

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

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

RECITALS

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

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

1. Subsection (a) of Section 4 [Compensation] of the Agreement is hereby amended in its entirety to read as follows:
 - (a) For the complete and satisfactory performance of the services detailed in Appendix A attached to the Agreement, the City will pay the Trustee for all expenses as detailed in Appendix B attached to this Amendment. For purposes of certification by the Controller, the

total compensation will be the original contract amount of \$260,000, plus the approved increment of \$600,000 pursuant to Resolution No. 01-0360, plus the approved increment of \$900,000 pursuant to Resolution No. 07-0035, for a total of \$1,760,000.

2. **Nondiscrimination; Penalties**

a. Trustee Shall Not Discriminate

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

b. Subcontracts

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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

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

3. Limitations on Contributions

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

4. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Requiring Health Benefits for Covered Employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Prohibition on Political Activity with City Funds

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

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

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

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

AIRPORT COMMISSION
AND COUNTY OF SAN FRANCISCO

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

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

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

ATTEST:
Jean Caramatti
Jean Caramatti
Secretary, Airport Commission

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

Company Name
550 Kearny Street, Suite 600

Address
San Francisco CA 94108

City State Zip
(415) 263-2436

Area Code Phone Number

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: Dennis J. Herrera
Deputy City Attorney

95-3571558

Federal Employer or Taxpayer
Identification Number

Appendix B
Calculation of Charges

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

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

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

**Total Estimated Annual and Transaction
Fees**

\$164,870

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

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