

## AMENDED AND RESTATED CUSTODIAN AGREEMENT

AMENDED AND RESTATED CUSTODIAN AGREEMENT, dated as of October 8, 2014 (as the same may be amended, modified and supplemented from time to time, this "*Agreement*"), is entered into among STATE STREET BANK AND TRUST COMPANY (the "*Bank*"), CITY AND COUNTY OF SAN FRANCISCO, a charter city and county duly organized and existing under the laws of State of California (the "*City*"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("*Wells Fargo Bank*"), as custodian for the Bank.

### WITNESSETH:

WHEREAS, the Bank has agreed to issue its irrevocable direct-pay letter of credit (the "*Letter of Credit*") to provide credit and liquidity support for the City and County of San Francisco Finance Corporation (the "*Corporation*") Lease Revenue Refunding Bonds, Series 2008-2 (Moscone Center Expansion Project) (the "*Bonds*") issued pursuant to the Trust Agreement, dated as of September 1, 2008, among the City, the Corporation and Wells Fargo Bank, in its capacity as trustee (the "*Trust Agreement*");

WHEREAS, the Letter of Credit may be drawn upon to pay, among other things, the purchase price of Bonds secured thereby tendered or deemed tendered for purchase under certain circumstances as set forth in the Trust Agreement; and

WHEREAS, it is a condition precedent, among others, to the obligation of the Bank to enter into the Amended and Restated Letter of Credit and Reimbursement Agreement, dated as of October 1, 2014, among the City, the Corporation and the Bank (as the same may be amended, modified, supplemented and restated from time to time, the "*Reimbursement Agreement*"), that Wells Fargo Bank shall have executed and delivered this Amended and Restated Custodian Agreement.

WHEREAS, the City, Wells Fargo Bank and the Bank are party to a Reimbursement Custodian Agreement dated as of September 1, 2008 (as amended to date, the "*Original Agreement*");

WHEREAS, this Amended and Restated Custodian Agreement amends in its entirety the Original Agreement, and from the date hereof all references made to the Original Agreement in any Related Document or in any other instrument or document shall be deemed to refer to this Agreement. This Agreement shall become effective and supersede all provisions of the Original Agreement upon the execution of this Agreement by each of the parties hereto and the fulfillment of all conditions precedent hereof.

NOW, THEREFORE, in consideration of the foregoing premises, the terms and conditions of this Custodian Agreement, and other good and valuable consideration, the parties hereto do hereby agree as follows:

## SECTION 1. DEFINITIONS.

All terms capitalized herein and not defined herein shall have the meaning ascribed to them in the Trust Agreement, or, if not defined therein, the meanings ascribed to them in the Reimbursement Agreement.

## SECTION 2. APPOINTMENT AND ACCEPTANCE.

(a) The Bank hereby appoints Wells Fargo Bank to act as agent, bailee and custodian ("*Custodian*") for the exclusive benefit of the Bank with respect to the Bank Bonds. Wells Fargo Bank hereby accepts such appointment and agrees to maintain and hold all Bank Bonds at any time delivered to it as agent, bailee or custodian for the exclusive benefit of the Bank in accordance with the terms of this Agreement.

(b) The Custodian acknowledges and agrees that it is acting and will act with respect to the Bank Bonds at the direction of the Bank for the exclusive benefit of the Bank and is not and shall not at any time be subject in any manner or to any extent to the direction or control of the City or any other Person with respect to such Bank Bonds. The Custodian agrees to act in strict accordance with this Agreement and in accordance with any lawful written instructions from the Bank delivered to the Custodian from time to time pursuant hereto. Under no circumstances shall the Custodian deliver possession of the Bank Bonds to, or cause Bank Bonds to be registered in the name of, the City, the Corporation, the Remarketing Agent or any Person other than the Bank except in accordance with the express terms of this Agreement or otherwise upon the written instructions of the Bank.

(c) The Custodian may rely and shall be protected in acting upon any document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Custodian shall not be liable for any error in judgment made in good faith by its responsible officers, employees and agents unless the Custodian, its responsible officers, employees or agents were negligent or engaged in willful misconduct. Anything herein to the contrary notwithstanding, the Custodian shall have no liability hereunder for any act or omission except as shall result from its gross negligence or willful misconduct.

## SECTION 3. RECEIPT OF THE BANK BONDS.

(a) The CUSIP number for the Bank Bonds is 79765XRT5 (the "*Bank Bond CUSIP Number*"). So long as the Bonds are Book-Entry Bonds and held by the Custodian as custodian of DTC as part of DTC's fast automated transfer program ("*FAST Eligible Bonds*"), concurrent with the Custodian's receipt of the Purchase Price for each purchase of Bonds by the Bank with proceeds of a drawing under the Letter of Credit, the Custodian shall, as a participant of DTC (or any other successor securities depository) or an eligible transfer agent, make a direct registration electronic book-entry (i) crediting the DTC account designated by such Bank as its account in which to hold Bank Bonds purchased by it (the "*Bank Book-Entry Account*") by the principal amount of the Bonds purchased hereunder by the Bank using the Bank Bond CUSIP Number; and (ii) debiting the book-entry account of DTC for the Bonds (thereby reducing the principal balance of the global certificate representing the Bonds) (the "*DTC Account*") by the principal

amount of the Bonds by the Bank with proceeds of a drawing under the Letter of Credit. So long as the Bonds are FAST Eligible Bonds, upon a remarketing of Bank Bonds in accordance with the terms of the Reimbursement Agreement and the Trust Agreement, and the Custodian's receipt from the Remarketing Agent of the proceeds thereof, the Custodian shall, as a participant of DTC (or any other successor securities depository) or an eligible transfer agent, make a direct registration electronic book-entry in its records (i) debiting the Bank Book-Entry Account by the principal amount of the Bonds so remarketed; and (ii) crediting the DTC Account for the Bonds (thereby increasing the principal balance of the global certificate representing the Bonds) by the principal amount of the Bonds so remarketed. The Custodian acknowledges that it is familiar with the procedures and requirements set forth in a notice from The Depository Trust Company, dated April 4, 2008, respecting "Variable Rate Demand Obligations ("VRDO") Failed Remarketings and Issuance of Bank Bonds" and agrees that, with respect to any and all Bank Bonds, it will follow the procedures and requirements set forth in such notice, as the same may be amended from time to time. To the extent that, following any amendment of such notice, the procedures and requirements therein should become inconsistent with any aspect of the provisions in this clause (a), the Custodian, the City and the Bank shall promptly negotiate in good faith and agree upon amendments of this clause (a) so as to eliminate such inconsistency.

(b) If the Bonds are no longer FAST Eligible Bonds, concurrent with the Custodian's receipt of the Purchase Price for each purchase of Bonds by the Bank, the Custodian shall register each Bank Bond in the name of the Bank and shall hold such Bank Bonds as the agent, bailee and custodian of the Bank for the exclusive benefit of the Bank. The Custodian acknowledges and agrees that it is acting and will act with respect to Bank Bonds at the direction of the Bank for the exclusive benefit of the Bank and is not and shall not at any time be subject in any manner or to any extent to the direction or control of the City or any other Person with respect to such Bonds. The Custodian agrees to act in strict accordance with this Agreement and in accordance with any lawful written instructions delivered to the Custodian from time to time pursuant hereto by the Bank.

(c) Immediately upon the Custodian's receipt of Bonds that are Bank Bonds, the Custodian shall (i) promptly give telephonic notice to the Bank that it has received such Bank Bonds and (ii) within two (2) Business Days following such receipt, send or cause to be sent to the Bank, (A) a copy of the transfer journal entry for such Bank Bonds identifying the principal amount of such Bank Bonds and (B) confirmation that the Bank or its nominee has been registered as the owner of such Bank Bonds.

#### SECTION 4. PAYMENTS WITH RESPECT TO BANK BONDS.

If, while this Agreement is in effect, the Custodian in its capacity as the Trustee or the Tender Agent shall become entitled to receive or shall receive any payment in respect of any Bank Bonds, the Custodian agrees to accept the same as the Bank's agent and to hold the same in trust on behalf of the Bank and to deliver the same forthwith to the Bank in accordance with the payment instructions provided to the Custodian from time to time by the Bank in writing (any such payment instructions to remain effective until the Custodian receives written instructions from the Bank to the contrary).

SECTION 5. RELEASE OF BANK BONDS.

(a) Upon the remarketing of any Bonds that are Bank Bonds and the Bank's receipt of the Custodian's (in its capacity as Trustee under the Trust Agreement) duly completed and executed certificate in the form of Annex J to the Letter of Credit together with payment of the remarketing proceeds and the Differential Interest Amount, if any, the Custodian shall release Bonds that are Bank Bonds in a principal amount equal to the principal amount so remarketed to the Remarketing Agent for the Bonds in accordance with the terms of the Trust Agreement.

(b) In order to facilitate the transfer of Bank Bonds, the Bank agrees to deliver to the Custodian from time to time upon the written request of the Custodian, instruments of transfer duly endorsed in blank by the Bank.

SECTION 6. NO DISPOSITION, ETC.

Except as provided in Section 5 above, without the prior written consent of the Bank, the Custodian agrees that it will not sell, assign, transfer, exchange or otherwise dispose of, or grant any option with respect to, Bank Bonds, and will not create, incur or permit to exist any pledge, lien, mortgage, hypothecation, security interest, charge, option or any other encumbrance or take any other action with respect to Bank Bonds, or any interest therein, or any proceeds thereof.

SECTION 7. INFORMATION REGARDING BANK BONDS.

The Custodian shall deliver to the Bank at the Bank's request such information as may be in the possession of the Custodian with respect to Bank Bonds.

SECTION 8. STANDARD OF CARE.

The Custodian agrees that it will perform its duties hereunder in accordance with the express terms of this Agreement. The Custodian shall perform such duties and only such duties as set forth herein. The Custodian shall not be liable to the Bank except for gross negligence or willful misconduct in the performance of its obligations under this Agreement. The Bank shall indemnify the Custodian for and hold it harmless against any and all liability arising out of the performance of its obligations under the Agreement except for any liability arising out of the gross negligence or willful misconduct of the Custodian. The terms of this paragraph shall survive the termination of this Agreement.

SECTION 9. REMOVAL OR RESIGNATION.

The Bank may, at any time, effective immediately, and with or without cause, remove and discharge the Custodian from the performance of the Custodian's duties under this Agreement by written notice to the Custodian. Upon the effective date of any such termination, the Custodian shall deliver all Bank Bonds then in its custody to any successor custodian to be held in accordance with this Agreement or any other document executed by such successor custodian or, if the Bank has not designated a successor custodian, to the Bank.

SECTION 10. INSURANCE.

The Custodian, at its own expense, shall maintain and keep in full force and effect at all times during the existence of this Agreement: (a) fidelity insurance, (b) theft of documents insurance, (c) forgery insurance, and (d) errors and omissions insurance (which may be maintained by self-insurance). All such insurance shall be in amounts, with standard coverage and subject to deductibles that are customary for insurance typically maintained by a bank or other financial institution acting as custodian.

SECTION 11. PAYMENT OF EXPENSES.

The City acknowledges and agrees that the transactions contemplated by this Agreement are for the benefit of the City and the City agrees to pay or cause to be paid all reasonable out-of-pocket fees, costs disbursements, taxes and expenses (including, without limitation, the reasonable attorney's fees) incurred in connection with the enforcement of this Agreement by the Bank and, except as otherwise provided herein, the performance by the Custodian and the Bank of their respective obligations hereunder.

SECTION 12. FURTHER ASSURANCES.

The Custodian and the City each agree that at any time upon the written request of the Bank and at the expense of the City, such party will execute and deliver or cause to be executed and delivered any and all such further documents and do any and all such further acts and things as the Bank may reasonably request in order to effect the purposes of this Agreement.

SECTION 13. AVAILABILITY OF DOCUMENTS.

The Custodian agrees to keep and to cause its agents to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available upon reasonable prior notice for inspection by the Bank, its agents, accountants, attorneys and auditors.

SECTION 14. ORIGINALS AND COUNTERPARTS.

This Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and which counterparts shall constitute and be one and the same instrument.

SECTION 15. NOTICES.

Except as otherwise expressly provided in this Agreement, all notices shall be in writing, and delivered personally or by certified or registered United States mail, postage prepaid, or by expedited mail or courier, return receipt requested, charges prepaid, addressed to the respective party at the address set forth below:

If to the Bank, to:

State Street Bank and Trust Company

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

If to the Custodian:

Wells Fargo Bank, National Association  
as Trustee

333 Market St., 18th Floor

San Francisco, CA 94105

Facsimile: (415) 371-3400

Telephone: (415) 371-3365

If to the City:

City and County of San Francisco

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 316

San Francisco, California 94102

Attention: City Controller

Any party may change the address to which notices are to be sent by giving written notice of such change to the other parties hereto.

#### SECTION 16. SEVERABILITY.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### SECTION 17. WAIVERS, AMENDMENTS.

None of the terms or provisions of this Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by each of the Bank, the City and the Custodian. This Agreement and all obligations of the Custodian and the City hereunder shall be binding upon their respective successors and assigns and shall, together with the rights and remedies of the Bank hereunder, inure to the benefit of the Bank and its successors and assigns.

SECTION 18. GOVERNING LAW.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

IN WITNESS WHEREOF, each of the parties hereto has caused this Amended and Restated Custodian Agreement to be duly executed and delivered on the day and year first above written.

STATE STREET BANK AND TRUST COMPANY

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

CITY AND COUNTY OF SAN FRANCISCO

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

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
in its capacity as Custodian

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