

**CASH MANAGEMENT AND LOCKBOX AGREEMENT**

**among**

**[DEPOSITORY BANK],  
as Depository Bank**

**[TRUSTEE],  
as Trustee**

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

**and**

**HYATT CORPORATION**

**Relating to**

**Airport Commission of the City and County of San Francisco  
Special Facility Revenue Bonds  
(San Francisco International Airport Hotel)  
Series 201\_**

**Dated as of [DATE], 201\_**

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## **CASH MANAGEMENT AND LOCKBOX AGREEMENT**

This CASH MANAGEMENT AND LOCKBOX AGREEMENT, dated as of [DATE], 201\_ (this “Agreement”), among [DEPOSITORY BANK], a national banking association (in such capacity, the “Depository Bank”), [TRUSTEE], a national banking association, as trustee under the Trust Agreement (defined below) (in such capacity, the “Trustee”), AIRPORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO (the “Owner”), and HYATT CORPORATION (the “Manager”);

### **RECITALS:**

WHEREAS, Owner has determined to issue its \$[AMOUNT] aggregate principal amount of Airport Commission of the City and County of San Francisco Special Facility Revenue Bonds (San Francisco International Airport Hotel) Series 201\_ (the “Series 201\_ Bonds” and together with any additional bonds issued under the Trust Agreement, the “Bonds”) pursuant to that certain Trust Agreement, dated as of [DATE], 201\_ (as amended or supplemented in accordance with the terms thereof, the “Trust Agreement”) for the purpose of financing the acquisition, construction, equipping and furnishing of the Hotel (as defined in the Trust Agreement); and

WHEREAS, subject to the terms and conditions of the Trust Agreement, Owner will pledge under the Trust Agreement the Total Operating Revenues (as defined below) to the Trustee as security for the payment of the Bonds and performance by Owner of its other obligations under the Trust Agreement with respect to the Bonds, and has agreed, pursuant to the Trust Agreement, to establish a deposit account and a securities account with the Depository Bank and to cause such Total Operating Revenues (less the Petty Cash Amount) to be deposited in such deposit account, and has further pledged the Lockbox Fund (defined below) to the Trustee as security for the Bonds; and

WHEREAS, Owner has entered into a Hotel Management Agreement, dated as of [DATE], 2015 (as amended or supplemented in accordance with the terms thereof, the “Management Agreement”), with Manager, pursuant to which Manager has agreed to manage and operate the Hotel, subject to the terms and conditions hereof and thereof; and

WHEREAS, the aforementioned parties desire to establish the Lockbox Fund and the Investment Account (defined below), and to set forth the terms and conditions upon which the Total Operating Revenues will be deposited and maintained in, and withdrawn from, the Lockbox Fund, the Investment Account and certain other funds established under the Trust Agreement; and

WHEREAS, although certain provisions contained herein are also included in the Trust Agreement, the Depository Bank, the Trustee, Owner and Manager intend that Manager has contractual rights against the Depository Bank, the Trustee or Owner as provided herein if the Depository Bank, the Trustee or Owner violate, breach or otherwise default under the terms, conditions and provisions of this Agreement, and the terms, conditions and provisions of this Agreement are intended to be self-operative without reference to the Trust Agreement;

NOW THEREFORE, in consideration of the mutual premises recited above and contained herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Defined Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Trust Agreement and by this reference are incorporated herein.

Section 2. Interpretation.

(a) The Table of Contents and captions to the Articles and Sections of this Agreement are for convenience of reference only and in no way define, limit, describe or affect the scope or intent of any part of this Agreement.

(b) Defined terms in this Agreement shall include in the singular number the plural and in the plural number the singular.

(c) Unless otherwise stated, any reference in this Agreement to any Person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

(d) Unless otherwise expressly specified, any agreement, contract or document defined or referred to in this Agreement means such agreement, contract or document in the form (including all amendments, schedules, exhibits, appendices, attachments, clarification letters and the like relating thereto) as of its date of execution, and as the same may thereafter be amended, supplemented, replaced or otherwise modified from time to time in accordance with the terms hereof and thereof.

(e) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(f) The words “include,” “includes” and “including” shall not be limiting, and shall be deemed in all instances to be followed by the phrase “without limitation.”

(g) Any reference to a Section, Article or Exhibit is a reference to a Section, Article or Exhibit of this Agreement, unless otherwise specified.

(h) The phrase “and/or” means either or both of the items referenced thereby.

(i) References to “days” mean calendar days unless otherwise indicated.

(j) Unless the context clearly requires otherwise, the word “or” is not exclusive.

(k) Unless the language specifies or the context implies that a term of this Agreement is a condition, all of the terms of this Agreement shall be deemed and construed to be covenants to be performed by the designated Party.

(l) Unless expressly stated otherwise in this Agreement, whenever a matter is submitted to a Party for approval or consent in accordance with the terms of this Agreement, that Party has a duty to not unreasonably withhold, condition or delay such approval or consent.

Section 3. Establishment of Lockbox Fund and Investment Account.

(a) Lockbox Fund. The Trustee shall establish and maintain with the Depository Bank an interest bearing deposit account currently numbered \_\_\_\_\_ and titled “[TRUSTEE], as Trustee for Airport Commission of the City and County of San Francisco Special Facility Revenue Bonds – Lockbox Fund” (as such deposit account may be renumbered or retitled, the “Lockbox Fund”). The Lockbox Fund shall be assigned the federal tax identification number of the City, which number is \_\_\_\_\_. All parties agree that the Lockbox Fund is a deposit account. The Trustee, the Depository Bank and Owner represent, warrant and covenant that the Lockbox Fund is not now, and will not at any time be, evidenced by a certificate of deposit, passbook or other similar instrument.

(b) Lockbox Investment Account. The Trustee shall establish and maintain with the Depository Bank a securities account currently numbered \_\_\_\_\_ and titled “[TRUSTEE], as Trustee for Airport Commission of the City and County of San Francisco Special Facility Revenue Bonds – Lockbox Investment Account” (as such securities account may be renumbered or retitled, the “Investment Account”). The Investment Account shall be assigned the federal tax identification number of Owner.

(c) Preliminary Working Capital Account. Commencing on a date that is at least seven days prior to the Opening Date, the Trustee is required pursuant to Section 5.05(c) of the Trust Agreement to transfer from the Preliminary Working Capital Account of the Construction Fund into the Lockbox Fund, all amounts on deposit in the Preliminary Working Capital Account of the Construction Fund (which amount shall equal or be greater than the Working Capital Set Aside Amount) less the Petty Cash Amount upon receipt by the Trustee of a Written Request of Owner. At such time, Owner shall cause the Trustee to transfer the Petty Cash Amount to Manager. In addition, if required by Section 5.05(d) of the Trust Agreement, the Trustee shall transfer amounts in the Reservation Deposit Account and the Pre-Opening Expenses Account of the Construction Fund to the Lockbox Fund. Such amounts shall be subject to disbursement and withdrawal for the purposes and in the manner set forth herein with respect to amounts held in the Lockbox Fund.

(d) Working Capital Reserve Fund. Prior to the Opening Date, Owner shall cause to be deposited to the Working Capital Reserve Fund the amount of \$2,500,000, and pursuant to Section 3.03 of the Trust Agreement, the Trustee is required to deposit such amount to the Working Capital Reserve Fund. Thereafter, additional amounts shall be deposited into the Working Capital Reserve Fund in the manner set forth in the Trust Agreement. The funds in the Working Capital Reserve Fund shall be subject to disbursement and withdrawal for the purposes and manner set forth in the Trust Agreement and described below.

Section 4. Establishment of Clearing Bank Accounts and Provisions for Manager's Retention of Petty Cash. As part of the process of depositing all Total Operating Revenues into the Lockbox Fund, Manager may also establish one or more segregated deposit accounts (collectively, the "Clearing Bank Accounts") in order to obtain for the Hotel the most favorable terms available for settling electronic transactions effected with bank and non-bank credit cards or for other purposes customary in the upscale hotel industry; provided, however, that all Clearing Bank Accounts shall be "zero balance" accounts such that, at the end of each Business Day, all amounts contained therein (except for *de minimis* amounts) shall be automatically withdrawn and transferred to the Lockbox Fund, and except as provided in this Section, no other withdrawals from the Clearing Bank Accounts shall be permitted. Costs of maintaining such Clearing Bank Accounts shall be paid or credited as an Operating Expense. The Trustee and Owner acknowledge and agree that (a) Manager shall have the right to maintain customary and reasonable petty cash accounts at the Hotel and to fund those accounts in an amount or amounts aggregating not more than the Petty Cash Amount, (b) credit card processors will require the ability to access, debit for charge back purposes and offset the Clearing Bank Accounts set up for the purpose of handling credit card payments, and (c) Manager shall retain or receive directly from the Lockbox Fund all Excluded Taxes and Other Charges pursuant to Section 5.01(e) of the Trust Agreement (to the extent deposited with the Depository Bank).

Section 5. Deposit of Total Operating Revenues.

(a) Credit Card Companies. Manager shall immediately instruct each bank, corporation, processor or other entity (each, a "Credit Card Company") with which Manager has entered into a merchant's or other agreement with respect to the processing of charge card, debit card or comparable forms of payment that all receipts payable with respect to the Hotel, in accordance with such merchant's or other agreement or otherwise, shall be transferred when due by wire transfer or the ACH System for deposit in a Clearing Bank Account or the Lockbox Fund, notwithstanding contrary terms of any such merchant's or other agreement.

(b) Clearing Bank Accounts. Manager shall immediately instruct all Persons that now or hereafter maintain open accounts with Manager, or from whom Manager receives or will receive payment on an "accounts receivable" basis, the payments on which open accounts or accounts receivable constitute or will constitute Total Operating Revenues, to deliver all such payments when due under such accounts to Manager for deposit in a Clearing Bank Account or the Lockbox Fund whether in the form of checks, drafts, cash, money orders or any other type of payment whatsoever. Manager shall not direct any such Person to make payments due under such accounts in any other manner.

(c) Manager and Owner Deposits. Manager agrees to deposit promptly in the Lockbox Fund or a Clearing Account any Total Operating Revenues it may receive directly or from any third party; provided, however, that Manager may retain the Petty Cash Amount on the Hotel premises and may retain Excluded Taxes and Other Charges as provided in Section 4 of this Agreement (which Excluded Taxes and Other Charges Manager shall pay as provided in the Management Agreement). Owner shall deposit promptly in the Lockbox Fund any Total Operating Revenues it may receive directly or from any third party.

(d) Prohibited Actions. Without the prior written consent of an Authorized Commission Representative, no party hereto shall (i) terminate, amend, revoke, modify or contradict any instruction letter delivered pursuant to Sections 5(a) and (b) above in any manner, or (ii) cause any tenant, debtor or Credit Card Company to pay any amount of Total Operating Revenues in any manner other than as provided specifically herein.

Section 6. Disbursements From the Lockbox Fund.

(a) Disbursements to Manager by Depository Bank. On and after the Opening Date, unless the Management Agreement has been terminated, the Depository Bank shall periodically disburse amounts deposited in the Lockbox Fund to Manager as periodically requested by Manager, pursuant to either check or draft drawn by Manager directly against such Lockbox Fund, or by written instructions provided by Manager to the Trustee specifying the amount to be transferred by the Trustee to Manager, for the payment of: (i) Operating Expenses, including the Base Management Fee, then due and owing; and (ii) any Excluded Taxes or Other Charges deposited to the Lockbox Fund; provided, that if a Manager Event of Default (as defined in the Management Agreement) has occurred and is continuing under the Management Agreement, any unbudgeted Operating Expenses shall be disbursed to Manager only with the prior written consent of an Authorized Owner Representative. The Base Management Fee then due and owing shall be paid out on the first Business Day of each month immediately prior to any other disbursements, including the disbursements to the Trustee as provided in Section 6(b) below and any Excluded Taxes or Other Charges deposited to the Lockbox Fund.

(b) Disbursements to the Trustee by Depository Bank. On the first Business Day of each month, the Trustee will withdraw all amounts in the Lockbox Fund in excess of Working Capital Set-Aside Amount for deposit into the Available Revenue Fund pursuant to Sections 5.01(e) and 5.07 of the Trust Agreement, provided, however, that such withdrawal by the Trustee will not be made prior to the disbursement of Operating Expenses in accordance with the provisions of Section 6(a) above.

(c) Investments. Amounts held in the Lockbox Fund shall be invested by the Depository Bank in Investment Securities as directed by a Letter of Instructions. In the absence of such directions, the Trustee shall invest such amounts in Investment Securities described in clause 5 of the definition of Investment Securities. Any Investment Security purchased pursuant to this paragraph shall be a financial asset and shall be credited by the Depository Bank to the Investment Account. All interest or gain derived from any such Investment Security shall be deposited in the Lockbox Fund. All other proceeds of any such Investment Security shall be deposited in the Lockbox Fund, whether upon maturity or disposition. Any Investment Security purchased pursuant to this paragraph shall mature at such time as will permit funds to be available to make the transfers required by Sections 6(a) and (b).

Section 7. Other Funds Held by Trustee and Manager's Rights to Disbursements. Pursuant to the Trust Agreement, the Trustee has established and maintains certain Funds and Accounts (each as defined below) into which the Trustee will deposit (a) the Available Revenues in accordance with Section 5(b) above, and (b) any other funds constituting Total Operating



Revenues received from Owner, Manager or any other Person. Manager has requested that the Trustee and Owner enter into this Agreement for the purpose of paying Operating Expenses (including the Base Management Fee), costs of FF&E, Capital Expenses and other expenses for which Sufficient Funds are available (as defined in the Management Agreement) as provided under the Management Agreement. Manager's right to seek disbursements from the Trustee, the Trustee's obligations to make such disbursements and the terms and conditions under which such disbursements are to be made are set forth in the Trust Agreement and the Management Agreement, which provisions are reproduced in the following subparagraphs (provided, however, that to the extent that there is an inconsistency between the following terms and conditions and the terms and conditions of the Trust Agreement, the terms and conditions of the Trust Agreement shall govern and control):

(a) Taxes and Insurance Fund. Pursuant to the Trust Agreement, the Trustee has established or will establish a reserve for the payment of Taxes and insurance premiums (the "Taxes and Insurance Fund") into which the Trustee shall deposit a portion of the Available Revenues in an amount equal to the Taxes and Insurance Set Aside Amount. Unless the Management Agreement has been terminated, the Trustee is required under the terms of the Trust Agreement to make disbursements as directed by a Request of Manager, in substantially the form attached to the Trust Agreement as Exhibit E, to pay all Taxes (including personal property taxes) and insurance premiums that become due and payable with respect to the ownership and operation of the Hotel as set forth in Section 5.08 of the Trust Agreement.

(b) Working Capital Reserve Fund. Pursuant to the Trust Agreement, the Trustee has established or will establish the Working Capital Reserve Fund into which the Trustee will deposit a portion of the Available Revenues (after funding the deposits required by Section 5.07(a) *First* through *Sixth* of the Trust Agreement) until the Working Capital Reserve Requirement has been met and thereafter maintained. Unless the Management Agreement has been terminated, the Trustee is required under the terms of the Trust Agreement to make disbursements from the Working Capital Reserve Fund to Manager as directed by a Request of Manager [(and consented to by an Authorized Owner Representative and the Asset Manager in writing if payment of such amount would require the consent of an Authorized Owner Representative under the Management Agreement)] in substantially the form attached to the Trust Agreement as Exhibit F to pay for Operating Expenses, Capital Expenses, other expenses and items expressly provided for in the Management Agreement and/or other expenses which, if unbudgeted, shall be approved in writing by an Authorized Owner Representative, and the Asset Manager, at any time during which such expenses exceed Total Operating Revenue for such month plus the amount otherwise available to pay such expenses in the Lockbox Fund, the FF&E Reserve Fund, the Capital Reserve Fund and the Revenue Stabilization Fund (to the extent amounts in such Funds are authorized to be used for such expenses) all in accordance with Section 5.15(d) of the Trust Agreement. In addition, unless the Management Agreement has been terminated, the Trustee is required under the terms of the Trust Agreement to apply amounts on deposit in the Working Capital Reserve Fund for repair or replacement of the Hotel in the event of casualty damage or for the payment of amounts reasonably determined by Manager as are required to be made to protect life, health or property from imminent danger or to comply

with Applicable Laws, at any time during which such expenses exceed Total Operating Revenue for such month plus the amount otherwise available in the Lockbox Fund, the FF&E Reserve Fund, the Capital Reserve Fund and the Revenue Stabilization Fund to pay such expenses (to the extent amounts in such Funds are authorized to be used for such expenses).

(c) FF&E Reserve Fund and Capital Reserve Fund. Pursuant to the Trust Agreement, the Trustee has established or will establish one or more reserves for renewal and replacement of FF&E and/or Capital Expenses (the “FF&E Reserve Fund” and the “Capital Reserve Fund”) into which FF&E Reserve Fund and Capital Reserve Fund the Trustee is required to deposit a portion of the Available Revenues (after funding the deposits required by Section 5.07(a) *First* through *Seventh* of the Trust Agreement) in an amount equal to the FF&E Set Aside Amount and the Capital Reserve Set Aside Amount, respectively. Unless an Event of Default (as defined in the Management Agreement) by the Manager has occurred and is continuing under the Management Agreement or the Management Agreement has been terminated, the Trustee is required under the terms of the Trust Agreement to make disbursements as directed by a Request of Manager in substantially the form attached to the Trust Agreement as Exhibit G (for the FF&E Reserve Fund) and Exhibit H (for the Capital Reserve Fund) of funds deposited in the FF&E Reserve Fund and Capital Reserve Fund for purpose of paying for (i) FF&E and Capital Expenses included within the Capital Budget, (ii) if funds in the Revenue Stabilization Fund are insufficient to make such payments, amounts reasonably determined by Manager to be required to be made to protect life, health or property from imminent danger or to comply with Legal Requirements, all in accordance with Section 5.16 (for the FF&E Reserve Fund) and Section 5.17 (for the Capital Reserve Fund) of the Trust Agreement, and (iii) with the prior written consent of the Asset Manager and an Authorized Owner Representative, FF&E and Capital Expenses not included in the Capital Budget. If an Event of Default (as defined in the Management Agreement) by Manager has occurred and is continuing under the Management Agreement, the Trustee is required under the terms of the Trust Agreement to make disbursements as directed by a Request of Manager (with the prior written consent of an Authorized Owner Representative and the Asset Manager) in writing in substantially the form attached to the Trust Agreement as Exhibit G (for the FF&E Reserve Fund) and Exhibit H (for the Capital Reserve Fund) for the purposes and in the manner described in the immediately preceding sentence and in addition Manager shall provide a weekly report summarizing all amounts paid out of the FF&E Reserve Fund and Capital Reserve Fund during each week to the Trustee and Owner.

(d) Revenue Stabilization Fund. Pursuant to the Trust Agreement, the Trustee has established the Revenue Stabilization Fund into which the Trustee will deposit a portion of the Available Revenues (after funding the deposits required by Section 5.07(a) *First* through *Ninth* of the Trust Agreement). Unless the Management Agreement has been terminated, the Trustee is required under the terms of the Trust Agreement to make disbursements from the Revenue Stabilization Fund as directed by a Request of Manager in substantially the form attached to the Trust Agreement as Exhibit I: (i) to pay amounts reasonably determined by Manager as required to protect life, health or property from imminent danger or to comply with Applicable Laws; (ii) at least three Business Days

after such request, to pay for Operating Expenses, Capital Expenses within the Capital Budget, taxes and costs for insurance, or any other expenses and items requested by Manager with prior written notice to Owner and the Asset Manager, at any time during which such Operating Expenses, Capital Expenses or other expenses and items exceed the Total Operating Revenue for such month plus the amount otherwise available in the Lockbox Fund, the FF&E Reserve Fund and Capital Reserve Fund (to the extent amounts in such Funds are authorized to be used for such expenses and items); and (iii) for such other purposes as set forth in Section 5.18 of the Trust Agreement with respect to the Revenue Stabilization Fund; provided that if the payment of such Operating Expenses, Capital Expenses or other expenses and items are not authorized under the Management Agreement or require the consent or approval of Owner under the Management Agreement or hereunder, such Request shall be conditioned upon approval by an Authorized Owner Representative and the Asset Manager.

(e) Statements. The Trustee shall provide Owner and Manager with a monthly statement of the amounts available in the Funds and Accounts.

Section 8. Deposit Account Agreement; Fees.

(a) The parties agree to the terms and conditions of the Depository Bank's Deposit Account Agreement, the current form of which is attached hereto and incorporated herein by this reference as Exhibit B, as such terms and conditions may hereafter be changed from time to time.

(b) Owner agrees to pay the fees of the Depository Bank in accordance with the customary fees charged by the Depository Bank for the services described herein, as such fees are established from time to time.

Section 9. Termination of Depository Bank. Owner may replace the Depository Bank with a new Depository Bank reasonably acceptable to the Trustee and Manager upon five Business Days' notice to the other parties to this Agreement. Manager and the Trustee hereby each agree to take all reasonable action necessary to facilitate the transfer of the obligations, duties and rights of the Depository Bank to the successor thereof selected by Owner in its reasonable discretion. In the event of termination of the Depository Bank, the parties agree to establish a new Lockbox Fund, Investment Account and Clearing Bank Accounts (if such Clearing Bank Accounts are maintained with the Depository Bank) with a successor Depository Bank, and amend this Agreement to the extent necessary. No existing Depository Bank may resign or be replaced unless and until an eligible successor Depository Bank has assumed the obligations of the Depository Bank hereunder in writing.

Section 10. Trustee Control; Depository Bank.

(a) Trustee Control. The Lockbox Fund and the Investment Account shall be subject to the sole and exclusive dominion, control and discretion of the Trustee, subject to the terms, covenants and conditions of this Agreement.

(b) No Owner Withdrawals. Except as provided in the last sentence of Section 11, Owner shall not have any right or authority to make use of, or withdraw or

transfer, any money, security entitlements, or other property on deposit in or credited to the Lockbox Fund or the Investment Account, or to give any instructions or entitlement orders with respect to the Lockbox Fund or the Investment Account, or any money, security entitlements, or other property on deposit therein or credited thereto.

(c) Depository Bank Compliance with Instructions. Notwithstanding any other provision of this Agreement, the Depository Bank agrees that it will comply with the instructions of the Trustee directing disposition of funds in the Lockbox Fund without further consent by Owner or any other person or entity. The Depository Bank and the Trustee shall comply with the instructions of Manager in accordance with the terms of this Agreement. The Depository Bank represents and covenants that it has not and will not agree with any person or entity other than the Trustee to comply with instructions or other directions concerning the Lockbox Fund or the disposition of funds on deposit therein originated by any Person other than the Trustee.

(d) Depository Bank Compliance with Entitlement Orders. Notwithstanding any other provision of this Agreement, the Depository Bank agrees that it will comply with entitlement orders originated by the Trustee without further consent by Owner or any other person or entity. The Depository Bank represents and covenants that it has not and will not agree with any person or entity other than the Trustee that it will comply with entitlement orders originated by any person or entity other than the Trustee.

(e) Depository Bank Representations and Agreements. The Depository Bank represents and warrants that it is as of the date hereof and shall be for so long as it is the Depository Bank hereunder, a corporation or national bank that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity hereunder with respect to the Investment Account. The Depository Bank agrees with the parties hereto that the Investment Account is an account to which financial assets may be credited. The Depository Bank agrees with the parties hereto that each item of property credited to the Investment Account shall be treated as a financial asset. The Depository Bank represents and covenants that it is not and will not be a party to any agreement that limits, conditions, or conflicts with the provisions of this Agreement. The Depository Bank covenants that it will not take any action inconsistent with the provisions of this Agreement applicable to it. The Depository Bank represents and covenants that it has not entered and will not enter into any agreement with Owner relating to the Lockbox Fund or the Investment Account other than this Agreement.

(f) Subordination. The Depository Bank hereby subordinates all security interests, encumbrances, claims and rights of setoff it may have, now or in the future, against the Lockbox Fund or the Investment Account, or any money, security entitlements, or other property on deposit therein or credited thereto, other than in connection with the payment of the Depository Bank's customary fees and charges and for the reversal of provisional credits.

(g) Notice of Liens. Upon receipt of written notice of any lien, encumbrance, or adverse claim against the Lockbox Fund or the Investment Account, or any money, security entitlements, or other property on deposit therein or credited thereto, the

Depository Bank will make reasonable efforts promptly to notify Owner and Trustee thereof.

(h) Limitation on Liability. The Depository Bank shall have no responsibility or liability to Owner, the Trustee, Manager or any other Person or entity for complying with (i) any instructions concerning the Lockbox Fund originated by the Trustee or Manager, , and (ii) any entitlement order concerning the Investment Account or any security entitlement credited thereto originated by the Trustee, and shall have no responsibility to investigate the appropriateness of any such instructions or entitlement order, even if Owner notifies the Depository Bank that the Trustee is not legally entitled to originate any such instructions or entitlement order.

(i) Monthly Statements. The Depository Bank shall use its commercially reasonable best efforts to furnish to the Trustee, Owner, and Manager a monthly statement within 10 days after the end of each month covering receipts, disbursements, allocation and application of amounts on deposit in the Lockbox Fund and the Investment Account for such month. The Trustee shall have no duty to review any statements furnished to it by the Depository Bank.

Section 11. Covenants of Owner, Manager and Trustee.

(c) Manager hereby covenants that it will withdraw amounts from the Lockbox Fund for the sole purpose of paying Operating Expenses (including the Base Management Fee).

(d) The Trustee hereby expressly acknowledges and agrees that Manager shall be authorized to pay the Base Management Fee directly to Manager each month or otherwise when due as provided in Section 6(a) hereof.

(e) Owner hereby irrevocably appoints the Trustee as its attorney-in-fact (coupled with an interest) with full authority after an Event of Default to take any or all actions in the name of Owner which Owner is permitted to take under this Agreement.

(f) (d) The Trustee agrees with Manager to instruct the Depository Bank in accordance with the provisions of the Trust Agreement.

Section 12. Remedies of Trustee. After an Event of Default under the Trust Agreement shall have occurred and be continuing, the Depository Bank shall follow the instructions and entitlement orders given by the Trustee; provided, however, that the Trustee shall continue to be bound by the Trust Agreement and this Agreement. Notwithstanding anything contained herein to the contrary, as set forth in Section 5.22(a) of the Trust Agreement, so long as the Management Agreement has not expired or been terminated, Manager shall continue to be entitled to Request and receive funds as provided in Sections 6 and 7 of this Agreement and in Article V of the Trust Agreement even upon the occurrence and during the continuance of an Event of Default with respect to the Bonds, the breach of any provision of the Trust Agreement, or the occurrence of any event or condition which with the giving of notice, the passage of time, or both, would constitute an Event of Default with respect to the Bonds. Notwithstanding anything contained herein to the contrary, the Trustee and Manager agree that

so long as the Management Agreement has not expired or terminated, the exercise of the rights and remedies by the Trustee and the Bondholders under the Trust Agreement shall not affect the rights of Manager to access funds as set forth in Article V of the Trust Agreement, Sections 6 and 7 of this Agreement, and Article III of the Management Agreement. If the Management Agreement has expired or been terminated and a new Management Agreement has not been entered into, until a replacement Manager has entered into a Management Agreement with Owner, Owner shall be entitled to submit Requests and receive funds as described in Article V of the Trust Agreement and as described herein as if Owner was Manager.

Section 13. PCI Data Security Standard.

(a) The provisions set forth in this Section apply to the Depository Bank as a "Service Provider" that either itself, or through a processor, its agent, or Subcontractor, stores, processes, handles or transmits Cardholder Data in any manner. For purposes of this Section, the term "Cardholder Data" means personally identifiable data about the cardholder (e.g., the plastic card number, card expiration date in combination with the plastic card number, cardholder name in combination with the plastic card number, track data/magnetic stripe, verification numbers CVV2, CVC2, CID, and PIN Block). "Cardholder Data" also includes other personal information gathered about the cardholder (e.g., addresses and telephone numbers), assigned by the card issuer that identifies the cardholder's account or other cardholder personal information. For purposes of this Section, a "Service Provider" means any person or entity that maintains, processes, transmits or otherwise is permitted access to Cardholder Data, including through its provision of services to Owner. Customer Information shall include cardholder data and such other customer information as may be defined elsewhere in this Agreement.

(1) The Depository Bank represents and warrants that it shall implement and maintain the most recent Payment Card Industry ("PCI") Data Security Standard Requirements ("PCI Data Security Standard Requirements") for Cardholder Data, as they may be amended and updated from time to time. The current PCI Data Security Standard Requirements are available on the following internet site: <https://www.pcisecuritystandards.org/>. As evidence of compliance, the Depository Bank shall provide, upon request by Owner, current evidence of compliance with these data security standards certified by a third-party nationally recognized by the payment card industry for that purpose.

(2) The Depository Bank shall maintain and protect the security of all Cardholder Data when performing services under this Agreement in accordance with Applicable Law and PCI laws, rules and regulations. The Depository Bank shall use reasonable precautions, including physical, software and network security measures, employee screening, training and supervision and appropriate agreements with employees, to (i) prevent anyone other than the Depository Bank, Owner or their respective authorized employees from monitoring, using, gaining access to or learning the contents of the Cardholder Data; (ii) protect appropriate copies of Cardholder Data from loss, corruption or unauthorized alteration; and (iii) prevent the disclosure of passwords and other access control

information to anyone other than the Depository Bank and Owner and their respective authorized employees.

(3) The Depository Bank shall indemnify, defend and hold Owner harmless from and against any and all claims, losses, damages, notices and expenses, including any fines which Owner may be required to pay, which result from the Depository Bank's breach of the provisions of this Section. Without limiting the generality of the foregoing, the Depository Bank expressly agrees that if Owner pays any fine in connection with a breach by the Depository Bank of the provisions of this Section, the foregoing indemnity obligation shall require the Depository Bank to reimburse Owner the full amount of such fine within thirty (30) days of Owner delivering written notice to the Depository Bank of Owner's payment of such fine. The Depository Bank, at its sole cost and expense, shall fully cooperate with any investigation of any data loss or other breach of the Depository Bank's obligations under this Section. Any such reimbursement by the Depository Bank shall not constitute an Operating Expense.

(g) The use of Cardholder Data is specifically restricted only to those applications directly pertaining to payments, including transaction authentication, or as required by applicable law.

(h) If there is a breach or intrusion into, or otherwise unauthorized access to Cardholder Data stored by or for the Depository Bank, the Depository Bank shall immediately notify Owner, in the manner required by the PCI Data Security Standard Requirements, and provide Owner and the acquiring financial institution and their respective designees access to the Depository Bank's facilities and all pertinent records to conduct an audit of the Depository Bank's compliance with the PCI Data Security Standard Requirements. The Depository Bank shall fully cooperate with any audits of their facilities and records provided for in this Section.

(i) The Depository Bank shall maintain appropriate business continuity procedures and systems to ensure availability and security of Cardholder Data in the event of a disruption, disaster or failure of the Depository Bank's primary data systems.

(j) The Depository Bank's obligation to comply with the PCI Data Security Standard Requirements expressly survives termination or expiration of this Agreement.

(k) Any destruction of Cardholder Data must be completed in accordance with the PCI Data Security Standard Requirements.]

#### Section 14. Successors and Assigns; Assignments.

(l) This Agreement shall bind and inure to the benefit of and be enforceable by the Trustee, Owner and, so long as the Management Agreement or any successor agreement with Manager is in effect, Manager, and their respective successors and assigns.

(m) Owner shall not have the right to assign its rights and obligations under this Agreement to any person.

(n) Any successor Trustee under the Trust Agreement shall automatically become a party to this Agreement without the execution or filing of any paper or the performance of any further act.

(o) Upon termination of the Management Agreement, Manager shall assign its rights and delegate its obligations hereunder to any successor manager of the Hotel which Owner has caused to assume in writing such rights and obligations and may, with the written consent of the Trustee, assign its rights and delegate its obligations hereunder to any other person.

Section 15. Term. This Agreement shall terminate ten (10) years from its dated date (the "Expiration Date"); provided, that Owner shall have the option to extend this Agreement for an additional ten (10) years, with the assent of the other parties to this Agreement, by providing written notice of its intention to do so to the other parties to this Agreement at least one hundred twenty (120) days prior to the Expiration Date. Unless a party provides written notice to Owner and the other parties of its rejection of such extension at least sixty (90) days prior to such Expiration Date, the Expiration Date shall be deemed to be extended for an additional ten (10) years.

Section 16. Termination of Agreement. Notwithstanding any other provision of this Agreement, Manager's rights and obligations under this Agreement shall terminate upon termination of the Management Agreement and any successor agreement with Manager with respect to the management of the Hotel; provided, that Manager shall be entitled to all amounts then due and owing to it under the Management Agreement in the manner and to the extent described in the Management Agreement.

Section 17. Amendments. This Agreement may be amended from time to time upon the written agreement of all parties hereto.

Section 18. Notices. Notices to the Trustee, the Depository Bank, Owner and Manager shall be deemed given if sent in accordance with the Trust Agreement or the Management Agreement, as applicable.

Section 19. Owner Contracting Provisions. The Trustee and the Depository Bank each agrees to observe and perform the covenants set forth in Exhibit A hereto, which are incorporated herein by this reference.

Section 20. Governing Law; Venue; Jurisdiction. This Agreement and all disputes relating to the performance or interpretation of any term of this Agreement shall be construed under and governed by the laws of the State of California. To the extent permitted by law, each party hereto hereby irrevocably:

(p) consents to any suit, action or proceeding with respect to this Agreement being brought in any state or federal court of competent jurisdiction located in a judicial district which includes the City;



(q) waives any objection that it may have now or hereafter to the venue of any such suit, action or proceeding in any such court and any claim that any of the foregoing have been brought in an inconvenient forum;

(r) (i) acknowledges the competence of any such court; (ii) submits to the jurisdiction of any such court in any such suit, action or proceeding; and (iii) agrees that the final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon it and may be enforced in any court to the jurisdiction of which it is or may be subject by a suit upon such judgment, a certified copy of which shall be conclusive evidence of its liability;

(s) submits to the non-exclusive jurisdiction of the federal courts in the City, and

(t) agrees that service of process in any suit, action or proceeding may be made upon each parties' registered agent, together with a copy to each address set forth herein, or such other address of which each party shall have given by written notice to the other parties and agrees that such service shall in every respect be deemed to be effective service upon it in any suit, action or proceeding and shall be taken and held to be valid personal service upon or personal delivery to it, to the fullest extent permitted by law.

Section 21. Conditions Precedents. The Trustee's and Owner's compliance with the provisions of this Agreement permitting Manager to access funds as set forth herein is a condition precedent to the obligations of Manager under the Management Agreement.

Section 22. Inconsistencies with Management Agreement and Trust Agreement. Owner, Manager and the Trustee hereby agree that any inconsistencies between this Agreement and the Management Agreement or Trust Agreement shall be governed and controlled by the Trust Agreement; provided, however, the terms, conditions and provisions of this Agreement shall be self-operative without reference to the Trust Agreement except as specifically provided for herein and to the extent such provisions are not inconsistent with the terms, conditions and provisions of the Trust Agreement, and no Event of Default with respect to the Bonds or the occurrence of any event or condition which with the giving of notice, the passage of time or both would constitute an Event of Default with respect to the Bonds, shall impair, restrict or otherwise affect Manager's rights under this Agreement or the obligations, duties or liabilities of the Trustee or Owner under this Agreement.

Section 23. Certification of Funds; Budget and Fiscal Provisions. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Payment and performance obligations for each Fiscal Year during the Term therefore are subject to the appropriation of funds for the Agreement. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors of the City. This Agreement shall not become effective until the City Controller has certified that amounts are or are expected to be available to satisfy Owner's payment obligations under this Agreement. Owner's payment obligations hereunder shall not at any time exceed the amount so certified by the City Controller. Except as may be provided by laws governing emergency procedures, officers and employees of Owner are not authorized to request, and Owner is not required to reimburse Manager for, commodities or services beyond

the scope of this Agreement unless the change in scope is authorized by amendment and approved as required by Applicable Law. Officers and employees of Owner are not authorized to offer or promise, nor is Owner required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the Agreement is certified without certification of the additional amount by the City Controller.

Section 24. Third Party Beneficiary to Trust Agreement. The Trustee and Owner acknowledge and agree that Manager will directly and indirectly benefit from the Trust Agreement. Notwithstanding anything to the contrary, the Trustee and Owner further acknowledge and agree that as a material inducement to Manager's agreement to enter into this Agreement and the Management Agreement, it shall be deemed a third-party beneficiary of the Trust Agreement to the extent set forth in Section 12.05 of the Trust Agreement and, as such, the Trust Agreement shall be for the additional benefit of Manager to the extent set forth in Section 12.05 of the Trust Agreement.

Section 25. No Personal Liability. Owner, Manager, the Trustee and the Depository Bank and their respective officers, directors, board members, commissioners, employees, agents or representatives shall not have any personal liability for the payment of any amounts under this Agreement, the breach of any duties, obligations, covenants, agreements, responsibilities, or the representations and warranties contained in this Agreement.

Section 26. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 27. Severability. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

DEPOSITORY BANK:

[DEPOSITORY BANK],  
as Depository Bank

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

TRUSTEE:

[TRUSTEE], as Trustee

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

OWNER:

AIRPORT COMMISSION OF THE CITY AND  
COUNTY OF SAN FRANCISCO

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

Approved as to form:  
DENNIS J. HERRERA  
City Attorney

By \_\_\_\_\_  
Deputy City Attorney

MANAGER:

HYATT CORPORATION

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

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

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

## EXHIBIT A

### MANDATORY CONTRACTING PROVISIONS

#### 1. Nondiscrimination; Penalties

##### a. Manager Shall Not Discriminate

In the performance of this Agreement, Trustee/Depository Bank 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, or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

##### b. Subcontracts

Trustee/Depository Bank 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/Depository Bank's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

##### c. Nondiscrimination in Benefits

Trustee/Depository Bank 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/Depository Bank shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form CMD-12B-101 with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

**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/Depository Bank 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/Depository Bank 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/Depository Bank and/or deducted from any payments due Trustee/Depository Bank.

**2. Requiring Minimum Compensation for Covered Employees**

- a. Trustee/Depository Bank 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 Internet at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco) . A partial listing of some of Trustee/Depository Bank's obligations under the MCO is set forth in this section. Trustee/Depository Bank 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/Depository Bank to pay Trustee/Depository Bank'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/Depository Bank is obligated to keep informed of the then-current requirements. Any subcontract entered into by Trustee/Depository Bank 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/Depository Bank'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/Depository Bank.
- c. Trustee/Depository Bank 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/Depository Bank shall maintain employee and payroll records as required by the MCO. If Trustee/Depository Bank fails to do so, it shall be presumed that Trustee/Depository Bank paid no more than the minimum wage required under state law.

- e. The City is authorized to inspect Trustee/Depository Bank's job sites and conduct interviews with employees and conduct audits of Trustee/Depository Bank.
- f. Trustee/Depository Bank'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 Trustee/Depository Bank fails to comply with these requirements. Trustee/Depository Bank 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/Depository Bank'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/Depository Bank 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 this Agreement, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Trustee/Depository Bank fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Trustee/Depository Bank 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/Depository Bank 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/Depository Bank 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/Depository Bank later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Trustee/Depository Bank 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 Trustee/Depository Bank and this department to exceed \$25,000 in the fiscal year.

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

Trustee/Depository Bank 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 Internet 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/Depository Bank shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Trustee/Depository Bank 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 Trustee/Depository Bank 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/Depository Bank's failure to comply with the HCAO shall constitute a material breach of this Agreement. City shall notify Trustee/Depository Bank 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/Depository Bank fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Trustee/Depository Bank 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/Depository Bank 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/Depository Bank 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. Trustee/Depository Bank 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/Depository Bank based on the Subcontractor's failure to comply, provided that City has first provided Trustee/Depository Bank with notice and an opportunity to obtain a cure of the violation.
- e. Trustee/Depository Bank shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Trustee/Depository Bank'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/Depository Bank 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/Depository Bank 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 this Agreement.
- h. Trustee/Depository Bank shall keep itself informed of the current requirements of the HCAO.
- i. Trustee/Depository Bank 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/Depository Bank 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 (10) business days to respond.
- k. Trustee/Depository Bank shall allow City to inspect Trustee/Depository Bank's job sites and have access to Trustee/Depository Bank's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Trustee/Depository Bank to ascertain its compliance with HCAO. Trustee/Depository Bank agrees to cooperate with City when it conducts such audits.
- m. If Trustee/Depository Bank is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000, but Trustee/Depository Bank later enters into an agreement or agreements that cause Trustee/Depository Bank'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/Depository Bank and the City to be equal to or greater than \$75,000 in the fiscal year.

#### **4. First Source Hiring Program**

This section incorporates the requirements of the First Source Hiring Program pursuant to San Francisco Administrative Code Chapter 83 (entitled "First Source Hiring Program"). Trustee/Depository Bank agrees to participate and comply with the provisions of the First Source Hiring Program. As part of Trustee/Depository Bank's HMA with the City, Trustee/Depository Bank shall incorporate provisions of the First Source Hiring Program into any Joint Venture Partnership and shall require subcontractors to do the same. The Mayor's Office of Economic and Workforce Development is Trustee/Depository Bank's main contact for the First Source Hiring Program. For more information regarding First Source Hiring Program, go to: <http://www.workforcedevelopmentsf.org/> .

##### **a. Definitions**

The provisions of Chapter 83 of the San Francisco Administrative Code apply to this Agreement. Trustee/Depository Bank shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to

the remedies provided therein. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

Entry Level Position: Any non-Trustee/Depository Bankial position that requires either: (a) No education above a high school diploma or certified equivalency; or (b) Less than two (2) years training or specific preparation; and (c) Shall include temporary positions and paid internships. Trainee: An economically disadvantaged worker identified by the First Source Hiring Program as having the appropriate training, employment background, and skill set for an available Entry Level Position specified by Trustee/Depository Bank.

**b. First Source Hiring Goals**

- Over the life of this Agreement, Trustee/Depository Bank shall make good faith efforts to hire a minimum number of Trainees referred by the First Source Hiring Program to fulfill available Entry Level Positions, based on the Trustee/Depository Bank Fee Schedule below:

<b>Trustee/Depository Bank Fee Schedule</b>	<b>Minimum Number of Trainees to be Hired (over the life of this Agreement)</b>
\$0 – \$499,999	0
\$500,000 – \$899,999	1
\$900,000 – \$1,999,999	2
\$2,000,000 – \$4,999,999	3
\$5,000,000 – \$7,999,999	4
\$8,000,000 – \$10,999,999	5
\$11,000,000 – \$13,999,999	6
(> = \$14M, for each additional \$3 million in Trustee/Depository Bank fees, add one additional Trainee)	

- Trustee/Depository Bank may decline to hire a Trainee if Trustee/Depository Bank considers the Trainee in good faith and deems the Trainee is not qualified. The final decision to hire a Trainee shall be made by the Trustee/Depository Bank.
- Trustee/Depository Bank shall hire the Trainee on a full-time basis for at least twelve (12) months or on part-time basis for twenty-four (24) months.
- Trainees must be obtained through the First Source Hiring Program and Trustee/Depository Bank must consider all Trainees fairly and equally and

comply with the non-discrimination provisions pursuant to local, state, and federal laws. No existing employee may count toward the total number of Trainees hired.

**c. Procedures**

- Within thirty (30) days of award of contract, Trustee/Depository Bank will email the First Source Hiring Administrator and schedule to meet with staff from the First Source Hiring Program. At the meeting, Trustee/Depository Bank will provide information on Entry Level Positions, number of Trainees to be hired, job description, start date, and rate of pay. If Trustee/Depository Bank cannot quantify the numbers of Trainees to be hired, Trustee/Depository Bank must still meet with the First Source Hiring Program and present a workforce plan of good faith efforts towards the First Source Hiring Goals.
- Trustee/Depository Bank is required to notify the First Source Hiring Program of all available Entry Level Positions.
- Trustee/Depository Bank will designate a representative to monitor all employment related activity and be the main contact for the First Source Hiring Program.
- Trustee/Depository Bank will maintain documentation and records supporting good faith efforts toward the First Source Hiring Program.

**d. As-Needed Contracts**

Contractors awarded As-Needed contracts shall follow the provisions of the First Source Hiring Program. However, the First Source Hiring Goals will not be based on each individual Contract Service Order (“CSO”) but rather from the total number of CSOs issued to the contractor. Since a contractor does not know when or how many CSOs will be issued, the contractor shall hire Trainees only if the increase in CSOs creates entry-level employment opportunities.

**e. Noncompliance**

Failure to meet the criteria of the First Source Hiring Program does not impute bad faith but rather will trigger a review for compliance. If the City deems Trustee/Depository Bank is noncompliant and acted in bad faith towards the First Source Hiring Program, then the City may withhold progress payments and assess liquidated damages as defined in San Francisco Administrative Code Chapter 83.

**5. Conflict of Interest**

Through its execution of this Agreement, Trustee/Depository Bank 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.

## **6. Federal Non-Discrimination Provisions**

**49 CFR Part 21.** Trustee/Depository Bank for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that Trustee/Depository Bank shall maintain and operate the Airport facilities and services in compliance with all requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended. Trustee/Depository Bank, for itself, its personal representatives, successors in interest, and assigns, agrees that Trustee/Depository Bank in its operation at and use of the Airport, covenants that (1) No person on the grounds of race, color, national origin, or sex shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) That in the construction of any improvements on, over, or under the Airport and the furnishing of services thereon, no person on the grounds of race, color, national origin, or sex shall be excluded from participation or denied the benefits of, or otherwise be subject to discrimination, (3) That Trustee/Depository Bank shall use all City premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A—Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. These Regulations are incorporated as though fully set forth herein. Trustee/Depository Bank agrees to include the above statements in any subsequent contract that it enters into with subcontractors and cause those agreements to similarly include the statements, and cause those businesses to include the statements in further agreements.

**49 CFR Part 23.** The HMA is subject to the requirements of the United States Department of Transportation’s regulations, 49 Code of Federal Regulations, Part 23. Trustee/Depository Bank agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 Code of Federal Regulations Part 23. Trustee/Depository Bank agrees to include the above statements in any subsequent contract covered by 49 Code of Federal Regulations, Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

Failure by Trustee/Depository Bank to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Owner deems appropriate.

## **7. Owner 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 Owner at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to Owner intellectual property, without the Airport Director's prior consent.

## **8. Labor Peace/Card Check Rule**

Without limiting the generality of other provisions herein requiring Trustee/Depository Bank to comply with all Airport Rules, Trustee/Depository Bank shall comply with the Owner's Labor Peace/Card Check Rule, adopted on February 1, 2000, pursuant to Airport Commission Resolution No. 00-0049 (the "Labor Peace/Card Check Rule"). Capitalized terms not defined in this provision are defined in the Labor Peace/Card Check Rule.

To comply with the Labor Peace/Card Check Rule, Trustee/Depository Bank shall, among other actions: (a) Enter into a Labor Peace/Card Check Rule Agreement with any Labor Organization which requests such an agreement and which has registered with the Airport Director or his/her designee, within thirty (30) days after Labor Peace/Card Check Rule Agreement has been requested; (b) Not less than thirty (30) days prior to the modification of this Agreement, Trustee/Depository Bank shall provide notice by mail to any Labor Organization or federation of labor organizations which have registered with the Airport Director or his/her designee ("registered Labor Organizations"), that Trustee/Depository Bank is seeking to modify or extend this Agreement; (c) Upon issuing any request for proposals, invitations to bid, or similar notice, or in any event not less than thirty (30) days prior to entering into any Subcontract, Trustee/Depository Bank shall provide notice to all registered Labor Organizations that Trustee/Depository Bank is seeking to enter into such Subcontract; and (d) Trustee/Depository Bank shall include in any subcontract with a Subcontractor performing services pursuant to any covered Contract, a provision requiring the Subcontractor performing services pursuant to any covered Contract, a provision requiring the Subcontractor to comply with the requirements of the Labor Peace/Card Check Rule. If Airport Director determines that Trustee/Depository Bank violated the Labor Peace/Card Check Rule, Airport Director shall have the option to terminate this Agreement, in addition to exercising all other remedies available to him/her.

## **9. Protection of Private Information**

Trustee/Depository Bank has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Trustee/Depository Bank agrees that any failure of Trustee/Depository Bank to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, bring a false claim action against Trustee/Depository Bank pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Trustee/Depository Bank.

## **10. 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 Internet at:

[http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1) .

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.

## **11. 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/Depository Bank acknowledges and agrees that he or she has read and understood this section.

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

In accordance with San Francisco Administrative Code Chapter 12.G, Trustee/Depository Bank 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/Depository Bank 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/Depository Bank 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/Depository Bank from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Trustee/Depository Bank’s use of profit as a violation of this section.

### **13. 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.

### **14. Preservative-treated Wood Containing Arsenic**

Trustee/Depository Bank may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative.

Trustee/Depository Bank may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Trustee/Depository Bank from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes, or facilities that are partially or totally immersed in saltwater.

### **15. Compliance with Americans with Disabilities Act**

Trustee/Depository Bank acknowledges that, pursuant to the Americans with Disabilities Act (“**ADA**”), programs, services, and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Trustee/Depository Bank shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state, and local disability rights legislation. Trustee/Depository Bank agrees not to discriminate against disabled persons in the provision of services, benefits, or an activity provided under this Agreement, and further agrees that any violation of this prohibition on the part of Trustee/Depository Bank, its employees, agents, or assigns will constitute a material breach of this Agreement.

### **16. Sunshine Ordinance**

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations, and all other records of communications between City and persons or companies seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

## **17. Limitations on Contributions**

Through execution of this Agreement, Trustee/Depository Bank 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/Depository Bank 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/Depository Bank further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Trustee/Depository Bank's board of directors; Trustee/Depository Bank's chairperson, chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than 20% in Trustee/Depository Bank; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Trustee/Depository Bank.

Additionally, Trustee/Depository Bank acknowledges that Trustee/Depository Bank must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Trustee/Depository Bank further agrees to provide to City the names of each person, entity, or committee described above.

## **18. Drug-Free Workplace Policy**

Trustee/Depository Bank acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Trustee/Depository Bank agrees that any violation of this prohibition by Trustee/Depository Bank, its employees, agents, or assigns will be deemed a material breach of this Agreement.

## **19. Resource Conservation**

Chapter 5 of the San Francisco Environment Code ("**Resource Conservation**") is incorporated herein by reference. Failure by Trustee/Depository Bank to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

## **20. Proprietary or Confidential Information of City**

Trustee/Depository Bank understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Trustee/Depository Bank may have access to private or confidential information which may be owned or controlled by City and that such



information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Trustee/Depository Bank agrees that all information disclosed by City to Trustee/Depository Bank shall be held in confidence and used only in performance of this Agreement. Trustee/Depository Bank shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

## **21. Ownership of Results**

Any interest of Trustee/Depository Bank or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files, and media, or other documents prepared by Trustee/Depository Bank or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Trustee/Depository Bank may retain and use copies for reference and as documentation of its experience and capabilities.

## **22. Works for Hire**

If, in connection with services performed under this Agreement, Trustee/Depository Bank or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Trustee/Depository Bank or its subcontractors under this Agreement are not works for hire under United States law, Trustee/Depository Bank hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Trustee/Depository Bank may retain and use copies of such works for reference and as documentation of its experience and capabilities.

## **23. Audit and Inspection of Records**

Trustee/Depository Bank agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Trustee/Depository Bank will permit City to audit, examine, and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records, or personnel, and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Trustee/Depository Bank shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this section.

## **24. Subcontracting**

Trustee/Depository Bank is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

## **25. Agreement Made in California; Venue**

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

## **26. Food Service Waste Reduction Requirements**

Trustee/Depository Bank agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement.

By entering into this Agreement, Trustee/Depository Bank agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Trustee/Depository Bank agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Trustee/Depository Bank's failure to comply with this provision.

## **27. Consideration of Criminal History in Hiring and Employment Decisions**

- a. Trustee/Depository Bank agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at:

[http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:san\\_francisco\\_ca](http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:san_francisco_ca)

A partial listing of some of Trustee/Depository Bank's obligations under Chapter 12T is set forth in this Section. Trustee/Depository Bank is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

- b. The requirements of Chapter 12T shall only apply to Trustee/Depository Bank's or Subcontractor's operations to the extent those operations are in furtherance of the

performance of this Agreement, and shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, whose employment is or would be in whole or in substantial part physically located in the City and County of San Francisco, which excludes Airport property.

- c. Applicants or employees who would be or are performing work in furtherance of this Agreement may be required to be screened by the U.S. Department of Homeland Security for security badging. A rejection by the U.S. Department of Homeland Security of an applicant's or employee's security badging application, and the resulting inability of Trustee/Depository Bank to hire the applicant or assign the employee to perform services under this Agreement, shall not be considered an Adverse Action under Chapter 12T.
- d. Trustee/Depository Bank shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Trustee/Depository Bank's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.
- e. Trustee/Depository Bank or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.
- f. Trustee/Depository Bank or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (e), above. Trustee/Depository Bank or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.
- g. Trustee/Depository Bank or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement that Trustee/Depository Bank or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.
- h. Trustee/Depository Bank and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under Trustee/Depository Bank or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese,

and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

- i. Trustee/Depository Bank understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

## **28. Diesel Vehicles**

The San Francisco Environment Code currently requires a reduction in the number of passenger vehicles and light-duty trucks in the City's Municipal Fleet and use of biodiesel fuel (B20) by all diesel-using City departments, with goals set for diesel equipment to convert to use of biodiesel fuel. To the extent Trustee/Depository Bank purchases or leases any new diesel fuel vehicles for use in connection with operation of the Hotel, Owner encourages use of a biodiesel blend and Trustee/Depository Bank agrees to investigate use of a biodiesel blend in operation of its diesel vehicles, if any.