

File No. 220076

Committee Item No. 2

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee Date March 2, 2022

Board of Supervisors Meeting Date \_\_\_\_\_

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- Executed Agreement 3/1992
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- Airport Commission Resolution No. 01-0360 - 12/4/2001
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- Airport Commission Resolution No. 11-0251 - 11/15/2011
- Airport Commission Resolution No. 17-0022 - 2/7/2017
- Airport Commission Resolution No. 21-0229 - 12/7/2021

Completed by: Brent Jalipa Date February 22, 2022

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Trustee Agreement - Retroactive - The Bank of New York Mellon Trust Company, N.A. - San  
2 Francisco International Airport Revenue Bonds - Not to Exceed \$3,800,000]

3 **Resolution 1) approving Modification No. 6 to Airport Contract No. 9186 with The Bank**  
4 **of New York Mellon Trust Company, N.A., for bond trustee services, to increase the**  
5 **contract amount by \$1,050,000, for a new total not to exceed amount of \$3,800,000, to**  
6 **commence following approval by the Board of Supervisors; 2) retroactively approving**  
7 **Airport Contract No. 9186 with a contract amount of \$260,000, with a term date of**  
8 **November 4, 1991, to an indefinite term; 3) retroactively from December 4, 2001,**  
9 **approving Modification No. 1 to increase the contract amount by \$600,000 for a total**  
10 **not to exceed amount of \$860,000; 4) retroactively from February 6, 2006, approving**  
11 **Modification No. 2 to increase the contract amount by \$900,000 for a total not to exceed**  
12 **amount of \$1,760,000; 5) retroactively from April 1, 2012, approving Modification No. 3**  
13 **to increase the contract amount by \$800,000 for a total not to exceed amount of**  
14 **\$2,560,000; 6) retroactively from April 1, 2017, approving Modification No. 4 to increase**  
15 **the contract amount by \$190,000 for a total not to exceed amount of \$2,750,000; and 7)**  
16 **retroactively from June 1, 2018, approving Modification No. 5 to update the Trustee fee**  
17 **payment schedule, with no changes to the contract amount.**

18  
19 WHEREAS, By its Resolution No. 91-0210 (as supplemented and amended, the  
20 "Master Bond Resolution"), the Airport Commission of the City and County of San Francisco  
21 (the "Commission") duly authorized the issuance of San Francisco International Airport  
22 Second Series Revenue Bonds (the "Bonds") for any lawful purpose of the Commission; and

23 WHEREAS, The Master Bond Resolution sets forth the rights and obligations of the  
24 Commission, the holders of the Bonds, and the Bond trustee, in connection with the issuance  
25 and repayment of the Bonds; and

1           WHEREAS, A bond trustee serves as the fiduciary for the bondholders and is required  
2 to, among other things, maintain bond-related funds and accounts and make timely principal  
3 and interest payments to bondholders so long as any bonds are outstanding; and

4           WHEREAS, The Commission has issued and plans to issue revenue bonds and other  
5 debt instruments that will require the services of a bond trustee; and

6           WHEREAS, The Master Bond Resolution identifies the bond trustee, which serves as  
7 the fiduciary for the bondholders of the Bonds and sets forth the provisions of the  
8 Commission's agreement with the trustee, by defining the "Trustee" as "First Interstate Bank,  
9 Ltd. or any successor to its duties hereunder;" and

10          WHEREAS, The Master Bond Resolution also sets forth the Trustee's duties and  
11 certain terms and conditions applicable to the Trustee, providing that the Trustee will serve in  
12 its role until it shall have been replaced due to its resignation or removal, and providing that  
13 the Commission agrees to pay fees to and expenses of the Trustee for its services under the  
14 Master Bond Resolution as agreed to by the Commission and the Trustee pursuant to the  
15 terms of a separate agreement; and

16          WHEREAS, On November 4, 1991, the Commission adopted Resolution No. 91-0197,  
17 authorizing award of a contract with First Interstate Bank, Ltd., to provide bond trustee and  
18 paying agent services under the Master Bond Resolution in the amount of \$260,000; and

19          WHEREAS, The Board of Supervisors (the "Board") by its Resolution No. 34-92  
20 approved the Master Bond Resolution and the issuance of the first issue of the Bonds; and

21          WHEREAS, The Commission and First Interstate Bank, Ltd., entered into Contract No.  
22 9186, dated March 1992 (the "Trustee Agreement") for First Interstate Bank, Ltd., to provide  
23 trustee services for the Bonds with a maximum amount of \$260,000; and

1           WHEREAS, The Trustee Agreement is the “separate agreement” setting forth the  
2 terms of payment of the Trustee’s fees and expenses for its services referenced in the Master  
3 Bond Resolution; and

4           WHEREAS, The Trustee Agreement does not have a stated expiration date and  
5 continues until it is terminated in accordance with the Master Bond Resolution, which also  
6 does not state an end date for the services of the Trustee and requires a replacement trustee  
7 to be in place before the Trustee can resign or be removed; and

8           WHEREAS, The Trustee Agreement provides that the entire agreement between the  
9 City and the Trustee includes both the Trustee Agreement and Article VIII of the Master Bond  
10 Resolution, and it states that the Master Bond Resolution is the governing document, and all  
11 provisions contained in the Trustee Agreement are subject to and subordinate to the Master  
12 Bond Resolution; and

13           WHEREAS, On December 4, 2001, the Commission adopted Resolution No. 01-0360,  
14 which authorized a first modification to the Trustee Agreement to increase the contract  
15 amount by \$600,000 for a new total not to exceed amount of \$860,000, which the parties  
16 executed on the same date; and

17           WHEREAS, On February 6, 2007, the Commission adopted Resolution No. 07-0035,  
18 which authorized a second modification to the Trustee Agreement, to increase the contract  
19 amount by \$900,000 for a new total not to exceed amount of \$1,760,000, which the parties  
20 executed on the same date; and

21           WHEREAS, In 2008, The Bank of New York Mellon Trust Company, N.A. (“BNY  
22 Mellon”), succeeded to the duties of Trustee under the Trustee Agreement and the role of  
23 Trustee under the Master Bond Resolution; and

24           WHEREAS, On November 15, 2011, the Commission adopted Resolution No. 11-  
25 0251, which authorized a third modification to the Trustee Agreement, dated as of April 1,



1 2012, to increase the contract amount by \$800,000 for a new total not to exceed amount of  
2 \$2,560,000, which the parties executed on April 1, 2012; and

3 WHEREAS, On February 7, 2017, the Commission adopted Resolution No. 17-0022,  
4 which authorized a fourth modification to the Trustee Agreement, to increase the contract  
5 amount by \$190,000 for a new total not to exceed amount of \$2,750,000, which the parties  
6 executed on April 1, 2017; and

7 WHEREAS, The Commission and the Trustee entered into a fifth modification to the  
8 Trustee Agreement, dated as of June 1, 2018, to modify the original agreement to update the  
9 Trustee fee payment schedule, without increasing the not to exceed compensation amount;  
10 and

11 WHEREAS, On December 7, 2021, by its Resolution No. 21-0229, the Commission  
12 approved Modification No. 6 to the Trustee Agreement (“Modification No. 6”) with BNY Mellon,  
13 to increase the contract amount by \$1,050,000, for a new total not to exceed amount of  
14 \$3,800,000; and

15 WHEREAS, The Trustee Agreement, as previously modified, Commission Resolution  
16 No. 21-0229, and Modification No. 6 are on file with the Clerk of the Board of Supervisors in  
17 File No. 220076; and

18 WHEREAS, Charter, Section 9.118(b), provides that agreements entered into by a  
19 department, board, or commission requiring anticipated expenditures by the City and County  
20 of San Francisco of ten million dollars or more shall be subject to approval by the Board of  
21 Supervisors by Resolution; and

22 WHEREAS, The Trustee Agreement has a term in excess of ten years, and  
23 Modification No. 6 is in excess of \$500,000, requiring the approval of this Board under  
24 Charter, Section 9.118; and

1           WHEREAS, This Board approved the issuance of Bonds under the Master Bond  
2 Resolution on January 6, 1992, by Resolution No. 34-92, and with several other subsequent  
3 Board Resolutions, and confirmed the retention of The Bank of New York Trust Company,  
4 N.A., as Trustee on May 1, 2007, by Resolution No. 235-07, but the Trustee Agreement and  
5 the previous modifications have not been presented to the Board for stand-alone approvals;  
6 and

7           WHEREAS, In order to resolve any uncertainty about whether further Board approval is  
8 required, the Commission has requested Board approval under Charter, Section 9.118 for  
9 Modification No. 6, as well as retroactive Board approval of the Trustee Agreement, as  
10 modified by the previous modifications; now, therefore, be it

11           RESOLVED, That Modification No. 6 in the form presented and on file with the Clerk of  
12 the Board is hereby approved, and that the Airport Director is hereby authorized to execute  
13 and deliver Modification No. 6; and, be it

14           FURTHER RESOLVED, That within thirty (30) days of Modification No. 6 being  
15 executed by all parties, the Airport Director shall provide copies of the executed document to  
16 the Clerk of the Board for inclusion into the official file; and, be it

17           FURTHER RESOLVED, That the Trustee Agreement, as previously modified, in the  
18 form presented and on file with the Clerk of the Board is hereby approved, and all actions of  
19 staff relating thereto are hereby ratified and confirmed.

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|   |                               |
|---|-------------------------------|
| <b>Item 2</b><br><b>File 22-0076</b>  | <b>Department:</b><br>Airport |
| <b>EXECUTIVE SUMMARY</b>  |                               |
| <p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution approves Modification No. 6 to the agreement between the Airport and The Bank of New York Mellon Trust Company, N.A. for bond trustee services, increasing the agreement amount by \$1,050,000 from \$2,750,000 to \$3,800,000. The proposed resolution also retroactively approves the original agreement and prior five modifications.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The Airport Commission approved the Master Bond Resolution in 1991, defining the terms by which the Airport could issue revenue bonds and providing for the Airport to enter into an agreement with a financial institution to serve as third-party trustee to administer payment of principal and interest on the bonds. The trustee agreement is in effect as long as the 1991 Master Bond Resolution is in effect.</li> <li>• The Airport entered into a trustee agreement with First Interstate Bank in 1992 following a competitive solicitation. The agreement has been modified five times to increase the agreement amount and provide for changes in the trustee, which according to Airport staff, has transitioned from First Interstate Bank to The Bank of New York Mellon Trust Company, N.A. through a series of acquisitions and restructuring.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• Under the existing agreement, fees charged by the trustee are approximately \$146,000 per year, payable from Airport revenue and bond proceeds. Total fees paid to the trustee under the agreement through December 2021 are approximately \$2.7 million.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• The Board of Supervisors has previously approved issuance of Airport revenue bonds in accordance with the City Charter and Airport Commission’s 1991 Master Bond Resolution, which according to Airport staff, “contemplated that a Bond Trustee would be necessary to administer Airport debt.” However, the agreement between the Airport and The Bank of New York Mellon Trust Company for trustee services was not submitted to the Board of Supervisors for approval even though the indeterminate term exceeded the 10-year term requiring Board approval under Charter Section 9.118. According to Airport staff, the City Attorney’s Office advised that to resolve any uncertainty about compliance with Charter Section 9.118, the Airport should seek Board of Supervisors approval for Modification No. 6 and for the original agreement and prior modifications.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul> |                               |

## MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract by a department, board or commission that has a term of more than ten years is subject to Board of Supervisors approval.

## BACKGROUND

City Charter Section 4.115 provides that the Airport Commission has exclusive authority to plan and issue revenue bonds for airport-related purposes, subject to the approval, amendment or rejection of the Board of Supervisors of each issue. City Charter Section 9.107(4) provides that such bonds do not require voter approval if secured solely by Airport revenues. The Airport Commission adopted the Master Bond Resolution in 1991, which sets the terms for the Airport to issue revenue bonds, including requiring Airport Commission approval of supplemental resolutions detailing the terms of each bond issuance. The 1991 Master Bond Resolution provided for the Airport to enter into an agreement with a financial institution to serve as third-party trustee to administer payment of principal and interest on the bonds. The trustee agreement is in effect as long as the 1991 Master Bond Resolution is in effect.

The Airport entered into a trustee agreement with First Interstate Bank in 1992 following a competitive solicitation. The agreement has been modified five times to increase the agreement amount and reflect changes in the trustee, which according to Airport staff, has transitioned from First Interstate Bank to The Bank of New York Mellon Trust Company, N.A. through a series of acquisitions and restructuring.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution approves Modification No. 6 to the agreement between the Airport and The Bank of New York Mellon Trust Company, N.A. for bond trustee services, increasing the agreement amount by \$1,050,000 from \$2,750,000 to \$3,800,000. The proposed resolution also retroactively approves the original agreement and prior modifications as follows:

- Original agreement (1992) between the Airport and First Interstate Bank in the amount of \$260,000;
- Modification No. 1 (2001), increasing the agreement amount by \$600,000 to \$860,000;
- Modification No. 2 (2006), increasing the agreement amount by \$900,000 to \$1,760,000;
- Modification No. 3 (2012), increasing the agreement amount by \$800,000 to \$2,560,000;
- Modification No. 4 (2017), increasing the agreement amount by \$190,000 to \$2,750,000; and
- Modification No. 5 (2018), updating the Trustee fee payment schedule with no changes to the contract amount.

**Original Agreement and Modifications**

The Airport entered into the original agreement with First Interstate Bank in March 1992 following a competitive solicitation to serve as third-party trustee for Airport revenue bonds issued in accordance with the 1991 Master Bond Resolution. The term of the agreement was indeterminate and corresponded with the term of the Master Bond Resolution, which is in effect until the Airport Commission adopts a successor resolution. The Master Bond Resolution provides for removal or resignation of the trustee upon appointment of a successor trustee.

The amount of the agreement was \$52,000 per year, or \$260,000 over five years. Appendix B of the agreement set the fees to be charged by the trustee for services. Agreement services consist of paying principal and interest to bondholders, providing notices to bondholders, maintaining books, transferring and exchanging bonds, and other services defined in the 1991 Master Bond Resolution.

The Airport Commission approved the following modifications to the agreement:

- Modification No. 1 (December 2001) between the Airport and BNY Western Trust Company of California (a subsidiary of the Bank of New York Company, Inc.) amended the original agreement to increase the amount by \$600,000 to \$860,000 and update the fees charged by the trustee.
- Modification No. 2 (February 2006) between the Airport and Bank of New York Trust Company, N.A. amended the agreement to increase the amount by \$900,000 to \$1,760,000, update the fees charged by the trustee, and add City administrative requirements, such as compliance with the Health Care Accountability Ordinance.
- Modification No. 3 (April 2012) between the Airport and The Bank of New York Mellon Trust Company, N.A. amended the agreement to increase the amount by \$800,000 to \$2,560,000, update the fees charged by the trustee, and add or revise City administrative requirements.
- Modification No. 4 (April 2017) between the Airport and The Bank of New York Mellon Trust Company, N.A. amended the agreement to increase the amount by \$190,000 to \$2,750,000, update the fees charged by the trustee, and add or revise City administrative requirements.
- Modification No. 5 (June 2018) between the Airport and The Bank of New York Mellon Trust Company, N.A. amended the agreement to update the fees charged by the trustee with no increase in the agreement amount.

**Modification No. 6**

The Airport approved the sixth modification to the agreement in December 2021. Modification No. 6 increases the agreement amount by \$1,050,000 to \$3,800,000 but does not change the fees included in Modification No. 5. The term of the agreement is indeterminate and extends as long as the 1991 Master Bond Resolution is in effect.

Modification No. 6 also adds provisions regarding confidential information, digital signatures, and revises provisions to comply with City administrative requirements, such as new requirements set by the City's Campaign and Governmental Conduct Code.

### **FISCAL IMPACT**

Under the existing agreement, fees charged by the trustee are approximately \$146,000 per year, payable from Airport revenue and bond proceeds. Total fees paid to the trustee under the agreement through December 2021 are approximately \$2.7 million.

### **POLICY CONSIDERATION**

The Board of Supervisors has previously approved issuance of Airport revenue bonds in accordance with the City Charter and Airport Commission's 1991 Master Bond Resolution, which according to Airport staff, "contemplated that a Bond Trustee would be necessary to administer Airport debt." However, the agreement between the Airport and The Bank of New York Mellon Trust Company for trustee services was not submitted to the Board of Supervisors for approval even though the indeterminate term exceeded the 10-year term requiring Board approval under Charter Section 9.118. According to Airport staff, the City Attorney's Office advised that to resolve any uncertainty about compliance with Charter Section 9.118, the Airport should seek Board of Supervisors approval for Modification No. 6 and for the original agreement and prior modifications. According to Airport staff, any future modifications to the agreement will be submitted to the Board of Supervisors for approval.

### **RECOMMENDATION**

Approve the proposed resolution.

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

**Modification No. 6**

This Modification is made this 10<sup>th</sup> 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.

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





AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND  
FIRST INTERSTATE BANK, LTD.

This Agreement is made this \_\_\_\_\_ day of March, 1992, in the City and County of San Francisco, State of California, by and between:

First Interstate Bank, Ltd.  
345 California St., 8th Floor  
San Francisco, CA 94104,

hereinafter referred to as "Trustee" and City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Airport Commission, hereinafter referred to as "Commission."

Recitals

1. On December 3, 1991, the Commission adopted Resolution No. 91-0210 authorizing the issuance of San Francisco International Airport Revenue Bonds, Second Series, (hereinafter referred to as the "1991 Master Bond Resolution") and may from time to time issue said bonds in such issuances as it may hereafter establish; and
2. The issuance of San Francisco International Airport Revenue Bonds, Second Series, requires the services of a Bond Trustee; and
3. The hiring of Trustee to provide Bond Trustee services constitutes the purchase of articles or things of unusual character and operations conducted outside the boundaries of the City and County of San Francisco within the meaning of San Francisco City Charter Section 7.100 which authorizes such purchase by the department head upon the recommendation of the department head and approval of the Purchaser of Supplies; and
4. The services proposed in this Agreement are temporary in nature and the Commission does not have personnel in its employ who possess the necessary specialized knowledge to provide such services; and
5. On November 4, 1991 the Commission adopted Resolution No. 91-0197 authorizing the award of a contract to "Trustee" for Bond Trustee services,

Now, THEREFORE, the parties agree as follows:

1. Term of the Agreement

The term of this Agreement shall continue until terminated in accordance with Article VIII of the 1991 Master Bond Resolution

2. Effective Date of Agreement

This Agreement is effective as of the date of adoption of Commission Resolution 91-0197.

3. Services Trustee Agrees to Perform

The Trustee agrees to perform the services provided for in Appendix A, "Services to be Provided by Trustee," attached hereto and incorporated by reference as though fully set forth herein.

4. Compensation

- a) For the complete and satisfactory performance of services detailed in Appendix A, City will pay Trustee for all expenses as detailed in Appendix B. For purposes of certification by the Controller, the total of fees and expenses shall not exceed \$52,000 annually.
- b) No charges shall be incurred under this Agreement nor shall any payments become due to Trustee until reports, services, or both, required under this Agreement are received from Trustee and approved by Commission as being in accordance with this Agreement.
- c) In no event shall City be liable for interest or late charges for any late payments.

5. Method of Payment

Invoices submitted by Trustee under this Agreement must be in a form acceptable to Commission and Controller. All amounts paid by City to Trustee shall be subject to audit by City.

Payment shall be made by City to Trustee at the address stated hereinabove, or any other remittance address requested by Trustee.

6. Conflict of Interest

Trustee states that it is familiar with provisions of Section 8.105 of the Charter of City, and Section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

7. Notices to the Parties

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

To City:                    Airports Commission  
                                  City and County of San Francisco  
                                  P.O. Box 8097  
                                  San Francisco, CA 94128  
                                  Attention: Deputy Director of Airports  
    Business and Finance

To Trustee:                Gary Nelson, Vice President  
                                  First Interstate Bank, Ltd.  
                                  345 California Street  
                                  San Francisco, CA 94104



8. Trustee Counsel

Trustee may engage legal counsel to provide trustee counsel services at Commission's expense subject to prior approval by Commission of Trustee's choice of counsel and estimated fees.

9. Compliance with South Africa Divestment Ordinance: Liquidated Damages

- a. Trustee agrees to comply fully with all provisions of Article XIX (§§10.210 through 10.220, inclusive) of Chapter 10 of the San Francisco Administrative Code, as amended from time to time. Said provisions are incorporated herein and by reference made a part hereof as though fully set forth.

In the event Trustee fails to comply in good faith with any of the provisions of Article XIX of Chapter 10 of the San Francisco Administrative Code, Trustee shall be liable for liquidated damages for each violation in an amount equal to Trustee's net profit on this contract, or 10% of the total amount of the contract, or \$1,000, whichever is greatest. Trustee agrees and acknowledges that the liquidated damages assessed shall be payable to City upon demand, and any amounts owed to City may be offset against any monies due to Trustee, pursuant to this or any contract with City.

- b. Trustee is not the government of South Africa, a person or business entity organized under the laws of South Africa, or a person or entity doing business in South Africa. Trustee does not have a prohibited ownership interest as defined in §10.211(K) of Chapter 10, Article XIX of the San Francisco Administrative Code. The City reserves the right to terminate this contract for default if the contractor violates the terms of this clause.

10. MacBride Principles--Northern Ireland

The City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

11. Tropical Hardwoods

The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood product.

12. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

13. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms waived, except by written instrument executed and approved in the same manner as this Agreement.

14. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Commission's Bond Counsel who shall decide the true meaning and intent of the Agreement. The 1991 Master Bond Resolution will govern in the resolution of any disputes.

15. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

16. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

17. Entire Agreement and Governing Resolution

Together with Article VIII of the 1991 Master Resolution which pertains to the Trustee, this contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. In all cases, the 1991 Master Bond Resolution, as amended with Supplemental Resolutions, shall be the governing document. All provisions contained in this contract are subject to and subordinate to the 1991 Master Bond Resolution, as amended with Supplemental Resolutions. This contract may be modified only as provided in Section 13.

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

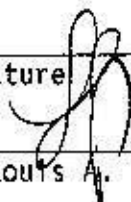
CITY

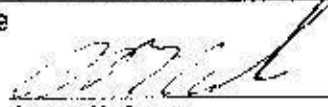
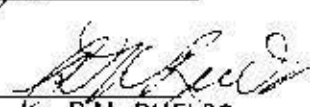
TRUSTEE

AIRPORTS COMMISSION

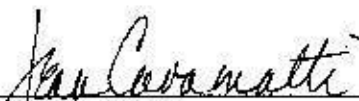
CITY AND COUNTY OF SAN FRANCISCO

Recommended by:

Signature   
By: Louis A. Turpen  
Director of Airports  
Title and Department

First Interstate Bank, Ltd.  
Name  
By:    
Gary Nelson R.M. RUELOS  
Vice President ASSISTANT VICE PRESIDENT  
Title

ATTEST:

  
Jean Caramatti  
Secretary  
Airports Commission

Resolution No.: 54-1089  
Adopted: NOV 5 1991

Approved as to Form:  
Louise H. Renne  
City Attorney

By   
Deputy City Attorney

Approved:

Rudolf Nothenberg  
Chief Administrative Officer

Appendices

A: Services to be Provided by Trustee

B: Calculation of Charges

## Appendix A

### Services to be Provided by Trustee

#### 1. Description of Services

The bond trustee will provide bond trustee, registrar and paying agent services. Under the terms of the 1991 Master Bond Resolution, the trustee's duties will include, but not be limited to, the following:

1. Investment of reserve funds held by the Trustee and prompt reporting on investment yields and other information requested by the Commission. The Commission intends to direct how the funds are to be invested.
2. Payment of principal and of interest on Bonds to bondholders, at the time and in the manner required by the 1991 Master Bond Resolution and the related supplemental resolutions.
3. The provision of notices to bondholders.
4. Maintenance of books of registration for Bonds.
5. The transfer and exchange of Bonds.
6. Pursuit of remedies on behalf of the holders of the Bonds in the event of a default by the San Francisco Airports Commission under the 1991 Master Bond Resolution.
7. Maintenance in New York City of a Co-Paying Agent office or relationship with another firm serving as Co-Paying Agent, as approved by the Airport.
8. Such other duties as are specifically provided for in Article VIII of the 1991 Master Bond Resolution, incorporated here by reference.

#### 2. Reports

Trustee shall submit written reports as specified in Article VIII of the 1991 Master Bond Resolution and as specified in Trustee's original Proposal submitted for this service. Trustee agrees to provide Commission with reports showing investment yields of all monies held under trust under this Agreement. The timely submission of all reports is a necessary and material term and condition of this Agreement.

#### 3. Department Liaison

In performing the services provided for in this Appendix, Trustee's liaison with the Commission will be with the Airport's Budget & Financial Planning Department.

Appendix B

Calculation of Charges

|   |                   |
|---|-------------------|
| Four Series (Book Entry)                | \$ 11,250         |
| Four Series (Registered)                | \$ 11,250         |
| Acceptance Fee - 1st Series             | \$ 2,000          |
| Acceptance Fee - Each Additional Series |                   |
| Trustee Counsel Fee                     | \$ 2,500          |
|   | \$500 each series |
| Annual Administration Fee - 1st Series  | \$ 6,000 + \$ 750 |
| Registrar & Paying Agent (Registered)   | \$ 4.00 per pmnt  |
| Securities Transactions                 | \$25.00           |
| Payments by Wire Transfers              | \$25.00           |
| Requisition Payments (By Checks)        | \$15.00           |
| Sinking Fund Redemptions                | \$500             |
| Termination Fee                         | \$250             |

Above fees to be guaranteed for a 3 year period upon execution of this contract. Trustee agrees to notify Commission in advance of any fees or charges not shown in the above schedule. Such other fees and charges as may arise during the term of this contract shall be payable upon approval by Commission.

0869B

are derived from any source legally available for such purpose and may be used by the Commission for such purpose without incurring indebtedness. No property or rights of the Commission shall ever be subject to forfeiture by reason of any default on the part of the Commission hereunder, provided, however, that nothing herein contained shall operate to excuse the Commission from making payments herein required to be made for the benefit of the Owners of the Bonds.

## ARTICLE VIII

### THE TRUSTEE

Section 8.01. Acceptance of Trust: General. By an instrument in writing delivered to the Commission, the Trustee shall evidence its acceptance of the powers, duties and obligations of the Trustee only as are specifically set forth herein. The Trustee shall have no duty, responsibility or obligation for the issuance of Bonds or for the validity or exactness hereof, or of any other document relating to such issuance. The Trustee shall have no duty, responsibility or obligation for the payment of Bonds except for payment in accordance with the terms and provisions hereof from, and to the extent of, funds which are held in trust by the Trustee for the purpose of such payment.

Prior to an Event of Default and after the curing or waiving of all Events of Default which may have occurred, the Trustee shall not be liable except for the performance of such duties as are specifically set forth herein. The Trustee shall have no liability for any act or omission to act hereunder, or under any other instrument or document executed pursuant hereto except for the Trustee's own negligent action, its own negligent failure to act or its own willful misconduct. The duties and obligations of the Trustee shall be determined solely by the express provisions hereof, and no implied powers, duties or obligations of the Trustee shall be read into this 1991 Resolution.

During an Event of Default, the Trustee shall exercise such of the rights and powers vested in it hereby, and shall use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

The Trustee shall not be required to expend or risk its own funds or otherwise incur individual liability in the performance of any of its duties or in the exercise of any of its rights or powers as the Trustee, except as may result from its own negligent action, its own negligent failure to act or its own willful misconduct.

Notwithstanding any other provision hereof, the Trustee shall have no liability for any (a) error of judgment made in



good faith by an officer or officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts, or (b) action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than the Principal Amount of Bonds Outstanding specified in Section 7.03 or Section 7.07, as the case may be, then existing relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee hereunder.

Section 8.02. Trustee Not Required to Take Action Unless Indemnified. Except as expressly required herein (including the requirements of the next sentence) the Trustee neither shall be required to institute any suit or action or other proceeding in which it may be a defendant, nor to take any steps to enforce its rights and expose it to liability, nor shall the Trustee be deemed liable for failure to take any such action, unless and until it shall have been indemnified, to its satisfaction, against any and all reasonable costs, expenses, outlays, counsel and other fees, other disbursements including its own reasonable fees and against all liability and damages. The Trustee nevertheless, may begin suit, or appear in and defend suit, or do anything else which in its judgment is proper to be done by it as the Trustee, without prior assurance of indemnity, and in such case the Commission shall reimburse the Trustee for all reasonable costs, expenses, outlays, counsel and other fees, and other reasonable disbursements including its own fees, and for all liability and damages suffered by the Trustee in connection therewith, except for the Trustee's own negligent action, its own negligent failure to act, its own willful misconduct or self-dealing constituting a breach of trust under applicable law. If the Trustee begins, appears in or defends such a suit, the Trustee shall give prompt notice of such action to the Commission and shall give such notice prior to taking such action if possible. If the Commission shall fail to make such reimbursement, the Trustee may reimburse itself for any costs and expenses in accordance with Section 7.04.

Section 8.03. Employment of Experts. The Trustee is hereby authorized to employ as its agents such attorneys at law, and other qualified independent consultants (who are not employees of the Trustee), as it may deem necessary to carry out any of its obligations hereunder, and shall be reimbursed by the Commission for all reasonable expenses and charges in so doing. The Trustee shall not be responsible for any misconduct or negligence of any such agent appointed with due care by the Trustee.

Section 8.04. Enforcement of Performance by Others. It shall not be the duty of the Trustee, except as herein specifically provided, to seek the enforcement of any duties and obligations herein imposed upon the Commission.



- Section 8.05. Right to Deal in Bonds and Take Other Actions. The Trustee may in good faith buy, sell or hold and deal in any Bonds with like effect as if it were not such Trustee and may commence or join in any action which a Holder is entitled to take with like effect as if the Trustee were not the Trustee. It is understood and agreed that the Trustee engages in a general banking business and no provision hereof is to be construed to limit or restrict the right of the Trustee to engage in such business with the Commission or any Holder. So engaging in such business shall not, in and of itself, and so long as the Trustee duly performs all of its duties as required hereby, constitute a breach of trust on the part of the Trustee.

Section 8.06. Removal and Resignation of Trustee. The Trustee may resign at any time. Written notice of such resignation shall be given to the Commission and such resignation shall take effect upon the later of the date 90 days after receipt of such notice by the Commission and the date of the appointment and qualification of a successor Trustee. In the event a successor Trustee has not been appointed and qualified within 60 days after the date notice of resignation is given, the Trustee or the Commission may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section.

In addition, the Trustee may be removed at any time by the Commission so long as (a) no Event of Default shall have occurred and be continuing and (b) the Commission determines, that the removal of the Trustee shall not have an adverse effect upon the rights or interests of the Bondholders. Subject to clause (b) of the preceding sentence, in the event the Trustee becomes Insolvent, the Commission may remove the Trustee by written notice effective immediately upon the appointment and qualification of a successor Trustee.

In the event of the resignation or removal of the Trustee or in the event the Trustee is dissolved, becomes Insolvent or otherwise becomes incapable to act as the Trustee, the Commission shall be entitled to appoint a successor Trustee. In such event, the successor Trustee shall cause notice to be mailed to the Holders of all Bonds then Outstanding in such manner deemed appropriate by the Commission. If the Trustee resigns, the resigning Trustee shall pay for such notice. If the Trustee is removed, is dissolved, becomes Insolvent or otherwise becomes incapable of acting as Trustee, the Commission shall pay for such notice.

Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Trustee shall be a trust company or bank having the powers of a trust company as to trusts, qualified to do and doing trust business within the State of California and having an officially reported combined capital, surplus, undivided profits and reserves aggregating at least \$50,000,000, if there is such

an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Every successor Trustee howsoever appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Commission an instrument in writing, accepting such appointment hereunder, and thereupon such successor Trustee, without further action, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor, and such predecessor shall execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of such predecessor. The predecessor Trustee shall execute any and all documents necessary or appropriate to convey all interest it may have to the successor Trustee. The predecessor Trustee promptly shall deliver all records relating to the trust or copies thereof and communicate all material information it may have obtained concerning the trust to the successor Trustee.

Each successor Trustee, not later than 10 days after its assumption of the duties hereunder, shall mail a notice of such assumption to each Holder of a registered Bond and shall publish notice of such assumption in Authorized Newspapers.

Section 8.07. Proof of Claim. The Trustee shall have the right and power to act in its name or in the name and place of the Commission or Holders to make proof of claim in any proceeding, bankruptcy, reorganization or otherwise where proof of claim may be required, including proofs of claim against Credit Providers. Any amount recovered by the Trustee as a result of any such claim, after payment of all fees (including reasonable attorneys' fees), costs, expenses and advances paid or incurred by the Trustee or its agents in pursuing such claim, shall be for the equal benefit of all holders of Outstanding Bonds of the affected Series.

Section 8.08. Trustee's Fees and Expenses. The Commission hereby agrees to pay fees to and expenses of the Trustee for its services hereunder as agreed to by the Commission and the Trustee pursuant to the terms of a separate agreement.

Section 8.09. Reliance Upon Documents. In the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely upon and shall be protected in acting or refraining from acting in reliance upon any document, including but not limited to any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper officials of the Commission, the Treasurer, the City, an Airport Consultant, a Financial Consultant, an Independent Auditor, the Holders or agents or attorneys of the Holders; provided, in the case of any such document specifically required to be furnished to the Trustee hereby, the Trustee shall be under a duty to examine the same to determine whether it conforms to the

requirements hereof. The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond or other paper or document submitted to the Trustee; provided, however, the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may deem prudent. Whenever in the administration hereof, the Trustee shall deem it desirable that a matter be provided or established prior to taking or not taking any action hereunder, the Trustee (unless other evidence be specifically prescribed herein) may rely upon any document provided for in this 1991 Resolution.

Except where other evidence is required hereby, any request or direction of the Commission mentioned herein shall be sufficiently evidenced by a certified copy of such request executed by a Authorized Commission Representative.

Section 8.10. Recitals and Representations. The recitals, statements and representations contained herein or in any Bond shall be taken and construed as made by and on the part of the Commission and not by the Trustee, and the Trustee neither assumes nor shall be under any responsibility for the correctness of the same other than the Trustee's certification of authentication of any Bonds as to which it is Authenticating Agent.

The Trustee makes no representation as to, and is not responsible for, the validity or sufficiency hereof or, except as herein required, the filing or recording or registering of any document. The Trustee shall be deemed not to have made representations as to the security afforded hereby or hereunder or as to the validity or sufficiency of such document. The Trustee shall not be concerned with or accountable to anyone for the use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof. The Trustee shall not be responsible or liable for any loss suffered in connection with the investment of any funds made by it in accordance with the provisions hereof.

Except with respect to Events of Default described in Section 7.01(a), (b) and (c) hereof, the Trustee shall have no duty of inquiry with respect to any default which constitutes or with notice or lapse of time or both would constitute an Event of Default without actual knowledge of the Trustee or receipt by the Trustee of written notice of a default which constitutes or with notice or lapse of time or both would constitute an Event of Default from the Commission or any Holder.

The Trustee shall be deemed to have knowledge of the existence of an Event of Default only in the following circumstances: (i) in the case of an Event of Default referred to in paragraphs (a), (b) and (c) of Section 7.01 of this 1991 Resolution, upon the occurrence of such Event of Default, (ii) in the case of an Event of Default referred to in paragraph (d),



(e), (f) and (g) of Section 7.01 of this 1991 Resolution, when any Responsible Officer of the Trustee obtains actual knowledge of the occurrence of such Event of Default or when the Trustee receives written notice thereof from the Commission or from any Holder, and (iii) in the case of an Event of Default referred to in paragraph (h) of this 1991 Resolution, when any Responsible Officer of the Trustee obtains actual knowledge of the occurrence of such Event of Default or when the Trustee receives written notice thereof from the Commission or from any Holder, unless otherwise expressly provided in the applicable Supplemental Resolution.

Section 8.11. Reports and Records. (a) The Trustee shall at all times keep or cause to be kept proper records in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of the Bonds and all Funds and Accounts established and maintained by the Trustee pursuant to this 1991 Resolution. Such records shall be available for inspection by the Commission on each Business Day during reasonable business hours and by any Owner or its agent or representative duly authorized in writing at reasonable hours and under reasonable circumstances. The Trustee shall not be required to maintain records with respect to transactions made by the Treasurer or the Commission or with respect to Funds and Accounts established and maintained by the Treasurer.

(b) The Trustee shall provide to the Commission each month a report of the amounts deposited in each Fund and Account held by it under this 1991 Resolution and the amount disbursed from such Funds and Accounts, the earnings thereon, the ending balance in each of such Funds and Accounts, the investments in each such Fund and Account and the yield on each investment calculated in accordance with the directions of an Authorized Commission Representative.

(c) The Trustee shall annually, within a reasonable period after the end of the Fiscal Year, provide to the Commission and to each Owner who shall have filed its name and address with the Trustee for such purpose (at such Owner's cost) a statement, which need not be audited, covering receipts, disbursements, allocation and application of Bond proceeds, Net Revenues and any of the moneys in any of the Funds and Accounts established pursuant to this 1991 Resolution for the proceeding year.

Section 8.12. Paying Agent, Authenticating Agent and Registrar. The Commission may appoint a Paying Agent, an Authenticating Agent and a Registrar with respect to a Series of Bonds in the Supplemental Resolution pursuant to which such Series is issued. Each Paying Agent, Authenticating Agent and Registrar shall (i) designate to the Trustee its principal office and (ii) signify its acceptance of the duties and obligations imposed upon it hereunder and under such Supplemental Resolution

by written instrument of acceptance delivered to the Commission and the Trustee.

Each Paying Agent, Authenticating Agent or Registrar shall exercise its duties in accordance with the terms of and shall have the protection provided to the Trustee in this 1991 Resolution.

If any Paying Agent, Authenticating Agent or Registrar shall resign or be removed, the Commission shall designate a successor. If the Commission shall designate a successor, then, upon the Trustee's receipt of the written designation and the written acceptance of such designated successor, such entity shall thereupon, without further action by the Commission, be appointed as successor Paying Agent, Authenticating Agent or Registrar, as the case may be.

In the event that any Paying Agent, Authenticating Agent or Registrar shall resign or be removed, or be dissolved, or if the property or affairs of any Paying Agent, Authenticating Agent or Registrar shall be taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and no successor shall have been appointed, the Trustee shall, *ipso facto* be deemed to be Paying Agent, Authenticating Agent or Registrar, until the appointment of a successor. In each case in which the Trustee is acting as Paying Agent, Authenticating Agent or Registrar for any Series of Bonds, the Trustee in such capacities shall be entitled to all of the immunities and protections from liability that are provided in this Article VIII.

Any corporation into which any Paying Agent, Authenticating Agent or Registrar may be merged or converted or with which it may be consolidated, or any corporation resulting from any such merger, consolidation or conversion, or succeeding to the corporate trust business of Paying Agent, Authenticating Agent or Registrar, shall be the successor of the Paying Agent, the Authenticating Agent and the Registrar if such successor corporation is otherwise eligible under this Section, without the execution or filing of any further act on the part of the Trustee or the entity serving as Paying Agent, Authenticating Agent or Registrar or such successor corporation.

Section 8.13. Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

- Section 8.14. Other Agents. The Commission or the Trustee with the consent of the Commission may from time to time appoint other agents as may be appropriate at the time to perform duties and obligations under this 1991 Resolution or under a Supplemental Resolution all as provided by Supplemental Resolution or resolution of the Commission.

## ARTICLE IX

### SUPPLEMENTAL RESOLUTIONS

Section 9.01. Supplemental Resolutions Not Requiring Consent of Bondholders. The Commission may adopt, without the consent of or notice to any of the Holders, one or more Supplemental Resolutions for one or more of the following purposes:

(a) to cure any ambiguity or formal defect or omission herein;

(b) to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising hereunder that shall not have a material adverse effect on the interests of the Holders;

(c) to grant or confer upon the Holders any additional rights, remedies, powers or authority that may lawfully be granted or conferred upon them;

(d) to secure additional revenues or provide additional security or reserves for payment of any Bonds;

(e) to preserve the excludability of interest on any Bonds from gross income for purposes of federal income taxes, or to change the tax covenants set forth in Section 6.09, pursuant to an Opinion of Bond Counsel that such action will not affect adversely such excludability;

(f) to provide for the issuance of, and to set the terms and conditions of, each additional Series of Bonds hereunder, including covenants and provisions with respect thereto which do not violate the terms of this 1991 Resolution;

(g) to add requirements the compliance with which is required by a Rating Agency in connection with issuing a rating with respect to any Series of Bonds;

(h) to confirm, as further assurance, any interest of the Trustee in and to the Net Revenues or in and to the Funds and Accounts held by the Trustee or in and to any other moneys, securities or funds of the Commission provided pursuant to this 1991 Resolution;

**MODIFICATION NO. 1  
TO AGREEMENT BETWEEN  
CITY AND COUNTY OF SAN FRANCISCO  
AND  
BNY WESTERN TRUST COMPANY OF CALIFORNIA**

This Modification No. 1 of Agreement, dated for convenience as of December 4, 2001, is made and entered by and between the City and County of San Francisco ("City"), acting by and through its Airport Commission ("Commission"), and BNY Western Trust Company a subsidiary of the Bank of New York Company, Inc. ("Trustee"), located at 550 Kearny Street, Suite 600 San Francisco, California 94108-2527.

**RECITALS**

1. On December 3, 1991, the Commission adopted Resolution No. 91-0210, authorizing the issuance of San Francisco International Airport Revenue Bonds, Second Series, Second Series, (hereinafter referred to as the "1991 Master Bond Resolution") and may from time to time issue said bonds in such issuances as it may hereafter establish; and
2. The issuance of San Francisco International Airport Revenue Bonds, Second Series, requires the services of a Bond Trustee; and
3. The hiring of Trustee to provide Bond Trustee services constitutes the purchase of articles or things of unusual character and operations conducted outside the boundaries of the City and County of San Francisco within the meaning of San Francisco City Charter Section 7.1000 which authorizes such purchase by the department head upon the recommendation of the department head and approval of the Purchaser of Supplies; and
4. The services proposed in this Agreement are temporary in nature and the Commission does not have personnel in its employ who possess the necessary specialized knowledge to provide such services; and
5. On November 4, 1991, the Commission adopted Resolution No. 91-0197 authorizing the award of a contract to "Trustee" for Bond Trustee services; and
6. On December 4, 2001, the Commission, by its Resolution No. 01-0360 adopted November 20, 2001, authorized Modification No. 1 to this Agreement to increase the total compensation payable by \$600,000.

NOW, THEREFORE, Contractor and City agree as follows:

1. Modification of Section 4(a): Compensation, as follows:

For the complete and satisfactory performance of services detailed in Attachment A, City will pay Trustee for all expenses as detailed in Attachment A. For purposes of certification by the Controller, the total compensation will be the original contract amount, \$260,000, plus the approved increment of \$600,000 pursuant to Resolution No. 01-0360 for a total of \$ 860,000.



2. The term of this agreement shall continue until terminated in accordance with Article VIII of the 1991 Master Bond Resolution.
3. As modified hereby, this agreement shall remain in full force and effect.



Attachment A  
Calculation of Charges

| Trustee Services   | Issue 1-4                                    | Issue 5-27B,<br>and all new<br>issues. |
|--|--|--|
| Acceptance Fee per new issue   | \$0  | \$750                                  |
| Annual Administration Fee  | \$6,600 (for all<br>four issues<br>combined) | \$8.25 per<br>million                  |
| Annual Escrow Agent (Registrar & Paying) Agent<br>Acceptance fee per Escrow        |  | \$1500<br>\$500                        |
| Investment Charge per transaction  | \$25   | \$25                                   |
| Transaction Fee per Wire Transfers   | \$25   | \$25                                   |
| Transaction Fee per Check  | \$20   | \$20                                   |
| Bondholder Services per issue  | \$100  | \$100                                  |
| Annual Audit Report per issue  | \$50   | \$50                                   |
| Investment Agreement, or Repurchase/ Forward Purchase<br>Agreement (if applicable) |  | \$500                                  |
| Annual Fee of a Repurchase/ Forward Purchase<br>Agreement (if applicable)          |  | \$500                                  |
| Redemption Processed per redemption <sup>1</sup>                                   | \$500  | \$500                                  |
| Termination Fee per issue  | \$250  | \$250                                  |
| Annual Maintenance Fee -Full Fast Bonds (if applicable)                            |  | \$250                                  |
| Indirect Cost  | Not to exceed<br>\$150 per Issue             | Not to exceed<br>\$150 per Issue       |

Above fees to be guaranteed for a three (3) year period upon execution of this contract modification.

Trustee agrees to notify Commission sixty (60) days in advance of any fees or charges not shown in the above schedule. Such other fees and charges as may arise during the term of this contract shall be payable upon approval by Commission.


<sup>1</sup> The redemption fee applies only to early redemptions and not to scheduled sinking fund and principal payments, and is applied once to all the bonds within redeeming issues. In other words, this fee cannot be applied to each bond maturity within redemption.


IN WITNESS WHEREOF, Trustee and Commission have executed this Amendment as of the date first referenced above.

CITY

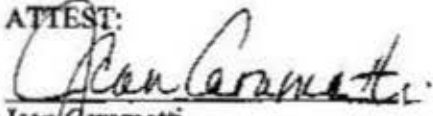
BNY Western Trust Company.

AIRPORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO

By:   
John L. Martin  
Airport Director

By:   
Signature

ATTEST:

  
Jean Caramatti  
Secretary  
Airport Commission

ROSE M. RUELOS, VICE PRESIDENT  
Name Title

BNY WESTERN TRUST COMPANY  
Company Name

550 KEARNY ST., #600  
Address

SAN FRANCISCO, CA. 94108  
City State Zip

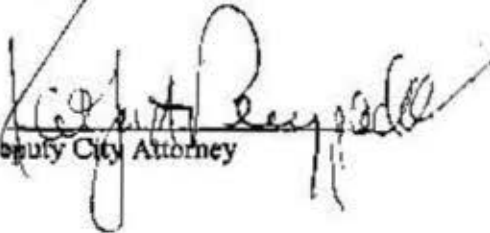
(415) 263-2418  
Area Code Phone Number

Resolution No.: 01-0360

Adopted: December 4, 2001

APPROVED AS TO FORM:

Dennis J. Herrera  
City Attorney

By:   
Deputy City Attorney

95-3571558  
Federal Employer or Taxpayer  
Identification Number

**ADDENDUM  
TO  
MODIFICATION NO. 1  
TO AGREEMENT BETWEEN  
CITY AND COUNTY OF SAN FRANCISCO  
AND  
BNY WESTERN TRUST COMPANY OF CALIFORNIA**

**No. 4 Notification of Limitations on Contributions**

This paragraph applies if this Amendment is in excess of \$50,000 and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal service; and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 - 3.730-1, prohibit the public officials who approved this Amendment from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time this Amendment is executed; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time this Amendment is executed.

Contractor understands that any public official who approved this Amendment may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this Amendment. Upon request, Contractor agrees to furnish, before this Amendment is entered into, such information as any public official approving this Amendment may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this Amendment is entered into, Contractor with a list of public officials who, under the Conduct Code, will approve this Amendment. Failure of any public official who approved this Amendment to abide by the Conduct Code shall not constitute a breach by either the City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

**No. 5 Airport Intellectual Property**

Pursuant to Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

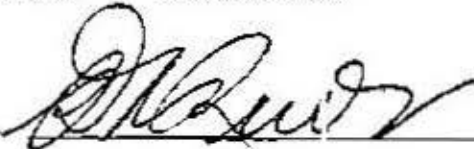
**CONTRACTOR**

**Bank of New York Western Trust Company**

Address 550 Kearny Street, Suite 600

San Francisco, CA 94108  
City State Zip

(415) 263-2418  
Area Code Phone Number

By 

Name Rose Ruelos

Title Vice President

**MODIFICATION NO. 2  
TO AGREEMENT BETWEEN  
CITY AND COUNTY OF SAN FRANCISCO  
AND  
THE BANK OF NEW YORK TRUST COMPANY, N.A.**

This Modification No. 2 (the "Amendment"), dated for convenience as of February 6, 2006, is made and entered by and between the City and County of San Francisco (the "City"), acting by and through its Airport Commission (the "Commission"), and The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), located at 550 Kearny Street, Suite 600, San Francisco, California 94108-2527, and amends the Agreement, dated as of March 1992 (as previously amended and modified, the "Agreement"), between the City and the Trustee (formerly known as First Interstate Bank, Ltd).

RECITALS

1. On December 3, 1991, the Commission adopted Resolution No. 91-0210, as amended and supplemented (the "1991 Master Bond Resolution"), authorizing the issuance from time to time of its San Francisco International Airport Second Series Revenue Bonds (the "Bonds"); and
2. The 1991 Master Bond Resolution requires the services of a bond trustee so long as any of the Bonds are outstanding; and
3. On November 5, 1991, the Commission adopted Resolution No. 91-0197 authorizing the award of a contract to the Trustee for bond trustee services after a competitive selection process, and the Commission entered into the Agreement with the Trustee; and
4. Under the Agreement, the Trustee is to serve until a replacement bond trustee is appointed in accordance with the provisions of the 1991 Master Bond Resolution; and
5. On December 4, 2001, the Commission adopted Resolution No. 01-0360 authorizing Modification No. 1 to the Agreement dated as of December 4, 2001, to increase the total compensation payable to the Trustee by \$600,000.
6. On February 6, 2006, the Commission adopted Resolution No. 07-0035 authorizing this Modification No. 2 to the Agreement to increase the total compensation payable to the Trustee by \$900,000.

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

1. Subsection (a) of Section 4 [Compensation] of the Agreement is hereby amended in its entirety 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 this Amendment. 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, for a total of \$1,760,000.

## 2. **Nondiscrimination; Penalties**

### a. Trustee Shall Not Discriminate

In the performance of the Agreement, Trustee agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

### b. Subcontracts

Trustee shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Trustee's failure to comply with the obligations in this subsection shall constitute a material breach of the Agreement.

### c. Nondiscrimination in Benefits

Trustee does not as of the date of this Amendment and will not during the term of the Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

### d. Condition to Contract

As a condition to the Agreement, Trustee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

### e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of the Agreement as though fully set forth herein. Trustee shall comply fully with and be bound by all of the provisions that apply to the Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Trustee understands that pursuant to §12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of the Agreement may be assessed against Trustee and/or deducted from any payments due Trustee.

### **3. Limitations on Contributions**

Through execution of this Amendment, Trustee acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer of the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

### **4. Requiring Minimum Compensation for Covered Employees**

Trustee agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of the Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in the Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Trustee agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of the Agreement, Trustee shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Trustee shall pay a minimum of \$10.77 an hour beginning January 1, 2005 and for the remainder of the term of the Agreement; provided, however, that Trustees that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of the Agreement.

b. Trustee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Trustee's compliance or anticipated compliance with the requirements of the MCO, for opposing

any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. Trustee understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Trustee of the terms of the Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

d. If, within 30 days after receiving written notice of a breach of the Agreement for violating the MCO, Trustee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Trustee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

- (1) The right to charge Trustee an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Trustee under the Agreement;
- (3) The right to terminate the Agreement in whole or in part;
- (4) In the event of a breach by Trustee of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Trustee from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. Trustee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

f. Trustee shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Trustee from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Trustee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

h. The Trustee shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

i. The City may conduct random audits of Trustee. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Trustee every two years for the duration of the Agreement. Nothing in the Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

j. Any subcontract entered into by Trustee shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Trustee and a third party which requires the third party to perform all or a portion of the services covered by the Agreement. Trustee shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Trustee's obligation to ensure that any subcontractors of any tier under the Agreement comply with the requirements of the MCO. If any subcontractor under the Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Trustee.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Trustee of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Trustee understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Trustee of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Trustee arising from the Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Trustee also understands that the MCO provides that if Trustee prevails in any such action, Trustee may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If Trustee is exempt from the MCO when this Amendment is executed because the cumulative amount of agreements with this department for the fiscal year is

less than \$25,000 (\$50,000 for nonprofits), but Trustee later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Trustee shall thereafter be required to comply with the MCO under the Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Trustee and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

## **5. Requiring Health Benefits for Covered Employees**

Trustee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of the Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in the Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Trustee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Trustee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Trustee is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Trustee's failure to comply with the HCAO shall constitute a material breach of the Agreement. City shall notify Trustee if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of the Agreement for violating the HCAO, Trustee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Trustee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Trustee shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Trustee shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Trustee shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Trustee based on the Subcontractor's failure to comply, provided that City has first provided Trustee with notice and an opportunity to obtain a cure of the violation.



e. Trustee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Trustee's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Trustee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Trustee shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Trustee shall keep itself informed of the current requirements of the HCAO.

i. Trustee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Trustee shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Trustee shall allow City to inspect Trustee's job sites and have access to Trustee's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Trustee to ascertain its compliance with HCAO. Trustee agrees to cooperate with City when it conducts such audits.

m. If Trustee is exempt from the HCAO when the Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Trustee later enters into an agreement or agreements that cause Trustee's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Trustee and the City to be equal to or greater than \$75,000 in the fiscal year.

## **6. Prohibition on Political Activity with City Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, Trustee may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under the Agreement. Trustee agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Trustee violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i)

terminate the Agreement, and (ii) prohibit Trustee from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Trustee's use of profit as a violation of this section.

7. The term of the Agreement shall continue until terminated in accordance with Article VIII of the 1991 Master Bond Resolution.
8. As modified hereby, the Agreement shall remain in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the Trustee and the Commission have executed this Amendment as of the date first referenced above.

AIRPORT COMMISSION  
AND COUNTY OF SAN FRANCISCO

THE BANK OF NEW YORK TRUST CITY  
COMPANY, N.A.

By: Jackson Wong  
John L. Martin  
Airport Director *for*

By: Johanna K. Tokunaga  
Signature  
Johanna K. Tokunaga  
Assistant Vice President

ATTEST:

Jean Caramatti  
Jean Caramatti  
Secretary, Airport Commission

Name Title  
The Bank of New York  
Trust Company, N.A.

Company Name  
550 Kearny Street, Suite 600

Address  
San Francisco CA 94108

City State Zip  
(415) 263-2436

Area Code Phone Number

Resolution No.:07-0035  
Adopted: February 6, 2006

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: Dennis J. Herrera  
Deputy City Attorney

95-3571558

Federal Employer or Taxpayer  
Identification Number

Appendix B  
Calculation of Charges

**The Bank of New York Trust Company, N.A.**  
**Calculation of Charges**

| <u>Annual Costs</u>  | <u>Trustee Fees</u>              | <u>Estimated Annual Fees</u> |
|--|----------------------------------|------------------------------|
| Annual Administration Fee  | \$2,000                          | \$122,000                    |
| Investment Charge per Transaction  | \$35                             | \$4,620                      |
| Transaction Fee per Wire Transfers   | \$25                             | \$3,300                      |
| Transaction Fee per Check  | n/a                              | \$0                          |
| Bondholder Services per Issue  | \$100                            | \$6,100                      |
| Annual Audit Report per Issue  | \$50                             | \$3,050                      |
| Investment Agreement, or<br>Repurchase/Forward Purchase Agreement<br>(if applicable) | \$500                            | \$0                          |
| Annual fee of a Repurchase/Forward<br>Purchase Agreement (if applicable)             | \$500                            | \$4,500                      |
| Indirect Costs   | Not to exceed \$150<br>per issue | \$9,150                      |
| <b>Total Estimated Annual Fees</b>   |                                  | <b>\$152,720</b>             |

| <u>Transaction Costs per Bond Issue<br/>(to be paid from Closing Costs)</u>  | <u>Trustee Fees</u> | <u>Estimated Annual Fees</u> |
|--|---------------------|------------------------------|
| Annual Administration Fee  | \$2,300             | \$6,900                      |
| Acceptance Fee per New Issue   | \$250               | \$750                        |
| Annual Escrow Agent (Registrar & Paying)<br>Agent, Acceptance Fee per Escrow | \$500               | \$1,500                      |
| Redemption Processed per Redemption <sup>1</sup>                             | \$500               | \$1,500                      |
| Termination Fee per Issue  | \$500               | \$1,500                      |
| <b>Total Estimated Annual Fees</b>   |                     | <b>\$12,150</b>              |

**Total Estimated Annual and Transaction  
Fees**

**\$164,870**

Trustee agrees to notify Commission sixty (60) days in advance of any fees or charges not show in the above schedule; provided, however, that during the continuance of an Event of Default (as defined in the Commission's Resolution No. 91-0290 adopted on December 3, 1991 (the "1991 Resolution"), the provisions of Section 7.04 of the 1991 Resolution shall apply. Such other fees and charges as may arise during the term of this contract shall be payable upon approval by the Commission.

<sup>1</sup> The redemption fee applies only to early redemptions and not to scheduled sinking fund and principal payments, and is applied once to all the bonds within an issue being redeemed, not to each bond maturity within an issue being redeemed.

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

**THIRD AMENDMENT  
TO CONTRACT NO. 9186  
THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**

THIS THIRD AMENDMENT (this "Amendment") is made as of April 1, 2012, in San Francisco, California, to Contract No. 9186 (the "Agreement") 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 or the Commission's designated agent, hereinafter referred to as the "Commission."

WHEREAS, the Commission approved Resolution 91-0197 on November 4, 1991 awarding 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 Resolution No. 11-0251 approving this Amendment No. 3 to the Agreement with the Trustee to increase the authorized not-to-exceed compensation amount from \$1,760,000 to \$2,560,000, to approve an additional \$800,000 for the next five years of service, effective April 1, 2012 through March 31, 2017; and

WHEREAS, approval for Amendment No. 3 was obtained when the Civil Service Commission approved Contract number PSC 4023-98/99 on March 19, 2012; and

WHEREAS, the Commission and Trustee desire to modify the Agreement on the terms and conditions set forth herein;

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



1. **Definitions.** The following definitions shall apply to this Amendment:

a. **Agreement.** The term “Agreement” shall mean Contract No. 9186 dated November 4, 1991, between Trustee and City, as amended by:

Modification No. 1, dated December 4, 2001, and  
Modification No. 2, dated February 6, 2006.

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

2. Subsection (a) of **Section 4. Compensation** of the Agreement is hereby amended in its entirety 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, for a total of \$2,560,000.

3. **Section 6. Conflict of Interest** is hereby replaced in its entirety with the following:

6. **Conflict of Interest.** Through its execution of this Agreement, Trustee acknowledges that it is familiar with the provision of Section 15.103 of the City’s Charter, Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

4. **Section 10. MacBride Principles—Northern Ireland** is hereby replaced in its entirety with the following:

10. **MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Trustee acknowledges and agrees that he or she has read and understood this section.

5. **Section 11. Tropical Hardwoods** is hereby replaced in its entirety with the following:

11. **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

6. The Agreement, which was previously amended by Section 2 of Modification No. 2, is further amended by replacing such section with a new **Section 18. Nondiscrimination; Penalties**, as follows:

**Section 18. Nondiscrimination; Penalties**

a. **Trustee Shall Not Discriminate.** In the performance of this Agreement, Trustee agrees not to discriminate against any employee, City employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Trustee shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Trustee's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Trustee does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Trustee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Trustee shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Trustee understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Trustee and/or deducted from any payments due Trustee.

7. The Agreement, which was previously amended by Section 3 of Modification No. 2, is further amended by replacing such section with a new **Section 19. Limitations on Contributions**, as follows:

**Section 19. Limitations on Contributions.** Through execution of this Agreement, Trustee acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Trustee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Trustee further acknowledges that 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 20 percent in Trustee; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Trustee. Additionally, Trustee acknowledges that Trustee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Trustee further agrees to provide to City the names of each person, entity or committee described above.

8. The Agreement, which was previously amended by Section 4 of Modification No. 2, is further amended by replacing such section with a new **Section 20. Requiring Minimum Compensation for Covered Employees**, as follows:

**Section 20. Requiring Minimum Compensation for Covered Employees**

a. Trustee agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Trustee's obligations under the MCO is set forth in this Section. Trustee is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Trustee to pay Trustee's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Trustee is obligated to keep informed of the then-current requirements. Any subcontract entered into by Trustee shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Trustee's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Trustee.

c. Trustee shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Trustee shall maintain employee and payroll records as required by the MCO. If Trustee fails to do so, it shall be presumed that the Trustee paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Trustee's job sites and conduct interviews with employees and conduct audits of Trustee.

f. Trustee's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Trustee fails to comply with these requirements. Trustee agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Trustee's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Trustee understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Trustee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Trustee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Trustee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Trustee is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Trustee later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Trustee shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Trustee and this department to exceed \$25,000 in the fiscal year.

9. The Agreement, which was previously amended by Section 5 of Modification No. 2, is further amended by replacing such section with a new **Section 21. Requiring Health Benefits for Covered Employees**, as follows:

#### **Section 21. Requiring Health Benefits for Covered Employees**

Trustee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse) . Capitalized terms used in

this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Trustee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Trustee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Trustee is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Trustee's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Trustee if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Trustee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Trustee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Trustee shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Trustee shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Trustee shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Trustee based on the Subcontractor's failure to comply, provided that City has first provided Trustee with notice and an opportunity to obtain a cure of the violation.

e. Trustee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Trustee's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Trustee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Trustee shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Trustee shall keep itself informed of the current requirements of the HCAO.

i. Trustee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.



j. Trustee shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Trustee shall allow City to inspect Trustee's job sites and have access to Trustee's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Trustee to ascertain its compliance with HCAO. Trustee agrees to cooperate with City when it conducts such audits.

m. If Trustee is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Trustee later enters into an agreement or agreements that cause Trustee's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Trustee and the City to be equal to or greater than \$75,000 in the fiscal year.

10. The Agreement, which was previously amended by Section 6 of Modification No. 2, is further amended by replacing such section with a new **Section 22. Prohibition on Political Activity with City Funds**, as follows:

**Section 22. Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Trustee may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Trustee agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Trustee violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Trustee from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Trustee's use of profit as a violation of this section.

11. A new **Section 23. Submitting False Claims; Monetary Penalties** is hereby added to the Agreement, as follows.

**23. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at:

[http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco\\_ca](http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca). A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the

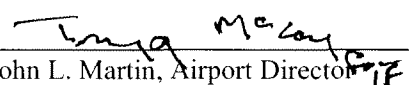

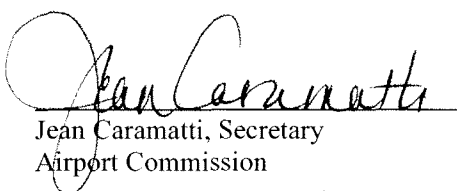
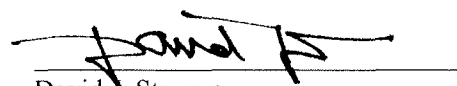
City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**12. Appendix B – Calculation of Charges** is replaced in its entirety with the attached Appendix B – Bond Trustee Services – CALCULATION OF CHARGES – THIRD AMENDMENT.

**13. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after April 1, 2012.

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

IN WITNESS WHEREOF, Trustee and City have executed this Amendment as of the date first referenced above.

|   |   |
|---|---|
| <b>CITY</b><br>AIRPORT COMMISSION<br>CITY AND COUNTY OF<br>SAN FRANCISCO  | <b>TRUSTEE</b><br>THE BANK OF NEW YORK MELLON<br>TRUST CO., N.A.  |
| By: <u></u><br>John L. Martin, Airport Director                | <u></u><br>Authorized Signature |
|   | <u>Johanna Tokunaga</u><br>Printed Name   |
| ATTEST:   | <u>Vice President</u><br>Title  |
| By: <u></u><br>Jean Caramatti, Secretary<br>Airport Commission | <u>The Bank of New York Mellon Trust Co., N.A.</u><br>Company Name  |
| Resolution No: <u>11-0251</u>   | <u>City Vendor Number</u>   |
| Adopted on: <u>Nov. 15, 2011</u>  | <u>400 South Hope Street, 4<sup>th</sup> Floor</u><br>Address   |
| APPROVED AS TO FORM:  | <u>Los Angeles, CA 90071</u><br>City, State, ZIP  |
| DENNIS J. HERRERA<br>City Attorney  | <u>213-630-6268</u><br>Telephone Number   |
| By: <u></u><br>David J. Stevens<br>Deputy City Attorney      | <u>95-3571558</u><br>Federal Employer ID Number   |

**Appendix B – Bond Trustee Services  
CALCULATION OF CHARGES – THIRD AMENDMENT**

|  | <u>Trustee Fees</u>              | <u>Estimated Annual Cost</u> |
|--|----------------------------------|------------------------------|
| Annual Administration Fee  | \$2,000                          | \$106,000                    |
| Investment Charge per Transaction  | \$35                             | \$3,955                      |
| Transaction Fee per Wire Transfers   | \$25                             | \$3,300                      |
| Transaction Fee per Check  | n/a                              | \$0                          |
| Bondholder Services per Issue  | \$100                            | \$5,300                      |
| Annual Audit Report per Issue  | \$50                             | \$2,650                      |
| Investment Agreement, or Repurchase/Forward Purchase Agreement (if applicable) | \$500                            | \$2,000                      |
| Annual fee of a Repurchase/Forward Purchase Agreement (if applicable)          | \$500                            | \$6,000                      |
| Indirect Costs   | Not to exceed \$150<br>per issue | \$7,950                      |
| <b>Total Estimated Annual Fees</b>   |                                  | <b>\$137,155</b>             |

| <u>Transaction Costs per Bond Issue (to be paid from Closing Costs)</u>   | <u>Trustee Fees</u> | <u>Estimated Annual Fees</u> |
|---|---------------------|------------------------------|
| Annual Administration Fee   | \$2,300             | \$13,800                     |
| Acceptance Fee per New Issue  | \$250               | \$1,500                      |
| Annual Escrow Agent (Registrar & Paying) Agent, Acceptance Fee per Escrow | \$500               | \$1,500                      |
| Redemption Processed per Redemption                                       | \$500               | \$3,000                      |
| Termination Fee per Issue   | \$500               | \$3,000                      |
| <b>Total Estimated Annual Fees</b>  |                     | <b>\$22,800</b>              |

**Total Estimated Annual and Transaction Fees** **\$159,955**

Trustee agrees to notify Commission sixty (60) days in advance of any fees or charges not shown in the above schedule; provided, however, that during the continuance of an Event of Default (as defined in the Commission's Resolution No. 91-0290 adopted on December 3, 1991 (the "1991 Resolution"), the provisions of Section 7.04 of the 1991 Resolution shall apply. Such other fees and charges as may arise during the term of this contract shall be payable upon approval by the Commission.

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

**Modification No. 4**

THIS MODIFICATION NO. 4 (this "Modification") to the Agreement (as defined below) is made as of April 1, 2017, in San Francisco, 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 ("City"), acting by and through its Airport Commission or the Commission's designated agent, hereinafter referred to as the "Commission."

RECITALS

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



WHEREAS, on February 7, 2017, by Resolution No. 17-0022, the Commission approved this Modification to increase the not-to-exceed compensation amount under the Agreement by \$190,000, for a total contract authorization of \$2,750,000, and to replace Appendix B; and

WHEREAS, approval for this Modification was obtained when the Civil Service Commission approved PSC 4023-98/99 on October 13, 2016; and

WHEREAS, the Commission desires to modify the Agreement for administrative changes required by recently enacted San Francisco contracting ordinances or the Commission; and

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

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

**a. Agreement.** The term "Agreement" shall mean Contract No. 9186 dated November 4, 1991, 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, and  
Third Amendment to Contract No. 9186, dated April 1, 2012.

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

**2. Subsection (a) of Section 4. Compensation** of the Agreement is hereby amended in its entirety 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, for a total of \$2,750,000.

**3. Section 9. Compliance with South Africa Divestment Ordinance: Liquidated Damages** is hereby deleted in its entirety.

**4. Section 23. Submitting False Claims; Monetary Penalties** is hereby replaced in its entirety to read as follows:

The full text of San Francisco Administrative Code § 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Under San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or

employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

5. A new **Section 24. Cooperative Drafting** is hereby added to the Agreement, as follows:

**24. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

6. A new **Section 25. Sugar-Sweetened Beverage Prohibition** is hereby added to the Agreement, as follows:

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

7. A new **Section 26. Airport Commission Rules and Regulations** is hereby added to the Agreement, as follows:

**26. Airport Commission Rules and Regulations.** To the extent Trustee is at San Francisco International Airport while performing its obligations under this Agreement, Trustee agrees to comply with the Airport Commission's Rules and Regulations for the San Francisco International Airport as amended from time to time. A copy of the current Rules and Regulations can be found at: <http://www.flysfo.com/about-sfo/the-organization/rules-and-regulations>.

8. A new **Section 27. Federal Fair Labor Standards Act** is hereby added to the Agreement, as follows:

**27. Federal Fair Labor Standards Act.** This Agreement incorporates by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Trustee has full responsibility to monitor compliance to the referenced statute or regulation. Trustee must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

9. A new **Section 28. Occupational Safety and Health Act of 1970** is hereby added to the Agreement, as follows:

**28. Occupational Safety and Health Act of 1970.** This Agreement incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Trustee must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Trustee retains full responsibility to monitor its



compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Trustee must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**10.** A new **Section 29. Federal Nondiscrimination Requirements** is hereby added to the Agreement, as follows:

**29. Federal Nondiscrimination Requirements.** During the performance of this Agreement, Trustee, for itself, its assignees, and successors in interest (hereinafter referred to as "Trustee") agrees as follows:

- a. **Compliance with Regulations.** Trustee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
- b. **Nondiscrimination.** Trustee, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Trustee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c. **Solicitations for Subcontracts.** Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Trustee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Trustee of Trustee's obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
- d. **Information and Reports.** Trustee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Airport or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Airport or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance.** In the event of a contractor's noncompliance with the Non-discrimination provisions of this Agreement, the Airport will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - i. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - ii. Cancelling, terminating, or suspending a contract, in whole or in part.

- f. **Incorporation of Provisions.** Trustee will include the provisions of paragraphs 26 through 30 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Trustee will take action with respect to any subcontract or procurement as the Airport or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Trustee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Trustee may request the Airport to enter into any litigation to protect the interests of the Airport. In addition, Trustee may request the United States to enter into the litigation to protect the interests of the United States.
- g. **Title VI List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this Agreement, Trustee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Trustee") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
  - 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
  - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
  - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
  - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
  - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
  - The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies,



and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

**11. Appendix B – Bond Trustee Services – CALCULATION OF CHARGES – THIRD AMENDMENT** is replaced in its entirety with the attached **Appendix B – Bond Trustee Services – Calculation of Charges –Modification No. 4.**

**12. Effective Date.** Each of the changes set forth in this Modification shall be effective on and after **April 1, 2017.**

**13. 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.







Appendix B – Bond Trustee Services  
Calculation of Charges –Modification No. 4

| Fee  | Unit Price | Estimated Annual Cost |
|--|------------|-----------------------|
| <b>Regular Fees</b>  |            |                       |
| Annual Administration Fee  | \$2,000    | \$98,000              |
| Investment Charge per Transaction  | \$35       | \$3,955               |
| Transaction Fee per Wire Transfer  | \$25       | \$5,700               |
| Transaction Fee per Check  | n/a        |                       |
| Bondholder Services per Issue  | \$100      | \$4,900               |
| Annual Audit Report per Issue  | \$50       | \$2,450               |
| Investment Agreement, or Repurchase/Forward Purchase Agreement (if applicable) | \$500      | \$2,000               |
| Annual Fee of a Repurchase/Forward Purchase Agreement (if applicable)          | \$500      | \$6,000               |
| Indirect Costs (not to exceed, per issue)                                      | \$150      | \$7,350               |
| <b>Subtotal</b>  |            | <b>\$130,355</b>      |
| <b>Transaction Fees</b>  |            |                       |
| Annual Administration Fees   | \$2,300    | \$9,200               |
| Acceptance Fee per New Issue   | \$250      | \$1,500               |
| Annual Escrow Agent (Registrar & Paying) Agent, Acceptance Fee per Escrow      | \$500      | \$3,000               |
| Redemption Processed per Redemption  | \$500      | \$0                   |
| Termination Fee per Issue  | \$500      | \$500                 |
| <b>Subtotal</b>  |            | <b>\$14,200</b>       |
| <b>Total</b>   |            | <b>\$144,555</b>      |

Trustee agrees to notify Commission sixty (60) days in advance of any fees or charges not shown in the above schedule; provided, however, that during the continuance of an Event of Default (as defined in the Commission's Resolution No. 91-0290 adopted on December 3, 1991 (the "1991 Resolution"), the provisions of Section 7.04 of the 1991 Resolution shall apply. Such other fees and charges as may arise during the term of this contract shall be payable upon approval by the Commission.

IN WITNESS WHEREOF, Trustee and City have executed this Modification as of the date first referenced above.

| CITY   | TRUSTEE  |
|--|--|
| AIRPORT COMMISSION<br>CITY AND COUNTY OF<br>SAN FRANCISCO  |  |
| By: <br>Ivar C. Satero, Airport Director                |  |
| Attest:  | Authorized Signature   |
| By: <br>Jean Caramatti, Secretary<br>Airport Commission | Johanna K. Tokunaga  |
| Resolution No: <u>17-0022</u>  | Printed Name   |
| Adopted on: <u>Feb. 7, 2017</u>  | Vice President   |
| Approved as to Form:   | Title  |
| Dennis J. Herrera<br>City Attorney   | The Bank of New York Mellon Trust<br>Company, N.A.                                 |
| By: <br>Brooke D. Abola<br>Deputy City Attorney       | Company Name   |
|  | 44473-03   |
|  | City Vendor Number   |
|  | 400 So. Hope Street, Suite 500   |
|  | Address  |
|  | Los Angeles CA 90071   |
|  | City, State, ZIP   |
|  | 213-630-6268   |
|  | Telephone Number   |
|  | 95-3571558   |
|  | Federal Employer ID Number   |

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

**Modification No. 5**

THIS MODIFICATION (this "Modification") is made as of **June 1, 2018**, in San Francisco, 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 ("City"), acting by and through its Airport Commission, hereinafter referred to as "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, the 1991 Master Bond Resolution allows the Commission from time to time to appoint agents other than the bond trustee as may be appropriate to perform duties and obligations under the 1991 Master Bond Resolution as provided by resolution of the Commission; and

WHEREAS, to facilitate issuance of Special Facility Bonds (as defined in the 1991 Master Bond Resolution) to finance an on-Airport hotel pursuant to Section 2.16 of the 1991 Master Bond Resolution, on April 3, 2018, the Commission adopted Resolution No. 18-0089 authorizing formation of a statutory trust to act as purchaser of such Special Facility Bonds and performance by the Trustee of trustee services for the statutory trust; and

WHEREAS, the Trustee has been appointed trustee for the statutory trust for a term of 10 years pursuant to an Owner Trust Agreement, dated May 29, 2018 (the "Owner Trust Agreement"), between the Trustee, as trustee (in such capacity, the "Owner Trust Trustee"), and the City; and

WHEREAS, the Owner Trust Agreement provides that fees of the Owner Trust Trustee shall be payable under a separate agreement; and

WHEREAS, City and Trustee desire to administratively modify the Agreement on the terms and conditions set forth herein to reflect this additional service to be provided by the Trustee and the compensation for it, without increasing the not-to-exceed compensation amount under the Agreement; and

WHEREAS, Trustee's service as Owner Trust Trustee is provided pursuant to a separate trust agreement and is therefore provided in a separate legal capacity from its service as bond trustee under the 1991 Master Bond Resolution; and

WHEREAS, approval for this Modification was obtained when the Department of Human Resources approved PSC 4023-98/99 on May 23, 2017;

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

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

**a. Agreement.** Contract No. 9186 dated November 4, 1991, 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, and  
Modification No. 4, dated April 1, 2017.

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

**2. Appendix A – Services to be Provided by Trustee** is modified to add the following sentence to Section 1, Description of Services:

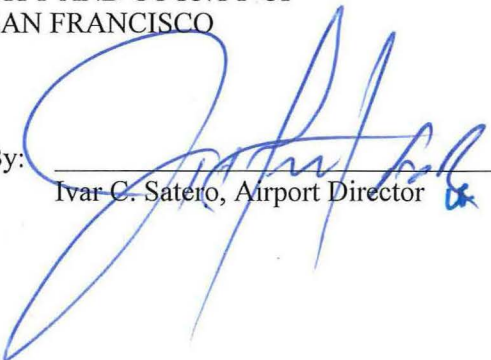


The Owner Trust Trustee will provide services as specified under the Owner Trust Agreement, including maintenance of trust assets in trust and payment of trust receipts to the beneficiary thereof.

3. **Appendix B – Bond Trustee Services – Calculation of Charges –Modification No. 4** is replaced in its entirety with the attached **Appendix B – Bond Trustee Services – Calculation of Charges –Modification No. 5**.

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

5. **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, Trustee and City have executed this Modification as of the date first referenced above.

| CITY   | CONTRACTOR   |
|--|--|
| AIRPORT COMMISSION<br>CITY AND COUNTY OF<br>SAN FRANCISCO  |  |
| By: <br>Ivar C. Satero, Airport Director          | <br>Authorized Signature |
|  | Johanna K. Tokunaga<br>Printed Name  |
|  | Vice President<br>Title  |
|  | The Bank of New York Mellon Trust<br>Company, N.A.<br>Company Name   |
|  | 0000004793<br>City Supplier ID   |
|  | 400 So. Hope Street, Suite 500<br>Address  |
|  | Los Angeles, CA 90071<br>City, State, ZIP  |
|  | 213-630-6268<br>Telephone Number   |
|  | 95-3571558<br>Federal Employer ID Number   |
| Approved as to Form:<br><br>Dennis J. Herrera<br>City Attorney   |  |
| By: <br>Brooke D. Abola<br>Deputy City Attorney |  |



**Appendix B – Bond Trustee Services  
Calculation of Charges –Modification No. 5**

| Fee  | Unit Price | Estimated Annual Cost |
|--|------------|-----------------------|
| <b>Regular Fees</b>  |            |                       |
| Annual Administration Fee – Bond Trustee                                       | \$2,000    | \$98,000              |
| Annual Administration Fee – Statutory Trust                                    | \$1,500    | \$1,500               |
| Investment Charge per Transaction  | \$35       | \$3,955               |
| Transaction Fee per Wire Transfer  | \$25       | \$5,700               |
| Transaction Fee per Check  | n/a        |                       |
| Bondholder Services per Issue  | \$100      | \$4,900               |
| Annual Audit Report per Issue  | \$50       | \$2,450               |
| Investment Agreement, or Repurchase/Forward Purchase Agreement (if applicable) | \$500      | \$2,000               |
| Annual Fee of a Repurchase/Forward Purchase Agreement (if applicable)          | \$500      | \$6,000               |
| Indirect Costs (not to exceed, per issue)                                      | \$150      | \$7,350               |
| <b>Subtotal</b>  |            | <b>\$131,855</b>      |
| <b>Transaction Fees</b>  |            |                       |
| Annual Administration Fees   | \$2,300    | \$9,200               |
| Acceptance Fee per New Issue   | \$250      | \$1,500               |
| Annual Escrow Agent (Registrar & Paying) Agent, Acceptance Fee per Escrow      | \$500      | \$3,000               |
| Redemption Processed per Redemption  | \$500      | \$0                   |
| Termination Fee per Issue  | \$500      | \$500                 |
| Acceptance Fee – Statutory Trust Trustee                                       | \$500      | \$500                 |
| <b>Subtotal</b>  |            | <b>\$14,700</b>       |
| <b>Total</b>   |            | <b>\$146,555</b>      |

Trustee agrees to notify Commission sixty (60) days in advance of any fees or charges not shown in the above schedule; provided, however, that during the continuance of an Event of Default (as defined in the Commission’s Resolution No. 91-0290 adopted on December 3, 1991 (the “1991 Resolution”), the provisions of Section 7.04 of the 1991 Resolution shall apply. Such other fees and charges as may arise during the term of this contract shall be payable upon approval by the Commission.

# AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 21-0229

**APPROVAL OF MODIFICATION NO. 6 TO CONTRACT NO. 9186 WITH THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. TO INCREASE THE CONTRACT AMOUNT BY \$1,050,000 FOR A NEW TOTAL NOT-TO-EXCEED CONTRACT AMOUNT OF \$3,800,000 FOR ONGOING BOND TRUSTEE AND PAYING AGENT SERVICES**

- WHEREAS, the Airport Commission (Commission) adopted Resolution No. 91-0210 on December 3, 1991 (as subsequently amended and supplemented, the “Master Bond Resolution”) to govern the sale and issuance of revenue bonds; and
- WHEREAS, a bond trustee and paying agent is required to, among other things, maintain bond-related funds and accounts and make timely principal and interest payments to bondholders so long as any bonds are outstanding; and
- WHEREAS, the Commission has issued and plans to issue revenue bonds and other debt instruments that will require the services of a bond trustee; and
- WHEREAS, the Master Bond Resolution sets forth the trustee’s duties and certain terms and conditions applicable to the trustee, providing that the trustee will serve in its role until it shall have been replaced due to its resignation or removal, and providing that the Commission agrees to pay fees to and expenses of the trustee for its services under the Master Bond Resolution as agreed to by the Commission and the trustee pursuant to the terms of a separate agreement; and
- WHEREAS, on November 4, 1991, the Commission adopted Resolution No. 91-0197, authorizing award of a contract with First Interstate Bank, Ltd. (now known as The Bank of New York Mellon Trust Company, N.A., and referred to herein as the Trustee), to provide bond trustee and paying agent services under the Master Bond Resolution in the amount of \$260,000; and
- WHEREAS, the Commission and the Trustee entered into an Agreement, dated March 1992 (Contract No. 9186 or the Trustee Agreement), for such services with a maximum amount of \$260,000; and
- WHEREAS, the Trustee Agreement is the “separate agreement” setting forth the terms of payment of the Trustee’s fees and expenses for its services referenced in the Master Bond Resolution; and
- WHEREAS, the Trustee Agreement does not have a stated expiration date and continues until it is terminated in accordance with the Master Bond Resolution, which also does not state an end date for the services of the Trustee and requires a replacement trustee to be in place before the Trustee can resign or be removed; and
- WHEREAS, on December 4, 2001, the Commission adopted Resolution No. 01-0360 , which authorized Modification No. 1 to the original agreement to increase the total compensation by \$600,000 for a new total not-to-exceed amount of \$860,000, which the parties executed on the same date; and



AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 21-0229

- WHEREAS, on February 6, 2007, the Commission adopted Resolution No. 07-0035, which authorized Modification No. 2 to the original agreement, to increase the total compensation by \$900,000 for a new total not-to-exceed amount of \$1,760,000, which the parties executed on the same date; and
- WHEREAS, on November 15, 2011, the Commission adopted Resolution No. 11-0251, which authorized Modification No. 3 to the original agreement, to increase the total compensation by \$800,000 for a new total not-to-exceed amount of \$2,560,000, which the parties executed on April 1, 2012; and
- WHEREAS, on February 7, 2017, the Commission adopted Resolution No. 17-0022, which authorized Modification No. 4 to the original agreement, to increase the total compensation by \$190,000 for a new total not-to-exceed amount of \$2,750,000, which the parties executed on April 1, 2017; and
- WHEREAS, on June 1, 2018, the City and the Trustee entered into Modification No. 5, which administratively modified the original agreement to update Appendix B – Bond Trustee Services – Calculation of Charges, without increasing the not-to-exceed compensation amount; and
- WHEREAS, the Commission desires now to approve Modification No. 6 to increase the contract amount by \$1,050,000 for a new total not-to-exceed amount of \$3,800,000 to add funds to the Trustee Agreement to pay for these services for future years; and
- WHEREAS, the City’s Board of Supervisors (Board) approved the issuance of bonds under the Master Bond Resolution on January 6, 1992 (Resolution No. 34-92) and with several other subsequent Board resolutions, and confirmed the retention of The Bank of New York (a predecessor entity to the Trustee) as Trustee on May 1, 2007 (Resolution No. 235-07), but the Trustee Agreement and the previous modifications have not been presented to the Board for stand-alone approvals; and
- WHEREAS, in order to resolve any uncertainty about whether further Board approval is required, it is desirable to request Board approval under Section 9.118 of the Charter of the City and County of San Francisco for Modification No. 6, as well as retroactive Board approval of the Trustee Agreement, as modified by the previous modifications; now, therefore, be it
- RESOLVED, that this Commission hereby approves Modification No. 6 to Contract No. 9186 with The Bank of New York Mellon Trust Company, N.A., to increase the contract amount by \$1,050,000, for a new total not-to-exceed amount of \$3,800,000, for ongoing bond trustee and paying agent services under the Master Bond Resolution; and, be it further
- RESOLVED, that the Commission Secretary is hereby authorized to request Board approval under Section 9.118 of the Charter of the City and County of San Francisco for Modification No. 6, as well as retroactive Board approval of the Trustee Agreement, as modified by the previous modifications.

Page 2 of 2

*I hereby certify that the foregoing resolution was adopted by the Airport Commission  
at its meeting of* \_\_\_\_\_

DEC 7 2021

\_\_\_\_\_  
Secretary



**MEMORANDUM**

December 7, 2021

TO: AIRPORT COMMISSION  
Hon. Larry Mazzola, President  
Hon. Eleanor Johns, Vice President  
Hon. Everett A. Hewlett, Jr.  
Hon. Jane Natoli  
Hon. Malcolm Yeung

21-0229

DEC 7 2021

FROM: Airport Director

SUBJECT: Approval of Modification No. 6 to Contract No. 9186 with The Bank of New York Mellon Trust Company, N.A. to Increase the Contract Amount by \$1,050,000 for a New Total Not-To-Exceed Contract Amount of \$3,800,000 for Ongoing Bond Trustee and Paying Agent Services

DIRECTOR'S RECOMMENDATION: APPROVE MODIFICATION NO. 6 TO CONTRACT NO. 9186 WITH THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. TO INCREASE THE CONTRACT AMOUNT BY \$1,050,000 FOR A NEW TOTAL NOT-TO-EXCEED AMOUNT OF \$3,800,000 FOR ONGOING BOND TRUSTEE AND PAYING AGENT SERVICES AND DIRECT THE COMMISSION SECRETARY TO REQUEST APPROVAL BY THE BOARD OF SUPERVISORS.

**Executive Summary**

The Bank of New York Mellon Trust Company, N.A. (Trustee) provides ongoing independent bond trustee and paying agent services under Contract No. 9186 (Contract). These services are required by Resolution No. 91-0210, as amended and supplemented (the Master Bond Resolution), to be in place for the life of the revenue bonds issued by the Commission. Staff recommend increasing the Contract amount by \$1,050,000 for a new total not-to-exceed contract amount of \$3,800,000 in order to maintain bond trustee and paying agent services. Staff also recommends authorizing the Commission Secretary to request Board of Supervisors approval under Section 9.118 of the Charter of the City and County of San Francisco for Modification No. 6, as well as retroactive approval of the Contract, as modified by the previous modifications.

**Background**

The Commission adopted Resolution No. 91-0197 on November 4, 1991, authorizing award of the Contract to the Trustee in the amount of \$260,000, to provide bond trustee and issuing and paying agent services required under the Master Bond Resolution (see Attachment A). The Contract was established without an expiration date and will continue until the Contract is terminated in accordance with the Master Bond Resolution, which also does not state an end date for the services of the Trustee and requires a replacement trustee to be in place before the Trustee can resign or be removed.

As indicated in the following table, Staff periodically returns to the Commission when necessary to add funds to the Contract to pay for these services for future years.

THIS PRINT COVERS CALENDAR ITEM NO. 2

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED MAYOR    LARRY MAZZOLA PRESIDENT    ELEANOR JOHNS VICE PRESIDENT    EVERETT A. HEWLETT, JR.    JANE NATOLI    MALCOLM YEUNG    IVAR C. SATERO AIRPORT DIRECTOR



| Contract Modification (Date)               | Contract Authority |
|--|--------------------|
| Original Contract (Mar 1992)               | \$ 260,000         |
| Modification No. 1 (Dec 2001)              | 600,000            |
| Modification No. 2 (Feb 2007)              | 900,000            |
| Modification No. 3 (Apr 2012)              | 800,000            |
| Modification No. 4 (Apr 2017)              | 190,000            |
| Modification No. 5 <sup>1</sup> (Jun 2018) | 0                  |
| Modification No. 6 (Proposed Dec 2021)     | 1,050,000          |
| Total Authority                            | \$3,800,000        |

<sup>1</sup>Modification No. 5 updated the Calculation of Charges and did not require Commission approval.

### **Modification No. 6**

The Commission has paid the Trustee approximately \$2,671,540 in fees through November 30, 2021. The attached resolution approves Modification No. 6 to increase the Contract amount by \$1,050,000 for a new total not-to-exceed contract amount of \$3,800,000. This is conservatively estimated to cover the costs of bond trustee and paying agent services for the next five years following the date of this memorandum.

### **Board Approval**

As described above, the Contract dates back to 1992 and has been modified five times, including four previous modifications that cumulatively exceed \$500,000. Charter Section 9.118 requires Board of Supervisors' (Board) approval of certain contracts with a term that exceeds ten years, and modifications to such contracts that exceed \$500,000. The Contract and prior modifications were not presented to the Board for stand-alone approvals; given the unique structure of the Contract, which is intertwined with the Master Bond Resolution, the Airport, in consultation with the City Attorney's office, considered the Contract and modifications to be approved in the ambit of the Board's multiple approvals of the issuance of bonds under the Master Bond Resolution. For the proposed Modification No. 6, the City Attorney's office advised Staff that to resolve any uncertainty about whether further Board approval is required, the safest course is to seek Board approval for both Modification No. 6 and the Contract, as previously modified. Therefore, the attached resolution authorizes the Commission Secretary to request Board approval under Section 9.118 of the Charter of the City and County of San Francisco for Modification No. 6, as well as retroactive approval of the Contract, as modified by the previous modifications.

### **Recommendation**

I recommend the Commission adopt the attached resolution approving Modification No. 6 to Contract No. 9186 with The Bank of New York Mellon Trust Company, N.A to increase the contract amount by \$1,050,000 for a new total not-to-exceed contract amount of \$3,800,000 to provide ongoing bond trustee and paying agent services and direct the Commission Secretary to request approval by the Board of Supervisors.



Ivar C. Satero  
Airport Director

Prepared by: Jan Mazyck  
Chief Financial Officer

Attachments

## ATTACHMENT A

### **BOND TRUSTEE AND PAYING AGENT SERVICES**

The Bank of New York Mellon Trust Company, N.A. provides bond trustee and paying agent services to the Commission under the Master Bond Resolution, including services related to the Airport's fixed rate revenue bonds, variable rate revenue bonds, outstanding interest rate swap, and other financing agreements.

Regular services provided by the Trustee include:

- Investment of reserve funds held by the Trustee under the direction of the Commission.
- Prompt reporting on investment yields and other information requested by the Commission.
- Payment of principal and interest on revenue bonds to bondholders, at the time and in the manner required by the Master Bond Resolution and the related supplemental resolutions.
- Providing notices to bondholders.
- Maintenance of books of registration for revenue bonds.
- The transfer and exchange of revenue bonds and other financing mechanisms.
- Prompt and timely assistance on trustee and paying agent issues related to short-term debt and other funding mechanisms instituted by the Commission.



AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 01-0360

AWARD OF CONTRACT MODIFICATION NO. 1 FOR BOND TRUSTEE  
SERVICES WITH BNY WESTERN TRUST COMPANY

WHEREAS, the Airport Commission adopted the new Master Bond Resolution in 1991 to govern the sale and issuance of present and future revenue bonds; and

WHEREAS, the Trustee has been and is required to oversee that the revenue bonds and other debt instruments are in compliance with all tax laws while outstanding; and

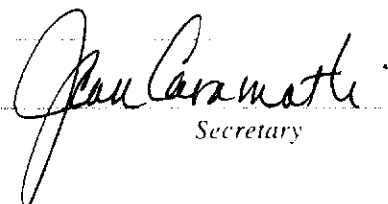
WHEREAS, the Airport Commission has issued and plans to issue revenue bonds and other debt instruments that will require the services of a Bond Trustee; now, therefore, be it

RESOLVED, that this Commission hereby approves a \$600,000 modification of contract to BNY Western Trust Company for Trustee, Registrar and Paying Agent fees for the next five years.

*I hereby certify that the foregoing resolution was adopted by the Airport Commission*

DEC 04 2001

*at its meeting of* .....

  
Secretary

**AIRPORT COMMISSION**

CITY AND COUNTY OF SAN FRANCISCO

**07-0035**

RESOLUTION NO.

AWARD OF CONTRACT MODIFICATION NO. 2 FOR BOND TRUSTEE SERVICES WITH THE BANK OF NEW YORK TRUST COMPANY, N.A.

- WHEREAS, the Airport Commission adopted the Master Bond Resolution in 1991 to govern the sale and issuance of present and future revenue bonds; and
- WHEREAS, the Trustee has been and is required to oversee that the revenue bonds and other debt instruments are in compliance with applicable tax laws while outstanding; and
- WHEREAS, the Trustee provides bond trustee and paying agent services for the Airport Commission; and
- WHEREAS, the Airport Commission has issued and plans to issue revenue bonds and other debt instruments that will require the services of a bond trustee; and
- WHEREAS, the Commission adopted Resolution No. 91-0197 on November 4, 1991, authorizing the award of a contract with First Interstate Bank, Ltd. (now known as The Bank of New York Trust Company, N.A.) to provide Bond Trustee services in the amount of \$260,000; and
- WHEREAS, the Commission adopted Resolution No. 01-0360 on December 4, 2001, authorizing Modification No. 1 to the original agreement with BNY to increase the total compensation by \$600,000 for a total of \$860,000; and
- WHEREAS, the Commission desires now to authorize a Modification No. 2 in order to increase the total compensation by \$900,000 and provide compensation for another five years; now, therefore, be it
- RESOLVED, that this commission hereby approves Modification No. 2 in the amount of \$900,000 for the contract with The Bank of New York Trust Company, N.A., for Trustee, Registrar and Paying Agent fees for the next five years, bringing the total fees for this contract to \$1,760,000.

I hereby certify that the foregoing resolution was adopted by the Airport Commission  
at its meeting of

**FEB 06 2007**

  
Secretary

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 11-0251

MODIFICATION NO. 3 TO CONTRACT NO. 9186 FOR BOND TRUSTEE AND PAYING AGENT SERVICES WITH THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. TO INCREASE THE TOTAL NOT-TO-EXCEED CONTRACT AMOUNT BY \$800,000 FROM \$1,760,000 TO \$2,560,000 TO FUND TRUSTEE AND PAYING AGENT SERVICES IN CONNECTION WITH THE AIRPORT'S BOND PROGRAM FOR A PERIOD OF FIVE YEARS EFFECTIVE APRIL 1, 2012 THROUGH MARCH 31, 2017

WHEREAS, the Airport Commission adopted Resolution No. 91-0210 on December 3, 1991 (as subsequently amended and supplemented, the "Master Bond Resolution") to govern the sale and issuance of revenue bonds; and

WHEREAS, a bond trustee and paying agent (the Trustee) is required to oversee that the revenue bonds and other debt instruments are in compliance with applicable tax laws so long as any bonds are outstanding; and

WHEREAS, the Trustee provides bond trustee and paying agent services for the Airport Commission; and

WHEREAS, the Airport Commission has issued and plans to issue revenue bonds and other debt instruments that will require the services of a bond trustee; and

WHEREAS, the Commission adopted Resolution No. 91-0197 on November 4, 1991, authorizing the award of a contract with 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, the Commission adopted Resolution No. 01-0360 on December 4, 2001, authorizing Modification No. 1 to the original agreement with BNY Western Trust Company, a subsidiary of Bank of New York Company (now known as The Bank of New York Mellon Trust Company, N.A) to increase the total compensation by \$600,000 for a total of \$860,000; and

WHEREAS, the Commission adopted Resolution No. 07-0035 on February 6, 2007, authorizing Modification No. 2 to the original agreement with The Bank of New York Mellon Trust Company N.A. to increase the total compensation by \$900,000 for a total of \$1,760,000; and

WHEREAS, the Commission desires now to authorize a Modification No. 3 to increase the total compensation by \$800,000 to provide compensation for another five year period; and

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 11-0251


WHEREAS, the City's Board of Supervisors approved the issuance of bonds under the Master Bond Resolution on January 6, 1992 (Resolution No. 34-92) and confirmed the retention of The Bank of New York as Trustee on May 1, 2007 (Resolution No.235-07); now therefore, be it

RESOLVED, that this commission hereby approves Modification No. 3 in the amount of \$800,000 to the contract with The Bank of New York Mellon Trust Company, N.A., effective April 1, 2012 through March 31, 2017 for Trustee services (Trustee and Paying Agent fees) for a period of five years for a total not-to-exceed amount of \$2,560,000.

Page 2 of 2

*I hereby certify that the foregoing resolution was adopted by the Airport Commission  
at its meeting of* \_\_\_\_\_

NOV 15 2011

  
\_\_\_\_\_  
Secretary

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 17-0022

**APPROVAL OF MODIFICATION NO. 4 TO BOND TRUSTEE CONTRACT NO. 9186 WITH THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., TO AUTHORIZE THE USE OF \$464,000 IN PREVIOUSLY APPROVED COMPENSATION, AND TO INCREASE FUNDING BY \$190,000, FROM \$2,560,000 TO A TOTAL NOT TO EXCEED AMOUNT OF \$2,750,000**

- WHEREAS, the Airport Commission (the "Commission") adopted Resolution No. 91-0210 on December 3, 1991 (as subsequently amended and supplemented, the "Master Bond Resolution") to govern the sale and issuance of revenue bonds; and
- WHEREAS, a bond trustee and paying agent (the "Trustee") is required to, among other things, maintain bond-related funds and accounts and make timely principal and interest payments to bondholders so long as any bonds are outstanding; and
- WHEREAS, the Trustee provides bond trustee and paying agent services for the Commission; and
- WHEREAS, the Commission has issued and plans to issue revenue bonds and other debt instruments that will require the services of a bond trustee; and
- WHEREAS, the Commission adopted Resolution No. 91-0197 on November 4, 1991, authorizing award of a contract with First Interstate Bank, Ltd. (now known as The Bank of New York Mellon Trust Company, N.A.), to provide Trustee services in the amount of \$260,000; and
- WHEREAS, this contract was established without an expiration date and continues until the Trustee is replaced pursuant to the Master Bond Resolution or the contract is otherwise terminated; and
- WHEREAS, the Commission adopted Resolution No. 01-0360 on December 4, 2001, authorizing Modification No. 1 to the original agreement with BNY Western Trust Company, a subsidiary of Bank of New York Company (now known as The Bank of New York Mellon Trust Company, N.A.), to increase the total compensation by \$600,000 for a total of \$860,000; and
- WHEREAS, the Commission adopted Resolution No. 07-0035 on February 6, 2007, authorizing Modification No. 2 to the original agreement with The Bank of New York Mellon Trust Company, N.A., to increase the total compensation by \$900,000 for a total of \$1,760,000; and
- WHEREAS, the Commission adopted Resolution No. 11-0251 on November 15, 2011, authorizing Modification No. 3 to the original agreement with The Bank of New York Mellon Trust Company, N.A., to increase the total compensation by \$800,000 for Trustee services for a period of five years, for a total of \$2,560,000; and
- WHEREAS, a balance of approximately \$464,000 of previously approved Trustee compensation is estimated to remain unspent through March 31, 2017, the end of the five-year period referenced in Resolution No. 11-0251; and

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 17-0022

- WHEREAS, the Commission desires now to authorize the use of such previously-approved Trustee compensation for payments to the Trustee for services provided after March 31, 2017; and
- WHEREAS, the Commission desires now to approve Modification No. 4 to increase the total compensation by \$190,000; and
- WHEREAS, the City's Board of Supervisors approved the issuance of bonds under the Master Bond Resolution on January 6, 1992 (Resolution No. 34-92) and confirmed the retention of The Bank of New York as Trustee on May 1, 2007 (Resolution No. 235-07); now, therefore, be it
- RESOLVED, that this Commission hereby authorizes the use of Trustee compensation added pursuant to Modification No. 3 to Contract No. 9186 for payments to the Trustee for services provided after the end of the five-year period referenced in Resolution No. 11-0251; and, be it further
- RESOLVED, that this Commission hereby approves and authorizes the execution of Modification No. 4 in the amount of \$190,000 to Contract No. 9186 with The Bank of New York Mellon Trust Company, N.A., for bond trustee and paying agent services, for a new total not to exceed amount of \$2,750,000.

Page 2 of 2

*I hereby certify that the foregoing resolution was adopted by the Airport Commission*

*at its meeting of*

**FEB 07 2017**

  
Secretary





San Francisco International Airport

February 28, 2022

The Honorable Members of the Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton Goodlett Place, Room 244  
San Francisco, CA 94102

Re: Request for Approval - Trustee Agreement - The Bank of New York Mellon Trust Company, N.A. - San Francisco International Airport Revenue Bonds - Not to Exceed \$3,800,000

Honorable Members of the Board of Supervisors:

The San Francisco Airport Commission (Airport) requests that the San Francisco Board of Supervisors approve Modification No. 6 to Airport Contract No. 9186 (the Agreement) with The Bank of New York Mellon Trust Company, N.A. (the Trustee), for bond trustee services, and retroactively approve the Agreement, and Modification Nos. 1, 2, 3, 4, and 5 to the Agreement, for an indefinite term. The proposed Modification No. 6 will increase the contract amount by \$1,050,000, for a new total not-to-exceed contract amount of \$3,800,000.

Modification No. 6 and the Agreement, as previously modified, are submitted to the Board of Supervisors for its approval in accordance with Section 9.118(b) of the Charter of the City and County of San Francisco (Charter) because the Agreement term exceeds 10 years, and Modification No. 6 would increase the contract amount by more than \$500,000.

**Background**

The Airport has approximately \$8.2 billion of bonds outstanding under Airport Commission Resolution No. 91-0210, as amended and supplemented (the Master Bond Resolution). The Master Bond Resolution requires the ongoing services of a trustee and paying agent so long as there are bonds outstanding. These services include:

- Investment of reserve funds held by the Trustee under the direction of the Airport.
- Prompt reporting on investment yields and other information requested by the Airport.
- Payment of principal and interest on revenue bonds to bondholders, at the time and in the manner required by the Master Bond Resolution and the related supplemental resolutions.
- Providing notices to bondholders.
- Maintenance of books of registration for revenue bonds.
- The transfer and exchange of revenue bonds and other financing mechanisms.
- Prompt and timely assistance on trustee and paying agent issues related to short-term debt and other funding mechanisms instituted by the Airport.
- Taking action as directed by bondholders in the event of a default under the Master Bond Resolution.

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED  
MAYOR

ELEANOR JOHNS  
PRESIDENT

MALCOLM YEUNG

EVERETT A. HEWLETT, JR.

JANE NATOLI

IVAR C. SATERO  
AIRPORT DIRECTOR

The Master Bond Resolution states that the Airport agrees to pay fees to and expenses of the Trustee for its services under the Master Bond Resolution as agreed to by the Airport and the Trustee pursuant to the terms of a separate agreement. The Agreement is this "separate agreement" setting forth the terms of payment of the Trustee's fees and expenses for its services referenced in the Master Bond Resolution.

The Bank of New York Mellon Trust Company, N.A., has provided these services to the Airport pursuant to the Agreement since 1992, when the first series of bonds were issued under the Master Bond Resolution. The Agreement does not have an expiration date; rather, the Agreement states that it will continue until terminated in accordance with the Master Bond Resolution, which also does not state an end date for the services of the Trustee and requires a replacement trustee to be in place before the Trustee can resign or be removed. This is because continuity in trustee services is essential to both the Airport and its bondholders.

### **Prior Contract Amendments**

The Agreement with the Trustee has been modified five previous times, for various purposes.

After a competitive selection process, on November 4, 1991, the Commission adopted Resolution No. 91-0197, authorizing award of the Agreement to First Interstate Bank, Ltd. (now known as The Bank of New York Mellon Trust Company, N.A., and referred to in this letter as the Trustee), to provide bond trustee and paying agent services under the Master Bond Resolution in the amount of \$260,000. The Agreement was executed in 1992, in connection with the issuance of the Airport's Issue 1 Bonds.

On December 4, 2001, the parties entered into Modification No. 1 to the Agreement, to increase the total compensation by \$600,000 for a new total not-to-exceed amount of \$860,000, as authorized by Airport Commission Resolution No. 01-0360.

On February 6, 2007, the parties entered into Modification No. 2 to the Agreement, to increase the total compensation by \$900,000 for a new total not-to-exceed amount of \$1,760,000, as authorized by Airport Commission Resolution No. 07-0035.

On April 1, 2012, the parties entered into Modification No. 3 to the Agreement, to increase the total compensation by \$800,000 for a new total not-to-exceed amount of \$2,560,000, as authorized by Airport Commission Resolution No. 11-0251.

On April 1, 2017, the parties entered into Modification No. 4 to the Agreement, to increase the total compensation by \$190,000 for a new total not-to-exceed amount of \$2,750,000, as authorized by Airport Commission Resolution No. 17-0022.

On June 1, 2018, the parties entered into Modification No. 5 to the Agreement, to update the appendix listing the Trustee services and the charges for such services, without increasing the not-to-exceed compensation amount, under the delegated authority of the Airport Director to make administrative changes.

The Honorable Members of the Board of Supervisors

February 28, 2022

Page 3

The issuance of bonds under the Master Bond Resolution has been approved by the Board on multiple occasions since 1991 (to date, 24 Board resolutions totaling over \$26.5 billion) as required under Charter Section 4.115, and these approvals contemplated that a third-party trustee would administer the Airport's bonds. But, the Agreement and prior modifications were not presented to the Board for approval under Charter Section 9.118. Given the unique structure of the Agreement, which is intertwined with the Master Bond Resolution, the Airport, in consultation with the City Attorney's office, considered the Agreement and prior modifications to be approved in the ambit of the Board's multiple approvals of the issuance of Airport bonds. For the proposed Modification No. 6, the City Attorney's office advised Staff that, to resolve any uncertainty about whether further Board approval is required, the safest course is to seek Board approval for both Modification No. 6 and the Agreement as previously modified. Staff acknowledges that the past practice was a regrettable error and plans to request Board approval as required under Charter Section 9.118 for all future modifications to the Agreement.

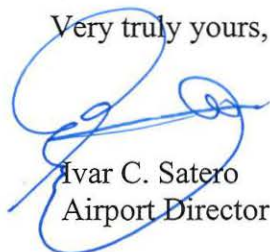
### **Airport Commission Action**

On December 7, 2021, by Resolution No. 21-0229, the Airport Commission approved Modification No. 6 to the Agreement and authorized the Commission Secretary to request Board approval under Charter Section 9.118 for Modification No. 6, as well as retroactive Board approval of the Agreement, as modified by the previous modifications.

### **Request**

The Airport requests that the Board of Supervisors adopt a resolution retroactively approving the Agreement with The Bank of New York Mellon Trust Company, N.A., for bond trustee services, as modified by five previous modifications for an indefinite term and a total not-to-exceed amount of \$2,750,000, and approving Modification No. 6 to the Agreement to increase the contract amount by \$1,050,000, for a new total not-to-exceed amount of \$3,800,000.

Very truly yours,



Ivar C. Satero  
Airport Director



## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 220076

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

|   |   |
|---|---|
| <b>TYPE OF FILING</b>                                       | <b>DATE OF ORIGINAL FILING (for amendment only)</b> |
| Original  |   |
| <b>AMENDMENT DESCRIPTION – Explain reason for amendment</b> |   |
|   |   |

#### 2. CITY ELECTIVE OFFICE OR BOARD

|                        |                                      |
|------------------------|--------------------------------------|
| <b>OFFICE OR BOARD</b> | <b>NAME OF CITY ELECTIVE OFFICER</b> |
| Board of Supervisors   | Members                              |

#### 3. FILER'S CONTACT

|                                  |                                |
|----------------------------------|--------------------------------|
| <b>NAME OF FILER'S CONTACT</b>   | <b>TELEPHONE NUMBER</b>        |
| Angela Calvillo                  | 415-554-5184                   |
| <b>FULL DEPARTMENT NAME</b>      | <b>EMAIL</b>                   |
| office of the clerk of the Board | Board.of.Supervisors@sfgov.org |

#### 4. CONTRACTING DEPARTMENT CONTACT

|   |  |
|---|--|
| <b>NAME OF DEPARTMENTAL CONTACT</b>     | <b>DEPARTMENT CONTACT TELEPHONE NUMBER</b> |
| Cathy widener                           | 650-821-5184                               |
| <b>FULL DEPARTMENT NAME</b>             | <b>DEPARTMENT CONTACT EMAIL</b>            |
| AIR San Francisco International Airport | Cathy.Widener@flysfo.com                   |



| 5. CONTRACTOR  |   |
|--|---|
| <b>NAME OF CONTRACTOR</b><br>The Bank of New York Mellon Trust Company, N.A.   | <b>TELEPHONE NUMBER</b><br>415-263-2418 |
| <b>STREET ADDRESS (including City, State and Zip Code)</b><br>50 Fremont Street, Suite 3900, San Francisco, CA 94105 | <b>EMAIL</b>                            |

| 6. CONTRACT  |                                |  |
|--|--------------------------------|--|
| <b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>  | <b>ORIGINAL BID/RFP NUMBER</b> | <b>FILE NUMBER (If applicable)</b><br>220076 |
| <b>DESCRIPTION OF AMOUNT OF CONTRACT</b><br>\$3,800,000  |                                |  |
| <b>NATURE OF THE CONTRACT (Please describe)</b><br>The Bank of New York Mellon Trust Company, N.A. provides ongoing independent bond trustee and paying agent services under Contract No. 9186. These services are required by Resolution No. 91-0210, as amended and supplemented, to be in place for the life of the revenue bonds issued by the Airport Commission. |                                |  |

| 7. COMMENTS |
|-------------|
|             |

| 8. CONTRACT APPROVAL                |  |
|-------------------------------------|--|
| This contract was approved by:      |  |
| <input type="checkbox"/>            | THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM   |
| <input checked="" type="checkbox"/> | A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES<br>Board of Supervisors                                   |
| <input type="checkbox"/>            | THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS |

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

| #  | LAST NAME/ENTITY/SUBCONTRACTOR | FIRST NAME | TYPE                    |
|----|--------------------------------|------------|-------------------------|
| 1  | Cook                           | Linda      | Board of Directors      |
| 2  | Echevarria                     | Joseph     | Board of Directors      |
| 3  | Gibbons                        | Thomas     | Board of Directors      |
| 4  | Gilliland                      | M. Amy     | Board of Directors      |
| 5  | Goldstein                      | Jeffry     | Board of Directors      |
| 6  | Gowrappan                      | Kumara     | Board of Directors      |
| 7  | Izzo                           | Ralph      | Board of Directors      |
| 8  | Kelly                          | Edmund     | Board of Directors      |
| 9  | O'Connor                       | Sandie     | Board of Directors      |
| 10 | Robinson                       | Elizabeth  | Board of Directors      |
| 11 | Scott III                      | Samuel     | Board of Directors      |
| 12 | Terrell                        | Frederick  | Board of Directors      |
| 13 | Zollar                         | Alfred     | Board of Directors      |
| 14 | Gibbons                        | Thomas     | CEO                     |
| 15 | Anderson                       | Jolen      | Other Principal Officer |
| 16 | Crowley                        | James      | Other Principal Officer |
| 17 | Engle                          | Bridget    | COO                     |
| 18 | Kablawi                        | Hani       | Other Principal Officer |
| 19 | Keating                        | Catherine  | Other Principal Officer |



**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

| #  | LAST NAME/ENTITY/SUBCONTRACTOR | FIRST NAME | TYPE                    |
|----|--------------------------------|------------|-------------------------|
| 20 | Kumar                          | Senthil    | Other Principal Officer |
| 21 | La Salla                       | Francis    | Other Principal Officer |
| 22 | Landau                         | Jeffrey    | Other Principal Officer |
| 23 | McCarthy                       | J. Kevin   | Other Principal Officer |
| 24 | Portney                        | Emily      | CFO                     |
| 25 | Regeľman                       | Roman      | Other Principal Officer |
| 26 | Ruane                          | Brian      | Other Principal Officer |
| 27 | Shah                           | Akash      | Other Principal Officer |
| 28 | Smits                          | Hanneke    | Other Principal Officer |
| 29 | Vince                          | Robin      | Other Principal Officer |
| 30 | Vos                            | Adam       | Other Principal Officer |
| 31 | wiener                         | James      | Other Principal Officer |
| 32 |                                |            |                         |
| 33 |                                |            |                         |
| 34 |                                |            |                         |
| 35 |                                |            |                         |
| 36 |                                |            |                         |
| 37 |                                |            |                         |
| 38 |                                |            |                         |

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

| #                        | LAST NAME/ENTITY/SUBCONTRACTOR  | FIRST NAME | TYPE |
|--------------------------|---|------------|------|
| 39                       |   |            |      |
| 40                       |   |            |      |
| 41                       |   |            |      |
| 42                       |   |            |      |
| 43                       |   |            |      |
| 44                       |   |            |      |
| 45                       |   |            |      |
| 46                       |   |            |      |
| 47                       |   |            |      |
| 48                       |   |            |      |
| 49                       |   |            |      |
| 50                       |   |            |      |
| <input type="checkbox"/> | Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type. |            |      |

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

|   |                           |
|---|---------------------------|
| <p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p><br><br><p>BOS Clerk of the Board</p> | <p><b>DATE SIGNED</b></p> |
|---|---------------------------|



San Francisco International Airport

January 21, 2022

Angela Calvillo  
Clerk of the Board  
Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Subject: Approval of Modification No. 6 to Airport Contract No. 9186 with The Bank of New York Mellon Trust Company, N.A.

Dear Ms. Calvillo:

We have enclosed a Board of Supervisors Resolution approving Modification No. 6 to Airport Contract No. 9186 with The Bank of New York Mellon Trust Company, N.A., for bond trustee services.

The Bank of New York Mellon Trust Company, N.A. provides ongoing independent bond trustee and paying agent services under Contract No. 9186. These services are required by Resolution No. 91-0210, as amended and supplemented, to be in place for the life of the revenue bonds issued by the Airport Commission. Modification No. 6 will increase the contract amount by \$1,050,000, for a new total not-to-exceed amount of \$3,800,000 to cover the costs of bond trustee and paying agent services for the next five years, and retroactively approve the contract as modified by five previous modifications and a prior total not-to-exceed amount of \$2,750,000.

We have enclosed copies of the Airport Commission's Resolution No. 21-0229, which was adopted on December 7, 2021, with the accompanying Memorandum.

The following is a list of accompanying documents:

- Board of Supervisors Resolution;
- Approved Airport Commission Resolution No. 21-0229;
- Memorandum accompanying Airport Commission Resolution No. 21-0229;
- Other Airport Commission resolutions referenced in the Board resolution;
- Modification No. 6 to Airport Contract No. 9186; and
- Contract No. 9186 and other modifications as amended and supplemented.

**AIRPORT COMMISSION** CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED  
MAYOR

LARRY MAZZOLA  
PRESIDENT

ELEANOR JOHNS  
VICE PRESIDENT

EVERETT A. HEWLETT, JR.

JANE NATOLI

MALCOLM YEUNG

IVAR C. SATERO  
AIRPORT DIRECTOR

Angela Calvillo  
Clerk of the Board  
Board of Supervisors  
January 21, 2022  
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The following person may be contacted regarding this matter:

Ronda Chu  
Capital Finance Director  
(650) 821-2823  
ronda.chu@flysfo.com

Very truly yours,

*Kantrice Ogletree /s/*

Kantrice Ogletree  
Commission Secretary

Enclosures

cc: Ronda Chu, Finance  
Cathy Widener, Governmental Affairs