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**THIRD SUPPLEMENTAL TRUST INDENTURE**

**By and Between**

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

**and**

**U.S. BANK NATIONAL ASSOCIATION  
as Trustee**

**Dated as of May 10, 2019**

**RELATING TO  
PORT OF OAKLAND, CALIFORNIA  
COMMERCIAL PAPER NOTES  
SERIES A, B, AND C**

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### **THIRD SUPPLEMENTAL TRUST INDENTURE**

This THIRD SUPPLEMENTAL TRUST INDENTURE (this “Third Supplemental Indenture”), dated as of May 10, 2019, is between the Board of Port Commissioners of the City of Oakland, California (the “Board”), a duly constituted department of the City of Oakland, organized and existing pursuant to Article VII of the Charter of the City of Oakland, and U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, as trustee (the “Trustee”), and supplements and amends that Trust Indenture, dated as of October 1, 1998, relating to the Port of Oakland, California Commercial Paper Notes (the “Original Indenture”), as previously supplemented by that certain First Supplemental Trust Indenture, dated as of August 2, 2010 (the “First Supplemental Indenture”), and by that certain Second Supplemental Trust Indenture, dated as of June 1, 2017 (the “Second Supplemental Indenture,” and together with the Original Indenture and the First Supplemental Indenture, the “1998 CP Indenture”), each of which is also by and between the Board and the Trustee (as successor in interest to U.S. Bank Trust National Association).

WHEREAS, the 1998 CP Indenture provides in Section 11.02(k) thereof that the Board may execute and deliver Supplemental Indentures to take effect with respect to Notes issued on or after the effective date of the Supplemental Indenture accompanied by appropriate disclosure of the amendment or supplement without the consent of or notice to the Noteholders;

WHEREAS, pursuant to Section 11.02 of the 1998 CP Indenture, while the Letter of Credit is in effect and the Bank is not Insolvent and is not in default under the Letter of Credit or the Reimbursement Agreement, the prior written consent of the Bank to any such Supplemental Indenture shall be required;

WHEREAS, the Board has determined that it is appropriate to amend certain sections of the 1998 CP Indenture to modify the permissible uses for proceeds of the Series A Notes, Series B Notes and Series C Notes;

WHEREAS, the Board currently has Series A Notes and Series C Notes Outstanding, but there are currently no Series B Notes Outstanding;

WHEREAS, the Bank has provided its written consent to this Third Supplemental Indenture; and

WHEREAS, each capitalized term used herein, but not defined, shall have the same meaning as that assigned to such term in the 1998 CP Indenture.

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

**ARTICLE I**  
**AMENDMENT OF THE 1998 CP INDENTURE**

Section 1.01 *Amendment to Section 1.01.*

The following definitions are hereby added to Section 1.01:

“Exempt Facility Notes” means the Series A Notes and the Series D Notes.

“Exempt Facility Project” means any undertaking, facility or item which is listed or otherwise described in a Tax Certificate of the Board as being, or otherwise permitted in accordance with the Tax Certificate of the Board to be, financed or refinanced in whole or in part with the proceeds of Exempt Facility Notes and which is acquired, constructed, reconstructed, improved, expanded or otherwise financed or refinanced with proceeds of the sale of Exempt Facility Notes.

“Governmental Notes” means the Series B Notes and the Series E Notes.

“Governmental Project” means any undertaking, facility or item which is listed or otherwise described in a Tax Certificate of the Board as being, or otherwise permitted in accordance with the Tax Certificate of the Board to be, financed or refinanced in whole or in part with the proceeds of Governmental Notes and which is acquired, constructed, reconstructed, improved, expanded or otherwise financed or refinanced with proceeds of the sale of Governmental Notes.

“Other CP Indenture” means that Trust Indenture dated as of September 1, 1999 between the Board and the Trustee, as amended and supplemented, including as amended by the First Supplemental Trust Indenture dated as of June 1, 2017 and the Second Supplemental Trust Indenture dated as of May 10, 2019.

“Series D Notes” means the “Port of Oakland, California Commercial Paper Notes, Series D (AMT),” issued under the Other CP Indenture.

“Series E Notes” means the “Port of Oakland, California Commercial Paper Notes, Series E (Non-AMT),” issued under the Other CP Indenture.

“Series F Notes” means the “Port of Oakland, California Commercial Paper Notes, Series F (Taxable),” issued under the Other CP Indenture.

“Taxable Notes” means the Series C Notes and the Series F Notes.

“Taxable Project” means any undertaking, facility or item which is acquired, constructed, reconstructed, improved, expanded or otherwise financed or refinanced with proceeds of the sale of Taxable Notes.

Section 1.02 ***Amendment to Section 2.01(b)***. Section 2.01(b) of the 1998 CP Indenture is hereby deleted in its entirety and replaced with the following:

“(b) The Board hereby authorizes the issuance of its Notes to be designated “Port of Oakland, California Commercial Paper Notes, Series A” (AMT) and “Port of Oakland, California Commercial Paper Notes, Series B” (Non-AMT) and “Port of Oakland, California Commercial Paper Notes, Series C” (Taxable) subject to the provisions of this Section 2.01 and as hereinafter provided. The Series A Notes shall be issued from time to time as provided herein to finance and refinance the cost of Exempt Facility Projects, the Series B Notes shall be issued from time to time as provided herein to finance and refinance the cost of Governmental Projects, and the Series C Notes shall be issued from time to time as provided herein to finance and refinance the cost of Taxable Projects. In addition, Notes of each Series may also be issued for any other purpose permissible pursuant to and in accordance with the Tax Certificate in effect at the time of issuance of such Notes, including, without limitation, to pay or to reimburse the Banks for Advances used to pay principal or interest due on maturing Commercial Paper Notes of any Series or notes of any series issued under the Other CP Indenture, to the extent permitted pursuant to the applicable Tax Certificate. Such authorization specifically includes the authorization to issue and reissue Commercial Paper Notes for such purposes. The aggregate principal amount of Commercial Paper Notes that may be Outstanding at any one time hereunder shall not at any time exceed the Authorized Amount. At no time shall the aggregate amount of interest payable on the Outstanding Commercial Paper Notes exceed the Interest Component then available under the Letter of Credit.”

Section 1.03 ***Amendment to Section 2.01(g)***. Section 2.01(g) of the 1998 CP Indenture is hereby deleted in its entirety and replaced with the following:

“(g) Commercial Paper Notes which are issued to finance or refinance Exempt Facility Projects shall be designated as Series A Notes. Commercial Paper Notes which are issued to finance or refinance Governmental Projects shall be designated as Series B Notes. Commercial Paper Notes which are issued to finance or refinance Taxable Projects shall be designated as Series C Notes. Successive tranches of each Series shall be designated as the related Series designation followed by “\_\_\_-1,” “\_\_\_-2,” “\_\_\_-3,” etc.”

Section 1.04 ***Amendment to Section 2.06(b)***. Section 2.06(b) of the 1998 CP Indenture is hereby amended by deleting clause (viii) thereof and replacing it with the following:

“(viii) the Note Proceeds shall be deposited in accordance with Section 4.02 hereof;”

Section 1.05 ***Amendment to Section 4.02***. Section 4.02 of the 1998 CP Indenture is hereby deleted in its entirety and replaced with the following:

“Deposit of Proceeds of Commercial Paper Notes. Immediately upon receipt thereof, the Issuing and Paying Agent shall, if instructed by an Authorized Board Representative, first deposit the proceeds of the sale of Series A Notes, Series B Notes, or Series C Notes into the corresponding Bank Payment Account or, if instructed by such Authorized Board Representative, into such other Bank Payment Account or “Bank Payment Account” as defined

in the Other CP Indenture as may be designated by such Authorized Board Representative in accordance with the requirements of the applicable Tax Certificate, in either case in an amount equal to the unreimbursed payments made by the applicable bank to pay principal of or interest on maturing Commercial Paper Notes or notes under the Other CP Indenture. Amounts deposited into any Bank Payment Account hereunder shall be held separate and apart from all other funds and accounts and not commingled with any other moneys. The remaining proceeds shall be transferred to the Trustee for deposit in the Construction Fund.”

Section 1.06 ***Amendment to Section 4.03(a)***. Section 4.03(a) of the 1998 CP Indenture is hereby deleted in its entirety and replaced with the following:

“(a) Moneys in the Construction Fund attributable to each of the Series A Notes, the Series B Notes, and the Series C Notes shall be applied, respectively, to the payment of Exempt Facility Projects, Governmental Projects, and Taxable Projects. An Authorized Board Representative may from time to time amend the list of Projects in a Tax Certificate; *provided, however,* that the Authorized Board Representative shall not amend the list of Projects in such a way as to change the tax status of the related Series of Commercial Paper Notes. An Authorized Board Representative is hereby authorized to execute one or more supplemental Tax Certificates in connection with any Series of Notes.”

Section 1.07 ***Amendment to Section 4.03(b)***. Section 4.03(b) of the 1998 CP Indenture is hereby deleted in its entirety and replaced with the following:

“(b) The Trustee shall make payments or disbursements from the Construction Fund upon receipt from the Board of a written requisition, in substantially the form attached as Exhibit C to this Indenture, executed by an Authorized Board Representative, which requisition shall state, with respect to each amount requested thereby, (i) the account, if any, within the Construction Fund from which such amount is to be paid, (ii) the number of the requisition from such account, (iii) the amount to be paid, the name of the Person to which the payment is to be made and the manner in which the payment is to be made, (iv) that the amount to be paid represents a cost of a qualifying Project as described in or as otherwise permitted pursuant to a Tax Certificate of the Board, or is related to a Taxable Project, as applicable, and (v) unless related to a Taxable Project, that the amounts requisitioned will be expended only in accordance with and subject to the limitations set forth in the applicable Tax Certificate.”

Section 1.08 ***Amendment to Section 4.03(d)***. Section 4.03(d) of the 1998 CP Indenture is hereby deleted in its entirety and replaced with the following:

“(d) Any amounts remaining in the Construction Account for a Series of Notes at the completion of the Project financeable by such Series shall be transferred to the Bank Payment Account and be used to repay Advances to the extent that a portion of such Advances is allocable to the interest on the Notes of such Series, or, at the instruction of an Authorized Board Representative, such remaining amounts may be transferred to such other Bank Payment Account or “Bank Payment Account” as defined in the Other CP Indenture as may be designated by such Authorized Board Representative in accordance with the requirements of the applicable Tax Certificate to be used to repay Advances with respect to other

Commercial Paper Notes, or “Advances” as defined in the Other CP Indenture with respect to commercial paper notes issued under the Other CP Indenture.”

Section 1.09 ***Amendment to Exhibit C.*** Exhibit C of the 1998 CP Indenture is hereby deleted in its entirety and replaced with Appendix 1 attached hereto.

Section 1.10 ***Effectiveness of Amendment.*** The amendments to the 1998 CP Indenture contained in this Third Supplemental Indenture shall have no effect with respect to any Notes issued prior to the date hereof, but shall only apply with respect to Notes issued on or after the date hereof.

## **ARTICLE II MISCELLANEOUS**

Section 2.01 ***Modification of the 1998 CP Indenture and this Third Supplemental Indenture.*** The Board may, from time to time and at any time, execute and deliver Supplemental Indentures supplementing and/or amending the 1998 CP Indenture and this Third Supplemental Indenture in the manner set forth in Article XI of the 1998 CP Indenture.

Section 2.02 ***Limitation of Rights.*** Nothing expressed or implied in this Third Supplemental Indenture shall give any person other than the Trustee, the Board and the Noteholders any right, remedy or claim under or with respect to this Third Supplemental Indenture.

Section 2.03 ***Severability.*** If any provision of this Third Supplemental Indenture shall be determined to be unenforceable, that shall not affect any other provision of this Third Supplemental Indenture.

Section 2.04 ***Governing Law.*** This Third Supplemental Indenture shall be governed by and construed in accordance with the laws of the State.

Section 2.05 ***Captions.*** The captions in this Third Supplemental Indenture are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Third Supplemental Indenture.

Section 2.06 ***Full Force and Effect.*** Except as amended herein, the 1998 CP Indenture remains in full force and effect.

Section 2.07 ***Counterparts.*** This Third Supplemental Indenture may be signed in several counterparts. Each will be an original, but all of them together constitute the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Third Supplemental Indenture to be duly executed, all as of the date first above written.

BOARD OF PORT COMMISSIONERS OF  
THE CITY OF OAKLAND

Attest:

By: \_\_\_\_\_  
Secretary to the Board

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

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

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

U.S. BANK NATIONAL ASSOCIATION,  
as trustee

By: \_\_\_\_\_  
Authorized Officer

THIS AGREEMENT SHALL NOT BE VALID  
OR EFFECTIVE FOR ANY PURPOSE  
UNLESS AND UNTIL IT IS SIGNED BY THE  
PORT ATTORNEY.

Approved as to form and legality as of this 10<sup>th</sup> day  
of May, 2019.

\_\_\_\_\_  
Danny Wan  
Port Attorney  
Port Resolution No. \_\_\_\_\_  
P.A. # \_\_\_\_\_



**APPENDIX 1**

**EXHIBIT C**

**FORM OF SERIES \_\_\_\_ CONSTRUCTION FUND REQUISITION**

Requisition No. \_\_\_\_

To: U.S. Bank Trust National Association  
One California Street, Suite 400  
San Francisco, California 94111  
Attention: Corporate Trust Department

Re: Requisition of Funds from Port of Oakland, California  
Commercial Paper Notes  
Series \_\_\_\_ Construction Fund  
[\_\_\_\_\_] **Subaccount**

The amount requisitioned: \$\_\_\_\_\_

Payment to be made to: \_\_\_\_\_

Manner in which payment is to be made: \_\_\_\_\_

The undersigned, an Authorized Board Representative within the meaning of the Trust Indenture (the "Indenture") dated as of October 1, 1998 between the Board of Port Commissioners of the City of Oakland (the "Board") and U.S. Bank Trust National Association, as trustee (the "Trustee"), hereby requisitions the amount set forth above and directs that such amount be paid to the party set forth above from funds held in the Series \_\_\_\_ Construction Fund held under the Indenture and directs that payment be made in the manner described above.

**[For Exempt Facility Projects and Governmental Projects only]** The amount to be paid represents a cost of [an Exempt Facility Project]/[a Governmental Project] and the amounts requisitioned hereby will be expended only in accordance with and subject to the limitations set forth in the Tax Certificate dated \_\_\_\_\_ and related to the Series \_\_\_\_ Notes issued under the Indenture.

**[For Taxable Project only]** The amount to be paid represents a cost of a Taxable Project.

Dated: \_\_\_\_\_

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

By: \_\_\_\_\_  
Authorized Board Representative