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LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT

between

CITY OF SAN JOSE, CALIFORNIA

and

BANK OF AMERICA, N.A.

RELATING TO  
CITY OF SAN JOSE, CALIFORNIA  
SAN JOSE INTERNATIONAL AIRPORT  
SUBORDINATED COMMERCIAL PAPER NOTES  
SERIES A-2a, SERIES A-2b, SERIES B-2 AND SERIES C-2

Dated as of January 1, 2011

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Council Agenda: 1-11-11

Item No.: 3.2 (b)

**DRAFT--Contact the Office of the City Clerk at (408)535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

## TABLE OF CONTENTS

SECTION	HEADING	PAGE
ARTICLE I	DEFINITIONS.....	1
Section 1.1.	Definitions .....	1
Section 1.2.	Accounting Terms and Determinations.....	15
Section 1.3.	Interpretation.....	15
ARTICLE II	APPLICATION AND ISSUANCE OF THE LETTER OF CREDIT; PAYMENTS .....	15
Section 2.1.	Application .....	15
Section 2.2.	Issuance of Letter of Credit .....	16
Section 2.3.	Conditions Precedent and Conditions Subsequent to Issuance of the Letter of Credit.....	16
Section 2.4.	Reimbursement .....	19
Section 2.5.	Fees .....	19
Section 2.6.	Reduction and Termination .....	19
Section 2.7.	Extension of Letter of Credit Expiration Date.....	20
Section 2.8.	Source of Funds .....	20
Section 2.9.	Margin Regulations.....	20
Section 2.10.	Maximum Rate; Payment of Fee .....	20
Section 2.11.	Bank Note.....	21
ARTICLE III	RESERVED.....	21
ARTICLE IV	THE TERM LOAN OPTION.....	21
Section 4.1.	Term Loan Option.....	21
Section 4.2.	Conditions Precedent to Term Loans.....	21
Section 4.3.	Repayment of Term Loans .....	22
Section 4.4.	Prepayment of Term Loans .....	22
ARTICLE V	SECURITY AND PLEDGE; INCREASED COSTS, MISCELLANEOUS.....	23
Section 5.1.	Security and Pledge.....	23
Section 5.2.	Increased Costs .....	24
Section 5.3.	Net of Taxes, Etc.....	25
Section 5.4.	Calculation of Interest and Fees; Default Rate.....	26
Section 5.4.	Form and Method of Payments; Net Payments .....	27
ARTICLE VI	REPRESENTATIONS AND WARRANTIES.....	27
Section 6.1.	Representations and Warranties of the City .....	27

ARTICLE VII	AFFIRMATIVE COVENANTS OF THE CITY .....	32
Section 7.1.	Maintenance of Existence.....	32
Section 7.2.	Reports, Certificates and Other Information .....	32
Section 7.3.	Maintenance of Books and Records.....	33
Section 7.4.	Access to Books and Records.....	33
Section 7.5.	Compliance with Documents.....	34
Section 7.6.	Compliance with Law .....	34
Section 7.7.	Change of Authorized Representative .....	34
Section 7.8.	Rate Covenant.....	34
Section 7.9.	Debt Service Coverage Ratio.....	35
Section 7.10.	Further Assurances.....	35
Section 7.11.	Performance of This and Other Agreements .....	35
Section 7.12.	Issuing and Paying Agent and Dealers.....	36
Section 7.13.	Alternate Facility .....	36
Section 7.14.	Senior Lien Parity Debt Ratings; Note Ratings.....	36
Section 7.15.	Hedging Agreements.....	36
Section 7.16.	Credit Facilities.....	36
Section 7.17.	Insurance.....	37
Section 7.18.	Additional Senior Lien Parity Debt .....	37
Section 7.19.	Bank Note CUSIP Number .....	<b>Error! Bookmark not defined.</b>
ARTICLE VIII	NEGATIVE COVENANTS OF THE CITY .....	38
Section 8.1.	Amendments .....	38
Section 8.2.	No Impairment.....	38
Section 8.3.	Application of Note Proceeds.....	38
Section 8.4.	Application of Drawings Proceeds .....	38
Section 8.5.	Issuing and Paying Agent and Dealers.....	39
Section 8.6.	Limitation on Additional Debt.....	39
Section 8.7.	Dealer Memorandum and Other Documents.....	39
Section 8.8.	Transfer of Airport.....	39
Section 8.9.	Exempt Status .....	39
Section 8.10.	Investments.....	39
Section 8.11.	Consolidation, Merger, etc. ....	40
Section 8.12.	Swap Termination Payments .....	40
Section 8.13.	Immunity .....	40
Section 8.14.	[Insert Field] .....	<b>Error! Bookmark not defined.</b>
ARTICLE IX	DEFAULTS AND REMEDIES .....	40
Section 9.1.	Events of Default .....	40
Section 9.2.	Rights and Remedies Upon Default.....	43
Section 9.3.	No Waiver .....	43

ARTICLE X	RESERVED.....	44
ARTICLE XI	MISCELLANEOUS .....	44
Section 11.1.	Evidence of Debt.....	44
Section 11.2.	Amendments, Waivers, Etc .....	44
Section 11.3.	Addresses for Notices.....	44
Section 11.4.	Survival of This Agreement .....	46
Section 11.5.	Costs, Expenses and Taxes.....	46
Section 11.6.	Right of Setoff; Other Collateral .....	47
Section 11.7.	Bank Information.....	48
Section 11.8.	Severability.....	48
Section 11.9.	Governing Law; Venue .....	48
Section 11.10.	Participations by the Bank.....	49
Section 11.11.	No Personal Liability .....	50
Section 11.12.	Limited Liability of the Issuing and Paying Agent and the Bank .....	50
Section 11.13.	Headings.....	51
Section 11.14.	Counterparts.....	51
Section 11.15.	Waiver of Jury Trial.....	51
Section 11.16.	Governmental Regulations .....	51
Section 11.17.	USA PATRIOT ACT .....	51
Section 11.18.	Electronic Transmissions .....	52

EXHIBITS

Exhibit A	—	Form of Irrevocable Transferable Direct-Pay Letter of Credit
Exhibit B	—	Form of Bank Note
Exhibit C	—	Form of Stop Order
Exhibit D	—	Form of Compliance Certificate

This LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT dated as of January 1, 2011 (this “*Agreement*”), is entered into between the CITY OF SAN JOSE, a municipal corporation and a political subdivision duly organized and existing under the Constitution and laws of the State of California (the “*City*”), and BANK OF AMERICA, N.A. (the “*Bank*”).

## RECITALS

WHEREAS, on October 2, 1984, the City Council of the City (the “*City Council*”) adopted Resolution No. 57794 providing for the issuance of obligations secured by and payable from the revenues of the Norman Y. Mineta San José International Airport (said resolution as supplemented and amended, including without limitation, by Resolution No. 70532 amending and restating said resolution in the form of a Master Trust Agreement dated as of July 1, 2001 (the “*Master Trust Agreement*”), between the City and The Bank of New York Trust Company, N.A. (successor to BNY Western Trust Company), as trustee (collectively referred to herein as the “*Master Bond Resolution*”).

WHEREAS, pursuant to the terms of Resolution No. \_\_\_\_\_ adopted by the City on January 11, 2011, (the “*Authorizing Resolution*”) and the Second Amended and Restated Issuing and Paying Agent Agreement dated as of January 1, 2011, between the City and Deutsche Bank Trust Company Americas (as successor to U.S. Bank Trust National Association) (the “*Initial Issuing and Paying Agent*”), as amended and supplemented to date the City has authorized the establishment of a commercial paper program pursuant to which both tax-exempt and taxable Commercial Paper Notes may be issued, which Commercial Paper Notes shall be payable from the Surplus Revenues (as defined below) of the Enterprise (as defined below).

WHEREAS, the City has requested the Bank to issue a Letter of Credit (as hereinafter defined) to the Issuing and Paying Agent to enable it to pay the principal of, and interest on, the Covered Notes (as hereinafter defined) on their respective maturity dates.

WHEREAS, the Bank is willing to issue the Letter of Credit upon the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Bank hereby agree as follows:

## ARTICLE I DEFINITIONS

*Section 1.1. Definitions.* The following terms shall have the following meanings as used herein:

Council Agenda: 1-11-11

Item No.: 3.2 (b)

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“*Agreement*” means this Letter of Credit and Reimbursement Agreement, as amended and supplemented from time to time.

“*Airport Budget*” means the executive summary of the annual budget of the City and the portion of the annual budget of the City that relates to the Enterprise.

“*Alternate Facility*” has the meaning set forth in the Issuing and Paying Agent Agreement.

“*Authorized Officer*” means the following officers of the Enterprise: the Director of Aviation, the Assistant Director of Aviation, the Deputy Director, Planning and Development of the City, the Deputy Director of Aviation, the Assistant Deputy Director, Planning and Development of the City and the Environmental Services Specialist, **[the Director of Finance, the Deputy Director, Finance and Administration and the Deputy Director of Aviation]**.

“*Authorized Representative*” has the meaning set forth in the Issuing and Paying Agent Agreement.

“*Authorizing Resolution*” has the meaning set forth in the recitals hereof.

“*Bank*” means Bank of America, N.A. and its successors and assigns.

“*Bank Note*” has the meaning set forth in Section 2.11 hereof.

“*Bank Rate*” means the rate of interest per annum with respect to an Unreimbursed Drawing (i) for the period from and including the Drawing Date to and including the ninetieth (90th) day thereafter, equal to the Base Rate from time to time in effect and (ii) from and after the ninety-first (91st) day after the Drawing Date and thereafter, equal to the Base Rate from time to time in effect plus 1.0%; *provided, however*, that immediately and automatically upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuance of such Event of Default, “Bank Rate” shall mean the Default Rate; *provided, further*, that at no time shall the Bank Rate be less than the interest rate on any Covered Notes Outstanding.

“*Base Rate*” means, on any date, the highest of (i) the Prime Rate plus 1.50% per annum, (ii) the Federal Funds Rate plus 3.00% per annum and (iii) 7.50%; subject to the provisions of Section 2.10 hereof.

“*Bond Counsel*” means Orrick, Herrington & Sutcliffe LLP, or such other firm or firms of attorneys which are nationally recognized as experts in the area of municipal finance selected by the City.

“*Business Day*” has the meaning set forth in the Letter of Credit.

“*Capital Lease*” means any lease of Property which in accordance with generally accepted accounting principles would be required to be capitalized on the balance sheet of the lessee.

“*Capitalized Lease Obligations*” means the amount of the liability shown on the balance sheet of any Person in respect of a Capital Lease as determined in accordance with generally accepted accounting principles.

“*Charter*” means the Charter of the City of San Jose, as from time to time amended, under which the City is organized and operates.

“*Citibank Reimbursement Agreement*” means that certain Letter of Credit and Reimbursement Agreement dated as of January 1, 2011, between Citibank, N.A. and the City, relating to the issuance by Citibank, N.A. of that certain irrevocable transferable direct-pay letter of credit supporting certain Commercial Paper Notes of the City.

“*City*” has the meaning set forth in the introductory paragraph hereof.

“*City Attorney*” means the Office of the City Attorney of the City, including the City Attorney, any Chief Deputy City Attorney, any Deputy City Attorney or any other legal counsel designated by the City in writing to the Bank.

“*City Clerk*” means the City Clerk of the City.

“*City Council*” has the meaning set forth in the recitals hereof.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time.

“*Commercial Paper Notes*” means any commercial paper notes of the City issued pursuant to the Issuing and Paying Agent Agreement and secured by a Lien on Surplus Revenues on a parity with the Covered Notes.

“*Compliance Certificate*” has the meaning set forth in Section 7.2(a) hereof.

“*Covered Notes*” means, collectively, the Series A-2a Notes, Series A-2b Notes, Series B-2 Notes and Series C-2 Notes.

“*Dealer*” means initially, each of Barclays Capital Inc., Morgan Stanley & Co. Incorporated and Citigroup Global Markets, Inc. and any successor thereto.

“*Dealer Agreement*” means each dealer agreement entered into between the City and the respective Dealer with respect to the Covered Notes.

“*Dealer Memorandum*” means that certain Offering Memorandum dated January \_\_, 2011, relating to the Covered Notes.

“*Debt Service*” shall mean (i) for purposes of computing Debt Service in connection with Section 7.8 and 7.9 hereof, the aggregate amount of principal and interest becoming due and payable during the related Fiscal Year and (ii) for purposes of computing Debt Service in connection with Section 8.6 hereof, the aggregate amount of principal and interest becoming due and payable for each of the three complete Fiscal Years immediately following the incurrence of any additional obligation or liability by the City that is a charge, Lien or encumbrance upon General Airport Revenues, in each case, with respect of all obligations or liabilities of the City that are secured by General Airport Revenues, including without limitation the Covered Notes, the Payment Obligations, the Term Loans, any other Commercial Paper Notes, the Senior Lien Bonds and any Senior Lien Parity Debt; *provided, however*, that for the purposes of computing Debt Service in connection with Section 7.8 and 7.9 hereof:

(a) (i) if the obligations of the City secured by General Airport Revenues are Commercial Paper Notes (including the Covered Notes), the principal on such Commercial Paper Notes then outstanding shall be amortized on a substantially level debt service for a period commencing on the Estimated Completion Date of the respective Project to which such obligations relate and ending 25 years thereafter;

(ii) if the obligations of the City secured by General Airport Revenues are Commercial Paper Notes (including the Covered Notes) and the proceeds will not be used with respect to a Project, the principal on such Commercial Paper Notes then outstanding shall be amortized on a substantially level debt service for a period commencing on the date of issuance of such Commercial Paper Notes and ending 25 years thereafter;

(b) (i) principal of and interest on payments on obligations of the City secured by General Airport Revenues shall be excluded to the extent such payments were paid from (A) amounts on deposit with the City, any trustee, any issuing and paying agent or any other fiduciary in an escrow specifically provided therefore or (B) the proceeds of any refunding obligations of the City secured by General Airport Revenues (provided, however, that “Debt Service” shall include the debt service on such refunding obligations), and (ii) interest on obligations of the City secured by General Airport Revenues shall be excluded to the extent that such interest payments are to be paid from the proceeds of obligations of the City secured by General Airport Revenues that are held by the City, any trustee, any issuing and paying agent or any other fiduciary as capitalized interest specifically to pay such interest. For purposes of this paragraph, interest funded from proceeds of the Commercial Paper Notes, other commercial paper obligations, or any obligations issued to refinance such Commercial Paper Notes shall also be excluded from the calculation of Debt Service;

(c) if any interest rate swap agreement is in effect with respect to the obligations of the City secured by General Airport Revenues, no amounts payable under such interest rate swap agreement shall be included in the calculation of Debt Service unless the sum of (i) interest payable on such underlying obligations, plus (ii) amounts payable under such interest rate swap agreement, less (iii) amounts receivable under such interest rate swap agreement, are expected to be greater than the interest payable on such obligations, then, in such instance the amount of such payments made that exceed the interest expected to be paid on such underlying obligations shall be included in such calculation.

; *provided, further, however*, that for the purposes of computing Debt Service in connection with Section 8.6 hereof:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the obligations of the City secured by General Airport Revenues consist of Indebtedness the interest rate on which is not fixed at the time of incurrence of such Indebtedness, and has not at some subsequent date been fixed, at a single numerical rate for the entire term of the Indebtedness, the interest rate on such obligations for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to an interest rate calculated, by multiplying the interest rate on such obligations on the date of calculation by 1.15 or, if such obligations are not currently outstanding, the then interest rate that such obligations would bear if they were outstanding on such date multiplied by 1.15, as certified by a certificate of a financial advisor or investment banker;

(c) (i) if the obligations of the City secured by General Airport Revenues are Commercial Paper Notes (including the Covered Notes), the principal on such Commercial Paper Notes then outstanding shall be amortized on a substantially level debt service for a period commencing on the Estimated Completion Date of the respective Project to which such obligations relate and ending 25 years thereafter, and for periods when the actual interest rate cannot yet be determined, the interest rate on such Commercial Paper Notes shall be assumed to be equal to an interest rate calculated, by multiplying the average interest rate of the outstanding Commercial Paper Notes (or related advances from a bank or banks to pay maturing Commercial Paper Notes) during the 90 day period prior to the date of calculation multiplied by 1.15, as certified by a certificate of a financial advisor or investment banker;

(ii) if the obligations of the City secured by General Airport Revenues are Commercial Paper Notes (including the Covered Notes) and the proceeds will not be used with respect to a Project, the principal on such Commercial Paper Notes then outstanding shall be amortized on a substantially level debt service for a period commencing on the date of issuance of such Commercial Paper Notes

and ending 25 years thereafter, and for periods when the actual interest rate cannot yet be determined, the interest rate on such Commercial Paper Notes shall be assumed to be equal to an interest rate calculated, by multiplying the average interest rate of the outstanding Commercial Paper Notes (or related advances from a bank or banks to pay maturing Commercial Paper Notes) during the 90 day period prior to the date of calculation multiplied by 1.15, as certified by a certificate of a financial advisor or investment banker;

(d) (i) principal of and interest on payments on obligations of the City secured by General Airport Revenues shall be excluded to the extent such payments are to be paid from amounts on deposit with the City, any trustee, any issuing and paying agent or any other fiduciary in an escrow specifically provided therefor, and (ii) interest on obligations of the City secured by General Airport Revenues shall be excluded to the extent that such interest payments are to be paid from the proceeds of obligations of the City secured by General Airport Revenues that are held by the City, any trustee, any issuing and paying agent or any other fiduciary as capitalized interest specifically to pay such interest. For purposes of this paragraph, interest expected to be funded from proceeds of the Commercial Paper Notes, other commercial paper obligations, or any obligations issued to refinance such Commercial Paper Notes, expected to be issued for such purpose may also be excluded from the calculation of Debt Service. If Commercial Paper Notes are expected to be issued for this purpose, such Commercial Paper Notes must be within the authorized aggregate principal amount of the Commercial Paper Notes in place at the time of such calculation;

(e) in determining the principal amount in respect of the obligations of the City that are secured by General Airport Revenues due in each Fiscal Year, payment shall (unless a different paragraph of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such obligations, including any minimum sinking fund account payments or any scheduled redemption or payment of such obligations on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such obligations; and

(f) if any interest rate swap agreement is in effect with respect to the obligations of the City secured by General Airport Revenues, no amounts payable under such interest rate swap agreement shall be included in the calculation of Debt Service unless the sum of (i) interest payable on such underlying obligations, plus (ii) amounts payable under such interest rate swap agreement, less (iii) amounts receivable under such interest rate swap agreement, are expected to be greater than the interest payable on such obligations, then, in such instance the amount of such payments expected to be made that

exceed the interest expected to be paid on such underlying obligations shall be included in such calculation.

For the purposes of the above definition:

1. “*Accreted Value*” means, with respect to any obligation of the City secured by General Airport Revenues and upon which interest is compounded and paid at maturity or upon prior redemption, the principal amount thereof plus the interest accrued thereon from its date, compounded at the applicable interest rate thereof on each date specified therein.

2. “*Assumed Debt Service*” means, with respect to any Excluded Principal Payment for any Fiscal Year on or after the Excluded Principal Payment date, the sum of the amount of principal and interest which would be payable in each such Fiscal Year if that Excluded Principal Payment were amortized for a period specified by the Authorized Representative in writing (no greater than thirty (30) years from the date of issuance of such Excluded Principal Payment) on a substantially level debt service basis, calculated based on a fixed interest rate equal to the rate at which the City could borrow (as of the time of calculation) for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Authorized Representative, who may rely conclusively on such certificate, and the Bank.

3. “*Excluded Principal Payments*” shall mean each payment of principal of the 2007 Bonds (or such other Indebtedness of the City secured by General Airport Revenues to the extent permitted by the last sentence of this paragraph) that an Authorized Representative determines in writing shall be paid with proceeds of future debt obligations of the City that are secured by General Airport Revenues. No such determination shall affect the security for the 2007 Bonds (or such other Indebtedness of the City secured by General Airport Revenues to the extent permitted by the last sentence of this paragraph) secured by General Airport Revenues or the obligation of the City to pay such payments from General Airport Revenues. Notwithstanding the foregoing, Excluded Principal Payments may apply to principal on other Indebtedness of the City secured by General Airport Revenues if designated by the City with the prior written consent of the Bank.

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

“*Default Rate*” means a fluctuating rate of interest per annum equal to the Base Rate from time to time in effect *plus* 3.0% per annum, subject to the provisions of Section 2.10 hereof; *provided, further*, that at no time shall the Default Rate be less than the interest rate on any Covered Notes outstanding.

“*Drawing*” has the meaning set forth in Section 2.4 hereof.

“*Drawing Date*” means the date on which a Bank honors a Drawing and makes the funds drawn available to the Issuing and Paying Agent.

“*Drawing Maturity Date*” has the meaning set forth in Section 2.4 hereof.

“*Enterprise*” has the meaning set forth in the Master Bond Resolution.

“*ERISA*” means the Employee Retirement Income Security Act of 1976, as amended or any successor statute thereto.

“*Estimated Completion Date*” shall mean the estimated date upon which a specified Project will have been substantially completed in accordance with the plans and specifications applicable thereto or the estimated date upon which a specified Project is expected to have been acquired and payment therefore made, in each case, as that date shall be set forth in a certificate of an Authorized Representative of the City delivered to the Issuing and Paying Agent in connection with the certifications made pursuant to Sections 7.9 and 8.6 hereof.

“*Event of Default*” means any event or circumstance set forth in Section 9.1 hereof.

“*Excess Interest*” has the meaning set forth in Section 2.10 hereof.

“*Existing Letters of Credit*” means (i) means the Irrevocable Direct Pay Letter of Credit dated December 6, 2007, as amended to date, issued on a several basis by the Bank and JPMorgan Chase Bank, National Association, pursuant to the Existing Reimbursement Agreement for the account of the City in favor of the Issuing and Paying Agent supporting the Existing Series A Notes and the Existing Series B Notes and (ii) means the Irrevocable Direct Pay Letter of Credit dated December 6, 2007, as amended to date, issued on a several basis by the Bank and JPMorgan Chase Bank, National Association, pursuant to the Existing Reimbursement Agreement for the account of the City in favor of the Issuing and Paying Agent supporting the Existing Series C Notes.

“*Existing Reimbursement Agreement*” means that certain Second Amended and Restated Letter of Credit and Reimbursement Agreement dated as of December 1, 2007, as amended to date, among JPMorgan Chase Bank, National Association, individually and as administrative agent, the banks from time to time party thereto and the City.

“*Existing Series A Notes*” means the City of San Jose, California San Jose International Airport Subordinated Commercial Paper Notes Series A-1 (Non-AMT) and Series A-2 (Non-AMT/Private Activity).

“*Existing Series B Notes*” means the City of San Jose, California San Jose International Airport Subordinated Commercial Paper Notes Series B (AMT).

“*Existing Series C Notes*” means the City of San Jose, California San Jose International Airport Subordinated Commercial Paper Notes Series C (Taxable).

“*Facility Fee*” has the meaning set forth in the Fee Letter.

“*Facility Fee Rate*” has the meaning set forth in the Fee Letter.

“*Federal Funds Rate*” means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be the rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to the Bank on such transactions as reasonably determined by the Bank in its sole discretion.

“*Fee Letter*” means that certain Fee Letter Agreement dated as of the Issuance Date between the City and the Bank.

“*Final Drawing Notice*” has the meaning set forth in the Letter of Credit.

“*Fiscal Year*” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or such other Fiscal Year as may be adopted by the City Council of the City.

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

“*General Airport Revenues*” has the meaning set forth in the Master Bond Resolution.

“*Governmental Authority*” means any nation or government, any state, department, agency or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

“*Guarantees*” means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

*“Indebtedness”* means for any Person (without duplication) (i) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (ii) all obligations for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business), (iii) all obligations secured by any Lien upon Property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (iv) all Capitalized Lease Obligations of such Person, (v) all obligations, contingent or otherwise, of such Person on or with respect to letters of credit, banker’s acceptances and other evidences of indebtedness representing extensions of credit whether or not representing obligations for borrowed money, (vi) all Guarantees and (vii) all regularly scheduled or non-contingent obligations under any Swap Contract.

*“Initial Issuing and Paying Agent”* has the meaning set forth in the recitals hereof.

*“Issuance Date”* means January 13, 2011.

*“Issuing and Paying Agent”* means the Initial Issuing and Paying Agent and any successor thereto.

*“Issuing and Paying Agent Agreement”* means the Second Amended and Restated Issuing and Paying Agent Agreement dated as of January 1, 2011, between the City and the Initial Issuing and Paying Agent, as amended and supplemented from time to time in accordance with the terms hereof and thereof.

*“Junior Lien Debt”* means all obligations or liabilities of the City that are secured by General Airport Revenues with a right of payment that is junior and fully subordinated to the Covered Notes, the Payment Obligations and the Term Loans.

*“Letter of Credit”* means the Irrevocable Direct Pay Letter of Credit dated January 13, 2011, issued by the Bank pursuant to the terms hereof for the account of the City in favor of the Issuing and Paying Agent supporting the Series A-2a Notes, the Series A-2b Notes, the Series B-2 Notes and the Series C-2 Notes, which shall be in substantially the form of Exhibit A hereto with blanks appropriately completed.

*“Letter of Credit Expiration Date”* means, with respect to the Letter of Credit, the date set forth in the Letter of Credit as the date on which the Letter of Credit is stated to expire, as the same may be extended pursuant to Section 2.7 hereof.

*“Lien”* means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing).

*“Maintenance and Operation Costs of the Enterprise”* has the meaning set forth in the Master Bond Resolution.

*“Master Bond Resolution”* has the meaning set forth in the recitals hereof.

*“Material Adverse Effect”* means (A) any material adverse effect or change on the City or the Enterprise which results in a material impairment of (i) the validity or enforceability of this Agreement, the Fee Letter or any of the other Program Documents to which it is a party, (ii) the ability of the City to consummate the transactions contemplated by this Agreement, the Fee Letter or any of the other Program Documents to which the City is a party, or (iii) the ability of the City to perform any of its obligations under any of the Program Documents to which the City is or will be a party or (B) an event or occurrence which adversely affects in a material manner the General Airport Revenues or Other Available Funds or the business or operations of the Enterprise.

*“Maximum Rate”* means the maximum rate permitted by applicable law.

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

*“Net General Airport Revenues”* has the meaning set forth in the Master Bond Resolution.

*“Original Stated Amount”* has the meaning set forth in Section 2.1 hereof.

*“Other Taxes”* has the meaning set forth in Section 5.3(a) hereof.

*“Other Available Funds”* has the meaning set forth the Master Bond Resolution.

*“Outstanding”* has the meaning set forth in the Master Bond Resolution.

*“Parent”* means, with respect to the Bank, any Person controlling the Bank.

*“Parity Debt”* means all Payment Obligations and any Indebtedness of the City, in each case, having an equal Lien and charge upon the Surplus Revenues and therefore payable on a parity with the Covered Notes (whether or not any Covered Notes are Outstanding).

*“Participant”* means any entity to which the Bank has granted a participation in the Letter of Credit and/or its rights with respect to the obligations of the City hereunder.

*“Payment Date”* means the first Business Day of each March and September of each year.

*“Payment Obligations”* means all obligations of the City to reimburse the Bank for Drawings under the Letter of Credit and to pay all other amounts payable to the Bank arising under or pursuant to this Agreement or the Fee Letter.

*“Payment Office”* has the meaning set forth in Section 5.5 hereof.

*“Person”* shall mean any individual, partnership, limited liability company, firm, corporation, association, joint venture, trust or other entity, or any government (or political subdivision or agency, department or instrumentality thereof).

*“Prime Rate”* means the rate of interest publicly announced by the Bank from time to time as its “prime rate” or equivalent, any change in the interest rate resulting from a change in the prime rate or equivalent to be effective on the date of each change. The Prime Rate is a reference rate only, and the Bank may make loans from time to time at interest rates above, equal to or below the Prime Rate.

*“Program Documents”* means this Agreement, the Letter of Credit, the Fee Letter, the Bank Note, each Dealer Agreement, each Issuing and Paying Agent Agreement, the Covered Notes, the Authorizing Resolution, the Master Bond Resolution and any documents related thereto; *provided, however*, that the Dealer Memorandum is not a Program Document..

*“Project”* shall mean any additions, enlargements, betterments, extensions and other improvements or expenditures to or related to, and the equipping of, the Enterprise, including without limitation, the acquisition of land therefore, passenger terminal facilities and related aircraft aprons, automobile parking, runways, utility plants and systems, terminal roadway systems, other transportation systems, rental car facilities, parking facilities and systems related thereto, landscaping, noise control improvements or expenditures (including such expenditures on private property) and related facilities, on the acquisition, construction, reconstruction, development, expansion and modification of airport terminal and ancillary facilities to the Enterprise financed in whole or in part with the proceeds of Commercial Paper Notes, Senior and Parity Lien Debt or Junior Lien Debt, as applicable.

*“Property”* means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

*“Rating Agencies”* means S&P, Moody’s and/or Fitch, as the context may require.

*“Reduction Fee”* has the meaning set forth in the Fee Letter.

*“Rolling Coverage Amount”* has the meaning set forth in the Master Bond Resolution.

*“S&P”* means Standard and Poor’s Ratings Services, a Division of The McGraw-Hill Companies, Inc. and its successors and assigns.

“*Secured Debt*” has the meaning set forth in Section 9.1(d) hereof.

“*Senior Lien Bonds*” means bonds, notes and all other Indebtedness of the City issued or incurred under the terms of the Master Bond Resolution and secured, under the terms of the Master Bond Resolution, by a pledge of the General Airport Revenues prior to the pledge of General Airport Revenues securing the Covered Notes and the Payment Obligations.

“*Senior Lien Parity Debt*” means all Indebtedness of the City that is secured by the General Airport Revenues with a right to payment that is on a parity with the Senior Lien Bonds (including, without limitation, any repayment obligations owed to any liquidity provider providing liquidity support with respect to the Senior Lien Bonds or credit provider providing credit support with respect to the Senior Lien Bonds).

“*Senior and Parity Lien Debt*” means all obligations and liabilities of the City that are secured by the General Airport Revenues with a right to payment that is senior to, or on a parity with, the Covered Notes, the Payment Obligations and the Term Loans.

“*Series A-2a Notes*” means the City of San Jose, California San Jose International Airport Subordinated Commercial Paper Notes Series A-2a.

“*Series A-2b Notes*” means the City of San Jose, California San Jose International Airport Subordinated Commercial Paper Notes Series A-2b.

“*Series B-2 Notes*” means the City of San Jose, California San Jose International Airport Subordinated Commercial Paper Notes Series B-2.

“*Series C-2 Notes*” means the City of San Jose, California San Jose International Airport Subordinated Commercial Paper Notes Series C-2.

“*State*” means the State of California.

“*Stated Amount*” means, as of any date, the maximum amount which, by the terms of the Letter of Credit, is available to be drawn under the Letter of Credit as of such date.

“*Stop Order*” means a written notice given to the Issuing and Paying Agent by the Bank, to stop issuing Covered Notes as provided in Section 9.2(b) hereof.

“*Subordinated Debt Account*” has the meaning set forth in the Master Bond Resolution.

“*Surplus Revenue Fund*” has the meaning set forth in the Master Bond Resolution.

“*Surplus Revenues*” has the meaning set forth in the Issuing and Paying Agent Agreement.

“*Swap Contract*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Taxes*” has the meaning set forth in Section 5.3(a) hereof.

“*Term Loan*” has the meaning set forth in Section 4.1 hereof.

“*Term Loan Maturity Date*” means, with respect to any Term Loan, the earliest to occur of (i) third anniversary of the Drawing Date for the Drawing relating to such Term Loan; *provided, however*, that so long as any obligations are due and owing Citibank, N.A. under the Citibank Reimbursement Agreement, this clause (i) of the definition of “*Term Loan Maturity Date*” shall mean the thirteen (13) month anniversary of the Drawing Date for the Drawing relating to such Term Loan, (ii) the date on which an Alternate Facility is issued to replace the Letter of Credit and (iii) the date on which the Stated Amount of the Letter of Credit is otherwise reduced to zero (other than as a result of the Stated Amount of the Letter of Credit being reduced to zero on the Letter of Credit Expiration Date).

“*Term Loan Rate*” means the rate of interest per annum with respect to a Term Loan, equal to the Base Rate from time to time in effect plus 1.0%; *provided, however*, that immediately and automatically upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuance of such Event of Default, “*Bank Rate*” shall mean the Default Rate; *provided, further*, that at no time shall the Term Loan Rate be less than the interest rate on any Commercial Paper Notes outstanding.

“*Termination Date*” has the meaning set forth in the Letter of Credit.

“*Termination Fee*” has the meaning set forth in the Fee Letter.

“*2007 Bonds*” means \_\_\_\_\_.

“*United States*” means the United States of America.

“*Unreimbursed Drawing*” means a Drawing or portion thereof for which the City has not reimbursed the Bank and which has not been converted to a Term Loan pursuant to Article IV hereof.

*Section 1.2. 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 and reports required to be delivered hereunder shall be prepared in accordance with generally accepted accounting principles as in effect from time to time, applied on a consistent basis.

*Section 1.3. Interpretation.* The following rules shall apply to the construction of this Agreement unless the context requires otherwise: (i) the singular includes the plural, and the plural the singular; (ii) words importing any gender include the other gender; (iii) references to statutes are to be construed as including all statutory provisions consolidating and amending, and all regulations promulgated pursuant to, such statutes; (iv) references to “writing” include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible form; (v) the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; (vi) references to the introductory paragraph, recitals, articles, sections (or clauses or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; (vii) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent that such amendments and other modifications are permitted or not prohibited by the terms of this Agreement; (viii) 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; (ix) references to Persons include their respective permitted successors and assigns; and (x) in the computation of a period of time from specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding.”

## ARTICLE II APPLICATION AND ISSUANCE OF THE LETTER OF CREDIT; PAYMENTS

*Section 2.1. Application.* The City hereby applies to the Bank for, and authorizes and instructs the Bank to issue to the Issuing and Paying Agent, for the account of the City, the Letter of Credit in the initial stated amount of \$83,340,000 (calculated as the sum of the maximum principal amount of the Covered Notes (*i.e.*, \$76,545,294) plus interest thereon at a maximum rate of twelve percent (12%) per annum for a period of two hundred seventy (270) days calculated on the basis of a year of 365 days and the actual number of day elapsed) (the “*Original Stated Amount*”).

*Section 2.2. Issuance of Letter of Credit.* The Bank agrees, on the terms, subject to the conditions and relying on the representations and warranties hereinafter set forth, to issue the Letter of Credit (substantially in the form of Exhibit A hereto) to the Issuing and Paying Agent for the account of the City in the manner provided above. The Letter of Credit shall expire on the Letter of Credit Expiration Date unless earlier terminated in accordance with its terms, or unless extended in accordance with the term thereof.

*Section 2.3. Conditions Precedent and Conditions Subsequent to Issuance of the Letter of Credit.* (a) The obligation of the Bank to issue the Letter of Credit shall be subject to the fulfillment of each of the following conditions precedent on or before the Issuance Date in a manner satisfactory to the Bank and its counsel:

(i) *Authorized Representative Certificate of City.* The Bank shall have received a certificate of an Authorized Representative of the City certifying as to the authority, incumbencies and specimen signatures of the officers of the City authorized to sign this Agreement, the Fee Letter and the other Program Documents being delivered concurrently herewith, and who will be authorized to represent the City in connection with this Agreement, the Fee Letter and the other Program Documents, upon which the Bank may rely until they receive a new such certificate.

(ii) *Authorized Representative Certificate of Issuing and Paying Agent.* The Bank shall have received one or more certificates of an Authorized Representative of the Issuing and Paying Agent certifying collectively as to (a) the authority, incumbencies and specimen signatures of the officers of the Issuing and Paying Agent authorized to sign each of the Program Documents being delivered concurrently herewith and to which the Issuing and Paying Agent is a party and the other documents to be delivered by the Issuing and Paying Agent hereunder and thereunder, and (b) the identity of the officer or officers who will be authorized to represent the Issuing and Paying Agent in connection with the Letter of Credit, upon which the Bank may rely until they receive a new such certificate.

(iii) *Legality; Material Adverse Change.* The Bank shall have determined (in its sole discretion) that (a) neither the honoring of any Drawing under the Letter of Credit nor the consummation of any of the transactions contemplated by this Agreement, the Fee Letter or any other Program Document will violate any law, rule, guideline or regulation applicable to the City, the Bank, the Letter of Credit, this Agreement or the Fee Letter, and (b) no material adverse change in the financial condition, business, assets, liabilities or prospects of the Enterprise and no material decrease in the General Airport Revenues shall have occurred since June 30, 2010, except as disclosed in writing to the Bank prior to the Issuance Date, which could reasonably be expected to result in a Material Adverse Effect.

(iv) *Approvals; Executed or Certified Program Documents.* (a) The Bank shall have received certified copies of all approvals, authorizations and consents of any trustee or holder of any indebtedness or obligation of the City or any governmental agency or public authority, necessary for the City to enter into this Agreement, the Fee Letter, the Bank Note and the transactions contemplated herein.

(b) The Bank shall have received executed or certified copies, as applicable, of each of the Program Documents.

(v) *Opinions.* The Bank shall have received (a) an opinion addressed to the Bank and dated the Issuance Date of Bond Counsel as to the validity and enforceability with respect to the City of this Agreement and the Fee Letter, and such other matters as the Bank may reasonably request, in form and substance satisfactory to the Bank, (b) an opinion of the City Attorney addressed to the Bank and dated the Issuance Date, as to the validity and enforceability with respect to the City of this Agreement, the Fee Letter, the Bank Note and such other matters as the Bank may reasonably request, in form and substance satisfactory to the Bank, and (c) an opinion of Bond Counsel addressed to the Bank (or a reliance letter in favor of the Bank) and dated the Issuance Date concerning the validity of the Covered Notes and certain other matters, rendered on the Issuance Date, in form and substance satisfactory to the Bank.

(vi) *Representations and Warranties; No Default or Event of Default.* The following statements shall be true and correct on the Issuance Date, and the Bank shall have received a certificate incorporating by reference the definitions of the capitalized terms defined in this Agreement, signed by an Authorized Representative of the City, dated the Issuance Date, stating that:

(a) the representations and warranties of the City contained in each of the Program Documents and each certificate, letter, other writing or instrument delivered by the City to the Bank pursuant hereto or thereto are true and correct on and as of the Issuance Date as though made on and as of such date (except to the extent that such representations or warranties expressly relate to an earlier date and if such representations and warranties expressly relate to an earlier date, such representations and warranties shall be true and correct as of such date); and

(b) no Default or Event of Default has occurred and is continuing or would result from the issuance of the Letter of Credit.

(vii) *Ratings.* (a) The Bank shall have received evidence in form and substance satisfactory to the Bank that on or prior to the Issuance Date, Moody's, Fitch and S&P shall have assigned long-term unenhanced ratings to the Senior Lien Bonds of "A2" (or its equivalent), "A-" (or its equivalent) and "A" (or its equivalent). In the event that such evidence demonstrating such long-term unenhanced ratings is dated on or prior

to the Issuance Date, the City shall provide the Bank with a written statement that, to the best of its knowledge, such long-term unenhanced ratings shall not have been withdrawn, suspended or reduced from and after the date such long-term unenhanced ratings were assigned.

(b) The Bank shall have received evidence that the Covered Notes have been rated no lower than “P-1” by Moody’s, “A-1+” by S&P, and “F1+” by Fitch.

(viii) *Audited Financial Statements.* The Bank shall have received a copy of the audited financial statements for the City (including the Enterprise) and the Enterprise for the three most recent Fiscal Years for which such statements are currently available and a copy of the most recent Airport Budget of the City.

(ix) *Other Financial Information.* The Bank shall have received a copy of the City’s and the Enterprise’s investment policy, guidelines and permitted investments in form and substance satisfactory to the Bank.

(x) *Necessary Action Regarding Pledge of Surplus Revenues.* All necessary action on the part of the City shall have been taken as required to assign and pledge the Surplus Revenues for the benefit of the Bank and the owners of the Covered Notes.

(xi) *Termination of Existing Letters of Credit.* The Bank shall have received evidence that the Existing Letters of Credit shall have been terminated and all amounts due and owing under the Existing Reimbursement Agreements shall have been paid in full.

(xii) *Other Legal Matters.* All other legal matters pertaining to the execution and delivery of each of the Program Documents, the issuance of the Covered Notes, and the adoption and implementation of the Master Bond Resolution and the Authorizing Resolution shall be reasonably satisfactory to the Bank and its counsel.

(xiii) *Other Documents, Etc.* The Bank shall have received such other documents, certificates, opinions, approvals and filings with respect to the Covered Notes and this Agreement as the Bank may reasonably request.

(b) *Conditions Subsequent to Issuance of Letter of Credit.* The City shall fulfill each of the following conditions subsequent in a manner satisfactory to the Bank and its counsel:

(i) *Bank Note.* Within thirty (30) days of the Issuance Date, the Bank shall have received written evidence satisfactory to the Bank that (i) a CUSIP number has been obtained and reserved from Standard & Poor’s CUSIP Service for the Bank Note and (ii) the Bank Note (and its related CUSIP number) shall

have been assigned a long-term rating of at least investment grade by any Rating Agency.

(ii) *Fees, Etc.* Within five (5) days of the Issuance Date, the Bank shall have received payment of the fees, costs and expenses referred to in Section 11.5 hereof.

*Section 2.4. Reimbursement.* (a) Subject to the provisions of Section 4.2 hereof, the City agrees to pay, or to cause to be paid, to the Bank on the earlier to occur of (A) the ninetieth (90th) day immediately succeeding the related Drawing Date and (B) the Letter of Credit Expiration Date (the earlier of such dates referred to herein as the “*Drawing Maturity Date*”) following each date on which the Bank shall honor any demand for payment under the Letter of Credit (each such payment by the Bank being herein referred to as a “*Drawing*”) a sum equal to the principal amount so paid under the Letter of Credit (any amount so paid by the Bank until reimbursed being herein referred to as an “*Unreimbursed Drawing*”). Interest on the unpaid principal balance of each Unreimbursed Drawing shall bear interest at the Bank Rate and shall be paid to the Bank monthly in arrears on the first Business Day of each calendar month to occur from and including the Drawing Date to and including the Drawing Maturity Date.

(b) The interest portion of any Drawing under the Letter of Credit shall be reimbursed by the Bank on the related Drawing Date and to the extent not reimbursed shall bear interest at the Default Rate.

(c) Subject to the provisions of Section 4.2 hereof respecting Term Loans (each such Term Loan when made shall constitute reimbursement of the principal portion of any Drawing in an amount equal to the amount of such Term Loan), the City shall be obligated, without notice of a Drawing or demand for reimbursement (which notice is hereby waived by the City), to reimburse the Bank for all Drawings on the Drawing Maturity Date. The City and the Bank agree that the reimbursement in full for each Drawing on the related Drawing Maturity Date is made is intended to be a contemporaneous exchange for new value given to the City by the Bank. If a Drawing is reimbursed at or prior to 2:00 P.M., New York City time, on the same day on which it is made, no interest shall be payable on such Drawing.

*Section 2.5. Fees.* The City hereby agrees to pay and perform its obligations provided for in the Fee Letter, including the payment of all fees and expenses provided for therein. The terms and provisions of the Fee Letter are incorporated herein by reference.

*Section 2.6. Reduction and Termination.* (a) Subject to the terms and provisions set forth in the Fee Letter, the Stated Amount of the Letter of Credit shall be reduced from time to time or permanently terminated, as provided herein, as requested by the City on the date specified in the certificate delivered by the Issuing and Paying Agent to the Bank, requesting such reduction or termination, *provided* that (i) each such reduction shall be in an amount equal to at least \$1,000,000 and integral multiples of \$1,000,000 in excess thereof, (ii) the Stated

Amount of the Letter of Credit shall not be reduced to an amount less than the aggregate principal amount of the then Outstanding Covered Notes and interest due thereon at maturity, if any, and (iii) any reduction or termination in the Stated Amount of a Letter of Credit shall not be effective until the Bank, has received from the Issuing and Paying Agent a notice in the form attached to the Letter of Credit as Annex B reflecting such reduction or termination.

(b) The City hereby agrees to pay the Termination Fee and/or the Reduction Fee set forth in the Fee Letter, as applicable.

*Section 2.7. Extension of Letter of Credit Expiration Date.* If the City submits to the Bank a written request not earlier than one hundred fifty (150) days and not later than ninety (90) days prior to the then current Letter of Credit Expiration Date for an extension of the Letter of Credit Expiration Date for a period agreed to by the parties hereto, the Bank will make reasonable efforts to respond to such request within forty-five (45) days after receipt of all information necessary, in the Bank's reasonable judgment, to permit the Bank to make an informed credit decision. In the event the Bank fails to definitively respond to such request within such period of time, the Bank shall be deemed to have refused to grant the extension requested. The Bank may, in its sole and absolute discretion, decide to accept or reject any such proposed extension and no extension shall become effective unless the Bank shall have consented thereto in writing. 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. If such an extension request is accepted by the Bank, the then current Letter of Credit Expiration Date shall be extended to the date agreed by the City and the Bank.

*Section 2.8. Source of Funds.* All payments made by the Bank pursuant to the Letter of Credit shall be made from funds of the Bank, and not from the funds of any other Person.

*Section 2.9. Margin Regulations.* No portion of the proceeds of any Drawings under the Letter of Credit shall be used by the City (or the Issuing and Paying Agent or any other Person on behalf of the City) for the purpose of "purchasing" or "carrying" any margin stock or used in any manner which might cause the borrowing or the application of such proceeds to violate Regulation U of the Board of Governors of the Federal Reserve System or any other regulation of said Board of Governors or to violate the Securities Exchange Act of 1934, as amended, in each case, as in effect on the date or dates of such Drawings or Term Loans and such use of proceeds.

*Section 2.10. Maximum Rate; Payment of Fee.* Anything set forth in this Agreement to the contrary notwithstanding, if the rate of interest payable hereunder shall exceed the Maximum Rate for any period for which interest is payable, then (i) interest at the Maximum Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) the Maximum Rate (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at

which time the City shall pay to the Bank, with respect to amounts then payable to the Banks that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank. Upon the earlier of (i) the termination of the Letter of Credit and this Agreement and (ii) the repayment of all Drawings and Term Loans in full, in consideration for the limitation of the rate of interest otherwise payable hereunder, the City shall pay to the Bank a fee equal to the amount of all unpaid deferred Excess Interest.

*Section 2.11. Bank Note.* All Payment Obligations shall be made against and evidenced by the City's promissory note payable to the order of the Bank in the principal amount equal to the Original Stated Amount, such note to be executed and delivered to the Bank on the Issuance Date in the form of Exhibit B attached hereto with appropriate insertions (the "*Bank Note*"). All Payment Obligations and all payments and prepayments on account of the principal of and interest on each Payment Obligation shall be recorded by the Bank on its books and records, which books and records shall, absent manifest error, be conclusive as to amounts payable by the City hereunder and under the Bank Note. The Bank may, but shall not be required to, complete the schedule attached to the Bank Note to reflect the making and status of Drawings, Unreimbursed Drawings and Term Loans, *provided* that the failure to make or any error in making any such endorsement on such schedule shall not limit, extinguish or in any way modify the obligation of the City to repay the Unreimbursed Drawings and Term Loans. The City shall pay principal and interest on the Bank Note on the dates and at the rates provided for in Sections 2.4 and 4.3 hereof with respect to Unreimbursed Drawings and Term Loans.

### **ARTICLE III RESERVED**

### **ARTICLE IV THE TERM LOAN OPTION**

*Section 4.1. Term Loan Option.* On a Drawing Maturity Date, each Unreimbursed Drawing remaining due and payable after 2:00 P.M., New York City time on such date shall, if the conditions precedent set forth in Section 4.2 hereof have been satisfied, be converted to a Term Loan.

*Section 4.2. Conditions Precedent to Term Loans.* The obligation of the Bank to convert principal owed to the Bank for Unreimbursed Drawings to Term Loans shall be subject to the fulfillment of each of the following conditions precedent on the Drawing Maturity Date, in a manner satisfactory to the Bank.

- (a) The following statements shall be true and correct on the Drawing Date:

(i) the representations and warranties of the City contained in each of the Program Documents and each certificate, letter, other writing or instrument delivered by the City to the Bank pursuant hereto or thereto are true and correct on and as of the Drawing Date as though made on and as of such date (except to the extent that such representations or warranties expressly relate to an earlier date and if such representations and warranties expressly relate to an earlier date, such representations and warranties shall be true and correct as of such date); and

(ii) no Default or Event of Default has occurred and is continuing or would result from converting the Unreimbursed Drawing to a Term Loan.

*Section 4.3. Repayment of Term Loans.* (a) The City agrees to pay to the Bank interest on each Term Loan at an interest rate equal to the Term Loan Rate. Interest on the unpaid principal balance of each Term Loan shall be paid to the Bank monthly in arrears on the first Business Day of each calendar month to occur from and including the date of such Term Loan to and including the Term Loan Maturity Date (or the date of prepayment of such Term Loan pursuant to Section 4.4 hereof), and on the Term Loan Maturity Date (or such prepayment date).

(b) The principal amount of each Term Loan shall be repaid in equal (or nearly equal) semi-annual installments (each such installment herein referred to as a “*Principal Payment*”) commencing on the date six months after the Drawing Date for the Drawing to which such Term Loan relates and each date occurring every six months thereafter until paid in full; *provided* that the unpaid principal amount of each Term Loan shall be paid in full not later than the applicable Term Loan Maturity Date.

(c) Notwithstanding anything to the contrary set forth in Section 4.3(b) hereof, so long as any obligations are due and owing Citibank N.A. under the Citibank Reimbursement Agreement and, as a result, the “*Term Loan Maturity Date*” means the thirteen (13) month anniversary of the Drawing Date for the Drawing relating to such Term Loan, there shall be no principal amortization with respect to such Term Loan prior to the Term Loan Maturity Date and all principal shall be paid in full on such Term Loan Maturity Date; *provided, however*, that in the event the Citibank Reimbursement Agreement is terminated and all obligations due and owing Citibank N.A. thereunder have been paid in full prior to the thirteen (13) month anniversary of the Drawing Date for the Drawing relating to such Term Loan, any Principal Payment on the related Term Loan that would otherwise have been due and payable if not for the preceding proviso shall be due and payable on the date the Citibank Reimbursement Agreement is terminated and all obligations due and owing thereunder have been paid in full and all subsequent Principal Payments shall be due and payable in accordance with Section 4.3(b) hereof.

*Section 4.4. Prepayment of Term Loans.* (a)(i) The City may prepay or cause to be prepaid the amount of any Term Loan outstanding in whole or in part with accrued interest to the date of such repayment on the amount prepaid. Any prepayment in part under this

Section 4.4(a)(i) shall be applied by the Bank to (1) the Term Loans in inverse order of the Drawing Dates related to Term Loans and (2) the remaining Principal Payments relating to each Term Loan prepaid in inverse order of the date of such Principal Payment.

(ii) Any prepayment made under Section 4.4(a)(i) hereof shall be applied by the Bank as a reimbursement of the related Drawing (and as a prepayment of the Term Loan, as the case may be, resulting from such Drawing) and, the City irrevocably authorizes the Bank to reinstate the amount available to be drawn under the Letter of Credit by the amount of such prepayment; *provided, however*, that the Issuing and Paying Agent shall not issue any Covered Notes (the aggregate principal and interest of which is payable from the amount of the Letter of Credit so reinstated) for sale or otherwise until the Letter of Credit has been reinstated pursuant to the terms of the Letter of Credit.

(b) *Mandatory Prepayment.* In the event that the Issuing and Paying Agent issues any Covered Notes while any Term Loan, or any portion of any or Term Loan, remains unpaid, the City shall apply the proceeds of any such Covered Notes (i) first, to the principal and interest of any Covered Notes maturing on such date and (ii) second, to the prepayment of such outstanding Term Loan, as the case may be. Any prepayment in part under this Section 4.4(b) shall be applied against each such Term Loan, as the case may be, in the order in which each such Term Loan, as the case may be, was made.

(c) *Prepayment Amount.* The City may prepay any Term Loan in whole, or in part in a minimum amount of \$1,000,000 and in integral multiples of \$100,000 in excess thereof, in each case without penalty on one Business Day's prior written notice.

## ARTICLE V SECURITY AND PLEDGE; INCREASED COSTS, MISCELLANEOUS

*Section 5.1. Security and Pledge.* To secure the payment of all Payment Obligations and the Bank Note, the City hereby pledges, places a first Lien upon and assigns to the Bank the Surplus Revenues held in the Subordinated Debt Account of the Surplus Revenue Fund, including the earnings on such Surplus Revenues. The City has previously pledged and assigned the Net General Airport Revenues and granted a Lien upon the Net General Airport Revenues to secure all Senior Lien Bonds, whenever issued, including Senior Lien Bonds issued subsequent to the execution and delivery of this Agreement and the other Senior Lien Parity Debt. The pledge, assignment and Lien on the Net General Airport Revenues granted to secure the Senior Lien Bonds and the other Senior Lien Parity Debt shall, in all respects, be prior to the pledge, assignment and Lien granted hereby. This pledge of and Lien upon the Surplus Revenues shall be for the equal and proportionate benefit and security of the Covered Notes, the Payment Obligations, the Bank Note and the Parity Debt, all of which shall be of equal rank without preference, priority or distinction as to Lien or otherwise. The pledge and Lien hereby granted shall remain effective for so long as any Outstanding Covered Note, the Bank Note, any Payment Obligation, any Unreimbursed Drawing or any Term Loan remains unpaid. No filing,

registering, or recording of the Master Bond Resolution, this Agreement or any other instrument is required to establish the pledge of or to perfect, protect or maintain the Lien on the Surplus Revenues, the Subordinated Debt Account, the Surplus Revenue Fund or the Net General Airport Revenues.

*Section 5.2. Increased Costs.* (a) If, after the Issuance Date, the Bank shall have determined that the adoption or implementation of, or any change in, any law, rule, treaty or regulation, or any policy, guideline or directive of, or any change in the interpretation or administration thereof by any court, central bank or other administrative or Governmental Authority (in each case, whether or not having the force of law), or compliance by the Bank with any request or directive of any such court, central bank or other administrative or Governmental Authority (whether or not having the force of law), shall (A) change the basis of taxation of payments to the Bank of any amounts payable hereunder (except for taxes on the overall net income of the Bank), (B) impose, modify or deem applicable any reserve, special deposit or similar requirement against making or maintaining its obligations under this Agreement or assets held by, or deposit with or for the account of, the Bank or (C) impose on the Bank any other condition regarding this Agreement or the Letter of Credit, and the result of any event referred to in clause (A), (B) or (C) above shall be to increase the cost to the Bank of making or maintaining its obligations hereunder or maintaining the Letter of Credit, or to reduce the amount of any sum received or receivable by the Bank hereunder, then the City shall pay to the Bank, at such time and in such amount as is set forth in paragraph (c) of this Section 5.2, such additional amount or amounts as will compensate the Bank for such increased costs or reductions in amount.

(b) If, after the Issuance Date, the Bank shall have determined that the adoption or implementation of, or any change in, any law, rule or regulation, or any policy, guideline or directive of, or any change in the interpretation or administration thereof, by, any court, central bank or other administrative or Governmental Authority, or compliance by the Bank or any corporation controlling the Bank with any directive of or guidance from any central bank or other authority (in each case, whether or not having the force of law), shall impose, modify or deem applicable any capital adequacy or similar requirement (including, without limitation, a request or requirement that affects the manner in which the Bank or any corporation controlling the Bank allocates capital resources to its commitments, including its obligations under lines of credit) that either (A) affects or would affect the amount of capital to be maintained by the Bank or any corporation controlling the Bank or (B) reduces or would reduce the rate of return on the Bank's or the Bank's controlling corporation's capital to a level below that which the Bank or the Bank's controlling corporation could have achieved but for such circumstances (taking into consideration the Bank's or the Bank's controlling corporation's policies with respect to capital adequacy), then the City shall pay to the Bank, at such time and in such amount as is set forth in paragraph (c) of this Section, such additional amount or amounts as will compensate the Bank or the Bank's controlling corporation for such cost of maintaining such increased capital or the reduction in the rate of return on the Bank's or the Bank's controlling corporation's capital.

(c) All payments of amounts referred to in paragraphs (a) and (b) of this Section shall be due sixty (60) days following the City's receipt of written notice thereof and shall be payable, in full, on the next succeeding quarterly payment date that the Letter of Credit Fee is due and payable. Interest on the sums due as described in paragraphs (a) and (b) of this Section, and in the preceding sentence, shall begin to accrue from the date which is sixty (60) days following the City's receipt of notice thereof and shall otherwise be payable in accordance with Section 5.2 hereof; *provided* that from and after the required date of payment, interest shall begin to accrue on such obligations at a rate per annum equal to the Default Rate until such delinquent payments have been paid in full. A certificate as to such increased cost, increased capital or reduction in return incurred by the Bank as a result of any event mentioned in paragraphs (a) or (b) of this Section setting forth, in reasonable detail, the basis for calculation and the amount of such calculation shall be submitted by the Bank to the City and shall be deemed conclusive if reasonably determined. In making the determinations contemplated by the above referenced certificate, the Bank may make such reasonable estimates, assumptions, allocations and the like that the Bank in good faith determines to be appropriate.

*Section 5.3. Net of Taxes, Etc.* (a) *Taxes.* Any and all payments to the Bank by the City hereunder shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges, withholdings or liabilities imposed thereon, excluding, however, taxes imposed on or measured by the net income or capital of the Bank by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a connection between the Bank and such jurisdiction or political subdivision (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "*Taxes*"). If the City shall be required by law to withhold or deduct any Taxes imposed by the United States or any political subdivision thereof from or in respect of any sum payable hereunder to the Bank, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 5.3), the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the City shall make such deductions and (iii) the City shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. If the City shall make any payment under this Section 5.3 to or for the benefit of the Bank with respect to Taxes and if the Bank shall claim any credit or deduction for such Taxes against any other taxes payable by the Bank to any taxing jurisdiction in the United States then the Bank shall pay to the City an amount equal to the amount by which such other taxes are actually reduced; *provided* that the aggregate amount payable by the Bank pursuant to this sentence shall not exceed the aggregate amount previously paid by the City with respect to such Taxes. In addition, the City agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America or the State of California from any payment made hereunder or from the execution or delivery or otherwise with respect to this Agreement (hereinafter referred to as "*Other Taxes*"). The Bank shall provide to the City within a reasonable time a copy of any written notification it receives with respect to Taxes or

Other Taxes owing by the City to the Bank hereunder *provided* that the Bank's failure to send such notice shall not relieve the City of its obligation to pay such amounts hereunder.

(b) *Indemnity.* The City shall, to the fullest extent permitted by State law and subject to the provisions hereof, indemnify the Bank for the full amount of Taxes and Other Taxes including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 5.3 paid by the Bank or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted; *provided* that the City shall not be obligated to indemnify the Bank for any penalties, interest or expenses relating to Taxes or Other Taxes arising from the Bank's gross negligence or willful misconduct. The Bank agrees to give notice to the City of the assertion of any claim against the Bank relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; *provided* that the Bank's failure to notify the City promptly of such assertion shall not relieve the City of its obligation under this Section 5.3. Payments by the City pursuant to this indemnification shall be made within sixty (60) days from the date the Bank makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Bank agrees to repay to the City any refund (including that portion of any interest that was included as part of such refund) with respect to Taxes or Other Taxes paid by the City pursuant to this Section 5.3 received by the Bank for Taxes or Other Taxes that were paid by the City pursuant to this Section 5.3 and to contest, with the cooperation and at the expense of the City, any such Taxes or Other Taxes which the Bank or the City reasonably believes not to have been properly assessed.

(c) *Notice.* Within thirty (30) days after the date of any payment of Taxes by the City, the City shall furnish to the Bank, the original or a certified copy of a receipt evidencing payment thereof.

(d) *Survival of Obligations.* The obligations of the City under this Section 5.3 shall survive the termination of this Agreement.

*Section 5.4. Calculation of Interest and Fees; Default Rate.* (a) Interest payable hereunder shall be calculated on the basis of a year of 365 or 366 days, as applicable, based upon the actual number of days elapsed. Fees and other amounts payable hereunder shall be calculated on the basis of a year of 360 days based upon the actual number of days elapsed. Any change in the Prime Rate or the Federal Funds Rate or any change in the Base Rate resulting from a change in the Prime Rate or the Federal Funds Rate shall become effective as of the opening of business on the day on which such change in the Prime Rate or Federal Funds Rate shall become effective.

(b) Except as otherwise provided for herein, including Section 2.10 hereof, any and all amounts remaining unpaid when due under this Agreement shall bear interest at the Default Rate until repaid and shall be payable upon demand.

(c) Interest not paid when due pursuant to Section 5.4(b) above, shall be added principal, and such interest shall, in turn, bear interest at the Default Rate and shall be payable upon demand, subject to the provisions of Section 2.10 hereof.

*Section 5.5. Form and Method of Payments; Net Payments.* All payments required to be made to the Bank under this Agreement shall be made not later than 2:00 p.m. (New York City time) on a Business Day by wire transfer in lawful currency of the United States and in immediately available funds to the Bank at Bank of America, N.A., ABA No. 0260-0959-3, Account No. 45358-83980, Reference: Standby Letter of Credit Department, regarding Letter of Credit No. \_\_\_\_\_ (or at such other bank, address or account as the Bank may designate in writing from time to time to the City) (the “*Payment Office*”). Any payment received by the Bank later than 2:00 p.m. (New York City time) on a Business Day shall be deemed to be made on the next succeeding Business Day. Whenever any payment due under the terms of this Agreement is due on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall be included in the computation of interest and fees. All such payments will be made without setoff, counterclaim or other defense.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES

*Section 6.1. Representations and Warranties of the City.* In order to induce the Bank to enter into this Agreement and the Bank to issue the Letter of Credit, the City represents and warrants as of the Issuance Date, with respect to itself, this Agreement and certain matters as follows:

(a) *Organization; Existence.* The City is duly organized and validly existing as a municipal corporation and a political subdivision of the State of California.

(b) *Power and Authority.* The City has and had at the time of adoption, execution, delivery, issuance, sale or performance full power, right and authority to (i) execute, deliver and perform its obligations under each of the Program Documents to which it is a party, and any and all instruments and documents required to be executed, adopted or delivered pursuant to or in connection herewith or therewith, (ii) adopt the Master Bond Resolution, (iii) issue and sell the Covered Notes as provided in the Program Documents and make payment of principal and interest, if any, on the Covered Notes and to pay the Payment Obligations and the Bank Note at the times and in the manner set forth herein, (iv) pledge the Surplus Revenues in the Subordinated Debt Account of the Surplus Revenue Fund, (v) own and operate the Enterprise, and (vi) perform each and all of the matters and things herein and therein provided for and the City has complied in all material respects with the laws of the State of California in all matters relating to such execution, delivery and performance.

(c) *Due Authorization, Etc.* Each of the Program Documents to which the City is a party has been duly authorized, executed, issued and delivered. This Agreement and each of the Program Documents to which the City is a party constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, subject as to enforceability, to bankruptcy, insolvency, moratorium, or other laws and equitable principles relating to or affecting creditors' rights generally from time to time in effect. The Payment Obligations are payable from and secured by Surplus Revenues as set forth herein and in the Master Bond Resolution and the Issuing and Paying Agent Agreement.

(d) *Necessary Actions Taken.* The City has taken all actions necessary to be taken by it (i) for the issuance and sale of the Covered Notes upon the terms set forth in the Program Documents, (ii) for the execution, adoption and delivery by the City of any and all such other instruments and the taking of all such other actions on the part of the City as may be necessary or appropriate for the effectuation and consummation of the transactions on the part of the City contemplated by the Program Documents or in connection herewith or therewith and (iii) to authorize or approve, as appropriate, the execution or adoption, issuance and delivery of, and the performance of its obligations under and the transactions contemplated by, each of the Program Documents to which it is a party and the payment of the Payment Obligations and the Bank Note at the times and in the manner set forth.

(e) *No Contravention.* The execution and delivery of each of the Program Documents and compliance with the provisions hereof and thereof, (i) will not conflict with or result in a violation of the Constitution of the State of California or the laws of the State of California, including any debt limitations or other restrictions or conditions on the debt-issuing power of the City; and (ii) in light of the City's plan to capitalize the interest and other carrying costs of the Projects through their Estimated Completion Dates, will not conflict with or result in a violation of, or breach of, or constitute a default under, any law, judgment, order, decree or administrative regulation or any of the terms, conditions or provisions of the Charter or any ordinance, contract, loan agreement, note, bond, resolution, indenture, mortgage, deed of trust or other agreement or instrument, material to the Enterprise, to which the City is a party or by which it or any property of the City, material to the Enterprise, is bound; and (iii) will not, except as expressly provided herein, result in the imposition or creation of any Lien, charge or encumbrance upon or invalidate or adversely affect in any way the Surplus Revenues or the Lien granted in connection therewith. The City has not received any notice, not subsequently withdrawn, given in accordance with the remedy provisions of any bond resolution or ordinance, trust indenture, guarantee or agreement or State law pertaining to bonds or notes secured by the General Airport Revenues, of any default or event of default of the City which has not been cured, remedied or waived.

(f) *Compliance.* The current collection of General Airport Revenues and the management of the Enterprise and the accounting and recordkeeping therefor are in material compliance with all applicable state and federal laws and all applicable resolutions, ordinances and rules of the City. The City is in compliance with the terms and conditions of each of the Program Documents to which it is a party, and no breach of the terms hereof or thereof has occurred and is continuing, and no Default or Event of Default has occurred and is continuing.

(g) *No Default.* No default by the City has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any bond, note or other evidence of Indebtedness (including, without limitation, any swap termination payment or contingent obligation under a Swap Contract) issued by the City and secured by the General Airport Revenues. No bankruptcy, insolvency or other similar proceedings pertaining to the City or any agency or instrumentality of the City are pending or contemplated.

(h) *No Public Vote or Referendum.* To the best knowledge of the City, there is no public vote or referendum pending, proposed or concluded, the results of which could reasonably be expected to result in a Material Adverse Effect.

(i) *No Immunity.* The City is not entitled to raise the defense of sovereign immunity in connection with any legal proceedings to enforce or collect upon this Agreement or the transactions contemplated thereby, including the payment of the Payment Obligations; *provided, however,* that the procedural requirements applicable to commencing an action and remedies against the City differ from those provisions and requirements applicable to individuals and non-governmental entities.

(j) *Litigation.* There are no actions, suits, or proceedings pending with service of process accomplished or, to the best knowledge of the City after due inquiry, threatened against or affecting the City, the Enterprise or any properties or rights of the City, by or before any court, arbitrator, or administrative or governmental body which (a) if determined adversely to the City would adversely affect the City's ability to perform its obligations under this Agreement or any other Program Document (or part thereof) that pertains in any manner to the Enterprise or (b) relate to the execution, delivery or performance by the City of this Agreement or any Program Document to which the City is a party.

(k) *Disclosure.* Neither the Program Documents nor any other document, certificate or statements of the City (including the financial and statistical reports, budgets, projections and cash flows of the Enterprise furnished to the Bank by or on behalf of the City in connection with the transactions contemplated hereby or thereby) contains any untrue statement of any material fact.

(l) *Financial Information.* The City has delivered to the Bank a copy of the audited financial statements for the Enterprise for the fiscal year ended June 30, 2010. These together with related notes, fairly present the financial position and results of operation of the Enterprise as of the date and for the periods therein set forth. All such financial statements have been prepared in accordance with generally accepted accounting principles for government entities consistently applied. There has been no material adverse change in the financial position, results of operations or projections of revenues of the Enterprise since June 30, 2010. The City has no material contingent liabilities or other material contracts or commitments payable from General Airport Revenues which are not reflected in such financial statements previously delivered to the Bank or in the notes thereto.

(m) *Official Signatures.* The Authorized Representative, on behalf of the City, has full power and authority to execute and deliver each of the Program Documents being delivered concurrently herewith and to perform under each of the Program Documents. Any agreement, certificate or request signed by or on behalf of any Authorized Representative of the City and delivered to a Dealer, the Issuing and Paying Agent or the Bank shall be deemed a representation and warranty by the City to the Bank as to the truth, accuracy and completeness of the statements made by the City therein.

(n) *Incorporation of Representations and Warranties by Reference.* The City hereby makes to the Bank the same representations and warranties made by the City in each Program Document, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference for the benefit of the Bank with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety (except to the extent that such representations and warranties expressly relate to an earlier date and if such representations and warranties expressly relate to an earlier date, such representations and warranties shall be true and correct as of such date). No amendment to such representations and warranties or defined terms made pursuant to any Program Document shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the prior written consent of the Bank.

(o) *Environmental Matters.* To the best knowledge of any Authorized Officer, the operations of the Enterprise are in compliance with all of the requirements of applicable federal, state and local environmental, health and safety statutes and regulations and are not 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, where a failure to comply with any such requirement or the need for any such remedial action could reasonably be expected to result in a Material Adverse Effect.

(p) *No Maximum Rate.* The interest rate payable on Unreimbursed Drawings and Term Loans hereunder is not subject to any limitation under the laws or constitution of the State of California.

(q) *ERISA.* The City does not maintain or contribute to, and has not maintained or contributed to, any Plan that is subject to Title IV of ERISA.

(r) *Margin Regulations; Investment Company Act.* (i) The City is not engaged 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, and the City will not use the proceeds of any of the of Drawings under the Letter of Credit so as to violate Regulation T, U or X of the Board of Governors of the Federal Reserve System, as the same may be amended or interpreted from time to time.

(ii) The City does not intend to use any part of the proceeds of the Covered Notes or the proceeds of Drawings under the Letter of Credit or the proceeds of Term Loans hereunder and has not incurred any Indebtedness to be reduced, retired or purchased by the City out of such proceeds, for the purpose of purchasing or carrying any Margin Stock, and the City does not own and has no intention of acquiring any such Margin Stock.

(s) *Insurance.* The City maintains the insurance requirements required by the Master Bond Resolution.

(t) *Taxes.* The City has filed all Federal, state and other material tax returns and reports required to be filed with respect to the Enterprise, the non-filing of which could reasonably be expected to result in a Material Adverse Effect, and has paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon the Enterprise or any of its properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against the Enterprise that would, if made, result in a Material Adverse Effect.

(u) *Permitted Investments.* The City does not currently maintain any investment of funds governed by the Master Bond Resolution, nor is it currently a party to any agreements for the purpose of effecting any investment of funds governed by the Master Bond Resolution, that are not Permitted Investments under the Master Bond Resolution and the City's Investment Policy.

**ARTICLE VII**  
**AFFIRMATIVE COVENANTS OF THE CITY**

So long as the Letter of Credit is outstanding and until all Payment Obligations and the Term Loans shall have been paid in full, the City shall do the following:

*Section 7.1. Maintenance of Existence.* The City shall maintain its existence as a municipal corporation and political subdivision under the laws of the State of California and at all times maintain its ownership of the Enterprise.

*Section 7.2. Reports, Certificates and Other Information.* The City shall furnish or cause to be furnished to the Bank copies of:

(a) As soon as available and in no event later than two hundred ten (210) days after the end of each Fiscal Year of the City, the annual audited financial statements for the Enterprise, which such annual audited financial statements shall include a Statement of Net Assets, Statement of Revenues, Expenses and Changes in Net Assets, and Statement of Cash Flows as well as the notes to the audited financial statements, together with the report of the City's independent accountants. Additionally, on the date that the City delivers the audited financial statements required by this Section 7.2(a) hereof, the City shall provide to the Bank a compliance certificate substantially in the form of Exhibit D hereto (the "*Compliance Certificate*") which provides for each of the following: (i) demonstration by the City that the Enterprise is in compliance with the rate maintenance covenant described in Section 7.8 hereof and (ii) a statement that no Default or Event of Default has occurred and is continuing hereunder, all as certified to by an Authorized Officer;

(b) As soon as available and in any event no later than forty-five (45) days after the end of each calendar quarter, an unaudited summary and detail of quarterly financial activity and cash position with respect to General Airport Revenues and Other Available Funds together with a Compliance Certificate properly completed and certified to by an Authorized Representative of the City;

(c) As soon as available, the Monthly Revenue, Expenditure and Enplanement Reports for the Enterprise;

(d) (i) As soon as available and in any event no later than forty-five (45) days prior to commencement of each Fiscal Year, the proposed Airport Budget and (ii) as soon as available and in any event within thirty (30) days of the availability thereof, the adopted Airport Budget;

(e) As soon as available, all notices, certificates, instruments, letters and written commitments in connection with the Covered Notes provided to the Issuing and

Paying Agent other than those notices, certificates, instruments, letters and written commitments that relate solely to the routine issuance and payment of the Notes;

(f) Promptly after it is posted electronically or otherwise published, any disclosure documents distributed in connection with any issue of Senior Lien Bonds or other Indebtedness secured by General Airport Revenues;

(g) (i) Promptly and, in any event within five (5) Business Days of (A) the occurrence of any Default or Event of Default which could reasonably be expected to result in a Material Adverse Effect and (B) the City obtaining actual knowledge or receiving any notice of any Default or Event of Default, a certificate signed by an Authorized Representative specifying in reasonable detail the nature and period of existence thereof and what action the City has taken or proposes to take with respect thereto and (ii) promptly following a written request of the Bank, a certificate of an Authorized Representative of the City as to the existence or absence, as the case may be, of a Default or an Event of Default under this Agreement;

(h) On or prior to the date on which Indebtedness secured by the General Airport Revenues is to be issued or incurred, a Compliance Certificate properly completed and certified to by an Authorized Representative of the City including a certification as to compliance with all debt service coverage ratios set forth herein and in the Master Bond Resolution that are required to be satisfied as a condition precedent to the issuance or incurrence of such Indebtedness;

(i) As promptly as practicable, written notice to the Bank of all litigation served against the City and all proceedings before any court or Governmental Authority which, in each case, could reasonably be expected to result in a Material Adverse Effect;

(j) Promptly, written notice to the Bank of all changes to the City's investment policy; and

(k) Such other information regarding the affairs and condition of the Enterprise as the Bank may from time to time reasonably request.

*Section 7.3. Maintenance of Books and Records.* The City will keep proper books of record and accounts of the Enterprise, separate and apart from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the Enterprise.

*Section 7.4. Access to Books and Records.* The City will permit any Person designated by the Bank (at the expense of the Bank) to visit any of the offices of the City and the Enterprise to examine the books and financial records, including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom, and to

discuss the affairs, finances and accounts of the City and the Enterprise with their principal officials, all at such reasonable times and as often as the Bank may reasonably request.

*Section 7.5. Compliance with Documents.* Except as provided for in Section 8.1 hereof, the City agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in each of the Program Documents, which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety all of which shall be deemed to be made for the benefit of the Bank and shall be enforceable against the City. To the extent that any such incorporated provision permits the City, the holders of one or more Covered Notes or any other party to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to the City, the holders of one or more Covered Notes or any other party, for purposes of this Agreement, such provision shall be complied with only if it is specifically waived by the Bank in writing and such document, opinion or other instrument and such event or condition shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Bank which shall only be evidenced by the written approval by the Bank of the same. Except as provided for in Section 8.1 hereof, no termination or amendment to such covenants and agreements or defined terms or release of the City with respect thereto made pursuant to the Program Documents, shall be effective to terminate or amend such covenants and agreements and defined terms or release of the City with respect thereto as incorporated by reference herein without the prior written consent of the Bank. Notwithstanding any termination or expiration of any such Program Document, the City shall, unless such Program Document has terminated in accordance with its terms and has been replaced by a new Program Document, continue to observe the covenants therein contained for the benefit of the Bank until the termination of this Agreement. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein.

*Section 7.6. Compliance with Law.* The City shall comply with and observe the obligations and requirements set forth in the Constitution of the State of California and in all statutes and regulations binding upon it relating to the Enterprise and the Program Documents.

*Section 7.7. Change of Authorized Representative.* If at any time after the Issuance Date, any official of the City not named in the certificate delivered on the Issuance Date pursuant to Section 2.3(a) shall be lawfully designated as an Authorized Representative, the City shall deliver promptly, and in no event later than five Business Days after such designation, a certificate to the Bank signed by an Authorized Representative (other than the official so designated), as to the incumbency and containing the specimen signature of the Authorized Representative so designated after the Issuance Date.

*Section 7.8. Rate Covenant.* The City shall, subject to applicable law, at all times establish, fix, prescribe and collect rentals, rates, fees and charges in connection with the services

and facilities furnished by the Enterprise so as to yield Net General Airport Revenues sufficient to comply with Section 7.9 hereof.

*Section 7.9. Debt Service Coverage Ratio.* On the last day of each Fiscal Year (as demonstrated by the City on the Compliance Certificate delivered to the Bank with the audited financial statements for the Enterprise pursuant to Section 7.2(a) hereof), the City shall ensure that, (i) the ratio of Net General Airport Revenues plus Other Available Funds to Debt Service with respect to Senior Lien Parity Debt for such Fiscal Year shall not be less than 1.25:1.0, (ii) the ratio of Net General Airport Revenues plus Other Available Funds to Debt Service with respect to Senior and Parity Lien Debt for such Fiscal Year shall not be less than 1.20:1.0, (iii) the ratio of Net General Airport Revenues plus Other Available Funds (excluding the Rolling Coverage Amount from Other Available Funds) to Debt Service with respect to Senior and Parity Lien Debt for such Fiscal Year shall not be less than 1.0 to 1.0, and (iv) the ratio of Net General Airport Revenues plus Other Available Funds to Debt Service with respect to Senior and Parity Lien Debt and Junior Lien Debt for such Fiscal Year shall not be less than 1.0 to 1.0; *provided, however*, that in calculating such ratios, the City shall be permitted to take into account any retirement of any Commercial Paper Notes having occurred in Fiscal Year 2011; *provided, further*, that in calculating such ratios, the City shall be required to include within the calculation of Debt Service, the debt service schedule for any Indebtedness payable from General Airport Revenues the proceeds of which were used to retire any Commercial Paper Notes having occurred in Fiscal Year 2011.

*Section 7.10. Further Assurances.* From time to time hereafter, the City shall execute and deliver such additional instruments, certificates or documents, and shall take all such actions as the Bank may reasonably request for the purposes of implementing or effectuating the provisions of the Program Documents or for the purpose of more fully perfecting or renewing the rights of the Bank with respect to the rights, properties or assets subject to such documents (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by the City which may be deemed to be a part thereof). Upon the exercise by the Bank of any power, right, privilege or remedy pursuant to the Program Documents which requires any consent, approval, registration, qualification or authorization of any Governmental Authority, the City will, to the extent permitted by law, execute and deliver all necessary applications, certifications, instruments and other documents and papers that the Bank may be required to obtain for such governmental consent, approval, registration, qualification or authorization.

*Section 7.11. Performance of This and Other Agreements.* The City shall punctually pay or cause to be paid all amounts payable under this Agreement, the Fee Letter, the Covered Notes and the other Program Documents to which it is a party and observe and perform all of the conditions, covenants and requirements set forth in this Agreement, the Fee Letter, the Covered Notes and the other Program Documents to which it is a party, except those amounts payable or conditions, covenants and requirements which are being contested in good faith by appropriate

proceedings diligently being conducted and for which adequate reserves have been provided in accordance with generally accepted accounting principles.

*Section 7.12. Issuing and Paying Agent and Dealers.* The City shall appoint an Issuing and Paying Agent and a Dealer or Dealers to be acting in respect of the Covered Notes pursuant to the Issuing and Paying Agent Agreement. If any Dealer fails place Covered Notes for which an issuance request has been issued by the City for thirty (30) consecutive days, then the City agrees, at the written request of the Bank, to cause such Dealer to be replaced with a Dealer reasonably satisfactory to the Bank. Any Dealer Agreement with a successor Dealer shall provide that (a) such Dealer may resign upon at least 60 days prior written notice to the Issuing and Paying Agent, the Bank and the City and (b) such Dealer shall use its best efforts to place the Notes without regard to the Bank Rate and up to the Maximum Rate (i.e., whether or not the rate to be borne by the Covered Notes is less than the Bank Rate).

*Section 7.13. Alternate Facility.* (a) The City shall use all commercially reasonable efforts to obtain an Alternate Facility to replace this Agreement and the Letter of Credit in the event that (A) the Bank shall decide not to extend the Letter of Credit Expiration Date, (B) the Letter of Credit shall terminate according to its terms, or (C) the Bank directs the Issuing and Paying Agent to cease issuing Covered Notes following the occurrence of an Event of Default.

(b) The City agrees that any Alternate Facility will require, as a condition to the effectiveness of the Alternate Facility, that the issuer of the Alternate Facility will provide funds to the extent necessary, in addition to other funds available, on the date the Alternate Facility becomes effective, for the payment of all outstanding Unreimbursed Drawings and Term Loans at par plus all accrued interest thereon at the Bank Rate, Term Loan Rate or Default Rate, as applicable, through the date such Alternate Facility becomes effective. On such date, any and all amounts due hereunder to the Bank shall be payable in full to the Bank.

*Section 7.14. Senior Lien Parity Debt Ratings; Note Ratings.* The City shall cause to be maintained at least two ratings on (i) the Senior Lien Parity Debt and (ii) the Covered Notes, in each case, by any two of Moody's, S&P or Fitch.

*Section 7.15. Hedging Agreements.* If the City shall enter into any Swap Contract supporting any Senior and Parity Lien Debt, the City shall ensure such hedging arrangements shall be with a counterparty with a long-term rating of "AA" (or its equivalent) or better from at least one Rating Agency at the time of execution of the related Swap Contract.

*Section 7.16. Credit Facilities.* In the event that the City shall, directly or indirectly, enter into or otherwise consent to any credit agreement, bond purchase agreement, liquidity agreement or other agreement or instrument (or any amendment, supplement or modification thereto) under which, directly or indirectly, any Person or Persons undertakes to make loans or extend credit or liquidity to the City with respect to Commercial Paper Notes, any other Parity Debt, other Indebtedness secured by the Surplus Revenues and any Junior Lien Debt, which such

agreement (or amendment thereto) provides such Person with more restrictive covenants, additional or different events of default and greater rights and remedies and/or any acceleration right or a shorter amortization period than are provided to the Bank in this Agreement, the City shall provide the Bank with a copy of each such agreement (or amendment thereto) and such more restrictive covenants, additional or different events of default, greater rights and remedies and/or any acceleration right or an amortization period shorter than that set forth in the Bank's Reimbursement Agreement shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefits of such more restrictive covenants, additional or different events of default, greater rights and remedies and/or any acceleration right or an amortization period shorter than that set forth in the Bank's Reimbursement Agreement as if specifically set forth herein. Upon the request of the Bank, the City shall promptly enter into an amendment to this Agreement to include such more restrictive covenants, additional or different events of default, greater rights and remedies and/or any acceleration right or an amortization period shorter than that set forth in the Bank's Reimbursement Agreement (provided that the Bank shall have and maintain the benefit of such more restrictive covenants, additional or different events of default, greater rights and remedies and/or any acceleration right or an amortization period shorter than that set forth in the Bank's Reimbursement Agreement even if the City fails to provide such amendment).

*Section 7.17. Insurance.* The City shall maintain insurance required by the Master Bond Resolution.

*Section 7.18. Additional Senior Lien Parity Debt* Provided that no Event of Default has occurred or is continuing, the proceeds of any Senior Lien Parity Debt (excluding Senior Lien Bonds issued to retire outstanding Senior Lien Bonds or Senior Lien Parity Debt) issued after the Issuance Date shall be used solely to reduce the aggregate principal amount of the Enterprise's commercial paper program (including, without limitation, to pay the principal of and interest on Outstanding Commercial Paper Notes (including Covered Notes) and amounts due and owing hereunder and under any reimbursement agreement entered into by the City and a letter of credit bank in support of any Commercial Paper Notes); *provided, however*, that so long as no Event of Default has occurred and is continuing, the City may, in its sole discretion, pay the principal of and interest on any Series of Outstanding Commercial Paper Notes and amounts due and owing hereunder or under any reimbursement agreement entered into by the City and a letter of credit bank in support of any Commercial Paper Notes. If an Event of Default has occurred and is continuing, the proceeds of any Senior Lien Parity Debt issued after the date of such Event of Default shall be used to pay all Outstanding Covered Notes and any other Outstanding Commercial Paper Notes on a *pro rata* basis and all amounts due and owing hereunder and under any reimbursement agreement entered into by the City and a letter of credit bank in support of any Commercial Paper Notes on a *pro rata* basis.

**ARTICLE VIII**  
**NEGATIVE COVENANTS OF THE CITY**

So long as the Letter of Credit is outstanding and until all of the Payment Obligations shall have been paid in full, the City shall not do any of the following, without the prior written consent of the Bank:

*Section 8.1. Amendments.* The City will not amend, modify or supplement in any manner whatsoever Section 5.01, 5.02 (except with respect to a supplement to the Master Bond Resolution the sole purpose of which is the creation of an additional debt service reserve fund supporting any series of Bonds (as defined in the Master Bond Resolution)), 7.02, 7.03, 7.04, 7.05, 7.06, 7.09, 7.10, 7.13, 7.16 or 7.18 of the Master Bond Resolution without the prior written consent of the Bank (such consent not to be unreasonably withheld or delayed) nor shall it amend, modify or supplement any other provision of the Master Bond Resolution or any other Program Document, other than this Agreement, in a manner which would have an adverse effect upon the City's ability to perform its obligations under this Agreement or to repay Indebtedness (including Commercial Paper Notes) that is secured by the General Airport Revenues or which adversely affects the security of the Bank or the rights or remedies of the Bank under the Program Documents or hereunder. Notwithstanding the foregoing, the City shall be entitled to enter into one or more supplements to the Master Bond Resolution in order to issue or incur additional Indebtedness so long as the City complies with Section 8.6 hereof and the issuance or incurrence of such additional Indebtedness would not otherwise result in a Default or an Event of Default.

*Section 8.2. No Impairment.* The City will neither take any action, nor cause or permit the Issuing and Paying Agent to take any action, under the Program Documents which would materially adversely affect the rights, remedies or security of the Bank under this Agreement, including, without limitation, the Payment Obligations and pledge of Surplus Revenues.

*Section 8.3. Application of Note Proceeds.* The City will not take or omit to take any action, which action or omission will in any way result in the proceeds from the sale of the Covered Notes being applied in a manner other than as provided in the Authorizing Resolution and the Issuing and Paying Agent Agreement. The City agrees not to authorize, instruct or permit the Issuing and Paying Agent to authenticate and deliver Covered Notes at any time when any Unreimbursed Drawing or Term Loan is outstanding unless the proceeds of the sale of such Covered Notes are to be applied on the sale date to repay such Unreimbursed Drawing or Term Loan (together with all accrued and unpaid interest thereon).

*Section 8.4. Application of Drawings Proceeds.* The City will not take or omit to take any action, which action or omission will in any way result in the proceeds of the Drawings being applied for any purpose other than to pay principal and interest on Covered Notes on their respective maturity dates.

*Section 8.5. Issuing and Paying Agent and Dealers.* The City will not, without the prior written consent of the Bank, which consent shall not be unreasonably withheld or delayed, (i) remove, or seek to remove, the Issuing and Paying Agent or any Dealer or (ii) appoint or consent to the appointment of any successor thereto. The City shall at all times maintain an Issuing and Paying Agent and a Dealer under the Issuing and Paying Agent Agreement.

*Section 8.6. Limitation on Additional Debt.* The City will not incur any obligation or liability (including Indebtedness) after the date hereof that is a charge, Lien or encumbrance upon the General Airport Revenues unless the City provides the Bank with a certificate of an Authorized Representative to the effect (and containing supporting calculations) that (i) projected Net General Airport Revenues plus Other Available Funds shall at all times exceed (A) 1.25 times Debt Service with respect to Senior Lien Parity Debt, (B) 1.20 times Debt Service with respect to Senior and Parity Lien Debt and (C) 1.0 times Debt Service with respect to Senior and Parity Lien Debt and Junior Lien Debt and (ii) projected Net General Airport Revenues plus Other Available Funds (excluding the Rolling Coverage Amount from Other Available Funds) shall at all times exceed 1.0 times Debt Service with respect to Senior and Parity Lien Debt, in each case, for each of the three complete Fiscal Years immediately following the incurrence of such obligation or liability. Notwithstanding the foregoing, the City will issue no additional Indebtedness which is to be secured by General Airport Revenues while a Term Loan is outstanding unless all outstanding Term Loans are to be paid in full from the proceeds of such additional Indebtedness.

*Section 8.7. Dealer Memorandum and Other Document.* Other than the information contained in Appendix \_\_\_ of the Dealer Memorandum under the caption “\_\_\_\_\_,” the City shall not permit any Dealer to include any material or reference relating to the Bank or any financial information relating to the Bank in any offering memorandum or any other document or any tombstone, unless such material or reference or financial information is approved in writing by the Bank prior to its inclusion therein.

*Section 8.8. Transfer of Airport.* The City shall not transfer, sell, lease or dispose of all or substantially all of the properties and facilities constituting the Enterprise unless either (i) the City receives the prior written consent of the Bank or (ii) the City pays to the Bank all amounts due and owing under this Agreement.

*Section 8.9. Exempt Status.* The City shall not take any action, omit to take any action or cause or permit another Person to take any action or omit to take any action, which, if taken or omitted, would adversely affect the excludability of interest on the Covered Notes (which are issued as tax-exempt) from the gross income of the holders thereof for purposes of Federal income taxation.

*Section 8.10. Investments.* The City shall not make any investments of funds governed by the Master Trust Agreement, or execute any agreements to make any investments of funds

governed by the Master Trust Agreement, that are not Permitted Investments, as defined in the Master Trust Agreement.

*Section 8.11. Consolidation, Merger, etc.* The City shall not dissolve or otherwise dispose of all or substantially all of the assets of the Enterprise or consolidate the Enterprise with or merge the Enterprise into another Person or permit one or more other Persons to consolidate with or merge into the Enterprise; *provided, however*, that the City may consolidate the Enterprise with or merge the Enterprise into another Person or permit one or more other Persons to consolidate with or merge into the Enterprise if each of the following conditions shall have been fulfilled: (i) such merger or consolidation shall be with or into another governmental entity which shall assume in writing, satisfactory in form and substance to the Bank, or by operation of law the due and punctual performance and observance of all of the covenants, agreements and conditions of this Agreement and the other Program Documents; (ii) such merger or consolidation shall not adversely affect or impair to any extent or in any manner (a) the Net General Airport Revenues, (b) the availability of the Surplus Revenues for the payment and security of the Covered Notes and the Payment Obligations under this Agreement, or (c) the pledge or the security afforded by the Issuing and Paying Agent Agreement and herein, and the Enterprise shall have furnished to the Bank an opinion, reasonably satisfactory in form and content, of counsel, reasonably satisfactory to counsel to the Bank, to such effect; (iii) such merger or consolidation (as evidenced by, among other things, pro forma financial statements and projections) will not result in a Material Adverse Effect; and (iv) the City shall have given the Bank not less than 60 days' prior notice of such disposition, merger or consolidation and furnished to the Bank all such information concerning such disposition, merger or consolidation as shall have been reasonably requested by the counsel to the Bank.

*Section 8.12. Swap Termination Payments.* The City shall not allow any Lien on General Airport Revenues securing any termination payment under any Swap Contract providing interest rate support to any Senior and Parity Debt to be first in priority to, or on parity with, the payment of the Covered Notes or any other Payment Obligation hereunder.

*Section 8.13. Immunity.* If and to the extent permitted by applicable law, the City agrees that it will not assert any immunity it may have as a governmental entity from lawsuits with respect to the enforcement of any of the obligations of the City under this Agreement.

## **ARTICLE IX DEFAULTS AND REMEDIES**

*Section 9.1. Events of Default.* The occurrence and continuance of one or more of the following events shall constitute an "*Event of Default*":

- (a) The City fails to pay, or cause to be paid, when due any Payment Obligation or any principal of or interest on any Term Loan or any interest on any Note; *provided, however*, that an Unreimbursed Drawing shall not be considered due on a

Drawing Date if the conditions precedent set forth in Section 4.2 have been satisfied and such Unreimbursed Drawing has been converted to a Term Loan; or

(b) Any representation, warranty or statement made by or on behalf of the City herein or in any other Program Document or in any certificate delivered pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which made or deemed made; or the documents, certificates or statements of the City (including unaudited financial reports, budgets, projections and cash flows of the Enterprise) furnished to the Bank by or on behalf of the City in connection with the transactions contemplated hereby, when taken as a whole, are materially inaccurate in light of the circumstances under which they were made and as of the date on which they were made; or

(c) (i) The City fails to perform or observe any term, covenant, condition subsequent or agreement contained in Section 2.3(b), 7.1, 7.2(a), 7.2(b), 7.2(g), 7.2(h), 7.2(i), 7.8, 7.9, 7.12, 7.13(b), 7.14, 7.15, 7.18 or Article VIII hereof or (ii) the City fails to perform or observe any other term, covenant or agreement contained in this Agreement or the Fee Letter (other than those referred to in Section 9.1(a) and 9.1(c)(i) hereof) and any such failure cannot be cured or, if curable, remains uncured for thirty (30) days after notice thereof to the City; or

(d) The City shall (i) default in any payment of any Indebtedness (including any swap termination payment or contingent obligation under a Swap Contract) secured by a charge, Lien or encumbrance on the General Airport Revenues with a priority of payment from General Airport Revenues that is senior to, or on a parity with, the Covered Notes, the Payment Obligations and the Term Loans, including Senior Lien Bonds (“*Secured Debt*”), beyond the period of grace, if any, provided in the instrument or agreement under which such Secured Debt was created, or (ii) default in the observance or performance of any agreement or condition relating to any Secured Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Secured Debt (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Secured Debt to become due prior to its stated maturity; or

(e) Any Secured Debt shall be declared to be due and payable, or required to be prepaid (for the avoidance of doubt, amounts required to be prepaid shall not include optional prepayments) other than by a regularly scheduled required prepayment, prior to the stated maturity thereof; or

(f) Any Program Document, except for any Dealer Agreement or Issuing and Paying Agent Agreement which has been terminated due to a substitution of the Dealer or

Issuing and Paying Agent, or any material provision thereof shall cease to be in full force or effect, or the City or any Person acting by or on behalf of the City shall deny or disaffirm the City's obligations under any Program Document; or

(g) The City fails to pay when due one or more final, non-appealable judgment or judgments or final, non-appealable order or orders against it, which judgment or judgments or order or orders is payable from General Airport Revenues and, in the aggregate, are in excess of \$10,000,000; or

(h) (i) The City or any Governmental Authority of competent jurisdiction imposes a debt moratorium, debt restructuring, debt adjustment or comparable restriction on repayment when due and payable of the principal of or interest on any obligation secured by a Lien, charge or encumbrance upon the General Airport Revenues, or (ii) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, the City seeks to have an order for relief entered with respect to it or the Enterprise or seeking to adjudicate it or the Enterprise insolvent or bankrupt or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or the Enterprise or its debts or those of the Enterprise, or (iii) the City seeks appointment of a receiver, trustee, custodian or other similar official for itself or the Enterprise or for any substantial part of the City's property, or the City shall make a general assignment for the benefit of its creditors, or (iv) there shall be commenced against the City or the Enterprise any case, proceeding or other action of a nature referred to in clause (ii) and the same shall remain undismissed, or (v) there shall be commenced against the City or the Enterprise any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal, within 60 days from the entry thereof, or (vi) the City takes action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), (iii), (iv) or (v) above, or (vii) the City or the Enterprise shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(i) Any of Moody's, Fitch or S&P suspends, withdraws (other than a withdrawal requested by the City for non-credit related reasons) or downgrades its long-term unenhanced rating of any Senior Lien Bonds below "Baa2" (or its equivalent), "BBB" (or its equivalent) or "BBB" (or its equivalent), respectively; *provided, however*, that so long as any obligations remain due and owing Citibank, N.A., under the Citibank Reimbursement Agreement, it shall be an "Event of Default" hereunder if any of Moody's, Fitch or S&P suspends, withdraws (other than a withdrawal requested by the City for non-credit related reasons) or downgrades its long-term unenhanced rating of any Senior Lien Bonds below "Baa1" (or its equivalent), "BBB+" (or its equivalent) or

“BBB+” (or its equivalent), respectively, for a period of 120 consecutive calendar days;  
or

(j) (i) The validity or enforceability of any material provision of this Agreement or any other Program Document is contested by the City or by any governmental agency or authority having jurisdiction over the City; or (ii) the City shall deny that it has any further liability or obligation under this Agreement or any other Program Document.

*Section 9.2. Rights and Remedies upon Default.* Upon the occurrence of an Event of Default hereunder, the Bank shall take any or all of the following actions:

(a) By notice to the City, declare all Unreimbursed Drawings, Term Loans, the Bank Note and interest thereon, immediately due and payable, whereupon the same shall become immediately due and payable (*provided* that, if an Event of Default specified in Section 9.1(h) hereof shall occur, the result which would occur upon the giving of written notice of such declaration shall occur automatically without the giving of any such notice); and/or

(b) By written notice to the Issuing and Paying Agent in the form of Exhibit C hereto (which notice shall constitute a “Stop Order” for purposes of the Issuing and Paying Agent Agreement) prohibit, until such time, if any, as the Bank shall withdraw (in writing) such notice, the issuance of additional Covered Notes, reduce the Stated Amount of the Letter of Credit to the amount of the then Outstanding Covered Notes supported by the Letter of Credit and interest payable thereon at maturity of such Covered Notes and/or terminate the Stated Amount as the then Outstanding Covered Notes are paid; and/or

(c) Petition a court of competent jurisdiction to issue a mandamus order to the City to compel specific performance of the covenants of the City contained in any of the Program Documents; and/or

(d) Give written notice of the occurrence of an Event of Default to the City and the Issuing and Paying Agent and exercise any rights and remedies available to the Bank at law, equity or under any Program Document; and/or

(e) Issue the Final Drawing Notice (the effect of which shall be to cause the Termination Date of the Letter of Credit to occur on the 15th day after the date of receipt thereof by the Issuing and Paying Agent).

*Section 9.3. No Waiver.* No failure on the part of the Bank 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 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.

**ARTICLE X  
RESERVED**

**ARTICLE XI  
MISCELLANEOUS**

*Section 11.1. Evidence of Debt.* The Bank shall maintain in accordance with its usual practices an account or accounts evidencing the obligations owed to the Bank resulting from each Drawing and each Term Loan made from time to time hereunder and the amounts of principal and interest payable to the Bank with respect to such Drawings and Term Loans and paid from time to time hereunder.

*Section 11.2. Amendments, Waivers, Etc.* No amendment or waiver of any provision of this Agreement or, subject to Section 8.1 hereof, any other Program Document, nor consent to any departure by the City therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

*Section 11.3. Addresses for Notices.* Any notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be mailed by first-class mail, registered or certified, return receipt requested, or express mail, postage prepaid, or sent by telex, telegram, telecopy or other similar form of rapid transmission confirmed by mailing (by first-class mail, registered or certified, return receipt requested, or express mail, postage prepaid) written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party. All such communications shall be mailed, sent or delivered to the address or numbers set forth below, or as to each party at such other address or numbers as shall be designated by such party in a written notice to the other parties.

- (i) If to the City:
- City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113-1905  
Attention: Debt Management – Finance  
Telephone: (408) 535-7010  
Facsimile: (408) 292-6482

with a copy to: San Jose International Airport  
Department of Aviation

San Jose, CA \_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_-\_\_\_\_

For service of process: City of San Jose  
Office of the City Clerk  
200 East Santa Clara Street  
San Jose, California 95113

with a copy to: City of San Jose  
City Attorney's Office  
200 East Santa Clara Street, 16th Floor  
San Jose, California 95113

(ii) if to the Bank with  
respect to credit matters: Bank of America, N.A.  
California Government Banking  
Mailcode: CA9-193-13-17  
333 South Hope Street, 13<sup>th</sup> Floor  
Los Angeles, California 90071  
Attention: Credit Products  
Telephone: (213) 621-7146  
Facsimile: (206) 585-9024

if to the Bank, with  
respect to Drawings under  
the Letter of Credit: Bank of America, N.A.  
Trade Operations  
1000 W. Temple Street, 7th Floor  
CA9-705-07-5  
Los Angeles, California 90012  
Attention: Standby Letter of Credit Department  
Telephone: (213) 240-6986  
Telecopier: (213) 457-8841-3140

(iii) If to the Issuing and  
Paying Agent:

Deutsche Bank Trust Company Americas  
60 Wall Street, 27th Floor  
New York, NY 10005  
Attention: Trust and Securities Services  
Telephone: (212) 250-7848  
Facsimile: (212) 797-8618

(iv) If to the Dealers:

\_\_\_\_\_  
\_\_\_\_\_  
New York, New York \_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

*Section 11.4. Survival of This Agreement.* All covenants, agreements, representations and warranties made in this Agreement shall survive the issuance by the Bank of the Letter of Credit and shall continue in full force and effect so long as the Letter of Credit shall be unexpired or any sums drawn or due thereunder or any other obligations shall be outstanding and unpaid, regardless of any investigation made by any Person and so long as any amount payable hereunder remains unpaid. Whenever in this Agreement the Bank is referred to, such reference shall be deemed to include the successors and assigns of the Bank and all covenants, promises and agreements by or on behalf of the City which are contained in this Agreement shall inure to the benefit of the successors and assigns of the Bank. The rights and duties of the City may not be assigned or transferred without the prior written consent of the Bank, and all obligations of the City hereunder shall continue in full force and effect notwithstanding any assignment by the City of any of its rights or obligations under any of the Program Documents or any entering into, or consent by the City to, any supplement or amendment to, or termination of, any of the Program Documents. Except as provided in Section 11.10 hereof, the rights and duties of the Bank may not be assigned or transferred without the prior written consent of the City.

*Section 11.5. Costs, Expenses and Taxes.* (a) The City shall pay within thirty days of demand (i) the reasonable fees and disbursements of Chapman and Cutler LLP, special counsel to the Bank, in connection with the negotiation, preparation and execution of this Agreement and the other documents described herein (which fees shall not exceed \$40,000 plus out-of-pocket expenses), (ii) the out-of-pocket and travel expenses incurred by the Bank (up to \$1,500) in connection with the negotiation, preparation and execution of this Agreement and the other documents described herein, (iii) all out-of-pocket expenses and internal charges of the Bank (including fees and disbursements of counsel to the Bank) incurred in connection with any waiver or consent under any Program Document or any amendment of any Program Document or any Default or alleged Default hereunder and (iv) if there is an Event of Default, all out-of-pocket expenses and internal charges incurred by the Bank (including fees and disbursements of counsel and time charges of attorneys who may be employees of the Bank) in connection with such Event of Default and collection and other enforcement proceedings resulting therefrom. To

the extent permitted by law, the City shall indemnify the Bank against any transfer taxes, documentary taxes, assessments or charges made by any Governmental Authority by reason of the execution and delivery of this Agreement or the Letter of Credit.

(b) To the extent permitted by the law, the City hereby indemnifies and holds harmless the Bank from and against any and all claims, damages, losses, liabilities, costs or expenses (including specifically reasonable attorneys fees) which the Bank may incur (or which may be claimed against the Bank by any Person whatsoever) by reason of or in connection with (i) the execution and delivery of this Agreement, the Letter of Credit and the transactions contemplated hereby or thereby and (ii) any untrue statement or alleged untrue statement of any material fact contained in the Dealer Memorandum prepared and distributed in connection with the Covered Notes (except for any information provided by the Bank for inclusion in such Dealer Memorandum, for which no indemnity is given), or the omission or alleged omission to state therein a material fact necessary to make such statements in light of the circumstances under which they are or were made, not misleading; *provided* that the City shall not be required to indemnify the Bank, to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by the Bank's willful misconduct or negligence. The Bank is hereby expressly authorized and directed to honor any demand for payment which is made under the Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the City, the Dealer, the Issuing and Paying Agent or any other person or the respective rights, duties or liabilities of any of them, or whether any facts or occurrences represented in any of the documents presented under the Letter of Credit are true and correct.

(c) To the fullest extent permitted by applicable law, the City shall not assert, and hereby waives, any claim against the Bank, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, the Letter of Credit, any other Program Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby or the use of the proceeds thereof.

(d) The obligations of the City under this Section 11.5(b) shall survive the termination of this Agreement.

*Section 11.6. Right of Setoff; Other Collateral.* (a) Upon the occurrence and during the continuance of an Event of Default, the Bank is hereby authorized at any time and from time to time without notice to the City (any such notice being expressly waived by the City), and to the fullest extent permitted by law, to setoff, to exercise any banker's lien or any right of attachment and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies of the Enterprise at any time held by the Bank which secures (A) Indebtedness of the City secured by a Lien on General Airport Revenues on a parity with or subordinate to the Lien on General Airport Revenues securing the Payment Obligations hereunder or Indebtedness of the City payable from General Airport Revenues on a priority

which is on a parity with or subordinate to Payment Obligations hereunder or (B) Indebtedness at any time owing by the Bank to or for the account of the City which the payment by Bank to the City would constitute General Airport Revenues which would secure Indebtedness of the City secured by a Lien on General Airport Revenues on a parity with or subordinate to the Lien on General Airport Revenues securing the Payment Obligations hereunder (irrespective of the currency in which such accounts, monies or Indebtedness may be denominated and the Bank is authorized to convert such accounts, monies and Indebtedness into United States dollars) against any and all of the obligations of the City in respect of the Enterprise hereunder, whether or not the Bank shall have made any demand hereunder or thereunder. Notwithstanding anything set forth herein to the contrary, no provision of this Section 11.6 shall be effective to the extent it contravenes any provision of the Master Bond Resolution or the Issuing and Paying Agent Agreement.

(b) The rights of the Bank under this Section are in addition to, in augmentation of, and do not derogate from or impair, other rights and remedies (including, without limitation, other rights of setoff) which the Bank may have. The Bank agrees to promptly notify the City after any such setoff and application referred to in subsection (a) above, *provided* that failure to give such notice shall not affect the validity of such setoff and application.

*Section 11.7. Bank Information.* Upon receipt of written request from the City or any Dealer, the Bank shall provide the Dealer with (i) a description of the Bank for inclusion in any offering memorandum prepared by the Dealer in respect of the Commercial Paper Notes (including the Covered Notes) and (ii) a copy of the Bank's most recent Annual Report as prepared by the Bank for distribution to the general public.

*Section 11.8. Severability.* Any provision of this Agreement which 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.

*Section 11.9. Governing Law; Venue.* (a) **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS; *PROVIDED, HOWEVER,* THAT THE OBLIGATIONS OF THE CITY UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS.

(b) *SUBMISSION TO JURISDICTION.* EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXTENT PERMITTED BY APPLICABLE LAW THE NONEXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT OF THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF

ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER PROGRAM DOCUMENT SHALL AFFECT ANY RIGHT THAT EITHER PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT AGAINST THE ANY OTHER PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) *WAIVER OF VENUE.* EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER PROGRAM DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) *SERVICE OF PROCESS.* EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.3 HEREOF. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

*Section 11.10. Participations by the Bank.* (a) The Bank may grant participations herein or in any of its rights and security hereunder, *provided* that any such participation shall grant to the City the right to continue dealing solely with the Bank. Any such participant is referred to in this agreement as a “*Participant.*” In connection with any proposed participation, the Bank may disclose to the proposed Participant any information that the City is required to deliver to the Bank pursuant to this Agreement. The City agrees that each Participant shall be entitled to the benefit of the cost protection and indemnification provisions of this Agreement contained in Sections 5.2, 5.4 and 11.5(b) hereof to the same extent that the Bank would be entitled had the Bank not sold a participation to such Participant. No participation in this Agreement sold by the Bank shall increase the City’s obligations under this Agreement beyond those that exist in favor of the Bank. The Bank shall enforce the provisions of Sections 5.2, 5.4 and 11.5(b) hereof in favor of Participants. In no event shall any participation release the Bank from any of its obligations under the Letter of Credit.

(b) The Bank may at any time assign to one or more banks or other institutions (each an “*Assignee*”) all, or a proportionate part of all, of its rights and obligations under this Agreement, and such Assignee shall assume such rights and obligations, pursuant to an assignment and

assumption agreement acceptable to the Bank; *provided that* no such assignment shall be made unless the City has given its written consent thereto (which consent shall not be unreasonably withheld); *provided, further,* that no such consent of the City shall be required if the proposed Assignee is an affiliate of the Bank. Upon such assignment, the Assignee shall have all of the rights and obligations of the Bank hereunder to the same extent as if it were a party hereto. In no event shall any such assignment release the Bank from any of its obligations under the Letter of Credit.

(c) Anything herein to the contrary notwithstanding, including without limitation Section 5.2 hereof, if any assignee bank or Participant shall incur increased costs or capital adequacy requirements as contemplated by Section 5.2 hereof, and such increased costs or capital adequacy requirements are greater than those that the Bank would have incurred had it not made an assignment or granted a participation interest as provided for in this Section 11.10, then the City shall not be obligated to pay to such assignee bank or such Participant, as applicable, any portion of the cost greater than that which the City would have paid under the provisions of Section 5.2 hereof had the Bank not made such assignment or granted such participation interest.

*Section 11.11. No Personal Liability.* No member, officer, agent or employee of the City shall be individually or personally liable for the obligations of the City hereunder or be subject to personal liability or accountability by reason of any provision hereof.

*Section 11.12. Limited Liability of the Issuing and Paying Agent and the Bank.* The City assumes all risks of the acts or omissions of the Issuing and Paying Agent and any transferee of the Letter of Credit with respect to its use of the Letter of Credit. Neither the Bank nor its Parent nor any of their respective officers, directors, employees or agents shall be liable or responsible for: (a) the use which may be made of the Letter of Credit or for any acts or omissions of the Issuing and Paying Agent and any beneficiary or transferee in connection therewith; (b) the validity, sufficiency, or genuineness of documents, or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent, or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of its Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit; *provided* that the City shall have a claim against the Bank and the Bank shall be liable to the City, to the extent, but only to the extent, of any direct, as opposed to consequential, damages suffered by the City which the City proves were caused by (i) the Bank's willful misconduct or gross negligence in determining whether documents presented under its Letter of Credit comply with the terms thereof or (ii) the Bank's willful failure to pay under the Letter of Credit after the presentation to it by the Issuing and Paying Agent of a demand and certificate strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary. The failure of the City to

receive the proceeds from the sale of Covered Notes, for whatever reason, shall not affect the obligation of the City to reimburse the Bank for any Drawing under the Letter of Credit or any Term Loan hereunder.

*Section 11.13. 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 11.14. Counterparts.* This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, taken together, shall constitute but one and the same Agreement.

*Section 11.15. Waiver of Jury Trial.* THE CITY AND THE BANK HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY PROGRAM DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, THE CITY AND THE BANK HEREBY CONSENT TO THE ADJUDICATION OF ANY AND ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE SHALL BE EMPOWERED TO HEAR AND DETERMINE ANY AND ALL ISSUES IN SUCH REFERENCE WHETHER FACT OR LAW. THE APPLICANT AND THE BANK REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND CONSENT AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE FOLLOWING THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF ITS CHOICE ON SUCH MATTERS. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

*Section 11.16. Governmental Regulations.* The City shall ensure that the proceeds of the Covered Notes shall not be used to violate any of the foreign asset control regulations of the Office of Foreign Assets Control (“OFAC”) or any enabling statute or Executive Order relating thereto. Further, the City shall comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act (“BSA”) laws and regulations, as amended. The City agrees to provide documentary and other evidence of the City’s identity as may be requested by Bank at any time to enable Bank to verify the City’s identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

*Section 11.17. USA PATRIOT ACT.* The Bank hereby notifies the City 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”), it is required to obtain, verify and record information that identifies the City, which information includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Patriot Act.

*Section 11.18. Electronic Transmissions.* The Bank is authorized to accept and process any amendments, transfers, assignments of proceeds, Drawings, consents, waivers and all documents relating to the Letter of Credit which are sent to Bank by electronic transmission, including the SWIFT, electronic mail, telex, telecopy, telefax, courier, mail or other computer generated telecommunications and such electronic communication shall have the same legal effect as if written and shall be binding upon and enforceable against the City. The Bank may, but shall not be obligated to, require authentication of such electronic transmission or that the Bank receives original documents prior to acting on such electronic transmission.

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

Approved as to Form  
CITY ATTORNEY

CITY OF SAN JOSE

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

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

BANK OF AMERICA, N.A.

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

EXHIBIT A

IRREVOCABLE TRANSFERABLE DIRECT-PAY LETTER OF CREDIT  
No. \_\_\_\_\_

BANK OF AMERICA, N.A.  
TRADE OPERATION  
1000 W. TEMPLE STREET, 7TH FLOOR  
CA9-705-07-5  
LOS ANGELES, CA 90012

Deutsche Bank Trust Company Americas,  
as Issuing and Paying Agent  
60 Wall Street, 27th Floor  
New York, New York 10005

Attention: Trust and Securities Services

Ladies and Gentlemen:

1. At the request of the City of San Jose, California (the “City”), Bank of America, N.A. (the “Bank”) hereby establishes, in favor of Deutsche Bank Trust Company Americas, as issuing and paying agent (the “Issuing and Paying Agent”) under that certain Second Amended and Restated Issuing and Paying Agent Agreement, dated as of January 1, 2011, as amended and supplemented from time to time (the “Issuing and Paying Agent Agreement”), between the City and the Issuing and Paying Agent, its Irrevocable Direct Pay Letter of Credit No. \_\_\_\_\_ (the “Letter of Credit”) issued pursuant to that certain Letter of Credit and Reimbursement Agreement dated as of January 1, 2011, as amended and supplemented from time to time (the “Reimbursement Agreement”), between the Bank and the City, in the initial stated amount of \$83,340,000 (calculated as the sum of the maximum principal amount of the Commercial Paper Notes (*i.e.*, \$76,545,294) plus interest thereon at a maximum rate of twelve percent (12%) per annum for a period of two hundred seventy (270) days calculated on the basis of a year of 365 days and the actual number of day elapsed) (said initial stated amount, as reduced or reinstated from time to time as herein provided, herein referred to as the “Stated Amount”), which may be drawn upon by the Issuing and Paying Agent to pay the principal of the City’s San Jose International Airport Subordinated Commercial Paper Notes, Series A-2a, Series A-2b, Series B-2 and Series C-2 (the “Covered Notes”) together with accrued and unpaid interest thereon. The Stated Amount of this Letter of Credit will be reduced to the amount set forth in

Council Agenda: 1-11-11

Item No.: 3.2 (b)

**DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.**

Annex B hereto from time to time delivered by you to the Bank to be attached hereto and made a part hereof; *provided, however*, that in no event shall the Stated Amount of this Letter of Credit be reduced to an amount less than the then unpaid principal amount of all Covered Notes outstanding plus all interest due on the stated maturity dates thereof as certified to the Bank by the Issuing and Paying Agent in the related Annex B hereto.

2. This Letter of Credit shall expire at 5:00 p.m., New York City time, on the date (the “*Termination Date*”) which is the earliest to occur of: (i) January 11, 2013 (the “*Letter of Credit Expiration Date*”), as such date may be extended in a Notice of Extension from the Bank to the Issuing and Paying Agent and the City in the form attached hereto as Annex E, (ii) the date of payment of a Drawing, not subject to reinstatement, which results in the Stated Amount being reduced to \$0, (iii) receipt by the Bank of a certificate signed by your duly authorized officer in the form of Annex C attached hereto appropriately completed, accompanied by the original of this Letter of Credit stating that you are surrendering the original of this Letter of Credit to the Bank or (iv) the earlier of (a) the 15th calendar day after the date on which you receive written notice from us in the form of Annex F attached hereto (the “*Final Drawing Notice*”), and (b) the date on which the Drawing is honored by the Bank resulting from the delivery of the Final Drawing Notice. All Drawings hereunder shall be paid from immediately available funds of the Bank.

3. Funds under this Letter of Credit are available to you against your presentation of the drawing certificate in the form of (i) Annex A-1 (with respect to the payment at maturity of the principal of and interest on Covered Notes), or (ii) Annex A-2 (with respect to the payment at maturity of the principal of and interest on Covered Notes after a Final Drawing Notice), attached hereto (any such certificate being a “*Drawing*”) by facsimile (at facsimile number (213) 857-8841), Attention: Standby Letter of Credit No. \_\_\_\_\_, or at such other address or telecopier number as we may specify to you in writing without further need of documentation, including the original of this Letter of Credit, it being understood that each Payment Document so submitted is to be the sole operative instrument of drawing. You shall use your best efforts to give telephonic notice of a drawing to the Bank at its Standby Letter of Credit Department (at: (213) 240-6986 and have this Letter of Credit number available) on the Business Day (as hereinafter defined) preceding the day of such drawing (but such notice shall not be a condition to drawing hereunder and you shall have no liability for not doing so). Each Drawing so presented shall have all blanks appropriately filled in and shall be signed by an authorized officer of the Issuing and Paying Agent and shall be in the form of a letter on the letterhead of the Issuing and Paying Agent delivered or telecopied to the Bank.

4. The Bank hereby agrees that all demands for payment made under and in strict compliance with the terms of this Letter of Credit will be duly honored upon receipt of the certificates as specified in paragraph 4 hereof and if presented at the aforesaid office on or before the Termination Date. If a Drawing is received by the Bank at or prior to 11:00 a.m., New York City time, on a Business Day, and *provided* that the documents presented in connection therewith strictly conform to the terms and conditions hereof, payment shall be made

A-1-2

Council Agenda: 1-11-11

Item No.: 3.2 (b)

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of the amount specified in immediately available funds, no later than 2:30 p.m., New York City time, on the same Business Day, or such later day, which must be a Business Day, as specified in the certificate accompanying such Drawing. If a Drawing is made hereunder after 11:00 a.m., New York City time, on a Business Day, and *provided* that the documents presented in connection therewith strictly conform to the terms and conditions hereof, payment shall be made of the amount specified in immediately available funds, no later than 2:30 p.m., New York City time, on the next Business Day, or such later day, which must be a Business Day, as specified in the certificate accompanying such Drawing. The Bank will pay all Drawings under this Letter of Credit with its own funds. Payment under this Letter of Credit shall be made by the Bank by wire transfer of immediately available funds to the Issuing and Paying Agent in accordance with its instructions on said certificate. Such account may be changed only by presentation to the Bank of a letter in form satisfactory to the Bank specifying a different account with the Issuing and Paying Agent and executed by the Issuing and Paying Agent. As used in this Letter of Credit “Business Day” shall mean a day other than (i) a Saturday, a Sunday or a legal holiday or (ii) any day which is a day on which the Bank’s office for receiving drawing requests under this Letter of Credit are to be presented are required or authorized to close.

5. Multiple drawings may be made hereunder, *provided* that subject to paragraph 8 hereof, each Drawing honored by the Bank hereunder shall *pro tanto* reduce the Stated Amount of this Letter of Credit and the Bank’s liability in respect thereof. Such reduction shall be effective whether or not the Drawing complied with the terms of this Letter of Credit and notwithstanding any acts or omissions, whether authorized or unauthorized, of the Issuing and Paying Agent or any officer, director, employee or agent of the Issuing and Paying Agent in connection with any drawing hereunder or the proceeds thereof or otherwise in connection with this Letter of Credit.

6. After any Drawing, the Stated Amount will be automatically and immediately reinstated by and to the extent of amounts received by the Bank for reimbursement by the City of the Issuing and Paying Agent on behalf of the City of any amounts of such Drawing (subject to any reduction in said Stated Amount as above provided in paragraph 3 hereof), unless the Issuing and Paying Agent shall have received notice from the Bank in substantially the form of Annex G attached hereto that an Event of Default under the Reimbursement Agreement has occurred and is continuing.

7. Only the Issuing and Paying Agent may make drawings under this Letter of Credit. Upon payment as provided in paragraph 4 of the amount specified in a drawing certificate drawn hereunder, the Bank shall be fully discharged of its obligation under this Letter of Credit with respect to such Drawing.

8. This Letter of Credit is intended to apply only to the payment of the principal amount of the Covered Notes and interest thereon upon maturity.

A-1-3

Council Agenda: 1-11-11

Item No.: 3.2 (b)

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9. To the extent not inconsistent with the express terms hereof, this Letter of Credit shall be governed by, and construed in accordance with, the terms of the International Standby Practice 98 (“ISP98”). As to matters not governed by the ISP98 this Letter of Credit shall be governed by and construed in accordance with Article 5 of the Uniform Commercial Code as in effect in the State of New York.

10. Communications with respect to this Letter of Credit shall be addressed to us at Bank of America, N.A., Trade Operations, Mail Code CA9-705-07-05, 1000 W. Temple Street, 7th Floor, Los Angeles, California 90012-1514, Attention: Standby Letter of Credit Department, specifically referring to the number of this Letter of Credit. For telephone assistance, please contact the Standby Letter of Credit Department at (213) 240-6986, and have this Letter of Credit number available.

11. This Letter of Credit is transferable in whole only to your successor as Issuing and Paying Agent under the Issuing and Paying Agent Agreement. Any such transfer (including any successive transfer) shall be subject to the Bank’s receipt of a signed transfer request signed by the transferor and by the transferee in the form of Annex D hereto and payment of our transfer fee, in such case, the transferee instead of the transferor shall be entitled to all the benefits of and rights under this Letter of Credit in the transferor’s place; *provided* that, in such case, any certificates of the Issuing and Paying Agent to be provided hereunder shall be signed by one who states therein that he is a duly authorized officer of the transferee. Transfers to designated foreign nationals and /or specially designated nationals are not permitted as being contrary to the U.S. Treasury Department or Foreign Assets Control Regulations.

12. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Covered Notes), except only the annexes referred to herein; and no such reference shall be deemed to incorporate herein by reference any document, instrument or agreement.

Very truly yours,

BANK OF AMERICA, N.A.

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

**ANNEX A-1**  
**TO**  
**BANK OF AMERICA, N.A.**  
**LETTER OF CREDIT NO. [LOCNO]**

Bank of America, N.A.  
Trade Operations  
Mail Code: CA9-705-07-05  
Standby Letter of Credit Department  
1000 W. Temple Street, 7th Floor  
Los Angeles, California 90012-1514

Re: Drawing Certificate

Gentlemen:

[Issuing and Paying Agent] (together with its successors and assigns, the “*Issuing and Paying Agent*”) hereby certifies to Bank of America, N.A. (the “*Bank*”), with reference to Irrevocable Transferable Direct-Pay Letter of Credit No. [LOCNO] (the “*Letter of Credit*”) issued by the Bank on January 13, 2011 (capitalized terms contained herein are used as defined in the Letter of Credit), that:

1. The Issuing and Paying Agent is the Issuing and Paying Agent under the Issuing and Paying Agent Agreement, and is acting as the agent for the owners of the Covered Notes.

2. The Issuing and Paying Agent hereby makes a demand on the Bank, for payment under the Letter of Credit in the amount of (a) in the amount of \$ \_\_\_\_\_ to be used for the payment of principal of the Covered Notes upon the stated maturity thereof and (b) \$ \_\_\_\_\_ to be used for the payment of interest on the Covered Notes upon the stated maturity thereof.

3. The amount hereby demanded does not exceed the amount available to be drawn under the Letter of Credit for this drawing.

4. The amount hereby demanded will not be applied to any payment in respect of Covered Notes registered in the name of the City or, to the best knowledge of the Issuing and Paying Agent, any nominee for or any Person who owns such Covered Notes for the sole benefit of the City.

5. Upon receipt by the Issuing and Paying Agent of the amount demanded hereby, (a) the Issuing and Paying Agent will apply the same directly to the payment when due of the appropriate amount owing on account of principal of and interest on the Covered Notes pursuant

Council Agenda: 1-11-11

Item No.: 3.2 (b)

**DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.**

to the Issuing and Paying Agent Agreement and Covered Notes, (b) no portion of said amount shall be applied by the Issuing and Paying Agent for any other purpose, and (c) no portion of said amount shall be commingled with other funds held by the Issuing and Paying Agent, except amounts received pursuant to any contemporaneous Demand hereunder.

6. The Issuing and Paying Agent hereby certifies that, on or prior to the date hereof, the Issuing and Paying Agent has not received a Stop Order in the form of Exhibit C hereto from the Bank.

7. Payment by the Bank pursuant to this Drawing shall be made to \_\_\_\_\_, ABA Number \_\_\_\_\_, Account Number \_\_\_\_\_, Attention: \_\_\_\_\_, Re: \_\_\_\_\_.

IN WITNESS WHEREOF, the Issuing and Paying Agent has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

Very truly yours,

[ISSUING AND PAYING AGENT], as Issuing and Paying Agent

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

**ANNEX A-2**  
**TO**  
**BANK OF AMERICA, N.A.**  
**LETTER OF CREDIT NO. [LOCNO]**

Bank of America, N.A.  
Trade Operations  
Mail Code: CA9-705-07-05  
Standby Letter of Credit Department  
1000 W. Temple Street, 7th Floor  
Los Angeles, California 90012-1514

Re: Drawing Certificate Regarding Payment of Principal and Interest after Final  
Drawing Notice

Gentlemen:

[Issuing and Paying Agent] (the "*Issuing and Paying Agent*") hereby certifies to Bank of America, N.A. (the "*Bank*"), with reference to Irrevocable Transferable Direct-Pay Letter of Credit No. [LOCNO] (the "*Letter of Credit*") issued by the Bank on January 13, 2011 (capitalized terms contained herein are used as defined in the Letter of Credit), that:

1. The Issuing and Paying Agent is the Issuing and Paying Agent under the Issuing and Paying Agent Agreement, and is acting as the agent for the owners of the Covered Notes.
2. The Issuing and Paying Agent has received the Final Drawing Notice.
3. The undersigned is making a Drawing under the Letter of Credit with respect to a payment of the principal of and accrued interest on Covered Notes issued in accordance with the Issuing and Paying Agent which mature on or after the date of the Final Drawing Notice.
4. The Issuing and Paying Agent hereby makes a demand on the Bank, for payment under the Letter of Credit (a) in the amount of \$\_\_\_\_\_ to be used for the payment of principal of the Covered Notes upon the stated maturity thereof and (b) \$\_\_\_\_\_ to be used for the payment of interest on the Covered Notes upon the stated maturity thereof.
5. The amount hereby demanded does not exceed the amount available to be drawn under the Letter of Credit for this drawing.
6. The amount hereby demanded will not be applied to any payment in respect of Covered Notes registered in the name of the City or, to the best knowledge of the Issuing and

Council Agenda: 1-11-11

Item No.: 3.2 (b)

**DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.**

Paying Agent, any nominee for or any Person who owns such Covered Notes for the sole benefit of the City.

7. Upon receipt by the Issuing and Paying Agent of the amount demanded hereby, (a) the Issuing and Paying Agent will apply the same directly to the payment when due of the appropriate amount owing on account of principal of and interest on the Covered Notes pursuant to the Issuing and Paying Agent Agreement and Covered Notes, (b) no portion of said amount shall be applied by the Issuing and Paying Agent for any other purpose, and (c) no portion of said amount shall be commingled with other funds held by the Issuing and Paying Agent, except amounts received pursuant to any contemporaneous Demand hereunder.

8. The Issuing and Paying Agent hereby certifies that, on or prior to the date hereof, the Issuing and Paying Agent has not received a Stop Order in the form of Exhibit C hereto from the Bank.

9. Payment by the Bank pursuant to this Drawing shall be made to \_\_\_\_\_, ABA Number \_\_\_\_\_, Account Number \_\_\_\_\_, Attention: \_\_\_\_\_, Re: \_\_\_\_\_.

IN WITNESS WHEREOF, the Issuing and Paying Agent has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

Very truly yours,

[ISSUING AND PAYING AGENT], as Issuing and Paying Agent

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

**ANNEX B**  
**TO**  
**BANK OF AMERICA, N.A.**  
**LETTER OF CREDIT NO. [LOCNO]**

Bank of America, N.A.  
Trade Operations  
Mail Code: CA9-705-07-05  
Standby Letter of Credit Department  
1000 W. Temple Street, 7th Floor  
Los Angeles, California 90012-1514

Re: Reduction of Stated Amount of  
Irrevocable Transferable Direct-Pay Letter of Credit No. [LOCNO]

Gentlemen:

[Issuing and Paying Agent] (the "*Issuing and Paying Agent*") hereby certifies to Bank of America, N.A. (the "*Bank*"), with reference to Irrevocable Transferable Direct-Pay Letter of Credit No. [LOCNO] (the "*Letter of Credit*") issued by the Bank on January 13, 2011 (capitalized terms contained herein are used as defined in the Letter of Credit), that:

1. The Issuing and Paying Agent is the Issuing and Paying Agent under the Issuing and Paying Agent Agreement, and is acting as the agent for the owners of the Covered Notes.

2. The Issuing and Paying Agent hereby notifies you, effective as of \_\_\_\_\_, 20\_\_ (which is a date at least five Business Days succeeding the date of receipt by the Bank of this certificate) (the "*Reduction Date*"), the City has determined that the Stated Amount of the Letter of Credit shall be reduced to \$\_\_\_\_\_ which amount is not less than the amount set out in paragraph 3 below.

3. The Issuing and Paying Agent hereby certifies that (i) \$\_\_\_\_\_ aggregate principal amount of Covered Notes are outstanding, (ii) the amount of interest to maturity of such Covered Notes is \$\_\_\_\_\_ and (iii) the total of (i) and (ii) is not more than the amount to which the Stated Amount is to be reduced pursuant to this Annex B.

4. If any Covered Notes are outstanding as of the Reduction Date, the City has informed the Issuing and Paying Agent that it will not issue additional Covered Notes unless after the issuance of such additional Covered Notes the aggregate principal amount of Covered Notes outstanding, together with the aggregate interest payable on such principal amount of

Covered Notes outstanding, shall be no greater than the Stated Amount as reduced pursuant to this Certificate.

5. The undersigned represents that he/she is a duly authorized officer of the Issuing and Paying Agent.

IN WITNESS WHEREOF, the Issuing and Paying Agent has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

Very truly yours,

**[ISSUING AND PAYING AGENT]**, as Issuing and Paying Agent

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

**ANNEX C  
TO  
BANK OF AMERICA, N.A.  
LETTER OF CREDIT No. [LOCNO]**

Bank of America, N.A.  
Trade Operations  
Mail Code: CA9-705-07-05  
Standby Letter of Credit Department  
1000 W. Temple Street, 7th Floor  
Los Angeles, California 90012-1514

Re: Irrevocable Transferable Direct-Pay Letter of Credit No. [LOCNO]

Gentlemen:

The undersigned, a duly authorized officer of \_\_\_\_\_, as Issuing and Paying Agent (the "*Issuing and Paying Agent*") under the Second Amended and Restated Issuing and Paying Agent Agreement dated as of January 1, 2011 (together with any amendments or supplements thereto, the "*Issuing and Paying Agent Agreement*"), between the City of San Jose and the Issuing and Paying Agent, hereby certifies to Bank of America, N.A. (the "*Bank*"), with respect to the above-referenced Irrevocable Transferable Direct-Pay Letter of Credit No. \_\_\_\_\_ (the "*Letter of Credit*") issued by the Bank in favor of the Issuing and Paying Agent that [prior to the date hereof, all of the outstanding Covered Notes, as defined in the Letter of Credit, were paid in accordance with their terms] [an Alternate Facility in full and complete substitution for the Letter of Credit has been issued and is in effect in accordance with the Issuing and Paying Agent Agreement].\*

Pursuant to said Issuing and Paying Agent Agreement, we are delivering herewith the original of the Letter of Credit for cancellation.

---

\* Select appropriate certification.

IN WITNESS WHEREOF, the Issuing and Paying Agent has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

Very truly yours,

**[ISSUING AND PAYING AGENT]**, as Issuing and Paying Agent

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

**ANNEX D  
TO  
BANK OF AMERICA, N.A.  
LETTER OF CREDIT NO. [LOCNO]**

[Letterhead of Issuing and Paying Agent]

**TRANSFER REQUEST**

Date:

Bank of America, N.A.  
Trade Operations  
Mail Code: CA9-705-07-05  
Standby Letter of Credit Department  
1000 W. Temple Street, 7th Floor  
Los Angeles, California 90012-1514

Re: Irrevocable Transferable Direct-Pay Letter of Credit No. [LOCNO]

We, the undersigned "Transferor", hereby irrevocably transfer all of our rights to draw under the above referenced Irrevocable Transferable Direct-Pay Letter of Credit No. [LOCNO] (the "*Letter of Credit*") in its entirety to:

NAME OF TRANSFEREE

\_\_\_\_\_  
(Print Name and complete address of the Transferee)

"Transferee"

ADDRESS OF TRANSFEREE

\_\_\_\_\_  
CITY, STATE/COUNTRY ZIP  
\_\_\_\_\_

In accordance with ISP98 (as defined in the Letter of Credit), Rule 6, regarding transfer of drawing rights, all rights of the undersigned Transferor in the Letter of Credit are transferred to the Transferee, who shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the Transferee without necessity of any consent of or notice to the undersigned Transferor.

The original Letter of Credit, including amendments to this date, is attached and the undersigned Transferor requests that you endorse an acknowledgment of this transfer on the

Council Agenda: 1-11-11

Item No.: 3.2 (b)

**DRAFT--Contact the Office of the City Clerk at (408)535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

reverse thereof. The undersigned Transferor requests that you notify the Transferee of this Letter of Credit in such form and manner as you deem appropriate, and the terms and conditions of the Letter of Credit as transferred.

If you agree to these instructions, please advise the Transferee of the terms and conditions of this transferred Letter of Credit and these instructions.

Payment of transfer fee of U.S. \$2,500 is for the account of the City (as defined in the Letter of Credit) who agrees to pay you on demand any expense or cost you may incur in connection with the transfer. Receipt of such shall not constitute consent by you to effect the transfer.

Transferor represents and warrants that (a) the Transferee is the Transferor's successor issuing and paying agent under the Issuing and Paying Agent Agreement (as defined in the Letter of Credit), (b) the enclosed Letter of Credit is original and complete, and (c) there is no outstanding demand or request for payment or transfer under the Letter of Credit affecting the rights to be transferred.

The effective date of the transfer of the Letter of Credit shall be the date hereafter on which Transferor effects the requested transfer by acknowledging this request and giving notice thereof to Transferee.

(Signature Page Follows)

Sincerely yours,

\_\_\_\_\_  
(Print Name of Transferor)

\_\_\_\_\_  
(Transferor's Authorized Signature)

\_\_\_\_\_  
(Print Authorized Signers Name and Title)

\_\_\_\_\_  
(Telephone Number/Fax Number)

Acknowledged:

\_\_\_\_\_  
(Print Name of Transferee)

\_\_\_\_\_  
(Transferee's Authorized Signature)

\_\_\_\_\_  
(Print Authorized Signers Name and Title)

\_\_\_\_\_  
(Telephone Number/Fax Number)

Acknowledged as of \_\_\_\_\_, 20\_\_:

BANK OF AMERICA, N.A.

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

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

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

SIGNATURE GUARANTEED

Signature(s) with title(s) conform(s) with that/those on file with us for this individual, entity or company and signer(s) is/are authorized to execute this agreement. We attest that the individual, company or entity has been identified by us in compliance with USA PATRIOT Act procedures of our bank.

\_\_\_\_\_  
(Print Name of Bank)

\_\_\_\_\_  
(Address of Bank)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Print Name and Title of Authorized Signer)

\_\_\_\_\_  
(Authorized Signature)

SIGNATURE GUARANTEED

Signature(s) with title(s) conform(s) with that/those on file with us for this individual, entity or company and signer(s) is/are authorized to execute this agreement. We attest that the individual, company or entity has been identified by us in compliance with USA PATRIOT Act procedures of our bank.

\_\_\_\_\_  
(Print Name of Bank)

\_\_\_\_\_  
(Address of Bank)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Print Name and Title of Authorized Signer)

\_\_\_\_\_  
(Authorized Signature)

**ANNEX E**  
**TO**  
**BANK OF AMERICA, N.A.**  
**LETTER OF CREDIT No. [LOCNO]**

**[Date]**

Deutsche Bank Trust Company Americas,  
as Issuing and Paying Agent  
60 Wall Street, 27th Floor  
New York, New York 10005

Attention: Trust and Securities Services

City of San Jose  
Department of Finance  
200 East Santa Clara Street  
San Jose, California 95113-1905

Attention: Debt Management

Re: Notice of Extension Amendment

Ladies and Gentlemen:

Reference is hereby made to that certain Irrevocable Transferable Direct-Pay Letter of Credit No. [LOCNO] (the "*Letter of Credit*"), dated January 13, 2011, established by us in your favor. We hereby notify you that the Letter of Credit Expiration Date is \_\_\_\_\_. You are hereby authorized to attach this Notice of Extension to the Letter of Credit.

All other terms and conditions of the Letter of Credit remain unchanged.

Council Agenda: 1-11-11

Item No.: 3.2 (b)

**DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.**

Very truly yours,

BANK OF AMERICA, N.A.

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

cc: City of San Jose  
Department of Finance  
200 East Santa Clara Street  
San Jose, California 95113-1905  
Attention: Debt Management

**ANNEX F  
TO  
BANK OF AMERICA, N.A.  
LETTER OF CREDIT NO. [LOCNO]**

**[Date]**

Deutsche Bank Trust Company Americas,  
as Issuing and Paying Agent  
60 Wall Street, 27th Floor  
New York, New York  
Attention: Trust & Securities Services

City of San Jose  
Department of Finance  
200 East Santa Clara Street  
San Jose, California 95113-1905  
Attention: Debt Management

Re: Event of Default under Reimbursement Agreement

Ladies and Gentlemen:

The undersigned, authorized officers of Bank of America, N.A. (the “*Bank*”) with reference to Irrevocable Transferable Direct-Pay Letter of Credit No. [LOCNO] dated January 13, 2011 (the “*Letter of Credit*”; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in favor of Deutsche Bank Trust Company Americas, as Issuing and Paying Agent, hereby certify that:

1. There exists an Event of Default under Section 9.1 of the Reimbursement Agreement dated as of January 1, 2011, between the City and the Bank and such Event of Default is continuing.
2. Unless it expires earlier in accordance with its terms, the Letter of Credit will expire on \_\_\_\_\_, 20\_\_\_. [insert date that is 15 days from beneficiary’s receipt of this notice or, if such day is not a Business Day, the next succeeding Business Day].

Council Agenda: 1-11-11  
Item No.: 3.2 (b)

**DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.**

IN WITNESS WHEREOF, the Bank has executed and delivered this certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

BANK OF AMERICA, N.A.

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

cc: City of San Jose  
Department of Finance  
200 East Santa Clara Street  
San Jose, California 95113-1905  
Attention: Debt Management

## EXHIBIT B

### [FORM OF BANK NOTE]

#### BANK NOTE

Dated: January 13, 2011

San Jose, California

For value received, the CITY OF SAN JOSE, CALIFORNIA (the “City”) hereby promises to pay to the order of BANK OF AMERICA, N.A. (the “Bank”), at its office at Bank of America, N.A., California Government Banking, Mailcode: CA9-193-13-17, 333 South Hope Street, 13th Floor, Los Angeles, California 90071 the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) or, if less, the aggregate unpaid principal amount of all Unreimbursed Drawings and Term Loans made by the Bank on the date of this Bank Note, on the dates and in the manner provided for in the Letter of Credit and Reimbursement Agreement, dated as of January 1, 2011 (together with any amendments or supplements thereto, the “Reimbursement Agreement”), by and between the City and the Bank. All capitalized terms used herein and not otherwise defined herein shall have the meanings specified in the Reimbursement Agreement.

The City promises to pay interest on the unpaid principal amount of all Unreimbursed Drawings and Term Loans evidenced by this Bank Note on the dates and at the rates provided for in the Reimbursement Agreement. All payments of principal and interest shall be made to the Bank in lawful money of the United States of America in immediately available funds.

This note is one of the Bank Note referred to in the Reimbursement Agreement and is entitled to the benefits thereof and of the Program Documents referred to therein. As provided in the Reimbursement Agreement, this Bank Note is subject to prepayment, in whole or in part. In the event that an Event of Default shall have occurred and be continuing, the principal of and accrued interest on this Bank Note may be declared due and payable in the manner and with the effect provided in the Reimbursement Agreement.

The Bank agrees, by acceptance of this Bank Note, that before disposing of this Bank Note it will make a notation on the schedule attached hereto of all principal payments and prepayments made hereunder and of the date to which interest hereon has been paid; *provided, however*, that the failure to make any such notation shall not limit or otherwise affect the obligation of the City hereunder with respect to payments of principal of and interest on this Bank Note.

The general fund of the City is not liable for the payment of principal of and interest on this Bank Note, nor is the credit or taxing power of the City pledged for the payment of principal of and interest on this Bank Note. The holder of this Bank Note shall not compel the exercise of the taxing power by the City or the forfeiture of any of its property except the General Airport

Council Agenda: 1-11-11

Item No.: 3.2 (b)

**DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.**

Revenues (as that term is defined in the Reimbursement Agreement). This Bank Note payable solely from the General Airport Revenues held in the Subordinated Debt Account of the Surplus Revenue Fund (as defined in the Reimbursement Agreement) including the earnings on such General Airport Revenues, and this Bank Note does not constitute a legal or equitable pledge, charge, Lien or encumbrance upon any other property of the City. The holder hereof shall not have the right to demand payment of this obligation from any sources or properties of the City except the General Airport Revenues held in the Subordinated Debt Account of the Surplus Revenue Fund including the earnings on such General Airport Revenues.

THIS BANK NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA.

[SEAL]

CITY OF SAN JOSE, CALIFORNIA

ATTEST:

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

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



**EXHIBIT C**

**FORM OF STOP ORDER**

**[Dated Date]**

Deutsche Bank Trust Company Americas,  
as Issuing and Paying Agent  
60 Wall Street, 27th Floor  
New York, New York  
Attention: Trust & Securities Services

City of San Jose  
Department of Finance  
200 East Santa Clara Street  
San Jose, California 95113-1905  
Attention: Debt Management

Re: City of San Jose, California  
San Jose International Airport  
Subordinated Commercial Paper Notes  
Series A-2a, Series A-2b, Series B-2 and Series C-2

Ladies and Gentlemen:

Pursuant to Section 9.2(b) of that certain Reimbursement Agreement, dated as of January 1, 2011 (the "*Reimbursement Agreement*"), between the City of San Jose, California (the "*City*") and the undersigned, you are hereby notified that (i) an "Event of Default" under Section 9.1( ) of the Reimbursement Agreement has occurred and is now continuing and (ii) upon receipt of this notice, no new Commercial Paper Notes (as defined in the Reimbursement Agreement) shall be issued or authenticated. This Stop Order shall remain in effect unless you have received written notification from us that this Stop Order has been rescinded.

Very truly yours,

BANK OF AMERICA, N.A.

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

Council Agenda: 1-11-11  
Item No.: 3.2 (b)

**DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.**

## EXHIBIT D

### CITY OF SAN JOSE, CALIFORNIA

#### COMPLIANCE CERTIFICATE

To: Bank of America, N.A.  
Government Banking  
Mailcode: CA9-193-13-17  
333 South Hope Street, 13th Floor  
Los Angeles, California 90071  
Attention: Credit Products

This Compliance Certificate is furnished to Bank of America, N.A. (the “*Bank*”) pursuant to that certain Letter of Credit and Reimbursement Agreement dated as of January 1, 2011, between the City of San Jose (the “*City*”) and the Bank (as extended, renewed, amended or restated from time to time, the “*Agreement*”). Unless otherwise defined herein, the terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the duly elected \_\_\_\_\_ of the City of San Jose, California;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the City during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Compliance Certificate, except as set forth below;
4. **[Include the following certification in Compliance Certificate required by Section 7.2(a) and Section 7.2(b)]** The financial statements required by Section 7.2[(a)/(b)] of the Agreement and being furnished to you concurrently with this Compliance Certificate are true, correct and complete as of the date and for the periods covered thereby;
5. **[Include the following certification in Compliance Certificate required by Section 7.2(h)]** The City is in compliance with all debt service coverage ratios on a pro forma basis set forth herein and in the Master Bond Resolution required to be satisfied as a condition precedent to the issuance or incurrence of Indebtedness secured by the General Airport Revenues; and

Council Agenda: 1-11-11

Item No.: 3.2 (b)

**DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.**

6. [Include the following certification in Compliance Certificate required by Section 7.2(a) and Section 7.2(h)] The Schedule I hereto sets forth financial data and computations evidencing the Enterprise's compliance with certain covenants of the Agreement, all of which data and computations are, to the best of my knowledge, true, complete and correct and have been made in accordance with the relevant Sections of the Agreement.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the City has taken, is taking, or proposes to take with respect to each such condition or event:

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The foregoing certifications, together with the computations set forth in Schedule I hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

CITY OF SAN JOSE

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

**SCHEDULE I  
TO COMPLIANCE CERTIFICATE**

**CITY OF SAN JOSE, CALIFORNIA**

**COMPLIANCE CALCULATIONS  
FOR LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT  
DATED AS OF JANUARY 1, 2011**

CALCULATIONS AS OF \_\_\_\_\_, \_\_\_\_\_

---

A. Debt Service Coverage Ratio with respect to Senior Lien Parity Debt (Section 7.9(i))

- |    |  |           |
|----|--|-----------|
| 1. | Net General Airport Revenues                         | \$ _____  |
| 2. | Other Available Funds                                | _____     |
| 3. | Line A1 plus A2                                      | _____     |
| 4. | Debt Service with respect to Senior Lien Parity Debt | _____     |
| 5. | Ratio of Line A3 to A4                               | _____:1.0 |
| 6. | Line A5 ratio must not be less than                  | 1.25:1.0  |
| 7. | The Enterprise is in compliance (circle yes or no)   | yes/no    |

B. Debt Service Coverage Ratio with respect to Senior and Parity Lien Debt (Section 7.9(ii))

- |    |  |           |
|----|--|-----------|
| 1. | Net General Airport Revenues                             | \$ _____  |
| 2. | Other Available Funds                                    | _____     |
| 3. | Line B1 plus B2  | _____     |
| 4. | Debt Service with respect to Senior and Parity Lien Debt | _____     |
| 5. | Ratio of Line B3 to B4                                   | _____:1.0 |
| 6. | Line B5 ratio must not be less than                      | 1.20:1.0  |
| 7. | The Enterprise is in compliance (circle yes or no)       | yes/no    |

C. Debt Service Coverage Ratio (excluding Rolling Coverage Amount) with respect to Senior and Parity Lien Debt (Section 7.9(iii))

- |    |                              |          |
|----|------------------------------|----------|
| 1. | Net General Airport Revenues | \$ _____ |
|----|------------------------------|----------|

Council Agenda: 1-11-11

Item No.: 3.2 (b)

**DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.**

- |    |   |           |
|----|---|-----------|
| 2. | Other Available Funds (excluding Rolling Coverage Amount) | _____     |
| 3. | Line C1 plus C2   | _____     |
| 4. | Debt Service with respect to Senior and Parity Lien Debt  | _____     |
| 5. | Ratio of Line C3 to C4                                    | _____:1.0 |
| 6. | Line C5 ratio must not be less than                       | 1.00:1.0  |
| 7. | The Enterprise is in compliance (circle yes or no)        | yes/no    |

D. Debt Service Coverage Ratio with respect to Senior and Parity Lien Debt and Junior Lien Debt (Section 7.9(iv))

- |    |   |           |
|----|---|-----------|
| 1. | Net General Airport Revenues  | \$_____   |
| 2. | Other Available Funds   | _____     |
| 3. | Line D1 plus D2   | _____     |
| 4. | Debt Service with respect to Senior and Parity Lien Debt and Junior Lien Debt | _____     |
| 5. | Ratio of Line D3 to D4  | _____:1.0 |
| 6. | Line D5 ratio must not be less than   | 1.00:1.0  |
| 7. | The Enterprise is in compliance (circle yes or no)                            | yes/no    |