
CONTINUING COVENANT AGREEMENT

dated as of

[DATED DATE]

by and between the

AIRPORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO

and

[BANK],

Relating to:

\$_____

San Francisco International Airport
Second Series Variable Rate Revenue Bonds,
Series [#]

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CONTINUING COVENANT AGREEMENT

THIS CONTINUING COVENANT AGREEMENT (the “Agreement”), dated as of [DATED DATE], is between the AIRPORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO, organized and existing under the Charter of the City and County of San Francisco (the “Commission”), and [BANK], a _____ duly organized and existing under the laws of _____ (the “Bank”).

WHEREAS, the Commission is issuing its San Francisco International Airport Second Series Variable Rate Revenue Bonds, Series [] (the “Bonds”) pursuant to and in accordance with Resolution No. 91-0210, adopted by the Commission on December 3, 1991 (the “1991 Resolution”), as supplemented and amended, including by Resolution No. 98-0114, adopted by the Commission on May 19, 1998 (the “Seventh Supplemental Resolution”), Resolution No. 02-0010, adopted by the Commission on January 8, 2002 (the “Tenth Supplemental Resolution”), Resolution No. 03-0220, adopted by the Commission on October 21, 2003 (as amended and restated by Resolution No. 10-0316 adopted by the Commission on October 26, 2010, the “Eleventh Supplemental Resolution”), Resolution No. 04-0220, adopted by the Commission on November 2, 2004 (the “Twelfth Supplemental Resolution”), and Resolution No. _____ adopted by the Commission on _____ (the “Sale Resolution”) and the Certificate of Additional Terms of the Commission dated [CLOSING DATE] (the “Certificate of Additional Terms”) (such 1991 Resolution as supplemented and amended, being referred to herein as the “1991 Master Resolution”); and

WHEREAS, the Bank has agreed to purchase the Bonds, and as a condition to such purchase, the Bank has required the Commission to enter into this Agreement; and

NOW, THEREFORE, in consideration of the premises and in order to induce the Bank to purchase the Bonds, the Commission and the Bank hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the 1991 Master Resolution. The following terms, as used herein, have the following respective meanings:

“1933 Act” means the Securities Act of 1933, as amended.

“Affiliate” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“Agreement” means this Continuing Covenant Agreement, as amended, modified or supplemented from time to time, in accordance with the provisions hereof.

“Airport” means the San Francisco International Airport.

“Amortization End Date” has the meaning set forth in the Certificate of Additional Terms.

“Amortization Payment” has the meaning assigned to that term in Section 2.02(b) hereof.

“Amortization Payment Date” has the meaning set forth in the Certificate of Additional Terms.

“Amortization Period” has the meaning assigned to that term in Section 2.02(b) hereof.

“Bank” has the meaning assigned to that term in the introductory paragraph of this Agreement.

“Bank Agreement” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to make or provide funds to make payment of, or to purchase or provide credit enhancement for, bonds or notes of the Commission secured by or payable from Net Revenues or a parity with the Bonds.

“Bank Rate” has the meaning set forth in the Certificate of Additional Terms.

“Bank Transferee” has the meaning assigned to that term in Section 8.07 hereof.

“Bondholder” means the Bank and each Bank Transferee or Non-Bank Transferee pursuant to Section 8.07 hereof so long as such Bank Transferee or Non-Bank Transferee is an owner of Bonds.

“Bonds” has the meaning assigned to that term in the preamble of this Agreement.

“Bond Counsel” means any counsel selected by the Commission with nationally recognized expertise in municipal finance law, including matters relating to the validity and tax exemption of interest on obligations of states and their political subdivisions.

“Business Day” means any day other than (i) a Saturday or Sunday, (ii) a day on which banks located in the city in which the principal corporate trust office of the Trustee is located are required or authorized to remain closed, or (iii) a day on which the New York Stock Exchange is closed.

“Certificate of Additional Terms” has the meaning assigned to that term in the preamble of this Agreement.

“Charter” means the Charter of the City, as amended and supplemented from time to time.

“City” means the City and County of San Francisco, a municipal corporation and political subdivision of the State of California.

“Closing Date” means the date on which the Bonds are originally purchased by the Bank.

“Commission” has the meaning assigned to that term in the introductory paragraph of this Agreement.

“Debt” of any Person means at any date, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business (including accounts payable to construction contractors and other professionals for services rendered), (iv) all obligations of such Person as lessee under capital leases, (v) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person, and (vi) all Debt of others guaranteed by such Person.

“Default” means any event or condition that constitutes an Event of Default or that with the giving of notice or the lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” has the meaning set forth in the Certificate of Additional Terms.

“Determination of Taxability” means and shall be deemed to have occurred on the first to occur of the following:

(i) on the date when the Commission files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(ii) on the date when the Bondholder or any former Bondholder notifies the Commission that it has received a written opinion by a nationally recognized attorney or firm of attorneys of substantial expertise on the subject of tax-exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within one hundred eighty (180) days after receipt by the Commission of such notification from the Bondholder or any former Bondholder, the Commission shall deliver to the Bondholder and any former Bondholder (a) absent any occurrence described in clauses (i), (iii) or (iv) of this definition of “Determination of Taxability,” an opinion of a nationally recognized attorney or firm of attorneys of substantial experience on the subject of tax-exempt municipal finance reasonably acceptable to the Bank stating that an Event of Taxability has not occurred or (b) a ruling or determination letter issued to or on behalf of the Commission by the Commissioner of the Internal Revenue Service or the

Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the Commission shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time, including an employee subordinate to one of these officers who has been authorized to provide such advice) that, based upon filings of the Commission, or upon any review or audit of the Commission or upon any other ground whatsoever, an Event of Taxability shall have occurred;

(iv) on the date when the Commission shall receive notice from the Bondholder or any former Bondholder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Bondholder or such former Bondholder the interest on the Bonds due to the occurrence of an Event of Taxability; or

(v) [on the date when the Commission notifies the Trustee and the Bondholder in writing that it has elected to change the tax status of the Bonds such that interest on the Bonds is includable in the gross income of Bondholders];

provided, however, no Determination of Taxability shall occur under subparagraph (iii) or (iv) hereunder unless the Commission has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however,* that, subject to Section 2.10, upon demand from the Bondholder or former Bondholder, the Commission shall promptly reimburse such Bondholder or former Bondholder for any payments, including any taxes, interest, penalties or other charges, such Bondholder (or former Bondholder) shall be obligated to make as a result of the Determination of Taxability under subparagraph (i), (ii), (iii) or (iv) hereunder.

“Event of Default” has the meaning assigned to that term in Section 7.01 hereof.

“Event of Taxability” means a (i) change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Commission, or the failure to take any action by the Commission, or the making by the Commission of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of the Bonds) which has the effect of causing interest paid or payable on the Bonds to become includable, in whole or in part, in the gross income of the Bondholder or any former Bondholder for federal income tax purposes or (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable

procedural law, in either case, which has the effect of causing interest paid or payable on the Bonds to become includable, in whole or in part, in the gross income of the Bondholder or any former Bondholder for federal income tax purposes with respect to the Bonds.

“Excess Amount” has the meaning set forth in the Certificate of Additional Terms.

“Excess Interest Amount” has the meaning assigned to that term in Section 2.05 hereof.

“Fiscal Year” means the fiscal year of the City as established from time to time, which currently is the period from July 1 of each year through June 30 of the year following.

“Fitch” means Fitch Inc., and its successors and assigns.

“Governmental Authority” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including any zoning authority, the Federal Deposit Insurance Corporation or the Federal Reserve Board, any central bank or any comparable authority), or any arbitrator with authority to bind the parties to this Agreement at law.

“Interest Rate Swap” has the meaning assigned to that term in the 1991 Master Resolution.

“Investor Letter” has the meaning assigned to that term in Section 8.07 hereof.

“Lien” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, a Person shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“Mandatory Tender Date” has the meaning set forth in the Certificate of Additional Terms.

“Mandatory Tender Purchase Price” has the meaning set forth in the Certificate of Additional Terms.

“Maximum Interest Rate” means the maximum interest rate on the Bonds of twelve percent (12%) *per annum*.

“Maximum Rate” means an interest rate equal to the lesser of (i) the maximum non-usurious *per annum* rate permitted by applicable law, and (ii) twenty percent (20%) *per annum*.

“Moody’s” means Moody’s Investors Service, Inc., and its successors and assigns.

“Net Revenues” has the meaning assigned to that term in the 1991 Master Resolution.

“1991 Master Resolution” has the meaning assigned to that term in the preamble of this Agreement.

“Non-Bank Transferee” has the meaning assigned to that term in Section 8.07 hereof.

“Obligations” means all obligations of the Commission to the Bank pursuant to this Agreement, the Related Documents and the Bonds.

“Outstanding” has the meaning assigned to that term in the 1991 Master Resolution.

“Parity Bonds” means obligations heretofore or hereafter issued by the Commission on a parity with the Bonds pursuant to the 1991 Master Resolution.

“Patriot Act” has the meaning assigned to that term in Section 8.16 hereof.

“Payment Office” means [BANK], _____, Attention: _____, Ref: San Francisco International Airport Second Series Variable Rate Revenue Bonds, Series [#], or such other office as the Bank may designate from time to time.

“Person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Purchase Price” has the meaning assigned to that term in Section 2.01(a) hereof.

“Rating Agency” means Moody’s, S&P or Fitch; provided, that if any such organization no longer maintains a rating on the Bonds, the term “Rating Agency” shall include any other rating agency designated by the Commission with the approval of the Bank.

“Related Documents” means this Agreement, the Bonds and the 1991 Master Resolution.

“Revenue Fund” has the meaning assigned to that term in the 1991 Master Resolution.

“S&P” means S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC, and its successors and assigns.

“Senior Lien Bonds” has the meaning assigned to that term in the 1991 Master Resolution.

“Subordinate Bonds” means any evidences of indebtedness for borrowed money issued from time to time by the Commission, including but not limited to bonds, notes, bond

anticipation notes, commercial paper, lease or installment purchase agreements or certificates of participation, authorized to be issued pursuant to and by authority of the Charter and pursuant to Resolution No. 97-0146 adopted by the Commission on May 20, 1997, as amended and supplemented, including as amended and supplemented by Resolution No. 97-0147 adopted on May 20, 1997, which was amended and restated by Resolution No. 99-0299 adopted on September 21, 1999, and by Resolution No. 09-0088 adopted on May 5, 2009.

“Taxable Date” means the date on which interest on all or part of the Bonds is first includable in gross income of the Bondholder (including, without limitation, any previous Bondholder) thereof as a result of an Event of Taxability as such a date is established pursuant to either (i) the Determination of Taxability or (ii) an opinion by an attorney or firm of attorneys of nationally recognized standing on the subject of tax exempt municipal finance; *provided, however,* that, for the avoidance of doubt, the Taxable Date shall not be earlier than the beginning of the period for which interest on the Bonds is included (taking into account the applicable statute of limitations) in the gross income of the Bondholder; for this purpose, such period of includability shall not begin prior to the earliest date on which the gross income of the Bondholder is subject to additional tax under the applicable statute of limitations.

“Taxable Rate” has the meaning assigned to that term in the Certificate of Additional Terms.

“Trustee” means The Bank of New York Mellon Trust Company, N.A., as Trustee for the Bonds under the 1991 Master Resolution, or any successor trustee for the Bonds appointed in accordance with the 1991 Master Resolution.

“Unremarketed Bonds” means Bonds with respect to which the Bank has not received payment of the Mandatory Tender Purchase Price, if any, on the Mandatory Tender Date.

Section 1.02. Interpretation. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neutral genders. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including cities, agencies and other public bodies, as well as natural persons. Unless otherwise indicated, references in this Agreement to subsections, Sections and Articles are to such subsections, Sections and Articles of this Agreement. The headings used throughout this Agreement are inserted for reference only and shall not be construed or considered in interpreting the terms and provisions of any Section or Article of this Agreement or the Agreement as a whole. Any and all Appendices referenced in this Agreement are incorporated herein by reference and shall be deemed to be an integral part hereof. Unless the context requires otherwise, the terms “herein,” “hereof,” “hereunder” and any similar terms, as used in this Agreement, shall refer to this Agreement as a whole and not to any particular provisions of this Agreement. The words “include,” “includes,” and “including” shall be construed to also mean “without limitation.” Any reference to a “month” shall be a reference to a calendar month beginning on the first day of a calendar month and ending on the last day thereof, unless otherwise specified herein. Any reference to a “day” shall be a reference to a calendar day and not a Business Day.

Section 1.03. Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with generally accepted accounting principles applicable to governmental entities such as the City as in effect from time to time, applied on a basis consistent with the most recent audited financial statements of the Commission delivered to the Bank.

ARTICLE II

PURCHASE OF BONDS AND THE COMMISSION'S OBLIGATIONS

Section 2.01. Purchase of Bonds.

(a) Purchase Price. Upon the satisfaction of the conditions set forth in Article III hereof and based on the representations and covenants of the Commission set forth herein, the Bank hereby agrees to purchase from the Commission, and the Commission hereby agrees to sell to the Bank, all, but not less than all, of the Bonds at par in an aggregate principal amount equal to \$[Par Amount] (the "Purchase Price").

(b) Closing. On the Closing Date, the Commission shall deliver to the Bank the documents described in and which otherwise satisfy the conditions described in Article III hereof. Upon the satisfaction of the conditions precedent set forth in Article III hereof (or waiver thereof by the Bank), the Bank will pay the Purchase Price for the Bonds in immediately available federal funds payable to [the Trustee on behalf of] the Commission. One fully registered Bond, in the aggregate principal amount equal to \$[_____], shall be issued to and registered in the name of [the Bank][Cede & Co., nominee for DTC, as securities depository], and the beneficial interests in the Bonds so registered will be credited to such accounts with DTC as the Bank shall designate. The Bonds shall be so issued and registered to and held by DTC or its nominee, and beneficial interests therein shall be transferable in accordance with the book-entry system.

Section 2.02. Payment Obligations.

(a) The Commission hereby unconditionally, irrevocably and absolutely agrees to make prompt and full payment of all Obligations due and payable to the Bondholders under the Related Documents and to pay any other Obligations due and payable to the Bondholders whether now existing or hereafter arising, irrespective of their nature, whether direct or indirect, absolute or contingent, with interest thereon at the rate or rates provided in such Related Documents and under such Obligations.

(b) [Delete if bank holds bonds at fixed rate to maturity.] In the event the Bondholders have not received the Mandatory Tender Purchase Price on the Mandatory Tender Date, the Commission shall cause the Unremarketed Bonds to be redeemed on the Mandatory Tender Date; provided that, if the Commission is required to redeem Unremarketed Bonds as set forth above and (i) no default described under Section 7.01(a)(i) or Section 7.01(e) hereunder shall have occurred and be continuing; (ii) no Event of Default shall have occurred and be

continuing and (iii) the representations set forth in Article IV shall be true and correct on, and shall be deemed to have been made on, the Mandatory Tender Date (except to the extent that any such representations and warranties expressly relate to an earlier date), then the Commission shall cause the principal amount of such Bonds to be redeemed in installments payable on each Amortization Payment Date (each such payment, an “Amortization Payment”), with the final installment in an amount equal to the entire then-outstanding principal amount of such Bonds to be redeemed on the Amortization End Date (the period commencing on the Mandatory Tender Date and ending on the Amortization End Date is herein referred to as the “Amortization Period”). Each Amortization Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Payments over the Amortization Period. During the Amortization Period, interest on Unremarketed Bonds shall accrue at the Bank Rate, be payable monthly in arrears on the first Business Day of each calendar month and be calculated on the basis of a 360-day year and actual days elapsed.]

(c) The Commission shall pay within thirty (30) days after demand:

(i) if an Event of Default shall have occurred, all costs and expenses of the Bank in connection with the enforcement (whether by means of legal proceedings or otherwise) of any of its rights and remedies under this Agreement, the other Related Documents and such other documents which may be delivered in connection therewith;

(ii) a fee for each amendment to this Agreement or any other Related Document requested by the Commission, or any consent or waiver by the Bank with respect to any Related Document requested by the Commission, in each case, in a minimum amount of \$2,500; and

(iii) the reasonable fees and out-of-pocket expenses for counsel or other reasonably required consultants to the Bank in connection with advising the Bank as to its rights, remedies and obligations under this Agreement and the other Related Documents or in connection with responding to requests from the Commission for approvals, consents and waivers.

All fees payable pursuant to this Agreement shall be deemed to be fully earned when due and non-refundable when paid.

Section 2.03. Default Rate. Upon the occurrence and during the continuance of an Event of Default described in Section 7.01(a) hereof, the Bonds shall bear interest at the Default Rate.

Section 2.04. Determination of Taxability.

(a) In the event a Determination of Taxability occurs, to the extent not payable to each Bondholder (or to the Bank for the period that it was the Bondholder of any of the Bonds) under the terms of the 1991 Master Resolution and the Bonds, the Commission hereby agrees, subject to Section 2.10 hereof, to pay to each Bondholder (or, if applicable, the Bank), on demand therefor (i) an amount equal to the difference between (A) the amount of interest that would have been paid to such Bondholder (or, if applicable, the Bank) on the Bonds

had the interest on the Bonds (or the taxable portion of the interest, in the event the interest on the Bonds is determined to be taxable only in part) been calculated at the Taxable Rate, and (B) the amount of interest actually paid to the Bondholder (or, if applicable, the Bank), during the Taxable Period. The “*Taxable Period*” is the period beginning on the Taxable Date and continuing to and including the date (if any) on which the interest (or the applicable portion of the interest, in the event the interest on the Bonds is determined to be taxable only in part) once again becomes excludable from the gross income of the owners thereof for federal income tax purposes; and (ii) an amount equal to any interest, penalties or charges owed by such Bondholder (or, if applicable, the Bank) as a result of interest on the Bonds becoming included in the gross income of such Bondholder (or, if applicable, the Bank), together with any and all external attorneys’ fees, court costs, or other reasonable out of pocket costs incurred by such Bondholder (or, if applicable, the Bank) in connection therewith.

(b) Subject to the provisions of clauses (c) and (d) below, such Bondholder (or, if applicable, the Bank) shall afford the Commission the opportunity, at the Commission’s sole cost and expense, to contest (i) the validity of any amendment to the Code which causes the interest on the Bonds to be included in the gross income of such Bondholder (or, if applicable, the Bank) or (ii) any challenge to the validity of the tax exemption with respect to the interest on the Bonds, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals).

(c) As a condition precedent to the exercise by the Commission of its right to contest set forth in clause (b) above, the Commission shall, within _____ (__) days of the written demand therefor reimburse such Bondholder for any and all expenses (including attorneys’ fees for services that may be required or desirable, as determined by such Bondholder (or, if applicable, the Bank) in its reasonable discretion) that may be incurred by the Bank in connection with any such contest, and for any and all penalties or other charges payable by such Bondholder (or, if applicable, the Bank) for failure to include such interest in its gross income.

(d) The obligations of the Commission under this Section 2.04 shall survive the termination of this Agreement, the termination of any of the other Related Documents, and the redemption or other payment in full of the Bonds.

Section 2.05. Maximum Interest Rate. [Delete if interest rate on bonds is fixed.]

(a) If the amount of interest payable for any period in accordance with the terms hereof or the Bonds exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate.

(b) Any interest that would have been due and payable for any period but for the operation of the immediately preceding paragraph (a) shall accrue and be payable as provided in this paragraph (b) and shall, less interest actually paid to each Bondholder for such period, constitute the “Excess Interest Amount.” If there is any accrued and unpaid Excess Interest Amount as of any date, then the principal amount with respect to which interest is payable shall bear interest at the Maximum Interest Rate until payment to each Bondholder of the entire Excess Interest Amount.

(c) Notwithstanding the foregoing, on the date on which no principal amount with respect to the Bonds remains unpaid, to the extent permitted by Law, the Commission shall pay to each Bondholder a fee equal to any accrued and unpaid Excess Interest Amount.

Section 2.06. Obligations Absolute. The payment obligations of the Commission under this Agreement shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

(a) any lack of validity or enforceability of this Agreement, the Bonds or any of the other Related Documents;

(b) the existence of any claim, set-off, defense or other right which the Commission may have at any time against the Bank, any other Bondholder or any other person or entity, whether in connection with this Agreement, the other Related Documents, the transactions contemplated herein or therein or any unrelated transaction; or

(c) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Section 2.07. Bank Consent to Subsequent Index Interest Rate Period. (a) So long as the Bank is the Bondholder, on or before the date which is one hundred twenty (120) days prior to the end of the Index Interest Rate Period, the Commission may provide written notice to the Bank, in the form of Appendix B hereto, of its desire to change the interest rate mode of the Bonds (including conversion to a new Index Interest Rate Period) and requesting the Bank to purchase such Bonds in such new Index Interest Rate Period or provide the liquidity or credit enhancement necessary to facilitate the conversion of the Bonds to such new interest rate mode. The Bank will make reasonable efforts to respond to such request within sixty (60) days after receipt of all information necessary, in the Bank's reasonable judgment, to permit the Bank to make an informed credit decision. The Bank may, in its sole and absolute discretion, decide to accept or reject any such request and no consent shall become effective unless the Bank shall have consented thereto in writing. In the event the Bank fails to definitively respond to such request within such sixty (60) day period, the Bank shall be deemed to have refused to grant such request. The consent of the Bank, if granted, shall be conditioned upon the preparation, execution and delivery of documentation in form and substance satisfactory to the Bank (which may include, but not be limited to, the delivery of a "no adverse effect opinion" of Bond Counsel to the Bank with respect to the tax-exempt status of the Bonds as a result of such conversion and interest rate setting). In the event the Commission and the Bank fail to document in writing their agreement of the proposed rate(s) and terms of the succeeding period(s), the Commission shall continue to be required to repurchase the Bonds on the Mandatory Tender Date for a purchase price of 100% of the par amount plus accrued interest to the Mandatory Tender Date. If the Bank and the Commission agree to the terms for the Bonds upon such conversion and the interest rate that the Bonds shall bear following the change shall meet the requirements of [Section ____] of the Certificate of Additional Terms, the Commission and Bank may cause conversion of the Bonds by the process described in [Section ____] of the Certificate of Additional Terms.

Section 2.08. Increased Costs.

(a) Net of Taxes. Except as otherwise required by law, each payment by the Commission to a Bondholder under this Agreement shall be made without defense, setoff or counterclaim and without any withholding for or on account of any present or future taxes (other than taxes imposed on or measured by the net income, gross income, gross receipts, or other measures of income or profits or capital of the recipient imposed by any jurisdiction having jurisdiction over such recipient) imposed by or within the jurisdiction in which the Commission is domiciled, any jurisdiction from which the Commission makes any payment hereunder, or (in each case) any political subdivision or taxing authority thereof or therein. If any such withholding is so required, the Commission shall pay such additional amount as may be necessary to ensure that the net amount actually received by a Bondholder free and clear of such taxes (including such taxes on such additional amount) is equal to the amount which the Bondholder would have received had such withholding not been made. If a Bondholder pays any amount in respect of any such taxes, penalties or interest, the Commission shall reimburse such Bondholder for that payment on demand. If the Commission pays any such taxes, penalties or interest, it shall deliver official tax receipts evidencing that payment or certified copies thereof to the applicable Bondholder on or before the thirtieth day after payment.

(b) Reserve Requirements. If any change in any law or regulation or in the interpretation thereof by any court or administrative or Governmental Authority charged with the administration thereof shall impose, increase or deem applicable any reserve, special deposit or similar requirement against the obligations of a Bondholder (other than as a result of the acts, omissions or financial condition of a Bondholder) and the result of any such event above shall be to increase the cost to a Bondholder of the holding of the Bonds (which increase in costs shall be the result of a Bondholder's pro rata allocation of the aggregate of such cost increases resulting from such events), then, upon written demand by a Bondholder to the Commission, the Commission shall pay to such Bondholder within forty-five (45) days of such demand, the amount of such increased costs from the date of such change; *provided* that interest thereon shall not begin to accrue until forty-five (45) days after such demand. A Bondholder shall submit to the Commission a certificate setting forth in reasonable detail the amount of such increased costs as a result of any such event. A Bondholder shall notify the Commission of any such impending or announced change in law, regulation or interpretation promptly upon receipt by it of actual notice of such change; provided, however, that any delay or failure to so notify the Commission shall not in any manner relieve the Commission of its obligations under this Agreement.

(c) Capital Requirements. If a Bondholder shall have determined that, after the date hereof, the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of increasing the amount of capital required to be maintained or reducing the rate of return on capital of such Bondholder as a consequence of such Bondholder's obligations hereunder or the holding by it of the Bonds pursuant hereto to a level below that which such Bondholder could have achieved but for such adoption, change, request or directive (taking into consideration its policies with respect to capital adequacy) by any amount deemed by such

Bondholder to be material then, upon written demand by a Bondholder to the Commission, the Commission shall pay to such Bondholder within forty-five (45) days of such demand, the amount of such reduction from the date of such change; *provided* that interest thereon shall not begin to accrue until forty-five (45) days after such demand. A Bondholder shall submit to the Commission a certificate setting forth in reasonable detail the amount as will compensate such Bondholder for such reduction as a result of any such event. A Bondholder shall notify the Commission of any such impending or announced change in law, regulation or interpretation promptly upon receipt by it of actual notice of such change; provided, however, that any delay or failure to so notify the Commission shall not in any manner relieve the Commission of its obligations under this Agreement.

(d) Limitation re Participations. Notwithstanding anything to the contrary contained in this Section 2.08, the Commission shall have no obligation to pay amounts pursuant to this Section 2.08: (i) in an amount greater than that which it would have been required to pay if a Bondholder had not participated any interest in the Bonds or (ii) for any increased costs incurred or reductions suffered more than six (6) months prior to the date that a Bondholder notifies the Commission of the change in law giving rise to such increased costs or reductions, and a Bondholder's intention to claim compensation therefor (except that if the change in law giving rise to such increased costs or reductions is retroactive, then the six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Survival. Without prejudice to the survival of any other agreement of the Commission hereunder, the agreements and obligations of the Commission contained in this Section 2.08 shall survive the termination of this Agreement and the payment in full of the Bonds and the obligations of the Commission thereunder and hereunder.

Section 2.09. Funding Indemnity. In the event a Bondholder shall incur any loss, cost, or expense (including, without limitation, any loss, cost, or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by such Bondholder to purchase or hold the Bonds or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Bondholder) as a result of any purchase, redemption, conversion or other prepayment of the Bonds on a date other than a [_____] Index Reset Date for any reason, whether before or after default, and whether or not such payment is required by any provision of this Agreement or the 1991 Master Resolution, then upon the demand of such Bondholder, the Commission shall pay to such Bondholder a premium in such amount as will reimburse such Bondholder for such loss, cost, or expense. If such Bondholder requests such premium, it shall provide to the Commission a certificate setting forth the computation of the loss, cost, or expense giving rise to the request for such premium in reasonable detail and such certificate shall be conclusive if reasonably determined.

Section 2.10. Limited Obligations. Notwithstanding any other provision of this Agreement (except for Section 5.07 hereof), and the provisions of the Certificate of Additional Terms), any other Related Document or the 1991 Master Resolution (except for the provisions of the Certificate of Additional Terms) to the contrary, the Bonds, are limited obligations of the Commission and payable solely from Net Revenues as provided in the 1991 Master Resolution.

ARTICLE III

CONDITIONS PRECEDENT TO PURCHASE OF BONDS

Section 3.01. Conditions Precedent. The obligation of the Bank to purchase the Bonds is subject to the following conditions precedent:

(a) Delivery of Documents. The Bank shall have received on or before the Closing Date (or shall have acknowledged its prior receipt of) the documents listed below, each in form and substance satisfactory to the Bank and its counsel and, unless indicated otherwise, dated the Closing Date:

(i) executed copies of this Agreement and the other Related Documents, dated their respective dates, and any amendments and supplements thereto, and a specimen copy of the Bonds;

(ii) [evidence that a CUSIP number for the Bonds has been obtained and reserved from Standard & Poor's CUSIP Services;]

(iii) evidence that the unenhanced long-term debt rating assigned to Parity Bonds are at least [_____];

(iv) a certificate of a duly authorized officer of the Commission, certifying as to the incumbency and signature of each of the officers of the Commission authorized to sign this Agreement and the other Related Documents;

(v) a certified copy of the resolution of the Commission approving the execution, delivery and performance of this Agreement and the other Related Documents, and a certified copy of the 1991 Master Resolution, each certified by a duly authorized officer of the Commission on the Closing Date, which certificate shall state that the respective resolutions have not been amended except as set forth therein or annulled and are in full force and effect on the Closing Date;

(vi) the audited financial statements of the Commission for the Fiscal Year ended [FY END DATE], and a copy of the annual operating budget of the Commission;

(vii) copies of opinions of [NAME] and [NAME], Co-Bond Counsel for the Commission, (A) as to the validity of the Bonds issued pursuant to the 1991 Master Resolution; (B) as to the pledge of Net Revenues as security for the payment of the Bonds; and (C) to the effect that interest on the Bonds will be exempt from gross income for Federal income tax purposes;

(viii) a certificate of a duly authorized officer of the Commission, certifying that all conditions precedent with respect to the execution of this Agreement and the other Related Documents shall have been satisfied and that, except as previously disclosed to the Bank, there has been no adverse change in

the financial condition, business, assets, liabilities or prospects of the Commission since [FY END DATE];

(ix) an opinion of the City Attorney of the City to the effect that this Agreement and the other Related Documents are valid and binding agreements of the Commission enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium or other laws affecting creditors' rights and to general principles of equity and that the 1991 Master Resolution, including each supplement and amendment thereto, was duly adopted and is in full force and effect;

(x) a certificate of the Trustee, as to such matters as the Bank may reasonably request;

(xi) an opinion of counsel to the Trustee, as to such matters as the Commission may reasonably request; and

(xii) such other documents, certificates and opinions as the Bank or the Bank's counsel shall have reasonably requested.

(b) Representations; No Defaults. The following statements shall be true and correct on and as of the Closing Date, and the Bank shall have received a certificate signed by the appropriate officer of the Commission, dated the Closing Date, stating that:

(i) the representations of the Commission contained in Article IV hereof are true and correct on and as of the Closing Date as though made on and as of such date; and

(ii) after giving effect to the issuance of the Bonds and the effectiveness of this Agreement, there exists no Default or Event of Default.

(c) No Material Adverse Change. As of the Closing Date, the Bank shall have determined (in its reasonable judgment) that no material adverse change in the financial condition, business, assets, liabilities or prospects of the Commission shall have occurred.

Section 3.02. Documents to Be Provided by the Bank. The Commission's agreement to enter into this Agreement shall be subject to the condition precedent that the Commission shall have received an opinion of counsel to the Bank, as to such matters as the Commission may reasonable request, such satisfaction to be conclusively evidenced by the delivery of this Agreement by the Commission.

ARTICLE IV

REPRESENTATIONS

The Commission represents to the Bank as follows:

(a) Legal Existence; Powers. The Commission (i) is a commission of the City organized and validly existing under the Charter, and (ii) has the legal right, power and authority to (A) control its properties and to carry on its business as now being and hereafter proposed to be conducted, (B) execute, deliver and adopt, as applicable, this Agreement and the other Related Documents, (C) perform all its obligations under the 1991 Master Resolution, this Agreement and the other Related Documents, and (D) issue the Bonds in accordance with the 1991 Master Resolution.

(b) Due Authorization; No Violation; No Conflicts. The execution, delivery and performance by the Commission of this Agreement and the other Related Documents to be delivered on the Closing Date and to which the Commission is a party have been duly authorized by all necessary action on the part of the Commission and do not (i) violate the Charter or any material provision of any court order by which the Commission is bound, (ii) conflict with, violate or contravene any material provision of existing law or regulation, or any order or decree or any court, tribunal or Governmental Authority, (iii) conflict with, violate or cause a default, or with the passage of time or the giving of notice, or both, would cause a default under any material provision of any bond, note or other evidence of indebtedness or mortgage, indenture, contract or other agreement to which the Commission is a party; and no consent of any Person and no license, approval or authorization of or notice to or registration, filing or declaration with any Governmental Authority, bureau or agency is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement or any of the other Related Documents or for the Commission to issue the Bonds or incur the Obligations in accordance with this Agreement or, if required, the same has been obtained and is in full force and effect or will be obtained in sufficient time in order to fully perform under this Agreement, or (iv) result in the imposition of any Lien on amounts in the Revenue Fund, except as provided herein and in the 1991 Master Resolution.

(c) Validity. This Agreement, the other Related Documents and the 1991 Master Resolution each constitutes a legal, valid and binding agreement or obligation, as the case may be, of the Commission, except as (i) the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally, (ii) the availability of equitable remedies which may be limited by equitable principles of general applicability and (iii) limitations on remedies available against public agencies such as the Commission available under applicable California laws and regulations.

(d) Litigation. As of the Closing Date, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, arbitrator, governmental or other board, body or official, pending or, to the best knowledge of the Commission, threatened against or affecting the Commission, wherein an unfavorable decision, ruling or finding would materially adversely affect (i) the transactions contemplated by or the validity of this Agreement, any of the other Related Documents, (ii) the status of the Commission as a commission of the City organized and existing under the Charter, (iii) the exemption of interest on the Bonds from federal income tax, (iv) the Commission's legal right, power and authority to control its own property and to carry on its business and operations, (v) the Commission's financial condition, or (vi) the Commission's ability to perform its obligations under this Agreement, the other Related Documents.

(e) Accuracy of Financial Reports. The audited financial statements for Fiscal Years ____ and ____, including the balance sheets as of the end of said periods, all examined and reported on by [____], independent public accountants, as heretofore delivered to the Bank correctly and fairly present the financial condition of the Commission as of said dates and the results of the operations of the Commission for such period as of said dates, and have been prepared in accordance with generally accepted accounting principles applicable to governmental entities such as the City, consistently applied, except as stated in the notes thereto; and there has been no material adverse change in the condition, financial or otherwise, of the Commission since the date of preparation thereof (other than as disclosed in writing to the Bank), from that set forth in said financial statements as of, and for the period ended on, those dates.

(f) No Acceleration. As of the Closing Date, no Debt which is recourse to, or secured by, the Revenues (as that term is defined in the 1991 Master Resolution), or any portion thereof, of the Commission, other than Repayment Obligations, if any, in an amount in excess of \$15,000,000, which is currently outstanding, is subject to acceleration of the payment thereof before the scheduled due date thereof at the direction or option of the holders of such Debt or any trustee for such holders.

(g) Disclosure. As of the Closing Date, (i) there is no event, fact or condition known to the Commission which the Commission has not disclosed to the Bank in writing which materially adversely affects the Commission and (ii) there is no event, fact or condition known to the Commission which the Commission has not disclosed to the Bank in writing which the Commission has determined is likely to materially adversely affect the ability of the Commission to perform its obligations hereunder.

(h) Security. There are no material Liens on the Net Revenues other than the Liens created by or pursuant to or otherwise permitted by the 1991 Master Resolution and this Agreement. The 1991 Master Resolution does not permit the issuance of any Debt secured by Net Revenues to rank senior to the Bonds. The 1991 Master Resolution requires the first use of Revenues to pay certain operation and maintenance expenses. Except as expressly provided in Section 5.07 hereof, the Lien on the Net Revenues securing the payment of principal of and interest on the Bonds ranks on a parity with the payment of principal of and interest on the Parity Bonds (including the Bonds) and is not subordinate to any payment secured by a Lien on the Net Revenues other than as permitted by the 1991 Master Resolution. The pledge of and lien on Net Revenues created by the 1991 Master Resolution and this Agreement are valid and binding on the Commission subject to and in accordance with the provisions of Section 5451 of the California Government Code. Amortization Payments and any other amounts due hereunder other than principal and interest on the Bonds are payable [from amounts available in the General Purpose Account]/[in the manner described in Section __ of the Certificate of Additional Terms].

(i) Sovereign Immunity. The Commission is subject to claims and to suit for money damages in connection with or under this Agreement and the other Related Documents pursuant to and in accordance with the laws of the State applicable to municipal corporations, including Part 3 of Division 3.6 of Title 1 of the Government Code of the State of California.

The Commission is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(j) Environmental Laws. As of the Closing Date, the Commission has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which noncompliance or remedial action, if determined adversely to the Commission, would be likely, in the determination of the Commission, to have a material adverse effect on the business operations or financial condition of the Commission or the ability of the Commission to perform its obligations under the 1991 Master Resolution or the Related Documents.

(k) Usury. The terms of this Agreement and the other Related Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

(l) Business of the Commission. The Commission is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any margin stock as defined in Regulation U of the Board of Governors of the Federal Reserve System.

(m) Event of Default. As of the Closing Date, no Event of Default has occurred and is continuing hereunder as of the date hereof.

(n) ERISA. The Commission, as an enterprise fund department of the City, participates in the San Francisco City and County Employees’ Retirement System (the “City Plan”). The City Plan is a governmental plan that is not subject to the Employee Retirement Income Security Act of 1974, as amended or recodified from time to time (“ERISA”).

(o) Incorporation of Representations. On the date of the execution of this Agreement, the Commission hereby makes to the Bank the same representations as were made by it in each Related Document to which it is a party and in the 1991 Master Resolution, which representations, together with the related definitions of terms contained therein, are hereby incorporated by reference with the same effect as if each and every such representation and definition were set forth herein in its entirety. No amendment to such representations or definitions made pursuant to the relevant Related Documents, which amendment could have a material adverse effect on the Bank, shall be effective to amend such representations and definitions as incorporated by reference herein without the prior written consent of the Bank

(p) Regulations U and X. The Commission is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of the Bonds will be used to extend credit to others for the purpose of purchasing or carrying any margin stock, or for any other purpose that would violate Regulation U or X issued by the Board of Governors of the Federal Reserve System.

(q) Legislation; Referendum. As of the Closing Date, (i) there is no State or local referendum or initiative certified for the ballot, or Federal, State or local legislation enacted or introduced and passed out of at least one committee, that is known to the Commission, which the Commission has determined would materially and adversely affect the financial condition or business operations of the Commission, and (ii) no State or local referendum or initiative has passed and no Federal, State or local legislation has been enacted that is known to the Commission, which the Commission has determined would materially and adversely affect the validity or enforceability of this Agreement, or the power of the Commission to carry out the transactions contemplated hereby and thereby.

ARTICLE V

AFFIRMATIVE COVENANTS

Section 5.01. Financial Statements. The Commission shall keep proper books of record and account in which full, true and correct entries will be made of all dealings and transactions of or in relation to affairs, operations, transactions and activities of the Commission in accordance with generally accepted accounting principles applicable to governmental entities such as the City, consistently applied, and will furnish to the Bank a copy of each of the following:

(a) Within forty-five (45) days of its availability, and in any event within two hundred ten (210) days after the close of each Fiscal Year of the Commission, the Commission's annual report including the balance sheet as of the end of such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year, all in reasonable detail, certified by an independent certified public accountant as having been prepared in accordance with generally accepted accounting principles applicable to governmental entities such as the City, consistently applied, such audit having been conducted with generally accepted auditing standards;

(b) Within sixty (60) days after the end of each fiscal quarter: (i) any projections, sensitivity analyses, consultant's reports, and other information that are provided to the Commission or otherwise made available to the public; (ii) a quarterly revenues report in reasonable detail by category; and (iii) any appropriations or supplemental appropriations relating to the Commission approved during such quarter;

(c) A copy of the Commission's budget, prepared by the Commission prior to the beginning of each Fiscal Year, within sixty (60) days after its approval by the City;

(d) Such other information in the Commission's possession respecting the affairs, condition and/or operations, financial or otherwise, of the Commission as the Bank may from time to time reasonably request; and

(e) Within forty-five (45) days after the end of each fiscal quarter, a summary of the Commission's outstanding Interest Rate Swaps, including the notional amounts thereof, the rates payable thereunder, the terms thereof, and the current mark-to-market valuations thereof.

Section 5.02. Notice of Default. The Commission shall deliver to the Bank, immediately after the Commission shall have obtained knowledge of the occurrence of an Event of Default, the written statement of an authorized officer of the Commission setting forth the details of such Event of Default and the action which the Commission proposes to take with respect thereto.

Section 5.03. Inspection. The Commission shall upon reasonable notice permit any Person designated by the Bank in writing, at the Bank's expense, to visit any of the properties of the Commission, to examine the municipal books and financial records of the Commission and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the Commission with the principal officers of the Commission and its independent public accountants, all at such reasonable times and, so long as no Event of Default shall have occurred and be continuing, no more than once every calendar quarter.

Section 5.04. Compliance with Agreements. The Commission shall observe and perform all of its obligations under the 1991 Master Resolution and under this Agreement, the Bonds and the other Related Documents to which it is a party.

Section 5.05. Preservation of Existence. The Commission shall preserve and maintain its legal existence.

Section 5.06. Use of Proceeds. The Commission shall use the proceeds of the Bonds solely in accordance with the purposes set forth in the 1991 Master Resolution.

Section 5.07. Pledge of Net Revenues; Other Payments.

(a) The payment of principal of and interest on the Bonds (other than Amortization Payments) is secured by a pledge of, lien on and security interest in the Net Revenues on a parity with the pledge, lien and security interest securing the payment of principal of and interest on all previously issued Parity Bonds and any additional Parity Bonds hereafter issued.

(b) The Commission shall pay Amortization Payments and any other amounts due hereunder other than principal of and interest on the Bonds [from the amounts available in the General Purpose Account]/[in the manner described in Section __ of the Certificate of Additional Terms].

Section 5.08. Litigation Notice. The Commission shall promptly give notice to the Bank of any action, suit or proceeding known to it at law or in equity or by or before any court, governmental instrumentality or other agency which, in the reasonable judgment of the Commission, if adversely determined, would materially impair the ability of the Commission to carry out its obligations under the Bonds, the 1991 Master Resolution, this Agreement, the Fee Agreement, or would materially adversely affect its assets or financial condition.

Section 5.09. Incorporation of Covenants. The covenants of the Commission set forth in Sections 2.11, 2.12, 6.04, 6.05, 6.06 and 6.07 of the 1991 Master Resolution are hereby incorporated by reference in this Agreement for the benefit of the Bank and other Bondholders. To the extent that any such incorporated provision permits any Person to waive compliance with

or consent to such provision or requires that a document, opinion, report or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such compliance shall be waived, or such provision shall be consented to, to the extent such waiver, acceptability or consent would have a material adverse effect on the rights, interests, security or remedies of the Bank hereunder, only if it is waived or consented to, as the case may be, by the Bank and such document, opinion, report or other instrument shall be reasonably acceptable or satisfactory to the Bank. No amendment to such covenants (or the defined terms relating thereto) made pursuant to the 1991 Master Resolution shall be effective to amend such incorporated covenants without the written consent of the Bank.

Section 5.10. No Preferential Treatment. In the event that the Commission has or shall, directly or indirectly, enter into or consent to any Bank Agreement which includes remedies not included in this Agreement (including the right to cause the related Debt, in an amount in excess of \$10,000,000 secured by Net Revenues on parity with the Bonds to become due and payable prior to its scheduled maturity), or covenants that are more restrictive as to the Commission than those contained in this Agreement, such remedies and covenants shall be deemed to be immediately incorporated herein and the Commission shall give prompt written notice thereof to the Bank and, upon the request of the Bank, shall enter into an amendment or amendments to this Agreement in form and substance reasonably satisfactory to the Commission and the Bank to incorporate such remedies and covenants to the extent applicable hereto; provided, however, that this Section 5.10 shall not apply to any greater rights or remedies contained in any underwriting agreement for the initial purchase and sale of any bonds, notes, debentures or other evidences of indebtedness payable from Net Revenues; and provided, further, that this Section 5.10 shall not be construed to entitle the Bank to a pledge of, or lien on, any of the Net Revenues superior and prior to the pledge thereof and lien thereon provided to the Bank in Section 5.07 hereof on the Closing Date; *provided, further*, that the Bank shall have and maintain the benefit of such remedies and covenants even if the Commission fails to provide such amendment.

Section 5.11. Subsequent Documents and Instruments. The Commission shall execute and deliver to the Bank, upon the written request of the Bank, such documents and instruments as may be necessary or reasonably required by the Bank to enable the Bank to exercise and enforce its rights under this Agreement and to realize thereon, and to record and file or re-record and re-file such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or reasonably required by the Bank to validate, preserve and protect the rights of the Bank under this Agreement.

Section 5.12. Ratings. The Commission covenants that it shall maintain, at all times, at least one (1) long-term unenhanced rating from a Rating Agency on the Senior Lien Bonds of at least “BBB-” (or its equivalent) or “Baa3” (or its equivalent) by any Rating Agency.

ARTICLE VI

NEGATIVE COVENANTS

Section 6.01. Compliance with Laws, Etc. The Commission shall not violate any laws, rules, regulations or governmental orders to which it is subject, which violation

materially and adversely affects its financial condition, business or results of operations or materially and adversely affects the Commission's ability to perform its obligations under this Agreement, the other Related Documents to which it is a party or the 1991 Master Resolution.

Section 6.02. Amendments. The Commission shall not, directly or indirectly, amend or modify, or consent to the amendment or modification of the 1991 Master Resolution or the Related Documents in any way that materially and adversely affects (i) the rights, interests, security or remedies of the Bank thereunder or hereunder or (ii) the obligations of the Commission under this Agreement without the prior written consent of the Bank, which consent will not be unreasonably withheld, conditioned or delayed.

The Bank hereby consents to the amendments to the 1991 Master Resolution contained in the Twenty-First Supplemental Resolution, adopted by the Commission on October 3, 2017.

Section 6.03. General Tax Covenant. The Commission will not take any action or omit to take any action that, if taken or omitted, adversely affects the exclusion of interest on the Bonds from the gross income of the owners for Federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended.

Section 6.04. Liens. Except as permitted by the 1991 Master Resolution, the Commission will not (a) issue any bonds, notes or other evidences of indebtedness of similar nature payable out of or secured by a security interest in or a pledge or assignment of the Net Revenues pledged under the 1991 Master Resolution and held or set aside by the Commission thereunder, or (b) create or cause to be created any Lien on the Net Revenues, or such moneys, securities or funds.

Section 6.05. Immunities. To the fullest extent permitted by law, the Commission agrees not to assert the defense of sovereign immunity in any proceeding related to or arising out of its obligations under the 1991 Resolution, this Agreement or the other Related Documents.

ARTICLE VII

EVENTS DEFAULT; REMEDIES

Section 7.01. Events of Default. Each of the following shall constitute an Event of Default under this Agreement:

(a) The Commission shall fail to pay (i) the principal of or interest on any of the Bonds when due and such failure continues for a period of one (1) Business Day, or (ii) any other Obligation when due and such failure continues for a period of three (3) Business Days; or

(b) Any representation, certification or statement made by the Commission in this Agreement or in any other Related Document or in any certificate or audited financial statement delivered pursuant to this Agreement or any other Related Document shall (in any such case) have been incorrect or untrue in any materially adverse respect when made or deemed to have been made; or

(c) (i) The Commission shall default in the due performance or observance of any term, covenant or agreement contained in Sections 5.05, 6.02, 6.04 or 6.07 hereof or Section 2.11 of the Master Bond Resolution; or (ii) the Commission shall default in the due performance or observance of any other term, covenant or agreement contained in this Agreement (other than those covered by clauses (a), (b) and (c)(i) of this Section 7.01) and such failure shall remain unremedied for a period of forty-five (45) days after the Bank shall have given the Commission written notice of such default; provided, that, so long as the Commission shall be proceeding with due diligence to remedy any default in the due performance or observance of such covenants which, if begun and prosecuted with due diligence, cannot be completed within a period of forty-five (45) days, then such 45-day period shall be extended to the extent as shall be necessary to enable the Commission to begin and complete the remedying of such default through the exercise of due diligence, but in no event for a period greater than one hundred twenty (120) days; or

(d) The Commission shall fail to pay when due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) principal of or interest on any Parity Bonds; or

(e) A proceeding is instituted against the City or the Commission in a court having jurisdiction over the City or the Commission, any of their activities or any of their properties seeking an order for rehabilitation, reorganization, conservation, liquidation or dissolution in respect of the City or the Commission under applicable law and such proceeding is not terminated for a period of sixty (60) consecutive days or such court enters an order granting the relief sought in such proceeding or the City or the Commission shall institute or take any corporate action for the purposes of instituting any such proceeding; or the City or the Commission shall become insolvent or unable to pay their respective debts as they mature, or the City or the Commission shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of the City or the Commission or for any substantial part of their respective properties, or shall make a general assignment for the benefit of creditors, or the City or the Commission shall fail generally to pay their respective debts or claims as they become due, or there shall be made a declaration of moratorium by a Governmental Authority of appropriate jurisdiction with respect to any debt of the City or the Commission or the City or the Commission shall take any corporate action in furtherance of any of the foregoing; or

(f) This Agreement or any provision hereof, at any time after the execution and delivery hereof, or the 1991 Master Resolution or any provision thereof shall, for any reason, cease to be valid and binding on the Commission or in full force and effect or shall be declared, in a final, non-appealable judgment, to be null and void, or the validity or enforceability of this Agreement, the 1991 Master Resolution or any provision thereof shall be contested (i) by the Commission or (ii) by any Governmental Authority having jurisdiction over the Commission, unless with respect to clause (ii) above, the same is being contested by the Commission in good faith and by appropriate proceedings; or the Commission shall deny that it has any or further liability or obligation under this Agreement or the 1991 Master Resolution; or

(g) From and after the Closing Date, final judgments and/or orders for the payment of money in excess of \$25,000,000 in aggregate (in excess of the coverage limits of any applicable insurance therefor) shall have been rendered against the Commission and be payable from Revenues and such judgments and/or orders shall not have been satisfied or paid when due under applicable law; or

(h) The Commission shall have defaulted in any material respect (i) in the payment of any Debt issued, assumed or guaranteed by the Commission that aggregates in excess of \$15,000,000 and has recourse to, or is secured by, the Revenues, or any portion thereof, or (ii) in the performance of any other obligation under any instrument under which any Debt is issued or secured by the Commission, which default causes such Debt to be amortized, prepaid, or redeemed over a shorter period of time than its original stated maturity; or

(i) Any payment default by the Commission under any Interest Rate Swap that causes a termination of the swap and gives rise to an obligation of the Commission to make a termination payment aggregating in excess of \$15,000,000; or

(j) The occurrence of any “event of default” (after giving effect to any applicable cure period) (i) under the 1991 Master Resolution or (ii) under any of the Related Documents other than this Agreement (which is not waived pursuant to the terms thereof) if the effect of such event is materially adverse to the Bank, in either case, which is not otherwise described in this Section 7.01.

Section 7.02. Remedies. Upon the occurrence of an Event of Default under Section 7.01 hereof, the Bank may, at the same or different times, so long as such Event of Default shall not have been remedied, take one or more of the actions specified in Section 7.03 of the 1991 Master Resolution entitled to be taken by holders of the Bonds.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Amendments and Waivers. No amendment or waiver of any provision of this Agreement, or any other Related Document (that would have a material adverse effect on the Bank), nor consent to any departure by the Commission therefrom shall in any event be effective unless the same shall be in writing and signed by the Bank and, with respect to any amendment, the Commission.

Section 8.02. No Personal Liability of Commission Members and Officials. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any present or future member, official, officer, agent or employee of the Commission, in his or her individual capacity, and neither the members, officers and employees of the Commission, nor any person executing this Agreement shall be liable personally hereunder or be subject to any personal liability or accountability by reason hereof.

Section 8.03. Indemnification.

(a) To the extent permitted by law, the Commission agrees to indemnify and hold harmless the Bank from and against any and all claims, damages, losses, liabilities and reasonable costs or expenses (including reasonable attorney's fees and expenses) whatsoever which the Bank may incur (or which may be claimed against the Bank by any person or entity whatsoever) by reason of or in connection with (i) the validity, sufficiency or genuineness of the Related Documents or the 1991 Master Resolution; or (ii) the execution and delivery of this Agreement; provided, that the Commission shall be relieved of its obligation to so indemnify and hold harmless the Bank if and to the extent that any such claims, damages, losses, liabilities, or costs or expenses are a result of the Bank's gross negligence or willful misconduct.

(b) To the extent permitted by law, the Commission agrees to indemnify and hold harmless the Bank (on a net after tax basis) from any present or future claim or liability for stamp, transfer, documentary, excise or other similar tax and any penalties or interest with respect thereto, which may be assessed, levied or collected by any Governmental Authority in connection with the execution, delivery and performance of, or any payment made under, the 1991 Master Resolution, this Agreement, the Bonds and the other Related Documents or any amendment thereto.

(c) Promptly after receipt by an indemnified party of written notice of the filing of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the Commission under this Section 8.03, notify the Commission in writing of the filing or commencement thereof; but the omission to so notify the Commission shall not relieve the Commission of any liability which it may have to such indemnified party otherwise than under this Section 8.03 unless the failure to give or delay in giving notice materially adversely affects the Commission. The indemnity agreements contained in this Section 8.03 shall survive the termination, expiration or cancellation of this Agreement. In case any such claim or action shall be brought against an indemnified party and the indemnified party shall notify the Commission of the filing or commencement thereof, the Commission shall be entitled to participate therein and, to the extent that it wishes, to assume the defense thereof, with counsel reasonably acceptable to the indemnified party. After timely written notice from the Commission to the indemnified party of its election to so assume the defense thereof, the Commission shall not be liable to the indemnified party under this Section 8.03 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof, other than reasonable out-of-pocket costs of any investigation, so long as the Commission continues to diligently pursue such defense. However, any indemnified party shall have the right to select separate counsel to assert legal defenses that the indemnified party's counsel concludes may be different from or additional to those available to the Commission. In such event, the fees and expenses of such separate counsel for the indemnified party in defending such claim or action shall be borne by the Commission. In no event shall the Commission be liable for the fees and expenses of more than one such separate counsel for an indemnified party in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. Nothing in this Section 8.03 shall limit any of the Bank's rights or remedies under this Agreement or at law or in equity. The indemnity agreements contained in this Section 8.05 shall survive the termination, expiration or cancellation of this Agreement.

Section 8.04. Costs and Expenses. The Commission agrees to pay the reasonable out-of-pocket costs and expenses (including attorneys' fees and expenses) incurred by the Bank in connection with the occurrence of an Event of Default under this Agreement.

Section 8.05. Notices. All notices, requests and other communications to any party hereunder shall be in writing (including bank wire, telex or similar writing) or by telephone or facsimile (promptly confirmed in writing) and shall be given to such party, addressed to it, at its address or telephone or facsimile number set forth below or such other address or telephone or facsimile number as such party may hereafter specify for the purpose by notice to each other party. Each such notice, request or communication shall be effective (i) if given by mail, 10 days after such communication is deposited in the mail with first-class postage prepaid, addressed as aforesaid, (ii) if given by telephone or facsimile, when given by telephone or facsimile to the party at its telephone or facsimile number (if any) specified below or (iii) if given by any other means, when delivered at the address specified below:

<u>Party</u>	<u>Address</u>
Bank:	[BANK] _____ Attention: _____ Telephone: _____ Facsimile: _____

Commission: San Francisco International Airport Commission
Business and Finance Division
International Terminal, Fifth Floor
P.O. Box 8097
San Francisco, CA 94128
Attention: Capital Finance Director
Telephone: 650-821-2888
Facsimile: 650-821-2925

Trustee: The Bank of New York Mellon Trust Company, N.A.
700 S. Flower St., Suite 500
Los Angeles, CA 90071
Attention: Corporate Trust Department
Telephone: 213-630-6268
Facsimile: 213-630-6215

Section 8.06. No Waiver; Remedies. No failure on the part of the Bank or the Commission to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 8.07. Successors and Assigns; Participation of Agreement.

(a) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon the Commission, its successors, transferees and assigns and shall inure to the benefit of the Bondholders and their respective permitted successors, transferees and assigns. The Commission may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the non-assigning party. The Bank may, subject to subsection (b) and (c) hereof, and in accordance with applicable Law, from time to time assign, sell or transfer in whole or in part, this Agreement, its interest in the Bonds and the Related Documents. Each Bondholder may at any time and from time to time enter into participation agreements in accordance with the provisions of subsection (d) of this Section 8.07. Each Bondholder may at any time pledge or assign a security interest in all or any portion of its rights or interests under the Bonds subject to the restrictions of subsection (e) of this Section 8.07.

(b) *Sales and Transfers by Bank to a Bank Transferee.* Without limitation of the foregoing generality, the Bank may at any time sell or otherwise transfer to one or more transferees all or a portion of the Bonds to a Person that is (i) an Affiliate of the Bank or (ii) a trust or other custodial arrangement established by the Bank or an Affiliate of the Bank, the owners of any beneficial interest in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the 1933 Act, or “accredited investors” as defined in Rule 501 of Regulation D under the 1933 Act (each, a “Bank Transferee”) and such Bank Transferee executes and delivers an Investor Letter (as defined below) to the Commission. From and after the date of such sale or transfer, the Bank (and its successors) shall continue to have all of the rights of the Bank hereunder and under the other Related Documents as if no such transfer

or sale had occurred; provided, however, that (A) no such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall in any way affect the obligations of the Bank hereunder, (B) the Commission shall be required to deal only with the Bank with respect to any matters under this Agreement and (C) in the case of a sale or transfer referred to in clause (b)(i) or (b)(ii) hereof, only the Bank shall be entitled to enforce the provisions of this Agreement against the Commission.

(c) *Sales and Transfers by Bondholder to a Non-Bank Transferee.* A Bondholder may at any time sell or otherwise transfer to one or more transferees which are not Bank Transferees but each of which constitutes a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act or an “accredited investor” as defined in Rule 501 of Regulation D under the 1933 Act (each a “Non-Bank Transferee”) all or a portion of the Bonds if (A) written notice of such sale or transfer, including that such sale or transfer is to a Non-Bank Transferee, together with addresses and related information with respect to the Non-Bank Transferee, shall have been given to the Commission and the Bank (if different than the Bondholder) by such selling Bondholder and Non-Bank Transferee, and (B) the Non-Bank Transferee shall have delivered to the Commission and the selling Bondholder, an investment letter in substantially the form attached as Exhibit [] to the Certificate of Additional Terms (the “Investor Letter”).

From and after the date the Commission, the Trustee and the selling Bondholder have received written notice and a copy of any assignment or assumption of this Agreement and an executed Investor Letter, (A) the Non-Bank Transferee thereunder shall be a party hereto and shall have the rights and obligations of a Bondholder hereunder and under the other Related Documents, and this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Non-Bank Transferee, and any reference to the assigning Bondholder hereunder and under the other Related Documents shall thereafter refer to such transferring Bondholder and to the Non-Bank Transferee to the extent of their respective interests, and (B) if the transferring Bondholder no longer owns any Bonds, then it shall relinquish its rights and be released from its obligations hereunder and under the Related Documents.

(d) *Participations.* The Bondholder shall have the right to grant participations in all or a portion of such Bondholder’s interest in the Bonds, this Agreement and the other Related Documents to one or more other banking institutions; provided, however, that (i) no such participation by any such participant shall in any way affect the obligations of the Bank hereunder and (ii) the Commission shall be required to deal only with the Bank, with respect to any matters under this Agreement, the Bonds and the other Related Documents and no such participant shall be entitled to enforce any provision hereunder against the Commission.

(e) *Certain Pledges.* In addition to the rights of the Bank set forth above, the Bank may at any time pledge or grant a security interest in all or any portion of its rights or interests under the Bonds, this Agreement and/or the Related Documents to secure obligations of the Bank or an Affiliate of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; provided that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

Section 8.08. City Contracting Provisions. The Bank shall comply with the provisions set forth in Appendix A to this Agreement, which is incorporated in and made a part of this Agreement by this reference.

Section 8.09. Severability. Any provision of this Agreement that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction; *provided, however*, that the Commission and the Bank hereby agree to negotiate in good faith to replace the provision of the Agreement prohibited, deemed unenforceable or not authorized with a provision having substantially the same economic or legal effect and not prohibited, unenforceable or not authorized.

Section 8.10. Consent by the Bank. Except as otherwise expressly set forth herein to the contrary, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action of the Bank shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which the Commission is a party and to which the Bank has succeeded hereto, such action shall be required to be in writing and may be withheld or denied by the Bank in its sole discretion.

Section 8.11. No Third Party Rights. Nothing expressed in or to be implied from this Agreement is intended to give, or shall be construed to give, any Person (including the Trustee), other than the parties hereto and their permitted successors and assigns, any benefit or legal or equitable right, remedy or claim under or by virtue of this Agreement.

Section 8.12. Governing Law; Waiver of Jury Trial. The obligations of the Bank under this Agreement shall be governed by, and construed in accordance with, the laws of the State of [New York] without giving effect to conflicts of laws provisions. The obligations of the Commission under this Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflicts of laws provisions. To the extent permitted by law, the parties hereto hereby waive their respective right to a trial by jury in connection with any litigation arising from or related to the obligations of the Commission or the Bank under this Agreement.

Section 8.13. Consent to Jurisdiction. Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the jurisdiction of the courts of the State of California and any appellate court from any thereof, and of the federal district courts which are located in the City and County of San Francisco, in any action or proceeding arising out of or relating to this Agreement and any other Related Document, or for recognition or enforcement of any judgment.

Section 8.14. Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a PDF copy

attached, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

Section 8.15. Prior Agreements Superseded. This Agreement supersedes all prior undertaking and agreements, both written and oral, between the Commission and the Bank relating to the Bonds, including those contained in any commitment letter or term sheet between the Commission and the Bank.

Section 8.16. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 8.17. USA Patriot Act Notice. Bank hereby notifies the Commission that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107.56 (signed into law October 26, 2001)) (the “Patriot Act”), the Bank is required to obtain, verify and record information that identifies the Commission, which information includes the name and address of the Commission and other information that will allow the Bank to identify the Commission in accordance with the Patriot Act.

Section 8.18. OFAC. The Commission shall ensure that (i) no person who controls the Airport (being the Airport Director and members of the Commission) is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists identified by the Bank to the Commission that are maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Orders that prohibit or limit the Bank from making any advance or extension of credit to the Commission or from otherwise conducting business with the Commission, and (ii) the Bond proceeds shall not be used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. The Commission agrees to provide documentary and other evidence of the Commission’s identity as may be requested by the Bank at any time to enable the Bank to verify the Commission’s identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the Patriot Act.

Section 8.19. Assignment to Federal Reserve Bank. The Bank may assign and pledge all or any portion of the obligations owing to it hereunder or under the Bonds to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank; provided, that any payment in respect of such assigned obligations made by the Commission to the Bank in accordance with the terms of this Agreement shall satisfy the Commission’s obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release the Bank from its obligations hereunder.

Section 8.20. Right to Provide Copies of Agreement. The Bank acknowledges and agrees that the Commission (i) may provide a copy of this Agreement to any Person, including without limitation, rating agencies, financial advisors and others, and (ii) may post a copy of this Agreement to the Electronic Municipal Market Access System (referred to as “EMMA”), a facility of the Municipal Securities Rulemaking Board.

Section 8.21. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of the Commission and the Bank, and both the Commission and the Bank have had an opportunity to have the Agreement reviewed and revised by legal counsel. Neither the Commission nor the Bank shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

AIRPORT COMMISSION OF THE CITY AND
COUNTY OF SAN FRANCISCO

By _____
Name: Ivar C. Satero
Title: Airport Director

APPROVED AS TO FORM
DENNIS J. HERRERA, CITY ATTORNEY

[_____] _____
Deputy City Attorney

[BANK]

By _____
Name:
Title:

APPENDIX A

CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

The following provisions shall apply to this Agreement as if set forth in the text thereof. Capitalized terms used but not defined in this Appendix shall have the meanings given in this Agreement.

1. ***Nondiscrimination; Penalties.***

(a) *Nondiscrimination in Contracts.* The Bank shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. The Bank shall incorporate by reference in any subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require any subcontractors to comply with such provisions. The Bank is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) *Nondiscrimination in the Provision of Employee Benefits.* San Francisco Administrative Code 12B.2. The 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 Commission elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

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

2. ***MacBride Principles—Northern Ireland.*** The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Agreement. By entering into this Agreement, the Bank confirms that it has read and understood that the Commission urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

3. ***Tropical Hardwood and Virgin Redwood Ban.*** Under San Francisco Environment Code Section 804(b), the Commission urges the Bank not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

4. ***Alcohol and Drug-Free Workplace.*** The Commission reserves the right to deny access to, or require the Bank to remove from, City facilities personnel of the Bank who the Commission has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City’s ability to maintain safe work facilities or to protect

the health and well-being of City employees and the general public. The Commission shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

5. ***Compliance with Americans with Disabilities Act.*** The Bank shall provide the services specified in this Agreement in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

6. ***Sunshine Ordinance.*** The Bank acknowledges that this Agreement and all records related to its formation, the Bank's performance of services provided under this Agreement, and the Commission's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

7. ***Limitations on Contributions.*** By executing this Agreement, the 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. The prohibition on contributions applies to each prospective party to the contract; each member of the Bank's board of directors; the Bank's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Bank; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Bank. The Bank must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

8. ***Requiring Minimum Compensation for Covered Employees.*** The Bank shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. The Bank is subject to the enforcement and penalty provisions in Chapter 12P. By entering into this Agreement, the Bank certifies that it is in compliance with Chapter 12P.

9. ***Requiring Health Benefits for Covered Employees.*** The Bank shall comply with San Francisco Administrative Code Chapter 12Q. The Bank shall choose and perform one of the

Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. The Bank is subject to the enforcement and penalty provisions in Chapter 12Q.

10. ***Prohibition on Political Activity with City Funds.*** In performing the services provided under this Agreement, the Bank shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The Bank is subject to the enforcement and penalty provisions in Chapter 12G.

11. ***Nondisclosure of Private, Proprietary or Confidential Information.*** If this Agreement requires the Commission to disclose “Private Information” to the Bank within the meaning of San Francisco Administrative Code Chapter 12M, the Bank shall use such information consistent with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services provided under this Agreement. The Bank is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of services provided under this Agreement, the Bank may have access to the City’s proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to the Bank, such information must be held by the Bank in confidence and used only in performing this Agreement. The Bank shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

12. ***Consideration of Criminal History in Hiring and Employment Decisions.*** The 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. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of the Bank’s obligations under Chapter 12T is set forth in this Section. The Bank is required to comply with all of the applicable provisions of Chapter 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.

The requirements of Chapter 12T shall only apply to the Bank’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes Airport property. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

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

14. ***Submitting False Claims; Monetary Penalties.*** The full text of San Francisco Administrative Code § 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Under San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

15. ***Conflict of Interest.*** By entering into this Agreement, the Bank certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the Commission if it becomes aware of any such fact during the term of this Agreement.

16. ***Food Service Waste Reduction Requirements.*** The Bank shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the provided remedies for noncompliance.

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

18. ***Laws Incorporated by Reference.*** The full text of the laws listed in this Appendix A, including enforcement and penalty provisions, are incorporated into this Agreement by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Appendix A are available at www.sfgov.org under "Open Gov."

APPENDIX B

REQUEST FOR SUBSEQUENT INDEX INTEREST RATE PERIOD