

ISSUE DATE: JANUARY 12, 2022
DUE DATE: FEBRUARY 23, 2022

REQUEST FOR EXPRESSIONS OF INTEREST

**DIRECT PAY LETTERS OF CREDIT AND
ALTERNATIVE VARIABLE RATE FINANCINGS
CITY OF PHILADELPHIA, PENNSYLVANIA
Gas Works Revenue Refunding Bonds, Eighth Series C
Gas Works Capital Project Commercial Paper Notes, Subordinate Series and Gas Works
Revenue Notes, CP Series
Philadelphia International Airport Revenue Refunding Bonds, Series 2005C-1&C-2
Philadelphia International Airport Revenue Commercial Paper Notes, Series ABC**

The City of Philadelphia (the “City”) is hereby seeking proposals for the provision of Direct Pay Letters of Credit or alternative financing structures (e.g., direct purchase notes, revolving lines of credit, etc.) (the “Bank Facility”) for the Gas Works Revenue Refunding Bonds, Eighth Series C; Gas Works Capital Project Commercial Paper Notes, Subordinate Series; Gas Works Revenue Notes, CP Series; Philadelphia International Airport Revenue Refunding Bonds, Series 2005C-1 and 2005C-2; and Philadelphia International Airport Revenue Commercial Paper Notes, Series A (Non-AMT), B (AMT), and C (Taxable).

The City is conducting a competitive process for the provision of credit enhancement and/or liquidity on the following outstanding bonds with credit facilities from highly rated credit and liquidity providers on the outstanding bonds listed below. Both current and new bank facility providers are strongly encouraged to participate. If your firm has overall limits for providing credit enhancement and/or liquidity to the City which could be fungible between credits, please state this clearly in your response.

Credit	Underlying Rating (Moody's/S&P/Fitch)	Series	Facility Par Amount	LOC Exp. Date
Philadelphia Gas Works	A3/A/BBB+	Eighth Series C	\$27,225,000	9/1/2022
	A3/A/BBB+	CP	\$120,000,000	6/20/2022
Philadelphia International Airport	A2/A-/A	Series 2005C-1&2	\$60,400,000	7/22/2022
	A2/A-/A	CP (Aggregate)	\$165,700,000	8/22/2022

For rating agency press releases and the latest official statements on the above credits and other information, please see the City’s investor website at <http://www.phila.gov/investor>. Presentations regarding all of the City’s credits can be found at <https://www.phila.gov/investor/Pages/InvestorConference.aspx>.

Alternative Variable Rate Financing Proposals

In addition to Direct Pay Letters of Credit, the City will also consider proposals for alternative variable rate financing structures. Alternative Bank Facility Financings would include direct purchase index notes and revolving facilities. If your firm is an authorized underwriter in the current pools for the relevant credits, you can also submit public-market variable rate proposals. Any alternative proposal submitted should be detailed, including pricing, terms and condition, and should only be included if it is a firm offer.

Anticipated Schedule of Events

The preliminary Schedule of Events for the proposals solicited hereby is set forth below.

Issue REI	Wednesday, January 12, 2022
Deadline to Submit Questions	Wednesday, January 19, 2022
City Responses to Questions Posted	Wednesday, February 2, 2022
PROPOSAL SUBMISSION DEADLINE	Wednesday, February 23, 2022 @ 5:00 pm EST
Select Facility Providers <i>(Final award is subject to approval by the City of terms of any Bank Facility)</i>	Wednesday, March 23, 2022

Proposal Information

Prospective providers who have received this document from a source other than the City, and who wish to assure receipt of any changes or additional materials related to this REI, should immediately e-mail Matthew Bowman (Matthew.Bowman@phila.gov) and provide their name and email address so that amendments to the REI or other communications may be sent to them.

Please respond on behalf of your firm only; the City will not consider joint proposals.

The expenses of your proposal will not be the responsibility of the City or any of their respective counsel or advisors. The City reserves the right to waive any irregularity in any proposal, negotiate with one or more firms and to reject any or all proposals. The City reserves the right not to proceed with the execution of any Bank Facility.

THE CITY ENCOURAGES SUBMISSIONS BY MINORITY, WOMEN, AND DISABLED OWNED FIRMS. THE CITY REQUIRES THAT ANY FIRM SELECTED TO PARTICIPATE AS PROVIDER FOR A CITY FINANCING AGREE NOT TO DISCRIMINATE NOR PERMIT DISCRIMINATION AGAINST ANY PERSON BECAUSE OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, OR SEXUAL ORIENTATION. IN THE EVENT OF SUCH DISCRIMINATION, THE CITY RESERVES THE RIGHT TO TERMINATE THE FIRM'S APPOINTMENT TO THE ISSUE.

Proposal Submission & Deadline

Please submit your proposals via e-mail by **no later than 5:00 PM EST on, Wednesday, February 23, 2022** to Natalia Dominguez Buckley (Natalia.Dominguez@Phila.gov) and Matthew Bowman (Matthew.Bowman@Phila.gov). The subject title should read, "REI-Submission - Direct Pay LOC - [insert firm name]".

Your response should follow the format in Exhibits A-1 and/or A-2, which are attached. THE CITY ANTICIPATES NEGOTIATING COMPLETE TERM SHEETS AFTER RESPONSES HAVE BEEN RECEIVED.

Interested parties must indicate by when they would expect to be able to receive **final credit approval**. A form of the Direct Pay Letter of Credit and Reimbursement Agreement or relevant legal documents for alternative proposals to be entered into by the City and the Facility provider must be made available to the City promptly upon notice to the respondent that they are the apparent choice of the City.

Questions

The City will accept written questions from prospective Providers. Questions and presentation requests will be accepted by e-mail to Matthew Bowman at Matthew.Bowman@phila.gov. **The deadline for written questions is Wednesday, January 19, 2022 at 5:00 PM, Local Time.**

NO QUESTIONS ARE TO BE DIRECTED TO THE MAYOR’S OFFICE, OR TO ANY OTHER CITY DEPARTMENT, AGENCY, OR PERSONNEL.

Answers to all substantive questions that are not clearly specific only to the requestor, will be distributed to all vendors who are known to have received a copy of the REI. Such distribution may include the posting of such information on the City’s website www.phila.gov/REI. The City will respond to questions by Wednesday, February 2, 2022.

Evaluation Criteria and Selection

Selection shall be made to the responsible providers whose proposals are deemed to be the most advantageous to the City, along with any relevant performance data and other information available to the City. Proposals will not be opened publicly.

Revisions to the REI

If it becomes necessary to revise this REI before the due date for proposals, amendments will be provided to all prospective providers who were sent this REI or otherwise are known by the City to have obtained this REI. Amendments made after the due date for proposals will be sent only to those Providers who submitted a timely proposal.

Acknowledgment of the receipt of all amendments to this REI issued before the proposal due date must accompany the provider’s proposal in the transmittal letter accompanying the proposal. Acknowledgement of the receipt of amendments to the REI issued after the proposal due date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the provider from complying with all terms of any such amendment.

Reservation of Rights

The City reserves the right to cancel this REI, accept or reject any and all proposals, in whole or in part, received in response to this REI, to waive or permit cure of minor irregularities, and to conduct discussions with any or all qualified or potentially qualified providers in any manner necessary to serve the best interests of the City. The City also reserves the right to make award(s) based upon the written proposals received without discussions or negotiations. In the event negotiations with any respondent(s) are not satisfactory to the City, the City reserves the right to discontinue such negotiations at any time; to enter into or continue negotiations with other respondents; and/or to solicit new responses from providers that did not respond to this REI. The City reserves the right not to make an award any respondent, with or without the re-issuance of this REI, if the City determines that such is in the City’s best interest. The City reserves the right to change the details at any time. Nothing in this REI shall bind the City to enter into any agreements pursuant to this solicitation.

Thank you for your interest in serving the City.

Exhibit A-1



**CITY OF PHILADELPHIA, PENNSYLVANIA
 Gas Works Revenue Refunding Bonds, Eighth Series C
 Gas Works Capital Project Commercial Paper Notes**

**REI for Direct Pay Letters of Credit
 and other Alternative Credit Enhancement and Liquidity
 Fee Proposal Form**

Proposals submitted must complete this form or include responses to all items on this form in order to be considered.

SECTION 1 – GENERAL INFORMATION

Full Legal Name of Provider: _____

Contact Person: _____ **Phone:** _____

Fax: _____ **E-mail:** _____

Bank’s Ratings:

Fitch: Long-term _____ Short-term _____ Outlook/Credit Watch _____
 Moody’s: Long-term _____ Short-term _____ Outlook/Credit Watch _____
 Standard & Poor’s: Long-term _____ Short-term _____ Outlook/Credit Watch _____

1.1. Please indicate if your firm has overall limits for providing credit and/or liquidity to the City and would capacity be available for other City owned credits, such as the Philadelphia Airport.

1.2. Maximum Principal Amount for the Bonds: _____ (plus required interest coverage)

1.3. Timeframe for Credit Approval: _____

SECTION 2 – PRICING

2.1 Complete the fee table below and separately provide a downgrade pricing grid.

Facility Length	Annual Fee
1 Year/365 days	
2 Years	
3 Years	
4 Years	

2.2 Term-Out Provisions (including interest rates and conditions)

2.3 Early Termination Provisions for the City

2.3 Bank Counsel: Firm Name and primary contact: _____

Legal Fees and Expenses: Estimated at \$ _____; capped at \$ _____

SECTION 3 – COVENANTS

3.1 Please itemize and briefly describe all required Security Covenants. Please do not provide generic statements such as those requesting “usual and customary provisions”

3.2 List all Termination Events and Events of Default

SECTION 4 – ALTERNATIVE PROPOSALS (LIMIT: 2 PAGES)

City of Philadelphia – Request for Expressions of Interest

Due Date: Wednesday, February 23, 2022 at 5:00 pm EST

Please include a description, terms and pricing associated with any proposed alternative variable rate financing proposals. Indicate whether the proposal is a firm offer. Proposals should not exceed two pages.

Exhibit A-2



CITY OF PHILADELPHIA, PENNSYLVANIA
Philadelphia International Airport Revenue Refunding Bonds,
Series 2005C-1 and 2005C-2
Philadelphia International Airport Revenue Commercial Paper
Notes, Series ABC

REI for Direct Pay Letters of Credit
And/or other Alternative Variable Rate Financing Structures
Fee Proposal Form

Proposals submitted must complete this form or include responses to all items on this form in order to be considered.

SECTION 1 – GENERAL INFORMATION

Full Legal Name of Provider: _____

Contact Person: _____ **Phone:** _____

Fax: _____ **E-mail:** _____

Bank’s Ratings:

Fitch:	Long-term _____	Short-term _____	Outlook/Credit Watch _____
Moody’s:	Long-term _____	Short-term _____	Outlook/Credit Watch _____
Standard & Poor’s:	Long-term _____	Short-term _____	Outlook/Credit Watch _____

1.4. Please indicate if your firm has overall limits for providing credit and/or liquidity to the City and would capacity be available for other City owned credits, such as the Philadelphia Airport.

1.5. Maximum Principal Amount for the Bonds: _____ (plus required interest coverage)

1.6. Timeframe for Credit Approval: _____

SECTION 2 – PRICING

2.1 Complete the fee table below and separately provide a downgrade pricing grid.

Facility Length	Annual Fee
1 Year/365 days	
2 Years	
3 Years	
4 Years	
5 Years	

2.2 Term-Out Provisions (including interest rates and conditions)

2.3 Early Termination Provisions for the City

2.4 Bank Counsel: Firm Name and primary contact: _____

Legal Fees and Expenses: Estimated at \$ _____; capped at \$ _____

SECTION 3 – COVENANTS

3.1 Please list any and all specific changes to the form of Reimbursement Agreement attached hereto. Please do not provide generic statements such as those requesting “usual and customary provisions”.

3.2 Please itemize and briefly describe all required Security Covenants

3.3 List all Termination Events and Events of Default

SECTION 4 – ALTERNATIVE PROPOSALS (LIMIT: 2 PAGES)

Please include a description, terms and pricing associated with any proposed alternative variable rate financing proposals for the Series 2005C-1 and 2005C-2 Bonds and any alternative proposals for variable rate revolving facilities in lieu of the Airport Commercial Paper program. Indicate whether the proposal is a firm offer. Proposals should not exceed two pages.

Attachment - Form of Airport Reimbursement Agreement

REIMBURSEMENT AGREEMENT

DATED AS OF _____

BY AND BETWEEN

THE CITY OF PHILADELPHIA,

AND

_____.

RELATING TO

TABLE OF CONTENTS

(This Table of Contents is not a part of this Reimbursement, Credit and Security Agreement and is only for convenience of reference)

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT, dated as of _____ (together with any amendments or supplements hereto, this “*Agreement*”), is by and between THE CITY OF PHILADELPHIA, PENNSYLVANIA, a city of the first class and political subdivision existing under the laws of the Commonwealth of Pennsylvania (the “*City*”), and _____ (the “*Bank*”).

WITNESSETH:

WHEREAS, the City owns the Philadelphia International Airport and the Northeast Philadelphia Airport (collectively, the “*Airport System*”);

WHEREAS, the Airport System is operated by the Division of Aviation of the City’s Department of Commerce (the “*Division*”);

OTHER RECITALS REGARDING COMMERCIAL PAPER PROGRAM

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, the City and the Bank agree as follows:

ARTICLE ONE DEFINITIONS

The following terms shall have the meanings specified in this Article, unless the context otherwise requires:

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

“*Airport System*” has the meaning set forth in the recitals hereof.

“*Amortization Commencement Date*” means the earlier of (i) the one hundred eighty first (181st) day after the date of the related Liquidity Advance (assuming such Liquidity Advance has not been fully reimbursed to the Bank) and (ii) the Stated Expiration Date, in each case subject to satisfaction of the conditions set forth in Section 3.3 hereof.

“*Amortization Period*” has the meaning set forth in Section 2.3(a) hereof.

“*Authorized Officers*” means the Finance Director of the City, the City Treasurer of the City, or such other person or persons at the time designated to act on behalf of the City by certificate filed with the Bank containing the specimen signature of such person and signed by the Finance Director of the City or the City Treasurer of the City. Such certificate may designate an alternate or alternates. As to any of the named officers, it shall include those who hold interim or acting titles to those offices.

“*Bank*” has the meaning set forth in the introductory statement hereof.

“*Bank Rate*” means, _____

“**Base Rate**” means, _____.

“**Bond Committee**” has the meaning set forth the General Ordinance.

“**Bond Counsel**” means _____, or other nationally recognized bond counsel selected by the City.

“**Bond Documents**” means _____.

“**Bondholder**” and words of like import have the meaning set forth in the General Ordinance.

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

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

“**Capitalized Lease Obligation**” 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 GAAP.

“**Change of Law**” means the adoption, **after the date hereof**, of any rule, regulation, guideline, order, request (whether or not having the force of law) or statute of any Governmental Authority or the application or requirements thereof, or any change in the interpretation, after the date hereof, of any rule, regulation, guideline, order, request (whether or not having the force of law) or statute by any Governmental Authority.

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

“**Closing Date**” means the date on which the Letter of Credit is issued.

“**Code**” means the Internal Revenue Code of 1986, as amended, and any successor statute thereto.

“**Commonwealth**” means the Commonwealth of Pennsylvania.

“**Default Rate**” means the _____

“**Determination**” has the meaning set forth in the General Ordinance.

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

“**DTC**” means The Depository Trust Company and its successors and assigns.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

“**Event of Default**” has the meaning set forth in Section 6.1 hereof.

“**Excess Interest**” has the meaning set forth in Section 2.17 hereof.

“**Facility Fee**” means the facility fee payable to the Bank pursuant to the Fee Letter.

“**Federal Funds Rate**” means, for any day, the rate per annum 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 such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Bank on such day on such overnight federal funds transactions as determined by the Bank. Each determination of the Federal Funds Rate by the Bank will be conclusive and binding on the City absent manifest error.

“**Fee Letter**” means the letter agreement from the Bank to the City, dated the Closing Date, specifying the method of determining the Facility Fee and specifying other fees and rates of interest payable with respect to the transactions referred to herein.

“**Financial Products Agreement**” means 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.

“**Fitch**” means Fitch Ratings and its successors.

“**Fiscal Agent**” means the “Fiscal Agent” as defined in and appointed by the City pursuant to the Ordinance, and as further defined in the Variable Rate Securities Agreement. The Fiscal Agent is the Tender Agent under the Variable Rate Securities Agreement.

“**GAAP**” means generally accepted accounting principals interpreted in accordance with governmental accounting standards, in each case applied on a basis consistent (except for changes approved by the City Controller, and, in the case of financial statements prepared as of a date other than the end of a fiscal year, except for the absence of certain notes and subject to normal year-end adjustments) with the most recent audited financial statements of the City delivered or required to be delivered to the Bank pursuant to this Agreement.

“General Ordinance” has the meaning set forth in the recitals hereof.

“Governmental Approval” means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

“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 (including the Board of Governors of the Federal Reserve System, any central bank or any comparable authority) owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

“Guarantees” means all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations 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 the City (without duplication) (i) all indebtedness created, assumed or incurred in any manner by the City 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 the City, whether or not the City has assumed or become liable for the payment of such indebtedness, (iv) all Capitalized Lease Obligations of the City, (v) all obligations of the City 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, and (vi) all Guarantees. The indebtedness and obligations described in the foregoing clauses (i) through (vi) shall constitute Indebtedness only to the extent payable from any Pledged Amounts.

“Investment Grade” means (a) with respect to a rating by Moody’s, a rating of “Baa2” (or its equivalent) or better, (b) with respect to a rating by Fitch, a rating of “BBB” (or its equivalent) or better, and (c) with respect to a rating by S&P, a rating of “BBB” (or its equivalent) or better.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case having the force of law.

“Letter of Credit” means the irrevocable transferable direct pay letter of credit issued by the Bank for the account of the City in favor of the Fiscal Agent and the Tender Agent, in the form of Appendix I hereto with appropriate insertions, as amended from time to time.

“Letter of Credit Obligation” means any and all obligations of the City to reimburse the Bank for any drawings under the Letter of Credit and all obligations to repay the Bank for any Liquidity Advance, including in each instance all interest accrued thereon.

“**Lien**” means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

“**Liquidity Advance**” has the meaning set forth in Section 2.3(a) hereof.

“**Liquidity Drawing**” means a drawing under the Letter of Credit resulting from the presentation of a certificate in the form of Annex C to the Letter of Credit.

“**Master Agreement**” has the meaning set forth in the definition of “Financial Products Agreement.”

“**Material Adverse Effect**” means any material and adverse effect (i) upon the assets, operations and property comprised of the Airport System and the financial condition thereof or (ii) on the ability of the City to perform its obligations under this Agreement, any of the Related Documents or the General Ordinance.

“**Maximum Rate**” means the maximum legal rate of interest which the Bank is legally entitled to charge, contract for or receive under any law to which such interest is subject.

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

“**Obligations**” means all fees payable hereunder and under the Fee Letter and all other obligations of the City to the Bank arising under or in relation to this Agreement and the Fee Letter, including, without limitation, all Letter of Credit Obligations.

“**Outstanding**” or “**Bonds outstanding**” have the same meaning herein as in the General Ordinance.

“**Participant**” means each Person purchasing a participation from the Bank or a sub-participation from a Participant pursuant to a Participation Agreement in accordance with Section 7.4 hereof.

“**Participation Agreement**” means any participation agreement between the Bank and any Person purchasing a participation or a sub-participation, in each case relating to the Letter of Credit and the Letter of Credit Obligations.

“**Passenger Facility Charges**” has the meaning set forth in the General Ordinance.

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

“**Pledged Amounts**” has the meaning set forth in the General Ordinance.

“**Potential Default**” means an event or condition which, but for the lapse of time or the giving of notice, or both, would constitute an Event of Default.

“**Prime Rate**” means that variable rate of interest per annum designated by the Bank, from time to time, as being its “prime rate,” with a change in the Prime Rate to take effect simultaneously with each change in such designated rate, without notice or demand. It is understood that such designated prime rate is merely a reference rate and does not necessarily represent the lowest or best rate being charged to any customer.

“**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**” or “**Rating Agencies**” means any one of more of Moody’s, S&P and/or Fitch.

“**Related Documents**” means _____.

“**S&P**” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its successors.

“**Semi-Annual Principal Payments**” has the meaning set forth in Section 2.3(a) hereof.

“**Stated Amount**” has the meaning set forth in the Letter of Credit.

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

“**Tender Agent**” means the “Tender Agent” as defined in and appointed by the City pursuant to the Ordinance, and as further defined in the Variable Rate Securities Agreement. The Tender Agent is the Fiscal Agent under the Variable Rate Securities Agreement.

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

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

“**Term Loan Rate**” means _____.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Any capitalized terms used herein, which are not specifically defined herein, shall have the same meanings herein as in the General Ordinance. All references in this Agreement to times of day shall be references to New York, New York, time unless otherwise expressly provided herein.

ARTICLE TWO LETTER OF CREDIT

Section 2.1 **Issuance of Letter of Credit.** Upon the terms, subject to the conditions and relying upon the representations and warranties set forth in this Agreement or incorporated herein by reference, the Bank agrees to issue the Letter of Credit. The Letter of Credit shall be in the original Stated Amount of _____ which is the sum of (i) the principal amount of _____ outstanding on the Closing Date, plus (ii) interest thereon at the rate of _____ per annum for a period of _____ days.

Section 2.2 **Letter of Credit Drawings.** The Fiscal Agent and/or the Tender Agent, as applicable, are each authorized to make drawings under the Letter of Credit in accordance with the terms thereof. The City hereby directs the Bank to make payments under the Letter of Credit in the manner therein provided. The City hereby irrevocably approves reductions and reinstatements of the Stated Amount as provided in the Letter of Credit.

Section 2.3 **Reimbursement of Certain Drawings under the Letter of Credit; Mandatory Prepayment; Interest.** (a) If the conditions precedent contained in Section 3.2 hereof are satisfied at the time of payment by the Bank of any Liquidity Drawing, each Liquidity Drawing made under the Letter of Credit shall constitute an advance (a "**Liquidity Advance**") to the City. The City promises to reimburse the Bank for each Liquidity Advance on the earliest of (i) the date on which the Letter of Credit is replaced by an Alternate Liquidity Facility pursuant to the terms of the General Ordinance, (ii) the last day of the Amortization Period, and (iii) the date on which any _____ purchased with funds disbursed under the Letter of Credit in connection with such Liquidity Drawing are redeemed, prepaid or canceled pursuant to the General Ordinance. The City's obligations to repay each Liquidity Advance and to pay interest thereon as hereinafter provided shall be secured by a _____ Note. Subject to Section 2.10 hereof, the City also promises to repay to the Bank interest on the unpaid principal amount of each Liquidity Advance from the date such Liquidity Advance is made until it is paid as provided herein, on the first Business Day of each month, commencing in the month following the Liquidity Advance, and on the date of the final payment of principal at the Bank Rate. Unless otherwise paid in full on the date provided above, so long as the conditions precedent contained in Section 3.3 hereof are satisfied on the related Amortization Commencement Date, each Liquidity Advance shall be payable by the City (i) in substantially equal semi-annual installments ("**Semi-Annual Principal Payments**") commencing on the first Business Day of the [sixth month] after the Amortization Commencement Date, with the final installment in an amount equal to the entire then outstanding principal amount of such Liquidity Advance due and payable on the earlier of (x) the date which is the fifth anniversary of the date of the related Liquidity Drawing and (y) the date which is the fifth anniversary of the Stated Expiration Date (as in effect as of the date of such Liquidity Advance) (the period commencing on the Amortization Commencement Date and ending on the date that the final principal installment of such Liquidity Advance is payable as herein provided is herein referred to as the "**Amortization Period**"). Each Semi-Annual Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Semi-Annual Principal Payments over the applicable Amortization Period described in the immediately preceding sentence. If the conditions precedent contained in Section 3.3 hereof are not satisfied on the Amortization Commencement Date for any Liquidity Advance, the principal amount of such Liquidity Advance, together with any interest thereon that is accrued but unpaid, shall be payable on such Amortization Commencement Date. Notwithstanding the foregoing, all payments of principal of and interest on the _____ Note shall be immediately due and payable on the Termination Date, other than a Termination Date as a result of the Stated Expiration Date (provided, in the case of the Stated Expiration Date, the conditions contained in Section 3.3 hereof are satisfied).

(b) Any Liquidity Advance may be paid in whole or in part on the day such Liquidity Advance is made. Any Liquidity Advance created pursuant to paragraph (a) above may be paid in whole or in part without premium or penalty on any other Business Day upon one Business Day's prior written notice.

(c) Upon receipt by the Bank of any payment or prepayment of any Liquidity Advance, the amount of such Liquidity Advance shall be reduced by the amount of such payment or prepayment.

Section 2.4 **Reimbursement of Drawings Other than Liquidity Drawings Creating Liquidity Advances Under the Letter of Credit.** When the Bank makes any payment under the Letter of Credit other than a Liquidity Advance, the City shall reimburse or cause to be reimbursed to the Bank an amount equal to the amount of such payment on the same Business Day as the date of such drawing. If the City fails timely to reimburse such payment, an Event of Default shall be deemed to have occurred in accordance with Section 6.1(c) hereof, and the City shall pay on demand interest at the Default Rate on all Obligations, including the unpaid amount of each payment, from and including the date such advance is made until such amount is paid in full.

Section 2.5 **Fees.** The City agrees to pay, or cause to be paid, to the Bank the Facility Fee and the other fees, expenses and payments described in the Fee Letter at the times and in the amounts specified in the Fee Letter and Section 2.6 hereof. Any references to the Facility Fee and such other fees, expenses and payments owed to the Bank hereunder without specific reference to the Fee Letter shall be read so as to include the Fee Letter.

Section 2.6 **Method of Payment; Etc.** All payments to be made by the City under this Agreement shall be made to the Bank by wire transfers by the City in lawful currency of the United States and in immediately available funds to such account as the Bank shall designate, or at such other place as the Bank may designate in writing, without any withholding, deduction or set-off, not later than 2:00 p.m. on the date when due.

Section 2.7 **Alternate Liquidity Facility.** The City may replace this Agreement and the Letter of Credit with an Alternate Liquidity Facility or reduce the Stated Amount (other than due to scheduled principal amortization, including mandatory sinking fund payments) at any time without penalty.

Section 2.8 **Computation of Interest and Fees.** All computations of interest hereunder and under the Fee Letter shall be made on the basis of a year of 365/366 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. All computations of the Facility Fee and the other fees specified hereunder and under the Fee Letter shall be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such fees are payable. Each determination by the Bank of an interest amount or fee hereunder and under the Fee Letter shall be made in good faith and, except for manifest error, shall be final, conclusive and binding for all purposes.

Section 2.9 **Payment Due on Non-Business Day to Be Made on Next Business Day.** To the extent that amounts owing to the Bank are repaid on the same day that they are borrowed or incurred, they shall not be deemed to constitute Obligations hereunder and under the Fee Letter, and, therefore, no interest shall be deemed to have accrued in connection

therewith. Whenever any payment under the terms of this Agreement and under the Fee Letter is due on a day which is not a Business Day, such payment shall be due and payable on the next succeeding Business Day with interest accruing and being payable by the City; provided, that if the City is unable to repay the amounts(s) thereof on such next succeeding Business Day, then interest will accrue at the Default Rate and be payable from and including such original due date through and including the Business Day when said moneys are actually repaid by the City.

Section 2.10 **Late Payments.** All Obligations not paid by the City when due and payable hereunder will accrue at the Default Rate and be payable from and including such original due date through and including the Business Day when said moneys are actually repaid by the City.

Section 2.11 **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 2.12 **Extension of Stated Expiration Date.** The City may submit a written request to the Bank, not more than one hundred fifty (150) days nor less than ninety (90) days prior to the Stated Expiration Date, for an extension of the Stated Expiration Date for a period as specified in such written request of between one (1) and five (5) years, and the Bank will make reasonable efforts to respond to such request within sixty (60) days after receipt of such written request and related financial information. In the event the Bank fails to respond to such request prior to such sixtieth day, 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 in its sole and absolute discretion, the then current Stated Expiration Date for the Letter of Credit shall be extended to the date agreed by the City and the Bank.

Section 2.13 **Reserved**

Section 2.14 **ReservedIncreased Costs.** (a) If the Bank shall have determined in good faith that a Change of Law shall (A) change the basis of taxation of payments to the Bank of any amounts payable hereunder or under the Fee Letter (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, the Fee Letter or the Letter of Credit or assets held by, or deposits with or for the account of, the Bank or (C) impose on the Bank any other condition regarding this Agreement, the Fee Letter 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 under the Letter of Credit or the Fee Letter, or to reduce the amount of any sum received or receivable by the Bank hereunder or under the Fee Letter, then the City shall pay to the Bank, at such time as is set forth in Section 2.15(d) hereof, such additional amount or amounts as will compensate the Bank for such increased costs or reduction in amount received or receivable as reasonably relates to the Letter of Credit, this Agreement and the Fee Letter.

(b) If the Bank shall have determined in good faith that a Change of Law shall impose, modify or deem applicable any capital adequacy, liquidity or similar requirement (including, without limitation, a request or requirement that affects the manner in which the Bank allocates capital resources or liquidity to its commitments, including its obligations under letters of credit) that either (A) affects or would affect the amount of capital or liquidity to be maintained by the Bank or (B) reduces or would reduce the rate of return on the Bank's capital to a level below that which the Bank could have achieved but for such circumstances (taking into consideration the Bank's policies with respect to capital adequacy and liquidity), then the City shall pay to the Bank at such time as is set forth in Section 2.15(d) hereof, such additional amount or amounts as will compensate the Bank for such cost of maintaining such increased capital or liquidity or such reduction in the rate of return on the Bank's capital as reasonably relates to the Letter of Credit, this Agreement and the Fee Letter.

(c) All payments of amounts referred to in Sections 2.15(a) and (b) hereof shall be due and payable in full on the next quarterly payment date referred to in the Fee Letter that is at least five (5) Business Days after the City's receipt of notice thereof. Interest on the sums due as described in Sections 2.15(a) and (b) hereof and in the preceding sentence shall begin to accrue from the date when the payments were first due 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 liquidity or reduction in return incurred by the Bank as a result of any event mentioned in Section 2.15(a) or (b) hereof setting forth, in reasonable detail, the basis for calculation and the amount of compensation due to the Bank shall be submitted by the Bank to the City and shall be conclusive (absent manifest error) as to the amount thereof. In making the determinations contemplated by such certificate, the Bank may make such reasonable estimates, assumptions, allocations and the like as the Bank in good faith determines to be appropriate.

(e) The obligations of the City under this Section 2.15 shall survive the termination of this Agreement.

Section 2.16 **Security for Obligations; Limited Obligations.** Pursuant to the General Ordinance, the City pledges to the Bank, for the security and payment of the Obligations to the Bank hereunder, and hereby grants a security interest to the Bank, in the Pledged Amounts (excluding Passenger Facility Charges which do not constitute part of the Pledged Amounts in respect of the _____ Bonds) on parity with the Lien granted to the holders of the other bonds issued under the General Ordinance. Notwithstanding any other provision of this Agreement to the contrary, all Obligations of the City to the Bank hereunder are special, limited obligations of the City payable solely from the Pledged Amounts (not including Passenger Facility Charges) and other sources provided in the General Ordinance.

Section 2.17 **Rate of Interest.** If the rate of interest payable under Section 2.3 or 2.4 hereof or under any other Section hereof shall exceed the Maximum Rate for any period for which interest is payable, then (a) interest at the Maximum Rate shall be due and payable with respect to such period and (b) if and to the extent permitted by applicable Laws, 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, if and to the extent permitted by applicable Laws,

pay to the Bank such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Rate, as applicable, which payments of deferred Excess Interest shall continue until the earlier of (i) the date on which this Agreement has terminated and there are no ___ Bonds outstanding and (ii) the date on which all amounts owed under the ___ Note or other obligations of the City to which the Excess Interest relates are fully paid to the Bank. Notwithstanding the foregoing, if and to the extent permitted by law, upon the termination or expiration of the Letter of Credit and this Agreement, the City shall pay the Bank an amount equal to all amounts owed to the Bank with respect to such Excess Interest. The City makes no representation or warranty with respect to the legality or enforceability of this Section 2.17, notwithstanding anything in this Agreement to the contrary.

ARTICLE THREE CONDITIONS PRECEDENT

Section 3.1 **Conditions Precedent to Issuance of Letter of Credit.** As conditions precedent to the obligation of the Bank to issue the Letter of Credit,

(a) the City shall provide to the Bank on the Closing Date, in form and substance satisfactory to the Bank and its counsel:

(i) written opinions of counsel to the City and Bond Counsel in form and substance reasonably satisfactory to the Bank, dated the Closing Date and addressed to the Bank;

(ii) a copy of the legal opinion delivered by the City Solicitor and other closing certificates and documents, with a reliance letter to the Bank but without the necessity of updating such opinion;

(iii) a certificate signed by an Authorized Officer of the City, dated the Closing Date and stating that:

(A) the representations and warranties contained in Article Four of this Agreement are true and correct on and as of the Closing Date as though made on such date;

(B) no Event of Default or Potential Default has occurred and is continuing, or would result from the issuance of the Letter of Credit or the execution, delivery or performance of this Agreement or any Related Document to which the City is a party;

(C) the conditions precedent to the issuance of the Letter of Credit set forth in Section 3.1(a) have been satisfied; and

(D) such other items as the Bank may reasonably request.

(iv) evidence of the due authorization, execution and delivery by the parties thereto of the Related Documents;

(v) copies of all authorizations and proceedings of the City, including a Determination, certified as of the Closing Date by an Authorized Officer of the City, authorizing, among other things, the execution, delivery and performance by the City of the Related Documents to which it is a party, and the issuance of the Letter of Credit and the Sinking Fund Letter of Credit;

(vi) true and correct copies of all approvals, if any, required under the General Ordinance necessary for the City to execute, deliver and perform this Agreement, and to authorize the City to obtain the issuance of the Letter of Credit;

(vii) a copy of a Determination approving the grant of a Lien on the Pledged Amounts (other than Passenger Facility Charges) on a parity with the Lien granted to the holders of the _____ Bonds and all necessary action shall have been taken as required by the General Ordinance to assign and pledge under the General Ordinance the Pledged Amounts (other than Passenger Facility Charges) for the benefit of the Bank and to ensure the priority thereof against any actual or potential creditors of the City whose rights are subordinate to the rights of the Bank as provided in the General Ordinance;

(viii) evidence that the City has received all consents and other approvals, if any, necessary for the City to execute, deliver and perform the Related Documents to which it is a party, including the granting of the Liens under any thereof, and to authorize the City to obtain the issuance of the Letter of Credit;

(ix) a certificate of the Authorized Officer of the City certifying the names and true signatures of the officers of the City authorized to sign the Related Documents to which the City is a party;

(x) a certificate of the Fiscal Agent and the Tender Agent containing the current names and specimen signatures of those officers of the Fiscal Agent and the Tender Agent authorized to make demand for payment under the Letter Of Credit and acknowledging the grant to the Bank of a security interest in Pledged Amounts;

(xi) executed originals of each of the Related Documents and such other documents, certificates and opinions as the Bank or its counsel may reasonably request;

(xii) payment of all fees and expenses due on the Closing Date and all costs and expenses actually incurred by the Bank in connection with the negotiation, preparation, execution and delivery of this Agreement, including the fees and expenses of counsel for the Bank;

(xiii) such other documents, instruments, approvals (and, if requested by the Bank, certified duplicates of executed originals of each of the foregoing, if available) and opinions as the Bank may reasonably request.

(b) there shall exist no pending or threatened action, suit or proceeding before any court or administrative agency which seeks to restrain or prohibit the execution, delivery or performance of this Agreement or any other Related Document or any of the transactions contemplated hereby and thereby (including without limitation the issuance of the Letter of Credit), or which otherwise challenges the legality or validity of any of such documents and transactions; and

(c) all legal requirements provided herein incident to the execution, delivery and performance of the Related Documents and the transactions contemplated thereby, shall be reasonably satisfactory to the Bank and its counsel.

In addition to the foregoing, the Bank shall have determined, as of the Closing Date, that no law, regulation, ruling or other action of the United States, the State of New York or the Commonwealth or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the Bank or the City from fulfilling its obligations under this Agreement, the Fee Letter, the Letter of Credit and the other Related Documents, as applicable.

Section 3.2 **Conditions Precedent to Liquidity Advances.** Following any payment by the Bank under the Letter of Credit pursuant to a Liquidity Drawing, a Liquidity Advance shall be made available to the City only if on the date of payment of such Liquidity Drawing by the Bank the following statements shall be true:

(a) the representations and warranties of the City contained in Article Four of this Agreement and in the other Related Documents are correct in all material respects on and as of the date of the Liquidity Advance as though made on and as of such date; and

(b) no event has occurred and is continuing, or would result from such payment, which constitutes a Potential Default or Event of Default.

Unless the City shall have previously advised the Bank in writing that one or both of the above statements is no longer true, the City shall be deemed to have represented and warranted on the date of such Liquidity Advance that both of the above statements are true and correct.

Section 3.3 **Conditions Precedent to Amortization Period.** The Bank will allow the City to amortize the _____ Note in Semi-Annual Principal Payments as provided in Section 2.3(a) hereof only if, on the Amortization Commencement Date, the following statements shall be true:

(a) the representations and warranties of the City contained in Article Four of this Agreement and in the other Related Documents are correct in all material respects on and as of the date of the Amortization Commencement Date as though made on and as of such date; and

(b) no event has occurred and is continuing, or would result from such payment, which constitutes a Potential Default or Event of Default.

Unless the City shall have previously advised the Bank in writing that one or both of the above statements is no longer true, the City shall be deemed to have represented and warranted on the Amortization Commencement Date that both of the above statements are true and correct.

ARTICLE FOUR REPRESENTATIONS AND WARRANTIES

In order to induce the Bank to enter into this Agreement, the City represents and warrants to the Bank as follows:

Section 4.1 **Incorporated Representations and Warranties.** The City makes, for the benefit of the Bank, all representations and warranties of the City set forth in the General Ordinance and the Related Documents, as if such representations and warranties were set forth herein. All such representations and warranties are hereby incorporated by reference as though they were set forth herein in their entirety.

Section 4.2 **Power and Authority.** The City is a city of the first class and a political subdivision duly organized and validly existing under the laws of the Commonwealth and the City has all required power and authority to own and operate the Airport System. The City has duly adopted the General Ordinance and has all requisite power and authority to carry out the terms and provisions thereof. The Authorized Officers of the City have all requisite power and authority to execute, deliver and carry out the terms and provisions of the General Ordinance and the Related Documents, and the other instruments and documents to be executed and/or delivered by them pursuant hereto or in connection herewith and the City has taken or caused to be taken all necessary action to cause the issuance of the Letter of Credit, authorize the execution, delivery and performance by the City of the General Ordinance and the Related Documents, the incurrence of the obligations contemplated thereunder and the execution, delivery and performance of the other instruments and documents to be executed and/or delivered by them pursuant hereto or in connection herewith or therewith. The General Ordinance, the Related Documents and each of the other instruments and documents executed and/or delivered by the City pursuant thereto or in connection therewith have been duly executed and delivered by the City and constitute the legal, valid and binding obligations of the City, enforceable against the City in accordance with their respective terms, except as the enforceability thereof may be affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, by general equitable principles and law and public policy and indemnification.

Section 4.3 **Approvals.** No authorization or approval or other action by, filing with, or notice to, any Person or Governmental Authority is required for the due execution, delivery and performance by the City of any of the Related Documents or the General Ordinance or any other instrument or document to be executed and/or delivered pursuant hereto or thereto or in connection herewith or therewith, except such authorizations, approvals, actions or filings which have been duly obtained or notices which have been duly given by the City, each of which is in full force and effect.

Section 4.4 **Other Agreements and Requirements of Law.** The City is not (i) in violation of any indenture, mortgage, agreement or other instrument or contractual obligation in a manner that could be reasonably be expected to result in a Material Adverse Effect on the Airport System or the Pledged Amounts or the ability of the City to perform its obligations under the General Ordinance or the Related Documents, or (ii) subject to any restriction or any judgment, order, writ, injunction, decree, rule or regulation which individually or in the aggregate would have a Material Adverse Effect on the Airport System or the Pledged Amounts or the ability of the City to perform its obligations under the General Ordinance or the Related Documents. The City is in material compliance with all Laws applicable to the Airport System or affecting the Airport System, non-compliance with which would have a Material Adverse Effect.

Section 4.5 **No Litigation.** There is no action, suit, investigation or proceeding pending, or to the knowledge of the City threatened against the City before any court, arbitrator or administrative or governmental body which questions the validity or enforceability of any of the Related Documents or the General Ordinance, or any action to be taken hereunder or thereunder or in which a final adverse adjudication would adversely affect the tax exemption of the _____ Bonds or have a Material Adverse Effect on the Airport System or the Pledged Amounts.

Section 4.6 **No Violations.** The City is not in default under any term of the General Ordinance or any of the Related Documents or, in any material respect, under any material indenture, mortgage, agreement or other instrument or contractual obligation to which it is a party affecting the Airport System or the Pledged Amounts, or by which it, as operator of the Airport System, or the Airport System is bound. Neither the adoption of the General Ordinance or the execution and delivery of the Related Documents, nor any of the other instruments or documents to be executed and/or delivered pursuant hereto or thereto or in connection herewith or therewith, nor the consummation of the transactions herein or therein contemplated, nor compliance with the provisions hereof or thereof will violate any Laws applicable to the City as owner and operator of the Airport System, or the Airport System, or will conflict with, or result in the breach of, or constitute a default under, any material indenture, mortgage, agreement or other instrument or contractual obligation to which the City as owner or operator of the Airport System is a party or by which it, as owner and operator of the Airport System, or the Airport System is bound, or result in the creation or imposition of any Lien of any kind and nature upon the Airport System or any of the Pledged Amounts.

Section 4.7 **Financial Information.** The financial information relating to the Airport System in the audited financial statements of the City for the fiscal years ended _____ previously delivered to the Bank are complete and accurate and fairly present the financial condition and the results of operations and cash flows of the City relating thereto on the dates thereof and for the periods then ended, and have been prepared in accordance with GAAP, and the submitted financial statements show all known liabilities, direct or contingent, of the City relating to the Airport System as of the dates thereof and were prepared in accordance with the accounting principles set forth therein and practices applied on a consistent basis. The following representations are true: (A) no event has occurred that could be deemed to have a Material Adverse Effect on the Airport System or the Pledged Amounts; (B) to the knowledge of the City there has been no legislative or regulatory change, or any other event or occurrence, whether or

not insured against, that would result in a Material Adverse Effect on the Airport System or the Pledged Amounts; and (C) the City has not experienced any material controversy or problem with its employees or with any labor organization with which it has a collective bargaining agreement relating to the Airport System.

Section 4.8 **Taxes.** As of the date hereof, the execution and delivery of this Agreement, the Fee Letter and the other Related Documents is not subject to any tax, duty, fee or other charge, including, without limitation, any registration or transfer tax, stamp duty or similar levy, imposed by any Commonwealth or, to the City's knowledge, federal Governmental Authority.

Section 4.9 **Letter of Credit.** The City has read the Letter of Credit and agrees to all of the terms and provisions thereof.

Section 4.10 **Labor Disputes and Acts of God.** Neither the operations of the Airport System nor the properties comprising the Airport System have been materially and adversely affected by any fire, explosion, accident, strike, lockout, or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance).

Section 4.11 **Outstanding Indebtedness.** The outstanding Indebtedness of the City payable from any Pledged Amounts, or otherwise relating to the Airport System, consists of the "Bonds" (as defined in the General Ordinance) issued under the General Ordinance and other Indebtedness listed on the financial statements provided to the Bank by the City, and the City has not incurred any additional debt payable from any Pledged Amounts, or relating to the Airport System, that will result in a material increase in liabilities.

Section 4.12 **Compliance with Terms.** Except as set forth on Schedule 1 hereto, the City is in compliance with all of the terms and conditions of the General Ordinance and each of the Related Documents, except for those terms and conditions which are to be satisfied after the date hereof, and no Potential Default or Event of Default has occurred and is continuing.

Section 4.13 **EEOC and OSHA.** The City has not received any notice of noncompliance from the Federal Equal Employment Opportunity Commission or the Federal Occupational Safety and Health Administration which would have a Material Adverse Effect on the Airport System or the Pledged Amounts.

Section 4.14 **Survival of Representations.** All representations and warranties made by or on behalf of the City in this Agreement are made as of the date hereof, but shall survive the delivery of this Agreement, and any investigation at any time made by or on behalf of the Bank shall not diminish its rights to rely upon such representations and warranties as having been true as of the date hereof or the date such representations and warranties are deemed to be updated pursuant to the terms of this Agreement.

Section 4.15 **Governmental Immunity.** There is no governmental immunity which would protect the City from the service of process, prevent the City from being subject to a judgment resulting from such service of process or the enforcement in accordance with Laws

applicable to it of any judgment rendered against it in connection with proceedings commenced by the Bank to enforce any of its rights under the General Ordinance or the Related Documents.

Section 4.16 **Security; Liens.** The General Ordinance permits the creation of a security interest in Pledged Amounts (other than Passenger Facility Charges) to secure the City's obligations hereunder on parity with the _____ Bonds. There are no Liens on any such Pledged Amounts or the Airport System, other than as disclosed to the Bank, which would have a Material Adverse Effect.

Section 4.17 **Insurance.** The City represents that it maintains such insurance, including self-insurance, on the Airport System as is customary in the industry or is required by Laws applicable to the City.

Section 4.18 **No Material Adverse Effect.** There are no facts which the City has failed to disclose to the Bank that, individually or in the aggregate, would have a Material Adverse Effect on the Airport System or the Pledged Amounts or, as far as the City can reasonably foresee, will have a Material Adverse Effect on the Airport System or the Pledged Amounts or on the ability of the City to perform its obligations under the Related Documents.

Section 4.19 **Disclosure.** The statements and representations made about the City and its operations contained in this Agreement and the Remarketing Circular, the exhibits hereto and the other documents, certificates, schedules and statements furnished to the Bank by or on behalf of the City in connection with the transactions contemplated hereby, do not contain any untrue statement of a material fact and do not omit to state a material fact necessary in order to make the statements contained therein not misleading.

Section 4.20 **Title to Properties.** The City has good title to the properties and assets comprising the Airport System, except for any defects or Liens that, in the aggregate, do not materially adversely affect the ability of the City to perform its obligations under this Agreement.

ARTICLE FIVE COVENANTS

The City will do the following so long as any amounts may be drawn under the Letter of Credit or any Obligations remain outstanding under this Agreement, unless the Bank shall otherwise consent in writing:

Section 5.1 **Reporting Requirements.** Furnish to the Bank:

(a) within [two hundred forty (240)] days after the end of each fiscal year of the City, the annual financial statements of the City relating to the Airport System for such year, including a statement of net assets, statement of revenues, expenses and changes in net assets, statement of cash flows and such other financial information with respect to the City as the Bank may reasonably request;

(b) concurrently with the delivery of each annual financial statement under Section 5.1(a) hereof, a certificate from the City's chief financial officer (i) certifying that all

representations and warranties in the General Ordinance, this Agreement or the other Related Documents are true and correct and that none of the covenants set forth in the General Ordinance, this Agreement or the other Related Documents have been breached, and (ii) stating that to the best of his or her knowledge no Default or Event of Default has occurred;

(c) promptly upon their becoming available, copies of any reports filed by the City with, or any material adverse notice or other material adverse communications received from, any Governmental Authority which, in any case, specifically relates to the Airport System or any Pledged Amounts or the _____ Bonds;

(d) promptly upon obtaining knowledge thereof, written notice from an Authorized Officer of any failure by the City to pay and discharge any of its Indebtedness payable from any Pledged Amounts when due;

(e) promptly upon obtaining knowledge of any event, act or omission which constitutes an Event of Default or Potential Default, a certificate signed by an Authorized Officer 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

(f) such other information respecting the operations, assets and condition, financial or otherwise, of the City relating to the Airport System and the Pledged Amounts as the Bank may from time to time reasonably request.

As and to the extent that any financial statement, audit report or other filing described in this Section 5.1 has been filed on a timely basis with the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access system or posted on the City's investor website, the requirements of this Section 5.1 with respect thereto shall be deemed satisfied.

Section 5.2 **Incorporated Covenants.** Observe and comply with, for the benefit of the Bank, all of the covenants and agreements of the City set forth in the General Ordinance and the Related Documents, as if such covenants and agreements were set forth herein. All such covenants and agreements are hereby incorporated by reference as though they were set forth herein in their entirety.

Section 5.3 **Keeping Books; Information for the Bank.** Keep proper books of record and account relating to the Airport System in which full, true and correct entries will be made of all dealings or transactions in relation to its operations and activities as required by laws applicable to the City, and make available during normal business hours for inspection by the Bank or its designated representatives any of its books and records relating to the Airport System when reasonably requested by the Bank to do so.

Section 5.4 **Notice of Default.** Shall promptly notify the Bank in writing of any default or event known to the City, or any condition or occurrence which with notice or the lapse of time, or both, would constitute a material default by any party thereto under any of the Related Documents, the General Ordinance, or any indenture, mortgage, agreement or other instrument or contractual obligation to which the City is a party relating to the Airport System, the Pledged Amounts or by which any of the Airport System may be bound or affected.

Section 5.5 **Maintenance of Insurance.** Keep, or cause to be kept, the facilities comprising the Airport System and the operations thereof insured with responsible insurers with policies payable to the City for the benefit of the Airport System against risks of direct physical loss, damage or destruction of such facilities, and against accidents, casualties, or negligence, including liability insurance and employer's liability, at least to the extent that similar insurance is usually carried by similar industries and facilities.

Section 5.6 **Reserved Notice of Litigation or Other Proceedings.** Give prompt notice to the Bank of (i) the existence of any dispute, (ii) the institution of any litigation, administrative proceeding or governmental investigation or (iii) the entry of any judgment, decree or order against or involving the City, if any of the foregoing relate to the Letter of Credit or any of the Bond Documents or could materially and adversely affect the operation, assets or financial condition of the Airport System or affect the enforceability of this Agreement, any of the other Related Documents or the General Ordinance.

Section 5.8 **Indebtedness and Obligations** Pay and perform all material Indebtedness and other obligations of the City relating to the Airport System as it becomes due and payable (or within applicable grace periods), including without limitation, all taxes, assessments and governmental charges against the income and properties of the Airport System except to the extent the amount, applicability or validity of any of the foregoing is being contested by the City in good faith and by appropriate proceedings and for which adequate reserves in respect thereof have been set aside on its books and so long as no enforcement action with respect to any Lien resulting therefrom has been commenced.

Section 5.9 **Compliance with Related Documents and Other Contracts.** Comply with all of its covenants and agreements under the Related Documents, and comply with all other material contracts and agreements relating to the Airport System to which the City is a party or by which it is bound.

Section 5.10 **Environmental Laws.** Comply with all environmental laws applicable to it; provided, however, that the City shall not be in breach of the foregoing if a failure to comply does not have a Material Adverse Effect on the Airport System or the Pledged Amounts.

Section 5.11 **Delivery of Notices.** Promptly provide the Bank with copies of any financial statements and reports, notices, filings or documentation required to be delivered under the General Ordinance to the Tender Agent, the holders of any bonds issued under the General Ordinance or to the Electronic Municipal Market Access System maintained by the Municipal Securities Rulemaking Board.

Section 5.12 **EEOC and OSHA Compliance.** Use its best efforts to comply with all Laws relating to Federal Equal Employment Opportunity Commission and Federal Occupational Safety and Health Administration requirements applicable to it; provided, however, that the City shall not be in breach of the foregoing if a failure to comply does not have a Material Adverse Effect on the Airport System or the Pledged Amounts.

Section 5.13 **Further Actions.** Cooperate with the Bank, at its own expense, in taking all such further actions as the Bank, in its reasonable judgment, shall deem necessary to effectuate the provisions of this Agreement, the Fee Letter and the other Related Documents.

Section 5.14 **Licenses, Permits, etc.** At all times and in all material respects maintain and comply with all necessary permits and licenses with respect to the operation of the Airport System issued by Governmental Authorities having jurisdiction over the Airport System.

Section 5.15 **Fundamental Changes.** Not sell, transfer, lease or otherwise dispose of all or any material part of the revenue generating assets of the Airport System, except in the ordinary course of the City's operations of the Airport System and in exchange for fair consideration or as otherwise permitted under the terms of Article IX of the General Ordinance.

Section 5.16 **Compliance with Laws, etc.** Not violate any Laws to which the City is subject relating to the Airport System and the Pledged Amounts, which violation involves a reasonable possibility of materially and adversely affecting the financial condition, business or results of operations of the Airport System or the ability of the City to perform its obligations under the General Ordinance and the Related Documents.

Section 5.17 **Inspection and Field Audit.** Permit the Bank and its duly authorized representatives and agents to visit and inspect any of the properties constituting the Airport System, corporate books and financial records of the City relating to the Airport System, and to examine and make copies of the books of accounts and other financial records of the City, all with reasonable (but in no event less than five (5) days) advance notice and at such reasonable times and reasonable intervals as the Bank may designate.

Section 5.18 **Indebtedness.** Not issue, incur, assume, create or have outstanding any Indebtedness secured by Pledged Amounts except as expressly permitted under the General Ordinance.

Section 5.19 **Liens.** Not create, incur or permit to exist any Lien with respect to the Airport System or Pledged Amounts other than (i) mechanic's or materialmen's liens which are being contested in good faith by the City or on the City's behalf, and (ii) Liens authorized by the General Ordinance that would not materially and adversely affect the ability of the City to perform its obligations under this Agreement.

Section 5.20 **Related Documents.** Not amend, modify or supplement, or consent to any amendment, modification or supplement, of any Related Document without the consent of the Bank; provided however, that the City may amend, modify and/or supplement (or consent to the same) the Related Documents in accordance with the terms hereof and thereof to the extent that such amendment, modification and/or supplement could not reasonably be expected to have an adverse effect on the Bank.

Section 5.21 **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, letter of credit, reimbursement 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, in each case secured by

Pledged Amounts, to or for the account of the City, which such agreement (or amendment thereto) provides such Person with more restrictive covenants and/or greater rights and remedies 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 and/or greater rights and remedies shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefits of such more restrictive covenants and/or such greater rights and remedies as if specifically set forth herein. The City shall promptly enter into an amendment to this Agreement to include such more restrictive covenants and/or greater rights or remedies (provided that the Bank shall maintain the benefit of such more restrictive covenants and/or greater rights and remedies even if the City fails to provide such amendment).

Section 5.22 **Hedging Agreements.** If the City shall in conjunction with or after the Closing Date enter into any Financial Products Agreement with respect to the _____ Bonds, with the foregoing to effectively limit the amount of interest that the City must pay on the notional amounts of the _____ Bonds, such hedging arrangements shall be with a counterparty, with a long-term rating of “A” (or its equivalent) or better and all obligations other than regularly scheduled payments of interest shall be subordinated in accordance with Section 4.06 of the General Ordinance to the debt service on bonds issued thereunder.

Section 5.23 **Remarketing Agent, Fiscal Agent and Tender Agent.** The City shall at all times maintain a Remarketing Agent, a Fiscal Agent and a Tender Agent. The City shall not appoint any successor Remarketing Agent, Fiscal Agent or Tender Agent without prior written notice to the Bank. The City shall at all times ensure that the Fiscal Agent and the Tender Agent are the same entity.

Section 5.24 **Alternate Liquidity Facility.** (a) The City shall use commercially reasonable efforts to obtain an Alternate Liquidity Facility to replace the Letter of Credit or obtain alternative financing in the event (i) the Bank shall decide not to extend the Stated Expiration Date pursuant to Section 2.12 hereof, or (ii) the ratings on the City’s bonds issued under the General Ordinance shall fall below Investment Grade.

(b) The City shall not permit an Alternate Liquidity Facility to become effective with respect to less than all of the _____ Bonds without the prior written consent of the Bank.

ARTICLE SIX DEFAULTS

Section 6.1 **Events of Default and Remedies.** If any of the following events shall occur, each such event shall be an “Event of Default”:

(a) failure of the City to (i) repay an advance described in Section 2.4 hereof, in full, on the date of the related drawing or (ii) make timely payments of principal and interest on the _____ Note, in the amounts and on the dates, when due;

(b) default in the payment of (i) any fee required to be paid when and as due as provided herein or in the Fee Letter or (ii) except as described in subsection 6.1(a) hereof, any

other Obligation required to be paid or reimbursed to the Bank under this Agreement or the Fee Letter when and as due as provided herein or therein, and such default in payment shall continue for four (4) calendar days;

(c) any material representation or warranty made by the City in the General Ordinance, this Agreement (or incorporated herein by reference), in the Fee Letter or in any of the other Related Documents or in any certificate, document, instrument, opinion or financial or other statement contemplated by or made or delivered pursuant to or in connection with the General Ordinance, this Agreement, the Fee Letter or any of the other Related Documents, shall prove to have been incorrect, incomplete or misleading, in any material respect, when made, or deemed made;

(d) failure of the City to perform or observe any term, covenant, agreement or condition contained in, or there shall occur any default under or as defined in, (i) any other agreement between the City and the Bank, or (ii) any other agreement by which it is bound involving a material liability of the City relating to the Airport System, which default under clause (i) or (ii) above shall not be remedied within the period of time (if any) within which such agreement permits such default to be remedied;

(e) default in the due observance or performance by the City of any covenant set forth in Section _____ hereof;

(f) default in the due observance or performance by the City of any other term, covenant or agreement set forth in this Agreement and the continuance of such default for thirty (30) days after the City is aware of the occurrence thereof;

(g) any material provision of the General Ordinance, this Agreement, the Fee Letter or any of the other Related Documents shall cease to be valid and binding, or the City shall contest any such provision, or the City or any agent or trustee on behalf of the City shall deny that it has any or further liability under the General Ordinance, this Agreement, the Fee Letter or any of the other Related Documents;

(h) the City becomes insolvent and generally fails to pay, or is generally unable to pay, or admits in writing its inability to pay, its debts as they become due or applies for, consents to, or acquiesces in, the appointment of a trustee, receiver or other custodian for the City, as the case may be, or a substantial part of its property, or makes a general assignment for the benefit of creditors;

(i) the City commences any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any state or federal bankruptcy or insolvency law, or any dissolution or liquidation proceeding;

(j) any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any state or federal bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is involuntarily commenced against or in respect of the City and such case or proceeding is not dismissed within sixty (60) days from the commencement thereof; or an order for relief is entered in any such proceeding;

(k) a trustee, receiver, or other custodian is appointed for the City or a substantial part of its Property and such appointment (if involuntary) is not dismissed within sixty (60) days;

(l) failure of the City to make any payment in respect of any of its Indebtedness when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness; or any other failure under any agreement or instrument relating to any such Indebtedness, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to accelerate or permit the acceleration of the maturity of such Indebtedness or such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regular scheduled required prepayment) prior to the stated maturity thereof;

(m) a judgment or judgments payable from any Pledged Amounts is entered, or an order or orders of any Governmental Authority is issued against the City (i) for payment of money, which judgment or judgments in the aggregate, exceed \$10,000,000 outstanding at any one time which is not fully covered by a valid insurance policy issued by an insurer that is solvent at the time of such judgment and has not refused coverage; or (ii) for injunctive or declaratory relief which judgment would reasonably be expected to have a Material Adverse Effect on the Airport System or Pledged Amounts; and such judgment is not discharged or execution thereon or enforcement thereof stayed pending appeal, within sixty (60) days after entry or issuance thereof, or, in the event of such a stay, such judgment is not discharged within sixty (60) days after such stay expires, provided that no assets of the City are attached by the judgment creditor pending such stay or discharge; provided, however, that a default described in clause (i) and (ii) above shall not exist if funds equal to the amount of the judgment described in clause (i) and (ii) above are (x) included by the City's Division of Aviation ("DOA") in its calculation of airport rates and charges and paid from such rates and charges within sixty (60) days after entry or issuance of such judgment, or (y) paid by the DOA within sixty (60) days after entry or issuance of such judgment from either (A) the DOA's Operating and Maintenance Account established under the General Ordinance; (B) the Bond Redemption and Improvement Account established under the General Ordinance; or (C) the Discretionary Account established under the General Ordinance

Section 6.2 Remedies. Upon the occurrence of any Event of Default, the Bank, may exercise any one or more of the following rights and remedies in addition to any other remedies herein or by law provided:

(a) by notice to the City, subject to the provisions of the General Ordinance, declare all Obligations to be, and such amounts shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the City, provided that upon the occurrence of an Event of Default under Section 6.1(g), (h) or (i) hereof such acceleration shall automatically occur (unless such automatic acceleration is waived by the Bank, in writing);

(b) pursue any rights and remedies it may have hereunder, under the General Ordinance or under any of the Related Documents; and

- (c) pursue any other action available at law or in equity.

Section 6.3 **Set-Off.** Upon the occurrence and during the continuance of any 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 set off and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys, at any time held and other indebtedness at any time owing by the Bank to or for the account of the City against any and all of the obligations of the City now or hereafter existing under this Agreement and the Fee Letter or any other agreement or instrument delivered by the City to the Bank in connection therewith, whether or not the Bank shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. The rights of the Bank under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Bank may have. The Bank shall give the City notice of any set-off hereunder after such set-off has occurred. Notwithstanding anything to the contrary contained in this Section 6.3, any amounts realized by the Bank pursuant to this Section 6.3 shall be strictly limited to Pledged Amounts.

ARTICLE SEVEN MISCELLANEOUS

Section 7.2 **Obligations Absolute.** The City acknowledges and agrees that all Obligations hereunder and under the Fee Letter are absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever by the Bank or any Participant, and without limiting the generality of the foregoing, the Obligations hereunder and under the Fee Letter shall not be impaired by any acceptance by the Bank of any other security for or guarantors upon the Obligations hereunder or under the Fee Letter or by any failure, neglect or omission on part of the Bank to resort to the City for payment of the Obligations hereunder or under the Fee Letter or to realize upon or protect any collateral security therefor. The Obligations hereunder and under the Fee Letter shall not in any manner be impaired or affected by the Person who receives or uses the proceeds of the drawings under the Letter of Credit or for what purposes such proceeds are used. Such liability of the City shall also not be impaired or affected by (and the Bank, without notice to anyone, is hereby authorized to make from time to time) any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any collateral security for the Obligations hereunder and under the Fee Letter or of any guaranty thereof. In order to enforce payment of the Obligations hereunder and under the Fee Letter, foreclose or otherwise realize on any collateral security therefor, and to exercise the rights granted to the Bank hereunder and thereunder and under applicable Laws, the Bank shall not be under any obligation at any time to first resort to any collateral security, property, liens or any other rights or remedies whatsoever, and the Bank shall have the right to enforce the Obligations hereunder and under the Fee Letter irrespective of whether or not other proceedings or steps are pending seeking resort to or realization upon or from any of the foregoing. By its acceptance below, the City hereby expressly waives and surrenders any defense to its liability with respect to the Obligations hereunder and under the Fee Letter based upon any of the foregoing.

Section 7.3 **Liability of the Bank.** The City assumes all risks of the acts or omissions of the Fiscal Agent and the Tender Agent, or any agent of the Fiscal Agent and the Tender Agent, and any transferee beneficiary of the Letter of Credit with respect to its use of the Letter of Credit. Neither the Bank nor any of its officers or directors 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 Fiscal Agent or the Tender Agent, any agent of the Fiscal Agent or the Tender Agent and any transferee beneficiary in connection therewith; (b) the validity or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the Letter of Credit or this Agreement, including failure of any documents to bear any reference or adequate reference to the Letter of Credit or this Agreement; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit or this Agreement; provided, however, that the City shall have a claim against the Bank and the Bank shall be liable to the City, to the extent of any direct compensatory, as opposed to consequential, damages suffered by the City which the City proves were caused by the Bank's gross negligence or willful misconduct in connection with the Letter of Credit or failure to examine documents presented under the Letter of Credit with care to determine whether they comply with the terms of the Letter of Credit (it being understood that the Bank assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face). 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 or among the City, the Fiscal Agent, the Tender Agent, any transferee beneficiary of the Letter of Credit 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.

Section 7.4 **Participants.** The Bank may at any time grant to one or more banks or other financial institutions (each, a "***Participant***") participating interests in the Bank's obligations under the Letter of Credit. Such Participant shall have the same rights and benefits against the City hereunder and under the Fee Letter as it would have had if such Participant were the Bank hereunder and thereunder; provided that no such participation shall cause the City to incur obligations, costs or expenses greater than it would have otherwise had to pay the Bank if there had been no Participant. In the event of any such grant by the Bank of a participating interest to a Participant, the Bank shall remain solely responsible for the performance of its obligations hereunder and under the Letter of Credit, and the City and the Fiscal Agent and the Tender Agent shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement, the Fee Letter and the Letter of Credit. Any agreement pursuant to which the Bank may grant such a participating interest shall provide that the Bank shall retain the sole right and responsibility to enforce the obligations of the City hereunder and under the Fee Letter including, without limitation, the right to approve any amendment, modification or waiver of any provision hereof or thereof. The Bank agrees to give to the City notice of the granting of a participating interest as provided in this Section 7.4 within a reasonable time after the granting thereof; provided that the failure to give such notice shall not affect in any way the effectiveness of the participation.

Section 7.5 **Survival of this Agreement.** All covenants, agreements, representations and warranties made in this Agreement and the Fee Letter shall survive the issuance 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 Obligations shall be outstanding and unpaid.

Section 7.6 **Modification of this Agreement.** No amendment, modification or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Bank and the City, and no amendment, modification or waiver of any provision of the Letter of Credit, shall in any event be effective unless the same shall be in writing and signed by the Bank.

Section 7.7 **Waiver of Rights by the Bank.** No course of dealing or failure or delay on the part of the Bank in exercising any right, power or privilege hereunder or under the Letter of Credit or this Agreement or the Fee Letter shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right or privilege. The rights of the Bank under the Letter of Credit and the rights of the Bank under this Agreement and the Fee Letter are cumulative and not exclusive of any rights or remedies which the Bank would otherwise have.

Section 7.8 **Severability.** In case any one or more of the provisions contained in this Agreement or the Fee Letter should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.9 **Governing Law.** This Agreement and the Fee Letter shall be governed by, and construed in accordance with, the law of the Commonwealth without reference to its principles of conflicts of law. The Letter of Credit shall be governed and construed as set forth therein.

Section 7.10 **Notices.** All notices hereunder shall be given by United States certified or registered mail or by telecommunication device capable of creating written record of such notice and its receipt. Notices hereunder shall be effective when received and shall be addressed:

Section 7.11 **Successors and Assigns.** Whenever in this Agreement or the Fee Letter the Bank is referred to, such reference shall be deemed to include the successors of the Bank, and all covenants, promises and agreements by or on behalf of the City which are contained in this Agreement or the Fee Letter shall inure to the benefit of any successors of the Bank. The rights and duties of the City hereunder and under the Fee Letter, however, may not be assigned or transferred without the prior written consent of the Bank, and all obligations of the City hereunder and under the Fee Letter shall continue in full force and effect notwithstanding any assignment by the City of any of its rights or obligations under any of the other Related Documents or any entering into, or consent by the City to, any supplement or amendment to any of the Related Documents.

Section 7.12 **Fees and Expenses.** Any taxes payable or ruled payable by any Governmental Authority in respect of this Agreement, the Fee Letter, the Letter of Credit or the Bonds shall be paid by the City together with interest and penalties, if any; provided, however, that the City may conduct a reasonable contest of any such taxes with the prior written consent of the Bank, which consent shall not be unreasonably withheld. The City shall pay (a) all reasonable fees and out-of-pocket expenses of the Bank and its counsel in connection with the preparation of this Agreement, the Fee Letter, the Letter of Credit and related documents required hereby and thereby as are set forth in the Fee Letter, (b) unless otherwise specified in the Fee Letter, all reasonable out-of-pocket expenses of the Bank, including reasonable fees and disbursements of counsel, in connection with any waiver or consent hereunder or any amendment or transfer hereof, of the Letter of Credit or of any Related Document or any Event of Default or Potential Default hereunder or thereunder, and (c) if an Event of Default occurs, all reasonable out-of-pocket expenses incurred by the Bank, including reasonable fees and disbursements of counsel, in connection with such Event of Default and collection and other enforcement proceedings resulting therefrom.

Section 7.13 **Headings.** The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

Section 7.14 **Counterparts.** This Agreement and the Fee Letter may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement and the Fee Letter may be delivered by the exchange of signed signature pages by facsimile transmission or by email with a pdf copy or other replicating image attached, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

Section 7.15 **Entire Agreement.** This Agreement constitutes the entire understanding of the parties with respect to the subject matter thereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

Section 7.16 **USA Patriot Act**(a) 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)) (as amended from time to time, the “**Patriot Act**”), the Bank 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, and the City hereby agrees to take any action reasonably necessary to enable the Bank to comply with the requirements of the Patriot Act.

(b) The City shall use its best efforts to ensure that (a) no Person who controls the City is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control or the Department of the Treasury, or included in any Executive Orders, that prohibit or limit the Bank from making any extension of credit to the City or from otherwise conducting business with the City and (b) the proceeds of the Bonds shall not be used to violate any of the foreign asset control regulations of Office of Foreign Assets Control or any enabling statute or Executive Order relating thereto.

Further, the City hereby agrees to take any action reasonably necessary to enable the Bank to comply with all applicable Bank Secrecy Act laws and regulations, as amended.

Section 7.17
Direct Damages

Consent to Jurisdiction; Waivers of Jury Trial and Non-

(a) The City and the Bank agree that any action or proceeding relating in any way to this Agreement shall be brought and enforced in the federal or state courts of the Commonwealth located in the City, and each irrevocably submits to the jurisdiction of each such court.

(b) The City and the Bank hereby irrevocably waive (i) any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or any Related Document or the transactions contemplated thereby and (ii) any right it may have to claim or recover in any such legal proceeding any special, exemplary, punitive or consequential damages.

[SIGNATURE PAGES TO FOLLOW]