the “Port Commission”) in connection with the issuance of \$_____ aggregate principal amount of Port Commission of the City and County of San Francisco Revenue Refunding Bonds, Series 2020A (Non-AMT Tax-Exempt) (the “Series 2020A Bonds”) and Series 2020B (Federally Taxable) (the “Series 2020B Bonds and, together with the Series 2020A Bonds, the “Series 2020 Bonds”). The Series 2020 Bonds are being issued pursuant to an Indenture of Trust, dated as of February 1, 2010, between the Port Commission and U.S. Bank National Association (the “Trustee”), as successor trustee to Deutsche Bank National Trust Company, as amended and supplemented by a First Supplement to Indenture of Trust dated as of February 1, 2010, a Second Supplement to Indenture of Trust dated as of May 1, 2014 and a Third Supplement to the Indenture of Trust dated as of January 1, 2020, between the Port Commission and the Trustee (collectively, the “Indenture”).

The Port Commission covenants and agrees in this Disclosure Certificate as follows:

SECTION 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the Port Commission for the benefit of the Holders and Beneficial Owners of the Series 2020 Bonds and in order to assist the Participating Underwriters in complying with Securities and Exchange Commission (the “S.E.C.”) Rule 15c2-12(b)(5).

SECTION 2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in the Disclosure Certificate unless otherwise defined in this Section 2, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Port Commission pursuant to, and as described in, Sections 3 and 4 of the Disclosure Certificate.

“Beneficial Owner” shall mean any person which: (a) has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Series 2020 Bonds (including persons holding Series 2020 Bonds through nominees, depositories or other intermediaries) including, but not limited to, the power to vote or consent with respect to any Series 2020 Bonds or to dispose of ownership of any Series 2020 Bonds; or (b) is treated as the owner of any Series 2020 Bonds for federal income tax purposes.

“Dissemination Agent” shall mean the [Port Commission], acting in its capacity as Dissemination Agent under the Disclosure Certificate, or any successor Dissemination Agent designated in writing by the Port Commission and which has filed with the Port Commission a written acceptance of such designation.

“Holder” shall mean either the registered owners of the Series 2020 Bonds, or, if the Series 2020 Bonds are registered in the name of The Depository Trust Company or another recognized depository, any applicable participant in such depository system.

“Listed Events” shall mean any of the events listed in Section 5(a) of the Disclosure Certificate.

“MSRB” shall mean the Municipal Securities Rulemaking Board or any other entity designated or authorized by the Securities and Exchange Commission to receive continuing disclosure filings pursuant to the Rule. Until otherwise designated by the MSRB or the Securities and Exchange Commission, filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) website of the MSRB currently located at <http://emma.msrb.org>.

“Official Statement” shall mean the final Official Statement, dated _____, 2019, prepared in connection with the sale and offering of the Series 2020 Bonds.

“Participating Underwriter” shall mean any of the original underwriters or purchasers of the Series 2020 Bonds required to comply with the Rule in connection with offering of the Series 2020 Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the S.E.C. under the Securities Exchange Act of 1934, as the same may be amended from time to time.

SECTION 3. Provision of Annual Reports.

(a) The Port Commission shall, or shall cause the Dissemination Agent to, not later than 270 days after the end of the Port Commission’s Fiscal Year (which currently ends June 30), commencing March 31, 2020, with the report for the 2018-19 Fiscal Year, provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of the Disclosure Certificate. If the Dissemination Agent is not the Port Commission, the Port Commission shall provide the Annual Report to the Dissemination Agent not later than 15 days prior to said date. The Annual Report must be submitted in electronic format and accompanied by such identifying information as is prescribed by the MSRB, and may cross-reference other information as provided in Section 4 of the Disclosure Certificate; provided, that if the audited financial statements of the Port Commission are not available by the date required above for the filing of the Annual Report, the Port Commission shall submit unaudited financial statements and submit the audited financial statements as soon as they are available. If the Port Commission’s fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(b).

(b) If the Port Commission is unable to provide to the MSRB an Annual Report by the date required in subsection (a), the Port Commission shall send a notice to the MSRB in substantially the form attached as Exhibit A.

(c) The Dissemination Agent shall (if the Dissemination Agent is other than the Port Commission) file a report with the Port Commission certifying the date that the Annual Report was provided to the MSRB pursuant to the Disclosure Certificate.

SECTION 4. Content of Annual Reports. The Port Commission’s Annual Report shall contain or incorporate by reference the following information:

(a) Audited Financial Statements of the Port Commission for the prior fiscal year, prepared in accordance with generally accepted accounting principles applicable to the Port Commission from time to time. If the Port Commission’s audited financial statements are not available by the date the Annual Report is required to be filed, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available;

(b) Updated information in Table 1 of the Official Statement captioned “PORT OF SAN FRANCISCO, REAL ESTATE LEASES, REMAINING LEASE TERMS”;

(c) Updated information in Table 2 of the Official Statement captioned “PORT OF SAN FRANCISCO, TOP TEN REAL ESTATE TENANTS BY REVENUE”;

(d) Updated information in Table 8 of the Official Statement captioned “PORT OF SAN FRANCISCO, MAJOR PORT OPERATING REVENUES”;

(e) Updated information in Table 10 of the Official Statement captioned “PORT OF SAN FRANCISCO, HISTORICAL OPERATIONS & MAINTENANCE EXPENSES”;

(f) Updated information in Table 11 of the Official Statement captioned “PORT OF SAN FRANCISCO, HISTORICAL RESULTS OF OPERATIONS”; and

(g) Updated information in Table 12 of the Official Statement captioned “PORT OF SAN FRANCISCO, HISTORIC DEBT SERVICE COVERAGE.”

Any or all of the items listed above may be set forth in a document or set of documents, or may be included by specific reference to other documents, including official statements of debt issues of the Port Commission or related public entities, which are available to the public on the MSRB website. If the document included by reference is a final official statement, it must be available from the MSRB. The Port Commission shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Listed Events.

(a) To the extent applicable and pursuant to the provisions of this Section 5, the Port Commission shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Series 2020 Bonds:

- (1) Principal and interest payment delinquencies;
- (2) Nonpayment related defaults, if material;
- (3) Unscheduled draws on any debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Series 2020 Bonds, or other material events affecting the tax status of the Series 2020 Bonds;
- (7) Modifications to the rights of Bondholders, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Series 2020 Bonds, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the obligated person;
- (13) Consummation of a merger, consolidation or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional trustee or the change of name of a trustee;
- (15) Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material.
- (16) Default, event of acceleration, termination event, modification of terms or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

(b) The term “financial obligation” as used in Event 15 means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with S.E.C. Rule 15c2-12.

(c) Whenever the Port Commission obtains knowledge of the occurrence of a Listed Event, the Port Commission will, in a timely manner not in excess of ten business days after the occurrence of the Listed Event, file a notice of such occurrence with the MSRB in electronic format, accompanied by such identifying information as is prescribed by the MSRB. Notwithstanding the foregoing, notice of a Listed Event described in Section 5(a)(8) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Holders and Beneficial Owners of affected Series 2020 Bonds pursuant to the Indenture.

SECTION 6. Termination of Reporting Obligation. The Port Commission's obligations under the Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Series 2020 Bonds. If such termination occurs prior to the final maturity of the Series 2020 Bonds, the Port Commission shall give notice of such termination in the same manner as for a Listed Event under Section 5(b).

SECTION 7. Dissemination Agent. The Port Commission may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under the Disclosure Certificate, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in the Disclosure Certificate.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of the Disclosure Certificate, the Port Commission may amend or waive the Disclosure Certificate or any provision of the Disclosure Certificate, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 3(b), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Series 2020 Bonds or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of the City Attorney or nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Series 2020 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the owners of a majority in aggregate principal amount the Series 2020 Bonds or (ii) does not, in the opinion of the City Attorney or nationally recognized bond counsel, materially impair the interests of the Holders.

In the event of any amendment or waiver of a provision of the Disclosure Certificate, the Port Commission shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Port Commission. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements: (iii) notice of such change shall be given in the same manner as for a Listed Event under Section 5; and (i) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in the Disclosure Certificate shall be deemed to prevent the Port Commission from disseminating any other information, using the means of dissemination set forth in the Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by the Disclosure Certificate. If the Port Commission chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by the Disclosure Certificate, the Port Commission shall have no obligation under the Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Remedies. In the event of a failure of the Port Commission to comply with any provision of the Disclosure Certificate, any Participating Underwriter, Holder or Beneficial Owner of the Series 2020 Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Port Commission to comply with its obligations under the Disclosure Certificate; provided that any such action may be instituted only in a federal or state court located in the City and County of San Francisco, State of California. Failure by the Port Commission to comply with any provision of the Disclosure Certificate shall not be deemed an Event of Default under the Indenture and the sole remedy under the Disclosure Certificate in the event of any failure of the Port Commission to comply with the Disclosure Certificate shall be an action to compel performance.

SECTION 11. Beneficiaries. The Disclosure Certificate shall inure solely to the benefit of the Port Commission, the Dissemination Agent, the Participating Underwriters and Holders and Beneficial Owners from time to time of the Series 2020 Bonds, and shall create no rights in any other person or entity.

Date: _____, 2019.

PORT COMMISSION OF THE CITY AND COUNTY
OF SAN FRANCISCO

By: _____
Executive Director

Approved as to Form:

DENNIS J. HERRERA
CITY ATTORNEY

By: _____
Deputy City Attorney