

**FIRST AMENDMENT TO  
REIMBURSEMENT AGREEMENT  
AND  
FIRST AMENDMENT TO  
AMENDED AND RESTATED FEE LETTER AGREEMENT**

This FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT AND FIRST AMENDMENT TO AMENDED AND RESTATED FEE LETTER AGREEMENT (this “Amendment”) is made and entered into as of [●], 2023 between THE BOARD OF PORT COMMISSIONERS OF THE CITY OF OAKLAND, CALIFORNIA (the “Board”), which Board has, pursuant to Article VII of the Charter of the City of Oakland, been granted exclusive control and management of the department of the City of Oakland, California known as the Port Department, and BANK OF AMERICA, N.A., a national banking association (together with its successors and assigns, the “Bank”).

**W I T N E S S E T H**

WHEREAS, the Board and the Bank are parties to that (i) certain Reimbursement Agreement, dated as of June 13, 2017, and that certain letter agreement dated May 10, 2019 (collectively, the “Existing Reimbursement Agreement,” unless otherwise defined herein, capitalized terms used herein and defined in the Existing Reimbursement Agreement shall have the same meaning herein as therein defined), and (ii) certain Amended and Restated Fee Letter Agreement dated May 10, 2019 (the “Existing Fee Agreement,” together with the Existing Reimbursement Agreement, the “Existing Agreements”); and

WHEREAS, the Board and the Bank desire to extend the term of the Letter of Credit and to amend certain provisions of the Existing Agreements as stated herein below.

NOW, THEREFORE, in consideration of the foregoing, the premises and mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Effectiveness of this Amendment. This Amendment shall become effective as provided herein at the time (the “Amendment Effective Time”) on the first date (the “Amendment Effective Date”) on which each of the following conditions shall be satisfied or waived by the Bank:

(a) Execution of this Amendment. The Board and the Bank shall have executed a copy of this Amendment (whether the same or different copies) and the Board shall have delivered the same to the Bank.

(b) No Default; Representations and Warranties. The Bank shall be satisfied that immediately prior to the Amendment Effective Time and after giving effect to this Amendment, (i) there shall exist no Default or Event of Default under the Existing Reimbursement Agreement and (ii) the representations and warranties of the Board contained in this Amendment are true and correct in all material respects as of the

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Amendment Effective Time with the same effect as though such representations and warranties had been made at the Amendment Effective Time (except for any such representation and warranty that by its terms is made as of an earlier date which representation and warranty is true and correct in all material respects as of such earlier date).

(c) Payments. The Bank shall have received all amounts, if any, owing under the Existing Fee Agreement from the Board through and including the Amendment Effective Date.

(d) Authority. The Bank shall have received evidence satisfactory to it that the Board has the power and authority and has received all consents necessary to enter into this Amendment.

(e) Closing Certificate of the Board. The Bank shall have received a certificate of an Authorized Board Representative, dated the Amendment Effective Date, certifying that (i) all representations and warranties of the Board contained in Article Four of the Existing Reimbursement Agreement (as modified by this Amendment) and the other Related Documents to which the Board is a party (A) that are not qualified by materiality or by reference to Material Adverse Effect or Material Adverse Change are true and correct in all material respects on and as of the Amendment Effective Date with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made as of an earlier date which representation and warranty is true and correct in all material respects as of such earlier date), or (B) that are qualified by materiality or by reference to Material Adverse Effect or Material Adverse Change are true and correct in all respects on and as of the Amendment Effective Date with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made as of an earlier date which representation and warranty is true and correct in all respects as of such earlier date); (ii) no Default or Event of Default has occurred and is continuing or would result from the execution and delivery by the Board of this Amendment; and (iii) the Board has satisfied each of the conditions applicable to the Board set forth in this Section 1.

(f) Secretary's Certificate of the Board. The Bank shall have received a certificate of the secretary of the Board certifying as to the incumbency and genuineness of the signature of each officer of the Board executing this Amendment.

(g) Counsel Fees. The Board shall have paid the fees and expenses of counsel to Bank, which payment shall be made on or before the Amendment Effective Date to the extent invoiced at least 2 Business Days prior to the Amendment Effective Date, or within 2 Business Days after receipt to the extent invoiced on or after the Amendment Effective Date.

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### 2. Amendments to Existing Agreements.

(a) At the Amendment Effective Time, Section 1.1 of the Existing Reimbursement Agreement shall be amended to delete the defined terms “*Reduction Fee*” and “*Termination Fee*.”

(b) At the Amendment Effective Time, the last sentence of Section 2.5 of the Existing Reimbursement Agreement shall be amended to delete the phrase “, including, without limitation, any applicable Termination Fee or Reduction Fee”.

(c) At the Amendment Effective Time, Section 2.7(a) of the Existing Reimbursement Agreement shall be amended and restated in its entirety to read as follows:

“(a) Notwithstanding any provisions of the Commercial Paper Indenture to the contrary, the Board agrees not to terminate, permanently reduce or replace the Letter of Credit (or to direct the Issuing and Paying Agent to terminate the Letter of Credit without a replacement letter of credit being substituted therefor) prior to the Stated Expiration Date, except upon (i) the payment to the Bank of all fees, expenses and other amounts payable hereunder, (ii) the payment to the Bank of all principal and accrued interest owing on the Bank Note, and (iii) providing the Bank notice of its intention to do so at least ten (10) Business Days (or such shorter amount of time reasonably acceptable to the Bank) prior to the date of such termination, permanent reduction or replacement; *provided* that all payments to the Bank referred to in clauses (i) and (ii) above shall be made with immediately available funds.”

(d) At the Amendment Effective Time, Section 2.14(d) of the Existing Reimbursement Agreement shall be amended and restated in its entirety to read as follows:

“(d) Notwithstanding anything herein or in any Related Document to the contrary, if the Bank seeks compensation from the Board pursuant to this Section, the Board shall have the option to terminate this Agreement, provided the Board provides notice to the Bank of its intent to terminate this Agreement within ten (10) Business Days following the Board’s receipt of written notice of all required payments of amounts referred to in paragraphs (a) and (b) of this Section.”

(e) At the Amendment Effective Time, Article Eight of the Existing Reimbursement Agreement shall be amended by adding the following new sections in numeric order at the end of Article Eight and the Table of Contents shall be revised to reflect such additional sections:

(i) *Section 8.23 Assignment of Rights to Governmental Entity.* In addition to the rights of the Bank set forth above in Section 8.3, the Bank may at any time pledge or grant a security interest in all or any portion of its rights or interest under this Agreement and the Related Documents to secure obligations of the Bank or an affiliate of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; *provided* that no such pledge or assignment shall release the Bank from any of its

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obligations hereunder or under any other Related Document or substitute any such pledgee or assignee for the Bank as a party hereto or under any other Related Document.

(ii) *Section 8.24 No Advisory or Fiduciary Relationship.* In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Related Document), the Board acknowledges and agrees that: (a) (i) the services regarding this Agreement provided by the Bank and any affiliate thereof are arm's-length commercial transactions between the Board, on the one hand, and the Bank and its affiliates, on the other hand, (ii) the Board has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Board is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Related Documents; (b) (i) the Bank and its affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary pursuant to Section 15B of the Securities Exchange Act of 1934, for the Board, or any other Person and (ii) neither the Bank nor any of its affiliates has any obligation to the Board with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Related Documents; and (c) the Bank and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Board, and neither the Bank nor any of its affiliates has any obligation to disclose any of such interests to the Board. To the fullest extent permitted by law, the Board hereby waives and releases any claims that it may have against the Bank or any of its affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

(iii) *Section 8.25 Acknowledgement Regarding Any Supported QFCs.* To the extent that this Agreement, the Fee Letter or the Letter of Credit provide support, through a guarantee or otherwise, for any agreement or instrument that is a QFC (such support, "*QFC Credit Support*", and each such QFC, a "*Supported QFC*"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "*U.S. Special Resolution Regimes*") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that this Agreement, the Fee Letter, the Letter of Credit and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "*Covered Party*") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special

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Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement, the Fee Letter or the Letter of Credit that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and this Agreement, the Fee Letter or the Letter of Credit were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a defaulting lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 8.25, the following terms have the following meanings:

(i) “*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

(ii) “*Covered Entity*” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

(iii) “*Default Right*” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

(iv) “*QFC*” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

(iv) *Section 8.26 Electronic Execution of Certain Documents* . This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “*Communication*”), including Communications required to be in writing, may, if agreed by the Bank, be in the form of an Electronic Record (as defined below) and may be executed using Electronic Signatures (as defined below), including, without limitation, facsimile and/or .pdf. The Board agrees that any Electronic Signature (including, without limitation, facsimile or .pdf) on or associated with any Communication shall be valid and binding on the Board to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature will constitute the legal, valid and

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binding obligation of the Board enforceable against the Board in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered to the Bank. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this Section may include, without limitation, use or acceptance by the Bank of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Bank may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“*Electronic Copy*”), which shall be deemed created in the ordinary course of the Bank’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Bank is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Bank pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (a) to the extent the Bank has agreed to accept such Electronic Signature, the Bank shall be entitled to rely on any such Electronic Signature without further verification and (b) upon the request of the Bank any Electronic Signature shall be promptly followed by a manually executed, original counterpart. For purposes hereof, “*Electronic Record*” and “*Electronic Signature*” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

(v) *Section 8.27 Filing of the Agreement.* In the event the Board elects or is required to file a copy of this Agreement or the Letter of Credit (or any amendment or modification thereof) with Electronic Municipal Market Access as provided by the Municipal Securities Rulemaking Board, the Board shall file only a complete copy of this Agreement or the Letter of Credit containing such redactions as reasonably directed by the Bank.

(f) At the Amendment Effective Time, Section 1.1 of the Existing Fee Agreement shall be amended by deleting the percentages under the column heading “LETTER OF CREDIT FEE RATE” and substituting therefor the following:

LEVEL	LETTER OF CREDIT FEE RATE
Level 1	0.385%
Level 2	0.585%
Level 3	0.785%
Level 4	1.035%
Level 5	1.535%

(g) At the Amendment Effective Time, Section 1.4 of the Existing Fee Agreement shall be deleted in its entirety.

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3. Representations and Warranties. By its execution hereof, the Board hereby represents and warrants as follows:

(a) it has the right, power and authority and has taken all action necessary to authorize the execution, delivery and performance of this Amendment;

(b) this Amendment has been duly executed and delivered by its duly authorized officers and constitutes the legal, valid and binding obligation of the Board, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal debtor relief laws from time to time in effect which affect the enforcement of creditors' rights in general and the availability of equitable remedies;

(c) each representation and warranty contained in Article Four of the Existing Reimbursement Agreement is true and correct in all material respects (except to the extent such representation and warranty is qualified by materiality or reference to Material Adverse Effect or Material Adverse Change, in which case such representation and warranty shall be true and correct in all respects) as of the Amendment Effective Date as if fully set forth herein, other than any such representations or warranties that, by their express terms, refer to an earlier date, in which case they shall have been true and correct in all material respects (except to the extent such representation and warranty is qualified by materiality or reference to Material Adverse Effect or Material Adverse Change) as of such earlier date; and

(d) no Default or Event of Default with respect to the Board has occurred and is continuing as of the Amendment Effective Date or would result after giving effect to this Amendment and the extension of the Letter of Credit.

4. Miscellaneous.

(a) As soon as practicable following satisfaction or waiver of the conditions precedent set forth in numbered paragraph 1 hereof, the Bank shall issue to the Issuing and Paying Agent an extension amendment to the Letter of Credit in accordance with the terms of Letter of Credit extending the Stated Expiration Date to December 31, 2026.

(b) Except as expressly modified by this Amendment, each of the Existing Agreements shall continue to be and remains in full force and effect in accordance with its terms. Each of Existing Agreements as amended by this Amendment is a Related Document. From and after the Amendment Effective Time, references to the Agreement and the Fee Letter shall refer to the Existing Reimbursement Agreement and the Existing Fee Agreement, respectively, as amended by this Amendment.

(c) This Amendment may be executed in any number of counterparts and by the different parties hereto in different counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

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(d) THIS AMENDMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AMENDMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, *PROVIDED* THAT THE OBLIGATIONS OF THE BOARD HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE.

(e) Delivery of an executed counterpart of a signature page of this Amendment by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Amendment. Without limiting the generality of the foregoing, the Board hereby agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation between the Bank and the Board, electronic images of this Amendment (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original.

*[Remainder of page intentionally left blank.]*



IN WITNESS WHEREOF, each of the Board and the Bank has caused this Amendment to be signed in its name by its duly authorized officer, effective as of Amendment Effective Time on the Amendment Effective Date.

THE BOARD OF PORT COMMISSIONERS OF  
THE CITY OF OAKLAND, CALIFORNIA

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

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

Title: Chief Financial Officer

APPROVED AS TO FORM AND LEGALITY:

This [●] day of [●], 2023

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

Port Attorney

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First Amendment to Reimbursement Agreement and  
First Amendment to Amended and Restated Fee Letter Agreement

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BANK OF AMERICA, N.A.

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

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

Title: Senior Vice President

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