

**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.**




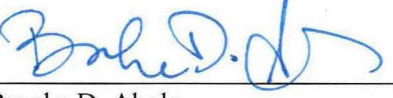
13. Legal Effect. Except as expressly changed by this Modification, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

| Fee | Unit Price | Estimated Annual Cost |
|--|------------|-----------------------|
| Regular Fees | | |
| 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 |
| Subtotal | | \$130,355 |
| Transaction Fees | | |
| 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 |
| Subtotal | | \$14,200 |
| Total | | \$144,555 |

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