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6-19-2019

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CREDIT FACILITY AND REIMBURSEMENT AGREEMENT

Dated as of [July \_\_, 2019]

between

CITY AND COUNTY OF DENVER, COLORADO,  
for and on behalf of its Department of Aviation

and

STATE STREET PUBLIC LENDING CORPORATION

Relating to:  
City and County of Denver, Colorado, for and on behalf of  
its Department of Aviation  
Airport System Subordinate Revenue Bonds,

\$ \_\_\_\_\_  
Series 2019A  
(AMT)

\$ \_\_\_\_\_  
Series 2019B  
(Taxable)

## CREDIT FACILITY AND REIMBURSEMENT AGREEMENT

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

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## EXHIBIT A - NOTICE OF TENDER

## **CREDIT FACILITY AND REIMBURSEMENT AGREEMENT**

This CREDIT FACILITY AND REIMBURSEMENT AGREEMENT dated as of [July \_\_, 2019] (this “*Agreement*”), is entered into between the City and County of Denver, Colorado, for and on behalf of its Department of Aviation (the “*City*”), and State Street Public Lending Corporation, and its successors and assigns (the “*Lender*”).

### **RECITALS**

WHEREAS, the City has heretofore issued the Series 2019A and Series 2019B Bonds (as hereinafter defined) pursuant to the terms of the hereinafter defined Ordinance;

WHEREAS, the City has determined to execute this Agreement in order to provide a source of funding for the purchase of the Series 2019A and Series 2019B Bonds upon certain mandatory tenders by the owners thereof (as hereinafter defined); and

WHEREAS, the City has determined to execute this Agreement in order to provide a source of funding for the purchase by the Lender on the terms and conditions specified herein of the Series 2019A and Series 2019B Bonds which are tendered; and

WHEREAS, the Lender is willing, upon the terms and conditions set forth in this Agreement, to hold the Series 2019A and Series 2019B Bonds as Series 2019A and Series 2019B Credit Facility Bonds (as hereinafter defined) upon the direction of a mandatory tender by the Lender;

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which is hereby acknowledged, the City, for and on behalf of its Department of Aviation, and the Lender, on behalf of itself and the Holders, hereby agree as follows:

### **ARTICLE ONE DEFINITIONS**

*Section 1.1. Definitions.* As used in this Agreement:

“*Affiliate*” means a corporation, partnership, association, joint venture, business trust, governmental entity or similar entity organized under the laws of any state that directly, or indirectly through one (1) or more intermediaries, Controls or is Controlled by, or is under common Control with, the City, the Department of Aviation or Lender, as may be applicable.

“*Agreement*” means this Credit Facility and Reimbursement Agreement, as amended and supplemented.

“*Airport*” means the Denver International Airport.

*“Airport System”* has the meaning set forth in the General Subordinate Bond Ordinance.

*“Amortization End Date”* means the earliest to occur of (a) the third (3rd) anniversary of the Series 2019A Mandatory Tender Date and (b) the date on which all of the Series 2019A Bonds and Series 2019A Credit Facility Bonds are redeemed, repaid, prepaid or cancelled in accordance with the terms of the Indenture.

*“Amortization Payment”* has the meaning set forth in Section 2.01(b)(ii) hereof.

*“Amortization Payment Date”* means (a) the Initial Amortization Payment Date and each six-month anniversary of the Initial Amortization Payment Date occurring thereafter which occurs prior to the Amortization End Date and (b) the Amortization End Date.

*“Amortization Period”* has the meaning set forth in Section 2.01(b)(ii) hereof.

*“Applicable Law”* means all applicable provisions of all constitutions, statutes, rules, regulations and all orders, judgments and decrees of all governmental bodies, courts and arbitrators.

*“Authorized Denominations”* has the meaning set forth in the Ordinance.

*“Authorized Officer”* means the Manager, the Acting Manager of Aviation, the Manager of Finance, the Chief Financial Officer, ex-officio Treasurer of the City, the Debt Administrator of the City or the City Attorney.

*“Base Rate”* means, for any day, a rate per annum equal to the highest of (a) the sum of 1.00% plus the Prime Rate for such day, (b) the sum of 2.00% plus the Federal Funds Rate for such day and (c) 6.50%.

*“Bond Counsel”* means Hogan Lovells US LLP or any other attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the validity of and the tax-exempt nature of interest on bonds issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America and selected by the City, for and on behalf of its Department of Aviation.

*“Bond Documents”* means the General Bond Ordinance, the General Subordinate Bond Ordinance, the Supplemental Bond Ordinance, the Bond Purchase Contract, the Paying Agent Agreement and the Series 2019A and Series 2019B Credit Facility Bonds.

*“Bond Purchase Contract”* means the Bond Purchase Agreement dated [July \_\_, 2019], between State Street Public Lending Corporation and the City.

*“Bonds”* means, collectively, any bonds issued pursuant to the General Subordinate Bond Ordinance that are secured on a parity with the Series 2019A and Series 2019B as Series 2019A and Series 2019B Credit Facility Bonds.

*“Business Day”* has the meaning set forth in the Supplemental Bond Ordinance.

*“Capital Fund”* has the meaning set forth in the Ordinance.

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

*“City”* means the City and County of Denver, Colorado, for and on behalf of its Department of Aviation.

*“Closing Date”* means [July \_\_, 2019], subject to the satisfaction or waiver of all of the conditions precedent set forth in Section 3.1 hereof.

*“Code”* means the Internal Revenue Code of 1986, as amended, and any successor statute thereto, and all lawful regulations promulgated thereunder.

*“Control”* means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, through the right to elect not less than a majority of the members of its board of directors or other governing board, by contract or otherwise, “Controlling” and “Controlled” have meanings correlative thereto.

*“Credit Facility”* has the meaning set forth in the General Bond Ordinance.

*“Credit Facility Obligations”* has the meaning set forth in the Ordinance.

*“Debt”* means, for any Person (without duplication), (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property, except trade accounts payable arising in the ordinary course of business, (d) all Capital Leases of such Person, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (g) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person, (h) all Guarantees by such Person of Debt of other Persons and (i) all obligations of such Person under any Swap Agreement; *provided* that in no event shall the term “Debt” as used herein include any indebtedness of the City, for and on behalf of its Department of Aviation, which is payable solely from payments to be made by a Person other than the City, for and on behalf of its Department of Aviation.

*“Debt Service Requirements”* has the meaning set forth in the General Bond Ordinance.

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

*“Default Rate”* means 12.0% per annum, payable on demand.

*“Designated Jurisdiction”* means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

*“Determination of Taxability”* means and shall be deemed to have occurred on the first to occur of the following:

(i) on the date when the City, for and on behalf of its Department of Aviation, files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(ii) on the date when the Lender or any Holder notifies the City, for and on behalf of its Department of Aviation, that it has received a written opinion by a nationally recognized firm of attorneys of substantial expertise on the subject of tax-exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within one hundred eighty (180) days after receipt by the City, for and on behalf of its Department of Aviation, of such notification from the Lender or any Holder, the City, for and on behalf of its Department of Aviation, shall deliver to the Lender or any Holder a ruling or determination letter issued to or on behalf of the City, for and on behalf of its Department of Aviation, by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the City, for and on behalf of its Department of Aviation, shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time, including an employee subordinate to one of these officers who has been authorized to provide such advice) that, based upon filings of the City, for and on behalf of its Department of Aviation, or upon any review or audit of the City, for and on behalf of its Department of Aviation, or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(iv) on the date when the City, for and on behalf of its Department of Aviation, shall receive notice from the Lender or any Holder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of Lender or any Holder the interest on the Series 2019A Bonds or Series 2019A Credit Facility Bonds due to the occurrence of an Event of Taxability;

*provided, however*, no Determination of Taxability shall occur under subparagraph (iii) or (iv) hereunder unless the City, for and on behalf of its Department of Aviation, has been afforded the



opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however*, that upon demand from the Lender or any Holder, the City, for and on behalf of its Department of Aviation, shall promptly reimburse, but solely from payments made by the City, for and on behalf of its Department of Aviation, the Lender or such Holder for any payments, including any taxes, interest, penalties or other charges, the Lender or such Holder shall be obligated to make as a result of the Determination of Taxability.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to Sections of ERISA shall be construed also to refer to any successor Sections.

“*Escrow Account*” has the meaning set forth in the General Bond Ordinance.

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

“*Event of Taxability*” means a (i) change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the City, for and on behalf of its Department of Aviation, or the failure to take any action by the City, for and on behalf of its Department of Aviation, or the making by the City, for and on behalf of its Department of Aviation, of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of the Series 2019A Bonds or Series 2019A Credit Facility Bonds) which has the effect of causing interest paid or payable on the Series 2019A Bonds or Series 2019A Credit Facility Bonds to become includable, in whole or in part, in the gross income of the Lender or any Holder for federal income tax purposes or (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or payable on the Series 2019A Bonds or Series 2019A Credit Facility Bonds to become includable, in whole or in part, in the gross income of the Lender or any Holder for federal income tax purposes with respect to the Series 2019A Bonds or Series 2019A Credit Facility Bonds.

“*FAA*” means the Federal Aviation Administration of the United States Department of Transportation and any successor thereto.

“*Federal Funds Rate*” means, for any day, the rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be 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 quoted to State Street Bank and Trust Company on such day on such transactions as determined by the Lender.

*“Fiscal Year”* has the meaning set forth in the General Bond Ordinance.

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

*“FRB”* means the Board of Governors of the Federal Reserve System of the United States, together with any successors thereof.

*“Funds”* shall mean all funds established under the General Subordinate Bond Ordinance (except for moneys and securities held in any Escrow Account (as defined in the General Bond Ordinance) and except as otherwise provided in the General Bond Ordinance) and, to the extent pledged to the payment of Subordinate Bonds and Subordinate Obligations, all funds and accounts established under the Supplemental Bond Ordinance.

*“GAAP”* means accounting principles generally accepted in the United States of America in effect from time to time, applied by the City, for and on behalf of its Department of Aviation, on a basis consistent with applicable Government Accounting Standards Board pronouncements and the City’s most recent financial statements, furnished to the Holders pursuant to Section 4.1(h) hereof.

*“General Bond Ordinance”* means Ordinance No. 0777, Series of 2018, adopted by the City, for and on behalf of its Department of Aviation, cited as the *“2018 Amended and Restated Airport System General Bond Ordinance,”* as amended and supplemented prior to the Closing Date and as it may be further amended and supplemented from time to time.

*“General Junior Lien Bond Ordinance”* means Ordinance No. 20170972, Series of 2017, titled as the *“Airport System General Junior Lien Bond Ordinance,”* as amended and supplemented prior to the Closing Date and as it may be further amended and supplemented from time to time.

*“General Subordinate Bond Ordinance”* means Ordinance No. 302, Series of 2013, titled as the *“Amended and Restated Airport System General Subordinate Bond Ordinance,”* as amended and supplemented prior to the Closing Date and as it may be further amended and supplemented from time to time.

*“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 owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

*“Gross Revenues”* has the meaning set forth in the General Bond Ordinance.

*“Guarantee”* means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the *“primary obligor”*) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term *“Guarantee”* as a verb has a corresponding meaning.

*“Holder”* shall mean each registered owner of the Series 2019A and Series 2019B Bonds, including the Lender with respect to all Series 2019A and Series 2019B Credit Facility Bonds.

*“Initial Amortization Payment Date”* means the first Business Day of the sixth (6th)] full calendar month following the Series 2019A Mandatory Tender Date.

*“Interest Payment Date”* has the meaning set forth in the Pricing Notice.

*“Junior Lien Obligations”* means bonds, notes, certificates, commercial paper or other securities or obligations relating to the Airport System, payable from Net Revenues, and having a lien thereon subordinate and junior to the lien thereon of Subordinate Bonds and Subordinate Obligations.

*“Laws”* means such federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

*“Lender”* means State Street Public Lending Corporation and its successors and assigns.

*“Lender Agreement”* means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement (such as a continuing covenant agreement or supplemental bondholder’s agreement), bond purchase agreement, or

other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) (i) to make or provide funds to make, payment of, (ii) to purchase or (iii) to provide credit enhancement for bonds, notes or other obligations of the City secured by or payable from Net Revenues.

*“Lender Obligations”* means the Subordinate Bond Obligations, the obligations of the City, for and on behalf of its Department of Aviation, to the Lender, the Majority Holder and the Holders under Sections 7.1 and 7.3 hereof and all other obligations of the City, for and on behalf of its Department of Aviation, to the Lender, the Majority Holder and the Holders arising under or in relation to this Agreement.

*“Lien”* means any mortgage, deed of trust, lien, security interest, assignment, pledge, charge, hypothecation 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.

*“Majority Holder”* means (i) prior to the occurrence of an Event of Default, State Street Public Lending Corporation, any Affiliate of State Street Public Lending Corporation or any commercial bank and (ii) from and after the occurrence of an Event of Default, the Holders owning a majority of the aggregate principal amount of Series 2019A and Series 2019B Credit Facility Bonds from time to time. As of the Closing Date, the Lender shall be the Majority Holder.

*“Manager”* has the meaning set forth in the General Subordinate Bond Ordinance.

*“Mandatory Tender Purchase Price”* means an amount equal to 100% of the principal amount of the Series 2019A Bonds subject to mandatory tender for purchase on the Series 2019 A Mandatory Tender Date and accrued interest thereon, if applicable.

*“Material Adverse Effect”* means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, performance, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Department of Aviation of the City or the Airport System or the transactions contemplated by this Agreement or the Related Documents; (b) a material impairment of the ability of the City, for and on behalf of its Department of Aviation, to perform its obligations under any Related Document to which it is a party; or (c) a material adverse change in, or a material adverse effect upon, the legality, validity, binding effect or enforceability against the City, for and on behalf of its Department of Aviation, of any Related Document to which it is a party.

*“Maturity Date”* has the meaning set forth in the Supplemental Bond Ordinance.

*“Maximum Federal Corporate Tax Rate”* means, for any day, the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect as of such day (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations generally shall not be applicable to the Purchaser, the maximum statutory rate of federal income taxation which could apply to the Purchaser as of such day).

*“Maximum Rate”* means the lesser of (i) fifteen percent (15%) per annum and (ii) the maximum non-usurious lawful rate of interest permitted by law.

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

*“Net Revenues”* has the meaning set forth in the General Bond Ordinance.

*“Noise Law”* means, collectively, the Noise Statute and the Noise Regulations.

*“Noise Regulations”* means 14 Code of Federal Regulations Part 161, as amended.

*“Noise Statute”* means the Federal Airport Noise and Capacity Act of 1990, as amended.

*“Notice of Tender”* means the form of Notice of Tender delivered by the Lender pursuant to the terms of Section 2.2 hereof and attached hereto as Exhibit A.

*“Obligations”* has the meaning set forth in the General Subordinate Bond Ordinance.

*“OFAC”* means the Office of Foreign Assets Control of the United States Department of the Treasury.

*“Operation and Maintenance Expenses”* has the meaning set forth in the General Subordinate Bond Ordinance.

*“Ordinance”* means that certain General Subordinate Bond Ordinance as supplemented by the Supplemental Bond Ordinance.

*“Outstanding”* has the same meaning herein as in the General Subordinate Bond Ordinance.

*“Paying Agent”* means Zions Bancorporation, National Association, as Paying Agent under the Supplemental Bond Ordinance, and any successor paying agent for the Series 2019A and Series 2019B Bonds (including the Series 2019A and Series 2019B Credit Facility Bonds).

*“Paying Agent Agreement”* means that certain Paying Agent and Bonds Registrar Agreement dated [July \_\_, 2019], between the City and the Paying Agent, as amended and supplemented from time to time in accordance with the terms hereof and thereof.

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

*“PFCs”* means the passenger facility charge imposed by the City, for and on behalf of its Department of Aviation, on passengers enplaned at the Airport pursuant to the PFC Regulations.

*“PFC Regulations”* means 14 CFR Part 158 of the Federal Aviation Regulations, as amended and supplemented, and any successor regulations of the FAA relating to PFCs.

*“Pledged Funds”* means the Subordinate Bond Fund established under the General Bond Ordinance and, to the extent pledged to the payment of Subordinate Bonds and Subordinate Obligations, any other funds and accounts established under the General Bond Ordinance, the General Subordinate Bond Ordinance and the Supplemental Bond Ordinance.

*“Prime Rate”* means the rate of interest per annum then most recently established by State Street Bank and Trust Company as its “prime rate.” Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by State Street Bank and Trust Company to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that State Street Bank and Trust Company may make various business or other loans at rates of interest having no relationship to such rate.

*“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.

*“Provider”* has the meaning set forth in Section 4.1(x) hereof.

*“Purchaser”* means State Street Public Lending Corporation and its permitted successors and assigns.

*“Purchaser Rate”* means a fluctuating interest rate per annum which, for each day, shall equal (i) for the period from and including the Series 2019A Mandatory Tender Date to and including the thirtieth (30th) day immediately succeeding the Series 2019A Mandatory Tender Date, the Base Rate from time to time in effect, (ii) for the period from and including the thirty-first (31st) day immediately succeeding the Series 2019A Mandatory Tender Date to and including the ninetieth (90th) day immediately succeeding the Series 2019A Mandatory Tender Date, the Base Rate from time to time in effect plus one percent (1.0%) and (iii) from the period from and after the ninety-first (91st) day immediately succeeding the Series 2019A Mandatory Tender Date, the Base Rate from time to time in effect *plus* two percent (2.0%); *provided that* if an Event of Default has occurred and is continuing, the Purchaser Rate shall equal the Default Rate.

*“Rating Agencies”* means S&P, Moody’s and Fitch.

*“Related Documents”* means this Agreement and the Bond Documents.

*“Related Party”* means, with respect to any Person, any of such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

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

“*Sanction(s)*” means any international economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“*Senior Bonds*” means “Bonds” as defined in the General Bond Ordinance.

“*Series 2019A Bonds*” means the City’s Airport System Subordinate Revenue Refunding Bonds, Series 2019A issued by the City, for and on behalf of its Department of Aviation, in the original aggregate principal amount of [\$\_\_\_\_\_].

“*Series 2019A Credit Facility Bonds*” means the Series 2019A Bonds registered for the account of the Lender or its transferee, nominee or designee pursuant to the terms of Section 2.1 hereof.

“*Series 2019A Mandatory Tender Date*” means \_\_\_\_\_, 2025.

“*Series 2019B Bonds*” means the City’s Airport System Subordinate Revenue Refunding Bonds, Series 2019B issued by the City, for and on behalf of its Department of Aviation, in the original aggregate principal amount of [\$\_\_\_\_\_].

“*Series 2019B Credit Facility Bonds*” means the Series 2019B Bonds registered for the account of the Lender or its transferee, nominee or designee pursuant to the terms of Section 2.1 hereof.

“*Series 2019B Maturity Date*” means November 15, 2019.

“*Subordinate Bond Obligations*” means the obligations of the City to pay the principal of and interest on the Series 2019A and Series 2019B Credit Facility Bonds.

“*Subordinate Bond Requirements*” has the meaning set forth in the Ordinance.

“*Subordinate Bonds*” has the meaning set forth in the Ordinance.

“*Subordinate Credit Facility*” has the meaning set forth in the General Subordinate Bond Ordinance.

“*Subordinate Credit Facility Obligations*” has the meaning set forth in the General Subordinate Bond Ordinance.

“*Subordinate Debt Service Requirements*” has the meaning set forth in the General Subordinate Bond Ordinance.

“*Subordinate Obligations*” has the meaning set forth in the General Subordinate Bond Ordinance.

*“Subordinated Cross-Default Provision”* means a provision in a Lender Agreement, pursuant to which the Provider is supporting bonds or other securities under the General Bond Ordinance or General Subordinate Bond Ordinance, as applicable, secured senior to or on a parity with the Series 2019A and Series 2019B Bonds and the Series 2019A and Series 2019B Credit Facility Bonds, which provides for an event of default under such Lender Agreement upon the occurrence of (i) a failure by the City, for and on behalf of its Department of Aviation, to pay when due the principal, interest or redemption price of any Subordinate Bond or Subordinate Obligation or (ii) any event, default or event of default with respect to any Subordinate Bond or Subordinate Obligation which, pursuant to the provisions of any contract related to such Subordinate Bond or Subordinate Obligation, permits the holders of such Subordinate Bond or Subordinate Obligation to accelerate such Subordinate Bond or Subordinate Obligation or require such Subordinate Bond or Subordinate Obligation to be prepaid prior to the stated maturity date thereof.

*“Supplemental Bond Ordinance”* means Supplemental Bond Ordinance No. \_\_\_\_, Series of 2019 adopted by the City Council of the City on [July \_\_, 2019], as amended and supplemented in accordance with the provisions of Section 5.8 hereof.

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

*“Taxable Date”* means the date on which interest on the Series 2019A Bonds or the Series 2019A Credit Facility Bonds is first includable in gross income of the Lender (including, without limitation, any Holder or previous Holder) thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

*“Taxable Period”* has the meaning set forth in Section 2.10 hereof.

*“Taxable Rate”* means, for each day, a rate of interest per annum equal to the product of (i) the interest rate on the Series 2019A Bonds or the Series 2019A Credit Facility Bonds for such day and (ii) the applicable Taxable Rate Factor.



“*Taxable Rate Factor*” means, for each day that the Taxable Rate is determined, the quotient of (i) one *divided by* (ii) one minus the Maximum Federal Corporate Tax Rate in effect as of such day, rounded upward to the second decimal place.

“*Tender Date*” means the Business Day on which the tender occurs following delivery of the Notice of Tender by the Lender.

“*Tender Period*” means the period from the Closing Date hereof to and including the earliest of the close of business on (a) (i) with respect to the Series 2019A Bonds, the Series 2019A Mandatory Tender Date and (ii) with respect to the Series 2019B Bonds, the Series 2019B Maturity Date, (b) the date on which no Series 2019A and Series 2019B Bonds are Outstanding, and (c) the date that State Street Public Lending Corporation or any of its Affiliates no longer own any of the Series 2019A and Series 2019B Bonds.

“*Tender Price*” means 100% of the principal amount of the Series 2019A and Series 2019B Bonds.

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 Ordinance. All references in this Agreement to times of day shall be references to New York time unless otherwise expressly provided herein. Unless otherwise inconsistent with the terms of this Agreement, all accounting terms shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

## **ARTICLE TWO**

### **TENDER OF BONDS**

*Section 2.1. Commitment to Hold Series 2019A and Series 2019B Bonds as Series 2019A and Series 2019B Credit Facility Bonds.* The Lender agrees, on the terms and conditions contained in this Agreement, to hold the Series 2019A and Series 2019B Bonds deemed tendered in accordance with the terms of the Ordinance, from time to time during the Tender Period at the Tender Price. The aggregate principal amount (or portion thereof) of any Series 2019A and Series 2019B Bonds held by the Lender on and after any Tender Date shall be an Authorized Denomination. Any Series 2019A and Series 2019B Bonds so held shall thereupon constitute Series 2019A and Series 2019B Credit Facility Bonds and shall, from the date of such tender and while they are Series 2019A and Series 2019B Credit Facility Bonds, bear interest at the rate provided for herein (i.e., the Purchaser Rate, the Taxable Rate or the Default Rate, as applicable), and have other characteristics of Series 2019A and Series 2019B Credit Facility Bonds as set forth herein and in the Ordinance.

*Section 2.2. Method of Causing Tender.* If, on any Business Day during the Tender Period, the Lender delivers a Notice of Tender to the Paying Agent and City, the Series 2019A

and Series 2019B Bonds shall be deemed Series 2019A and Series 2019B Credit Facility Bonds on the Tender Date set forth therein.

*Section 2.3. Payment Obligations; Prepayment.* (a) The City, for and on behalf of its Department of Aviation, hereby unconditionally, irrevocably and absolutely agrees to make prompt and full payment of all payment obligations owed to the Lender, the Majority Holder and the Holders under the Related Documents and to pay any other Lender Obligations owing to the Lender, the Majority Holder and the Holders, whether now existing or hereafter arising, irrespective of their nature, whether direct or indirect, absolute or contingent, with interest thereon at the rate or rates provided in such Related Documents for such Lender Obligations.

(b)(i) The Series 2019B Bonds shall be due and payable in full on the Series 2019B Maturity Date and, if the Series 2019B Bonds are not paid in full on the Series 2019B Maturity Date shall bear interest at the Default Rate, payable on demand.

(ii) In the event the Purchaser and any other Holders of the Series 2019A Bonds have not received the Mandatory Tender Purchase Price of the Series 2019A Bonds on the Series 2019A Mandatory Tender Date, the City, for and on behalf of its Department of Aviation, shall cause the Series 2019A Bonds to be redeemed on the Series 2019A Mandatory Tender Date; *provided* that, if the City, for and on behalf of its Department of Aviation, is required to redeem Series 2019A Bonds as set forth above and (i) no Default or Event of Default shall have occurred and be continuing and (ii) the representations and warranties set forth in Article Four shall be true and correct on, and shall be deemed to have been made on, the Series 2019A Mandatory Tender Date (except to the extent that any such representations and warranties expressly relate to an earlier date), then the Series 2019A Bonds shall constitute Series 2019A Credit Facility Provider Bonds and the City, for and on behalf of its Department of Aviation, shall cause the principal amount of such Series 2019A Credit Facility Provider Bonds to be redeemed in installments payable on each Amortization Payment Date (each such payment, an “*Amortization Payment*”), with the final installment in an amount equal to the entire then-outstanding principal amount of such Series 2019A Bonds to be redeemed on the Amortization End Date (the period commencing on the Series 2019A Mandatory Tender Date and ending on the Amortization End Date is herein referred to as the “*Amortization Period*”). Each Amortization Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Payments over the Amortization Period. During the Amortization Period, interest on Series 2019A Credit Facility Provider Bonds shall accrue at the Purchaser Rate, be payable monthly in arrears on the first Business Day of each calendar month and be calculated on the basis of a 360-day year and actual days elapsed.

(c) The City, for and on behalf of its Department of Aviation, shall pay within thirty (30) days after demand:

(i) if an Event of Default shall have occurred, all reasonable costs and expenses of the Holders in connection with the enforcement (whether by means of legal proceedings or otherwise) of any of their rights under this Agreement, the other Related Documents and such other documents as may be delivered in connection herewith or therewith, including, without limitation, the reasonable fees and expenses for counsel and

other reasonably required consultants to such Holders in connection with advising such Holders as to their rights and remedies under this Agreement, the other Related Documents and such other documents;

(ii) a fee for each amendment of any Related Document or consent by the Lender, the Majority Holder or the Holders or waiver by the Lender, the Majority Holder or the Holders under any Related Document, in each case in a minimum amount of \$3,500, plus the reasonable fees and expenses of any counsel retained by the Holders in connection therewith; and

(iii) any amounts advanced by or on behalf of Lender, the Majority Holder or the Holders to the extent required to cure any Event of Default (or an event or condition which, but for the lapse of time or the giving of notice, or both, would constitute an Event of Default) or event of nonperformance hereunder or under any other Related Document, together with interest at the Default Rate.

In addition, if at any time any Governmental Authority shall require revenue or other documentary stamps or any other tax in connection with the execution or delivery of this Agreement or other Related Documents, then, if the City, for and on behalf of its Department of Aviation, lawfully may pay for such stamps, taxes or fees, the City, for and on behalf of its Department of Aviation, shall pay, when due and payable, for all such stamps, taxes and fees, including interest and penalties thereon, and the City, for and on behalf of its Department of Aviation, agrees, to the extent permitted by law, to save the Holders harmless from and against any and all liabilities with respect to or resulting from any delay of the City or the Department of Aviation in paying, or omission of the City or the Department of Aviation to pay, for such stamps, taxes and fees hereunder.

(d) The Series 2019A Credit Facility Provider Bonds may be prepaid by the City, for and on behalf of its Department of Aviation, on any Business Day following one (1) Business Day prior written notice to the Lender.<sup>1</sup>

*Section 2.4. Rights of Lender Bondholders.* Upon holding Series 2019A and Series 2019B Credit Facility Bonds after a deemed tender, the Lender shall be entitled to and, where necessary, shall be deemed assigned all rights, privileges and security accorded Holders as provided in the Bonds and in the Ordinance, other than the right (a) to tender such Series 2019A and Series 2019B Credit Facility Bonds for purchase or (b) in any event, to have such Series 2019A and Series 2019B Bonds purchased with amounts drawn hereunder; *provided, however,* that to the extent additional rights and privileges are provided to Series 2019A and Series 2019B Credit Facility Bonds pursuant to this Agreement, the terms of this Agreement shall prevail and govern. Upon purchasing Series 2019A and Series 2019B Credit Facility Bonds and the registration of such Series 2019A and Series 2019B Credit Facility Bonds in the

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<sup>1</sup> Incorporate mutually agreeable language which provides that if the Series 2019A Credit Facility Provider Bonds or the Series 2019B Credit Facility Provider Bonds are prepaid prior to the Series 2019A Mandatory Tender Date or the Series 2019B Maturity Date, such prepayment shall be subject to the payment of make-whole premium, if any.

name of, for the benefit of, or at the direction of the Lender, as provided herein, the Lender shall be recognized by the City, for and on behalf of the Department of Aviation, and the Paying Agent as the true and lawful owners of the Series 2019A and Series 2019B Credit Facility Bonds (or, in the case of Book Entry Bonds, the beneficial owners thereof), and the City, for and on behalf of the Department of Aviation, and the Paying Agent acknowledge that Series 2019A and Series 2019B Credit Facility Bonds shall be considered Bonds for purposes of the Related Documents and shall be secured to the same extent as any other Holders of Bonds under the Ordinance, including, without limitation, the right to receive payments of principal and interest, and all rights under the Ordinance upon the occurrence of any “event of default” under the Ordinance, except to the extent the Ordinance provides to the Lender rights, privileges or obligations that are not applicable to Holders in general.

*Section 2.5. Computation of Interest.* All computations of interest payable by the City, for and on behalf of its Department of Aviation, under this Agreement shall be made on the basis of a year of 360 days and actual days elapsed. Interest shall accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof. All computations of fees and other amounts payable by the City, for and on behalf of its Department of Aviation, under this Agreement shall be made on the basis of a year of 360 days and actual days elapsed.

*Section 2.6. Payment Due on Non-Business Day to Be Made on Next Business Day.* If any sum becomes payable pursuant to this Agreement on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall be included in the computation of interest and fees.

*Section 2.7. Late Payments.* If any amount with respect to the Series 2019A and Series 2019B Credit Facility Bond or any Lender Obligation is not paid when due, such obligation shall bear interest until paid in full at the Default Rate.

*Section 2.8. Special Obligations.* Notwithstanding any other provision of this Agreement or any other Related Document to the contrary, the Series 2019A and Series 2019B Credit Facility Bonds are special obligations of the City, for and on behalf of its Department of Aviation, payable solely from the Net Revenues and the Pledged Funds on a basis junior and subordinate to payments of the Senior Bonds and any Obligations relating thereto and on parity with all other outstanding Subordinate Bonds and Subordinate Obligations issued pursuant to the Ordinance. The Series 2019A and Series 2019B Credit Facility Bonds and all other Lender Obligations shall not (i) constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation or (ii) be considered or held to be general obligations of the City. The City does not pledge its full faith and credit and taxing power for the payment of the Bonds or any Bond Obligation. The obligations owed to the Holders (including the Lender) hereunder (other than amounts due on the Series 2019A and Series 2019B Credit Facility Bonds) of the City, for and on behalf of its Department of Aviation, are general, unsecured obligations of the City, for and on behalf of its Department of Aviation, and payable from moneys in the Capital Fund.

*Section 2.9. Obligations Absolute.* The payment obligations of the City, for and on behalf of its Department of Aviation, under this Agreement shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

(a) any lack of validity or enforceability of this Agreement, the Series 2019A and Series 2019B Credit Facility Bonds or any of the other Related Documents;

(b) any amendment or waiver of or any consent to departure from all or any of the Related Documents;

(c) the existence of any claim, set-off, defense or other right which the City, for and on behalf of its Department of Aviation, may have at any time against the Lender, the Majority Holder any other Holder or any other Person or entity, whether in connection with this Agreement, the other Related Documents, the transactions contemplated herein or therein or any unrelated transaction; or

(d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Notwithstanding this Section, the Lender acknowledges the City, for and on behalf of its Department of Aviation, may have the right to bring a collateral action with respect to one or more of the foregoing circumstances. The payment obligations of the City, for and on behalf of its Department of Aviation, shall remain in full force and effect pending the final disposition of any such action. All fees payable pursuant to this Agreement shall be deemed to be fully earned when due and non-refundable when paid.

*Section 2.10. Determination of Taxability.* (a) In the event a Determination of Taxability shall occur, the Majority Holder may deliver a written notice to the Paying Agent and the City, for and on behalf of its Department of Aviation, that a Determination of Taxability has occurred and is continuing in order to cause a mandatory tender of the Series 2019A Bonds to the Lender or take such other remedial action pursuant to the terms of the General Subordinate Bond Ordinance and the Supplemental Bond Ordinance.

(b) In the event a Determination of Taxability occurs, the City, for and on behalf of its Department of Aviation, hereby agrees to pay to the Lender or any other Holder on demand therefor (i) an amount equal to the difference between (A) the amount of interest that would have been paid to the Purchaser, the Lender or any other Holder on the Series 2019A Bonds or the Series 2019A Credit Facility Bonds during the period for which interest on the Series 2019A Bonds or the Series 2019A Credit Facility Bonds is included in the gross income of the Purchaser, the Lender or any other Holder if the Series 2019A Bonds or Series 2019 Credit Facility Bonds had borne interest at the Taxable Rate, beginning on the Taxable Date (the "*Taxable Period*"), and (B) the amount of interest actually paid to the Purchaser, the Lender or any other Holder during the Taxable Period, and (ii) an amount equal to any interest, penalties or charges owed by the Purchaser, the Lender or any other Holder as a result of interest on the Series 2019A Bonds or Series 2019A Credit Facility Bonds becoming included in the gross

income of the Purchaser, the Lender or any other Holder, together with any and all attorneys' fees, court costs, or other out-of-pocket costs incurred by the Purchaser, the Lender or any other Holder in connection therewith;

(c) Subject to the provisions of paragraph (c) below, the Purchaser, the Lender or any other Holder shall afford the City, for and on behalf of its Department of Aviation, the opportunity, at the City's, for and on behalf of its Department of Aviation, sole cost and expense, to contest (i) the validity of any amendment to the Code which causes the interest on the Series 2019A Bonds or Series 2019A Credit Facility Bonds to be included in the gross income of the Purchaser, the Lender or any other Holder or (ii) any challenge to the validity of the tax exemption with respect to the interest on the Series 2019A Bonds or Series 2019A Credit Facility, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals); *provided* that, in no event shall the Purchaser, the Lender or any other Holder be required to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the City, for and on behalf of its Department of Aviation, or any other Person; and

(d) As a condition precedent to the exercise by the City, for and on behalf of its Department of Aviation, of its right to contest set forth in paragraph (b) above, the City, for and on behalf of its Department of Aviation, shall, on demand, immediately reimburse the Purchaser, the Lender or any other Holder for any and all expenses (including attorneys' fees for services that may be required or desirable, as determined by the Purchaser, the Lender or any other Holder in its sole discretion) that may be incurred by the Purchaser, the Lender or any other Holder in connection with any such contest, and shall, on demand, immediately reimburse the Purchaser, the Lender or any other Holder for any and all penalties or other charges payable by the Purchaser, the Lender or any other Holder for failure to include such interest in its gross income.

(e) *Survival.* Without prejudice to the survival of any other agreement of the City, for and on behalf of its Department of Aviation, hereunder, the agreements and obligations of the City, for and on behalf of its Department of Aviation, contained in this Section shall survive the termination of this Agreement and the payment in full of the Series 2019A Bonds and the Series 2019A Credit Facility Bonds and the obligations of the City, for and on behalf of its Department of Aviation, thereunder and hereunder.

### **ARTICLE THREE**

#### **CONDITIONS PRECEDENT TO EFFECTIVENESS**

*Section 3.1. Conditions Precedent to Effectiveness.* As conditions precedent to the effectiveness of the Credit Facility and Reimbursement Agreement, (a) the City, for and on behalf of its Department of Aviation, shall provide to the Lender on the Closing Date, each in form and substance satisfactory to the Lender and the Lender counsel, Chapman and Cutler LLP (hereinafter, the "*Lender's counsel*");

(i) a written opinion or opinions of the City Attorney, dated the Closing Date and addressed to the Lender, as to the due execution and delivery of the Related Documents, the enforceability of this Agreement and the other Related Documents to which the City, for and on behalf of its Department of Aviation, is a party, and such other customary matters as the Lender may reasonably request;

(ii) the written opinions of Hogan Lovells US LLP, co-bond counsel, dated the Closing Date and addressed to the Lender, to the effect that (A) this Agreement and the other Related Documents have been, duly authorized, executed and delivered by the City, for and on behalf of its Department of Aviation, and are the legal, valid and binding obligations of the City, for and on behalf of its Department of Aviation, enforceable against the City, for and on behalf of its Department of Aviation, in accordance with their respective terms, except as enforceability may be limited by the valid exercise of judicial discretion and the constitutional powers of the United States of America and subject to valid bankruptcy, insolvency, reorganization or moratorium or other similar laws applicable to the City or the Department of Aviation, as applicable, and equitable principles relating to or affecting creditors' rights generally from time to time; (B) the execution and delivery by the City, for and on behalf of its Department of Aviation, of this Agreement and the other Related Documents do not violate the constitution or laws of the State; (C) the City, for and on behalf of its Department of Aviation, has taken all actions, and has obtained all approvals, necessary to the authorization, execution, delivery and performance by the City, for and on behalf of its Department of Aviation, of this Agreement and the other Related Documents; (D) the exclusion of interest on the Series 2019A Bonds or the Series 2019A Credit Facility Bonds from the gross income of any owner of the Series 2019A Bonds or the Series 2019A Credit Facility Bonds for federal income tax purposes (excluding treatment of interest on the Series 2019A Bonds or the Series 2019A Credit Facility Bonds as an item of tax preference for purposes of the federal alternative minimum tax); (E) the Lender Obligations under this Agreement and the Series 2019A and Series 2019B Credit Facility Bonds, all constitute "Subordinate Credit Facility Obligations" for purposes of the Ordinance and "Series 2019A and Series 2019B Credit Facility Bonds" for purposes of the Supplemental Bond Ordinance and are entitled to the benefit of the security pledged therefor, and the Lender Obligations under this Agreement, constitute "Subordinate Credit Facility Obligations" for purposes of the Supplemental Bond Ordinance and are entitled to security pledged therefor; (F) the obligations of the City, for and on behalf of its Department of Aviation, to repay the Subordinate Bond Obligations and the Series 2019A and Series 2019B Credit Facility Bonds pursuant to this Agreement are special obligations of the City, for and on behalf of its Department of Aviation, payable solely from the Net Revenues and the Pledged Funds on a basis junior and subordinate to the payment and Senior Bonds and obligations relating thereto and on parity with all other outstanding Subordinate Bonds and Subordinate Obligations issued pursuant to the Ordinance; (G) the Series 2019A and Series 2019B Credit Facility Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended; and (H) the Ordinance is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended. The Lender Obligations and other obligations (other than the Subordinate Bond Obligations) of the City, for and on behalf of its Department of Aviation, are general, unsecured obligations of the City, for

and on behalf of its Department of Aviation, and payable from moneys in the Capital Fund.

(iii) a certificate signed by a duly authorized officer of the City, for and on behalf of its Department of Aviation, 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 event or condition which, but for the lapse of time or the giving of notice, or both, would constitute an Event of Default, has occurred and is continuing, or would result from the execution, delivery or performance of this Agreement or any Related Document to which the City, for and on behalf of its Department of Aviation, is a party;

(C) there has been no event or circumstance since the date of the audited annual financial statements dated December 31, 2018, that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect; and

(D) (1) the purchase of Series 2019A and Series 2019B Credit Facility Bonds pursuant to this Agreement are an arm's length commercial transaction between the City, for and on behalf of its Department of Aviation and the Lender, (2) the City, for and on behalf of its Department of Aviation, has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the purchase of the Series 2019A and Series 2019B Credit Facility Bonds for the account of the Lender or its transferee, nominee or designee pursuant to this Agreement and (3) the Lender has not acted as a fiduciary in favor of the City or the Department of Aviation with respect to the Series 2019A and Series 2019B Bonds or the process leading to the purchase of the Series 2019A and Series 2019B Credit Facility Bonds and has no other obligations to the City or the Department of Aviation with respect to these transactions except as expressly set forth in this Agreement;

(iv) this Agreement has been duly executed by the City, for and on behalf of its Department of Aviation;

(v) a certificate of the Treasurer of the City with respect to authorization of the officers of the City, for and on behalf of its Department of Aviation, to execute on behalf of the City, for and on behalf of its Department of Aviation, this Agreement and the other documents to be delivered by the City, for and on behalf of its Department of Aviation, hereunder;

(vi) certified copies of the General Subordinate Bond Ordinance and the Supplemental Bond Ordinance, authorizing, among other things, the execution, delivery



and performance by the City, for and on behalf of its Department of Aviation, of this Agreement and the other Related Documents to which it is a party (on the dates each such Related Document was executed and delivered by the City, for and on behalf of its Department of Aviation), certified by the Clerk and Recorder of the City as being in full force and effect;

(vii) evidence of the power and authority of the Paying Agent to accept and execute its responsibilities under the General Subordinate Bond Ordinance and the Supplemental Bond Ordinance, and certificates of the Paying Agent in each case, as to such matters incident to this Agreement and the transactions contemplated hereby and thereby as the Lender shall have reasonably requested;

(viii) an executed or certified copy of each document, instrument, certificate and opinion delivered pursuant to the General Bond Ordinance, the General Subordinate Bond Ordinance, the Supplemental Bond Ordinance and the other Related Documents in connection with the issuance and delivery of the Series 2019A and Series 2019B Bonds and the purchase of the Series 2019A and Series 2019B Credit Facility Bonds hereunder;

(ix) certified copies of all governmental and regulatory approvals, if any, necessary for the City, for and on behalf of its Department of Aviation, to execute, deliver and perform its obligations under the Related Documents to which the City, for and on behalf of its Department of Aviation, is a party;

(x) audited financial statements of the City for the fiscal year ended December 31, 2018, including balance sheets, income and cash flow statements and a copy of the most recent Report of the Airport Consultant;

(xi) an executed original, or certified copy, as applicable, of each Related Document; and

(xii) evidence that the unenhanced long term credit rating from the Rating Agencies assigned to Subordinate Bonds is not less than A2/A/A+ for Moody's, S&P, and Fitch, respectively.

(b) in the judgment of the Lender and the Lender's counsel, no law, regulation, ruling or other action of the United States or the State of Colorado 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 Lender from fulfilling its obligations under this Agreement and, in the Lender's sole discretion, no change in any law, rule or regulation (or the interpretation or administration thereof) shall have occurred which may adversely affect the consummation of the transactions contemplated hereby;

(c) all other legal matters pertaining to the execution and delivery and performance of this Agreement and the Related Documents and the transactions contemplated hereby and thereby shall be satisfactory to the Lender and its counsel, and the Lender shall have received such other statements, certificates, agreements, documents and information with respect to the

Department of Aviation and the other parties to the Related Documents and matters contemplated by this Agreement as the Lender may reasonably request; and

(d) the Series 2019A-B Bonds shall not be (i) assigned a specific rating by any rating agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) issued pursuant to any type of official statement, private placement memorandum or other offering document, (iv) assigned a CUSIP number by Standard & Poor's CUSIP Service or (v) placed or offered by a broker-dealer in the capacity of an underwriter or a placement agent.

*Section 3.2. Credit Requirements.* Prior to the Closing Date, the Lender shall have determined, in its sole discretion, based in part upon the information and reports submitted by the City, for and on behalf of its Department of Aviation, that the City and the Department of Aviation meets the Lender's credit requirements.

*Section 3.3. Litigation.* Prior to the Closing Date, the Lender shall have received a written description of all actions, suits or proceedings pending or, to the knowledge of the City, for and on behalf of its Department of Aviation, threatened against the City, for and on behalf of its Department of Aviation, in any court or before any arbitrator of any kind or before or by any governmental or non-governmental body which could reasonably be expected to result in a Material Adverse Effect, if any, and such other statements, certificates, agreements, documents and information with respect thereto as the Lender may reasonably request.

*Section 3.4. Other Matters.* On the Closing Date, the Related Documents shall be in full force and effect in the form theretofore approved by the Lender and none of the Related Documents shall have been amended, modified or supplemented other than as contemplated herein. There shall not have occurred any change or any development involving a prospective change in the financial or operating condition of the City, for and on behalf of its Department of Aviation, or its ability to pay its obligations with respect to the Bonds or this Agreement, from that set forth in the financial statements provided to the Lender that in the judgment of the Lender is material and adverse to the Lender nor any change in any law, rule, regulation (or the interpretation or administration thereof), that, in each case, may adversely affect the consummation of the transactions contemplated hereunder, as determined by the Lender in its sole discretion. The representations and warranties of the City, for and on behalf of its Department of Aviation, contained herein shall be true, complete and correct on the date hereof and on the Closing Date, as if made on the Closing Date and the City, for and on behalf of its Department of Aviation, shall have performed and complied with all agreements and conditions required by the Related Documents to be performed or complied with by it prior to the Closing Date. The City, for and on behalf of its Department of Aviation, shall not have failed to pay principal of or interest as and when due on any of its indebtedness payable from the Net Revenues and the Funds. All other legal matters pertaining to the execution and delivery of this Agreement and the Related Documents shall be satisfactory to the Lender and its counsel, and the Lender shall have received such other statements, certificates, agreements, documents and information with respect to the City, for and on behalf of its Department of Aviation, and the other parties to the Related Documents and matters contemplated by this Agreement as the Lender may reasonably request.

*Section 3.5. Payment of Fees and Expenses.* On or prior to the Closing Date, the Lender shall have received reimbursement of the Lender's reasonable fees and expenses (including, without limitation, the reasonable fees and expenses of counsel to the Lender and the reasonable out-of-pocket expenses of the Lender) and any other fees incurred in connection with the transaction contemplated by the Related Documents. The fees of counsel to the Lender shall be paid directly to Chapman and Cutler LLP in accordance with the instructions provided by Chapman and Cutler LLP.

#### **ARTICLE FOUR REPRESENTATIONS**

*Section 4.1. Representations of the City, for and on behalf of its Department of Aviation.* In order to induce the Lender to enter into this Agreement, the City, for and on behalf of its Department of Aviation, represents and warrants to the Lender and the Holders of the Series 2019A and Series 2019B Credit Facility Bonds as follows:

(a) *Organization; Power and Authority.* The City is duly organized and validly existing as a municipal corporation and political subdivision under the laws of the State of Colorado. The City, for and on behalf of its Department of Aviation, has full right and authority to enter into this Agreement, has or had the full right and authority to enter into the other Related Documents to which it is a party on the date of execution of such Related Documents and to perform each and all of the matters and things herein and therein provided for.

(b) *Due Authorization; No Violation.* The execution, delivery and performance by the City, for and on behalf of its Department of Aviation of this Agreement and the other Related Documents to which it is a party on the date of execution of such Related Documents and the issuance, execution and delivery of the Series 2019A and Series 2019B Bonds and the Series 2019A and Series 2019B Credit Facility Bonds on the respective dates of such issuance, execution and delivery were duly authorized by all necessary action, and did not and will not violate any constitutional provisions or any law or any regulation, order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to the City or the Department of Aviation or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than the Lien of the General Subordinate Bond Ordinance) upon any of the assets of the City or the Department of Aviation pursuant to the terms of, any resolution, ordinance, mortgage, indenture, agreement or instrument to which the City or the Department of Aviation is a party or by which it or any of its properties is bound.

(c) *Enforceability.* This Agreement, and each Related Document to which the City, for and on behalf of its Department of Aviation, is a party constitute the legal, valid and binding obligations of the City, for and on behalf of its Department of Aviation, enforceable against the City, for and on behalf of its Department of Aviation, in accordance with their respective terms, except as such enforceability may be subject to and limited by (w) applicable bankruptcy, reorganization, insolvency, liquidation,

readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally, (x) the exercise of judicial discretion, procedural and other defenses based on particular factual circumstances and equitable principles in appropriate cases, (y) the reasonable exercise by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado, and (z) the exercise by the United States of powers delegated to it by the United States Constitution; provided that, while certain remedies and other provisions of this Agreement and each Related Document are subject to the aforesaid exceptions and limitations and, therefore, may not be enforceable in accordance with their respective terms, such unenforceability would not preclude the enforcement of the obligations of the City, for and on behalf of its Department of Aviation, to pay the Subordinate Bond Obligations from the Net Revenues and Pledged Funds as provided in the Ordinances. The Series 2019A and Series 2019B Bonds and the Series 2019A and Series 2019B Credit Facility Bonds have been duly issued, executed and delivered in conformity with the Ordinance and constitute legal, valid and binding obligations of the City, for and on behalf of its Department of Aviation, enforceable in accordance with their terms, except as such enforceability may be subject to and limited by (w) applicable bankruptcy, reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally, (x) the exercise of judicial discretion, procedural and other defenses based on particular factual circumstances and equitable principles in appropriate cases, (y) the reasonable exercise by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado, and (z) the exercise by the United States of powers delegated to it by the United States Constitution; provided that, while certain remedies and other provisions of this Agreement and each Related Document are subject to the aforesaid exceptions and limitations and, therefore, may not be enforceable in accordance with their respective terms, such unenforceability would not preclude the enforcement of the obligations of the City, for and on behalf of its Department of Aviation, to pay the Subordinate Bond Obligations from the Net Revenues and Pledged Funds as provided in the Ordinance, and in all events the Subordinate Bond Obligations shall be entitled to the benefit and security of the Ordinance, the Net Revenues and the Pledged Funds as provided in the Ordinance.

(d) *Status.* Under the terms of the General Bond Ordinance, the Net Revenues cannot secure any Debt of the City (including Debt for and on behalf of its Department of Aviation) other than as provided in or permitted by the General Bond Ordinance. As of the Closing Date, the Series 2019A and Series 2019B Bonds constitute the only Debt of the City or the City, for and on behalf of its Department of Aviation, that is secured by a Lien on the Net Revenues other than the other Senior Bonds, Obligations, Subordinate Bonds, Subordinate Credit Facility Obligations, other Subordinate Obligations (all as defined in the Supplemental Bond Ordinance) and Junior Lien Obligations issued or incurred prior to the Closing Date. Under the terms of the General Bond Ordinance, the Net Revenues cannot secure any Debt of the City (including Debt for and on behalf of its Department of Aviation) other than Senior Bonds, Obligations, Subordinate Bonds (including the Series 2019A and Series 2019B Bonds), Subordinate Credit Facility Obligations, other Subordinate Obligations, and Junior Lien Obligations (as defined in the General Bond Ordinance or the General Subordinate Bond Ordinance). The Net

Revenues cannot be used to pay any obligations of the City (including Debt for and on behalf of its Department of Aviation) other than the foregoing described Debt, Operation and Maintenance Expenses and any other lawful purposes.

(e) *Disclosure.* No representation, warranty or other statement made by the City, for and on behalf of its Department of Aviation, in or pursuant to this Agreement or any other Related Document or any other document or financial statement provided by the City, for and on behalf of its Department of Aviation (the term “provided” to include the City’s filings on the MSRB’s Electronic Municipal Market Access or EMMA system), to the Lender or any Holder in connection with this Agreement or any other Related Document, contains any untrue statement of a material fact or omits (as of the date made) any material fact necessary to make the statements herein or therein not misleading in light of the circumstances under which they are made. To the best of the knowledge of the City, for and on behalf of its Department of Aviation, there is no fact, which the City, for and on behalf of its Department of Aviation, has not disclosed to the Lender or any Holder in writing which materially adversely affects or, so far as the City, for and on behalf of its Department of Aviation, can now reasonably foresee, is likely to materially adversely affect the ability (financial or otherwise) of the City, for and on behalf of its Department of Aviation, to perform its obligations hereunder or under the Related Documents.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or, to the best knowledge of the City, for and on behalf of its Department of Aviation, threatened against or affecting the City, for and on behalf of its Department of Aviation or the Airport System, wherein an unfavorable decision, ruling or finding could reasonably be expected to result in a Material Adverse Effect.

(g) *No Defaults.* (i) The City, for and on behalf of its Department of Aviation, is not in default under (A) any order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to the Airport System, or (B) any law or regulation, or (C) any contract, agreement or instrument to which the City, for and on behalf of its Department of Aviation, is a party or by which it or its property is bound, which default could reasonably be expected to result in a Material Adverse Effect; and no event has occurred which with the giving of notice or the passage of time or both would constitute such a default.

(ii) The City, for and on behalf of its Department of Aviation, is not in default under any bonds or other Debt or obligations payable from or secured by the Net Revenues or amounts on deposit in the Funds.

(h) *Financial Statements and Condition.* The audited balance sheet of the City as of December 31, 2018 and the related audited statements of earnings, changes in fund equity and cash flows of the City for the Fiscal Years then ended, and the accompanying footnotes thereon, dated December 31, 2018, reported on by BKD, LLP (“BKD”) independent certified public accountants, have been delivered to the Lender.

Consistent with BKD's opinion dated [May \_\_, 2019], the City believes these financial statements, as of the Closing Date, fairly present the financial condition of the City as at such dates and the results of the operations of the Airport System, for the periods covered by such statements, all in conformity with GAAP. Since December 31, 2018, there has been no material adverse change in the condition (financial or otherwise), business or operations of the Airport System or the City.

(i) *Consents.* No authorization, consent, order or other approval of, or registration or filing with, or taking of any other action in respect of or by, any court or governmental body, agency or other instrumentality is required for the valid execution, delivery or performance by the City, for and on behalf of its Department of Aviation, of this Agreement or was required for the valid execution, delivery or performance by the City, for and on behalf of its Department of Aviation, of the Related Documents to which the City, for and on behalf of its Department of Aviation, is a party or the issuance, execution and delivery and performance of the Series 2019A and Series 2019B Bonds and the Series 2019A and Series 2019B Credit Facility Bonds, except such as shall have been duly obtained, given or accomplished prior to the execution and delivery hereof or thereof.

(j) *Security.* The provisions of the General Subordinate Bond Ordinance (including, without limitation, Section 203 thereof) create an irrevocable Lien (but not necessarily an exclusive Lien) on the Net Revenues and Pledged Funds of the Airport System, which lien is expressly junior and subordinate to the Liens thereon of the Senior Bonds and Obligations relating thereto and which is on parity with outstanding Subordinate Bonds and Subordinate Obligations, for the benefit of the holders of the Series 2019A and Series 2019B Bonds, including the Series 2019A and Series 2019B Credit Facility Bonds. The provisions of Section 203 of the General Subordinate Bond Ordinance and Section 7.14 hereof create, with respect to the Subordinate Bond Obligations, including the Series 2019A and Series 2019B Credit Facility Bonds, an irrevocable Lien (but not necessarily an exclusive first Lien) on the Net Revenues of the Airport System, which Lien is expressly junior and subordinate to the Liens thereon of the Senior Bonds and Obligations relating thereto and which is on parity with outstanding Subordinate Bonds and Subordinate Obligations, for the benefit of the Lender and the Holders. Except with respect to the payment obligations of the City, for and on behalf of its Department of Aviation described in this clause (j), such liens are prior as against all other Persons having claims of any kind in tort, contract or otherwise, whether or not such Persons have notice thereof, except as otherwise provided for in the General Bond Ordinance and the General Subordinate Bond Ordinance. No filing or recording of any instrument is necessary to maintain such pledge as a valid and enforceable pledge or to maintain the priority thereof as stated in the preceding sentences.

(k) *Bond Documents.* The City, for and on behalf of its Department of Aviation, hereby makes to the Lender and the Holders the same representations and warranties made by the City, for and on behalf of its Department of Aviation, in each Bond Document to which the City, for and on behalf of its Department of Aviation, is a party, which representations and warranties, as well as the related defined terms

contained therein, are hereby incorporated by reference in this subparagraph (k) for the benefit of the Lender and the Holders with the same effect as if each and every such representation and warranty and defined term were set forth in this subparagraph (k) in its entirety. No amendment, modification, termination or replacement of any such representations, warranties, covenants and definitions contained in the Bond Documents shall be effective to amend, modify, terminate or replace the representations, warranties, covenants and definitions incorporated in this subparagraph (k) by this reference, without the prior written consent of the Majority Holder.

(l) *No Proposed Legal Changes.* There is no amendment, or to the knowledge of the City, for and on behalf of its Department of Aviation, proposed amendment certified for placement on a statewide ballot, to the Constitution of the State of Colorado or any published administrative interpretation of the Constitution of Colorado or any State of Colorado law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the Series 2019A and Series 2019B Bonds or the Series 2019A and Series 2019B Credit Facility Bonds, or the rights of any Holder thereof in its capacity as such, or the ability of the City, for and on behalf of its Department of Aviation, to perform its obligations under this Agreement or the other Related Documents.

(m) *No Sovereign Immunity.* The City, for and on behalf its Department of Aviation, does not enjoy any defense on the grounds of immunity (sovereign or otherwise) with respect to its contractual obligations under this Agreement, the General Bond Ordinance, the General Subordinate Bond Ordinance or the Supplemental Bond Ordinance.

(n) *Bankruptcy and Insolvency.* Gross Revenues (other than revenues from fuel taxes not derived from the ownership or operation of the Airport System and other components (if any) of Gross Revenues not derived from the ownership or operation or disposition of the Airport System) are “special revenues” (within the meaning of 11 U.S.C. § 902(2)(A)) and, accordingly, such Gross Revenues acquired by the City after the commencement of any case by the City under 11 U.S.C. §§ 901 *et seq.* shall remain subject to the Liens created by and under the General Subordinate Bond Ordinance in favor of the holders of the Series 2019A and Series 2019B Bonds (including the Series 2019A and Series 2019B Credit Facility Bonds) and the Lender. Under 11 U.S.C. § 922(d), the filing of a petition under 11 U.S.C. §§ 301 and 901 which commences such a case does not operate as a stay of application of such Gross Revenues to the payment of the Series 2019A and Series 2019B Bonds (including the Series 2019A and Series 2019B Credit Facility Bonds) or any amounts payable under this Agreement in accordance with the provisions of 11 U.S.C. § 928, notwithstanding that such Gross Revenues are received and held by the City. Under 11 U.S.C. §§ 922(d), 927 and 928, the filing of a petition under 11 U.S.C. §§ 301 and 901 which commences such a case does not operate as a stay of the transfer of such Gross Revenues to the holders of the Series 2019A and Series 2019B Bonds (including the Series 2019A and Series 2019B Credit Facility Bonds) or to the Lender to the extent of any amounts owing thereunder or hereunder.

Pursuant to 11 U.S.C. § 926(b), no transfer of property (including, without limitation, Gross Revenues after payment of the necessary operating expenses of the Airport System pursuant to 11 U.S.C. § 928(b)) by the City, for and on behalf of its Department of Aviation, in respect of the holders of the Series 2019A and Series 2019B Bonds (including the Series 2019A and Series 2019B Credit Facility Bonds) or the Lender as the Holder of any Series 2019A and Series 2019B Credit Facility Bonds or as a subrogee thereof is subject to avoidance under 11 U.S.C. § 547.

(o) *Environmental Matters.* Except as disclosed in writing to the Lender, the City, for and on behalf of its Department of Aviation, does not have knowledge that the operations of the Airport System are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could reasonably be expected to result in a Material Adverse Effect.

(p) *ERISA.* Neither the City nor the Department of Aviation has ever established nor contributed to, nor is a party to, any “employee benefit plan” within the meaning of Section 3(3) of ERISA or any other form of bonus, incentive compensation, deferred compensation or other similar plan or arrangement, other than a “governmental plan” within the meaning of Section 414(d) of the Code or Section 3(32) of ERISA.

(q) *Title to Properties; Liens and Encumbrances.* The City, for and on behalf of its Department of Aviation, has good title in fee simple or valid and enforceable leaseholds to, all of its real property and valid and indefeasible ownership of all of its fixtures, equipment and other assets. No property of the City, for and on behalf of its Department of Aviation, is subject to liens that could individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(r) *Compliance with Rules and Regulations.* The City, for and on behalf of its Department of Aviation, is in compliance with all laws, ordinances, orders, rules and regulations applicable to it, noncompliance with which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and all cash and other assets of the Airport System are invested in accordance with its investment policy, as amended or otherwise modified from time to time. Neither the City nor the Department of Aviation has 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.

(s) *Tax-Exempt Status of Bonds.* Neither the City nor the Department of Aviation has taken any action or knows of any action that any other Person has taken, which would cause interest on the Series 2019A Bonds or the Series 2019A Credit Facility Bonds to be included in the gross income of the recipients thereof for Federal income tax purposes (excluding treatment of interest on the Series 2019A Bonds or the



Series 2019A Credit Facility Bonds as an item of tax preference for purposes of the federal alternative minimum tax).

(t) *Interest.* None of the Related Documents, the Series 2019A and Series 2019B Bonds, or the Series 2019A and Series 2019B Credit Facility Bonds provide for any payments that would violate any applicable usury laws regarding permissible maximum rates of interest or the calculation or collection upon interest.

(u) *Federal Reserve Regulations.* No part of the proceeds of the purchase of the Series 2019A and Series 2019B Bonds will be used for the purpose, whether immediate, incidental or ultimate, to purchase or carry any margin stock (within the meaning of Regulation U of the FRB, as amended from time to time), or to extend credit to others for the purpose of purchasing or carrying any margin stock, or for any other purpose which would violate any of the regulations of the FRB.

(v) *Official Signatures.* The officials of the City, for and on behalf of its Department of Aviation, signing each of the Bond Documents, has and had full power and authority to execute, deliver and perform under each of the Bond Documents to which the City, for and on behalf of its Department of Aviation, is a party. Any agreement, certificate or request signed by or on behalf of any authorized representative of the City, for and on behalf of its Department of Aviation, and delivered to the Paying Agent, or the Lender and the Holders shall be deemed a representation and warranty by the City, for and on behalf of its Department of Aviation, to the Lender and the Holders as to the truth, accuracy and completeness of the statements made by the City, for and on behalf of its Department of Aviation, therein.

(w) *Credit Facility Obligations.* The Subordinate Bond Obligations under this Agreement and the Series 2019A and Series 2019B Credit Facility Bonds, all constitute (i) “Subordinate Credit Facility Obligations” for purposes of the General Subordinate Bond Ordinance and (ii) “Series 2019A and Series 2019B Credit Facility Bonds” for purposes of the Supplemental Bond Ordinance and are entitled to security pledged therefor, and (iii) Lender Obligations (other than Subordinate Bond Obligations) under this Agreement are general, unsecured obligations of the City, for and on behalf of its Department of Aviation, and payable from moneys in the Capital Fund (as defined in the General Subordinate Bond Ordinance). This Agreement constitutes a “Subordinate Credit Facility” for purposes of the General Subordinate Bond Ordinance.

(x) *No Subordinated Cross-Default Provision in Lender Agreements.* The City, for and on behalf of its Department of Aviation, has not entered into, or otherwise consented to any credit agreement, reimbursement agreement, standby bond purchase agreement (or other similar agreement), liquidity agreement, direct securities purchase agreement or other agreement or instrument (or any amendment, supplement or modification thereto) (each a “*Lender Agreement*”) under which, directly or indirectly, any Person or Persons (each a “*Provider*”) undertake(s) to make a loan or provide funds to make payment of, or to purchase or provide liquidity support or credit enhancement,

for Senior Bonds for and on behalf of its Department of Aviation, which Lender Agreement includes a Subordinated Cross-Default Provision.

## **ARTICLE FIVE COVENANTS**

The City, for and on behalf of its Department of Aviation, will do the following so long as the Lender or any Holder is an owner of the Series 2019A and Series 2019B Credit Facility Bonds and any Lender Obligations remain outstanding under this Agreement, unless the Majority Holder shall otherwise consent in writing:

*Section 5.1. Performance of This and Other Agreements.* The City, for and on behalf of its Department of Aviation, shall punctually pay or cause to be paid all amounts payable on the Bonds (including the Series 2019A and Series 2019B Credit Facility Bonds) and under this Agreement and the other Related Documents and observe and perform all of the conditions, covenants and requirements of this Agreement and the other Related Documents.

*Section 5.2. Further Assurances.* The City, for and on behalf of its Department of Aviation, shall execute, acknowledge where appropriate, and deliver, and cause to be executed, acknowledged where appropriate, and delivered, from time to time promptly at the request of the Majority Holder, all such instruments and documents as in the opinion of the Majority Holder are necessary or advisable to carry out the intent and purpose of this Agreement and the Related Documents or to enable the requesting party to enforce any of its rights hereunder or thereunder and to provide for the payment of the Lender Obligations and for the perfection of the Lien on the Net Revenues. At any time, and from time to time, upon request by the Majority Holder, the City, for and on behalf of its Department of Aviation, will, at the expense of the City, for and on behalf of its Department of Aviation, correct any defect, error or omission which may be discovered in the form or content of any of the Related Documents.

*Section 5.3. Books and Records; Inspection Rights.* The City, for and on behalf of its Department of Aviation, shall keep adequate records and books of account, in which complete entries will be made, reflecting all financial transactions of the City, for and on behalf of its Department of Aviation, and the Airport System; and at any reasonable time and from time to time upon reasonable notice thereof, permit the Majority Holder or any agents or representatives thereof, at the expense of the Majority Holder, to examine and make copies of and abstracts from the records and books of account of, and to the extent permitted by applicable law, visit the properties of, the City, for and on behalf of its Department of Aviation, and the Airport System and to discuss the affairs, finances and accounts of the Airport System with any of the City's or the Department of Aviation's officers, trustees and, with the consent of the City, for and on behalf of its Department of Aviation, independent auditors, for and on behalf of its Department of Aviation.

*Section 5.4. Debt.* The City, for and on behalf of its Department of Aviation, will not issue, incur, assume, create or have outstanding any Debt payable from Net Revenues or the Funds other than as expressly provided in or permitted by the General Bond Ordinance, the

General Subordinate Bond Ordinance and the General Junior Lien Bond Ordinance, as applicable.

*Section 5.5. Liens.* (a) The City, for and on behalf of its Department of Aviation, will not create, incur or permit to exist any Lien of any kind on the Net Revenues or the Funds, other than as expressly provided in or permitted by the General Bond Ordinance, the General Subordinate Bond Ordinance and the General Junior Lien Bond Ordinance, as applicable.

(b) In no event shall any Lien on Net Revenues or the Funds securing any swap termination payment on any Swap Contract entered into by the City, for and on behalf of its Department of Aviation, be senior in priority to, or on parity with, the payment of the Bonds (including without limitation the Series 2019A and Series 2019B Bonds or the Series 2019A and Series 2019B Credit Facility Bonds) or Subordinate Bond Obligations. In no event shall the City, for and on behalf of its Department of Aviation, agree to provide any collateral to support the obligations of the City, for and on behalf of its Department of Aviation, under any swap contract entered into by the City, for and on behalf of its Department of Aviation, at any time after the date of a tender of the Series 2019A and Series 2019B pursuant to the terms hereof, other than a Lien on Net Revenues subordinate to the Lien on Net Revenues securing the Subordinate Bonds or the Subordinate Lender Obligations.

*Section 5.6. Related Documents.* (a) The City, for and on behalf of its Department of Aviation, will not, directly or indirectly, amend, supplement or otherwise modify, or consent to any amendment, supplement or other modification of, any Related Document unless it has notified the Majority Holder of the substance of such amendment, supplement or other modification at least ten (10) Business Days prior to the effective date thereof.

(b) The City, for and on behalf of its Department of Aviation, further agrees that, without the prior consent of the Majority Holder, the City, for and on behalf of its Department of Aviation, will not, directly or indirectly, enter into or otherwise consent to any amendment, waiver, supplement, termination or other modification of any such Related Document, and will not accept the benefit of any waiver given thereunder, in any manner that (A) in the case of any such amendment, waiver, supplement, termination or other modification of the Ordinance, adversely affects (1) the ability of the City, for and on behalf of its Department of Aviation, to perform its obligations thereunder or (2) the rights, security or interests of the Lender or any other Holder hereunder or thereunder or (B) in the case of any such amendment, waiver, supplement, termination or other modification of any other Related Document, materially and adversely affects (1) the ability of the City, for and on behalf of its Department of Aviation, to perform its obligations hereunder or (2) the rights, security or interests of the Lender or any other Holder hereunder or under any such Related Document; *provided, however,* that this subsection 5.6(b) shall not prohibit the City, for and on behalf of its Department of Aviation, from issuing additional Bonds or additional Subordinate Bonds or incurring Obligations, Subordinate Credit Facility Obligations or other Subordinate Obligations, Junior Lien Obligations or Junior Lien Bonds, if the conditions precedent or otherwise applicable to the issuance of such bonds or the incurrence of such obligations (including, without limitation, under the General Bond Ordinance, the General Subordinate Bond Ordinance and the General Junior Lien Bond Ordinance, as applicable, as the case may be) have been satisfied.

*Section 5.7. Provisions to Facilitate Payments.* The City, for and on behalf of its Department of Aviation, shall cause to be included in each annual budget of the City, for and on behalf of its Department of Aviation, reasonable provisions for the payment of all amounts due and estimated to become due to the Holders with respect to the Series 2019A and Series 2019B Bonds and the Series 2019A and Series 2019B Credit Facility Bonds under this Agreement and the other Related Documents during the Fiscal Year covered by such budget. To the extent estimates are used, such estimates shall be made by the Deputy Manager of Aviation/Finance and Administration for the Airport System or any other appropriate official, in consultation with the Manager, in good faith and shall be based upon reasonable estimates of the amount of Bonds, expected to be outstanding, and the interest rates reasonably expected to be charged during the coming Fiscal Year for the remaining term of the Senior Bonds. To the extent that amounts actually due and payable to the Holders with respect to the Series 2019A and Series 2019B Bonds and the Series 2019A and Series 2019B Credit Facility Bonds under this Agreement and the other Related Documents in any Fiscal Year exceed the amounts estimated and/or available therefor in an annual budget of the City, for and on behalf of its Department of Aviation, for such Fiscal Year, the City, for and on behalf of its Department of Aviation, shall take, or cause to be taken, as promptly as possible, all such actions (including, without limitation, amendments of such annual budget) as may be required to permit and facilitate the expenditure of additional moneys from all sources legally available for the payment of such amounts.

*Section 5.8. Rate Covenant.* The City, for and on behalf of its Department of Aviation, will at all times comply with the rate maintenance covenants set forth in Sections 901 of the General Bond Ordinance and the General Subordinate Bond Ordinance.

*Section 5.9. Disclosure.* To the extent it has knowledge of the same, the City, for and on behalf of its Department of Aviation, will disclose to the Holders in writing any and all facts which materially and adversely affect, or could reasonably be expected to result in a Material Adverse Effect.

*Section 5.10. Compliance with Other Covenants.* (a) From and after the date hereof and so long as this Agreement is in effect, except to the extent compliance in any case or cases is waived in writing by the Majority Holder, the City, for and on behalf of its Department of Aviation, agrees that it will, for the benefit of the Holders, comply with, abide by, and be restricted by all the agreements, covenants, obligations and undertakings contained in the provisions of the other Related Documents, regardless of whether any indebtedness is now or hereafter remains outstanding thereunder, together with the related definitions, exhibits and ancillary provisions, which are incorporated herein by reference, *mutatis mutandis*, and made a part hereof to the same extent and with the same force and effect as if the same had been herein set forth in their entirety, and without regard or giving effect to any amendment or modification of any provisions of any of the other Related Documents to which the City, for and on behalf of its Department of Aviation, is a party or any waiver of compliance therewith, no such amendment, modification or waiver to in any manner constitute an amendment, modification or waiver of the provisions thereof as incorporated herein unless consented to in writing by the Majority Holder.

(b) So long as any Lender Obligations hereunder remain payable, the City, for and on behalf of its Department of Aviation, shall continue to comply with the covenants and undertakings set forth in the Ordinance, including, without limitation, Section 704 and Section 901 of the General Bond Ordinance thereof, notwithstanding anything in the Ordinance limiting such compliance to when a “Bond” (as defined in the Ordinance) remains outstanding thereunder.

*Section 5.11. Notice of Litigation or Other Proceedings.* The City, for and on behalf of its Department of Aviation, will give notice, as soon as practicable, (and, in any case, the City, for and on behalf of its Department of Aviation, shall use reasonable efforts to provide notice thereof within fifteen (15) Business Days) following receipt of notice thereof by an Authorized Officer, to the Majority Holders of (i) the institution of any litigation, administrative proceeding or governmental investigation involving the City, for and on behalf of its Department of Aviation, which is not fully covered by insurance (subject to deductibles maintained by the City, for and on behalf of its Department of Aviation) which is expected to have a Material Adverse Effect or (ii) the entry of any judgment, decree or order against or involving the City, for and on behalf of its Department of Aviation, which in either case is expected to have a Material Adverse Effect. The City, for and on behalf of its Department of Aviation, shall also provide to the Majority Holder concurrently with delivery to any other party, a copy of any notice required to be given by the City, for and on behalf of its Department of Aviation, under the Related Documents.

*Section 5.12. Notice of Events of Default.* The City, for and on behalf of its Department of Aviation, shall give immediate notice to the Majority Holder if the City, for and on behalf of its Department of Aviation, becomes aware of the occurrence of any Event of Default hereunder or any event of default under any other Related Document.

*Section 5.13. No Sovereign Immunity.* To the fullest extent permitted by law, the City, for and on behalf of its Department of Aviation, agrees not to assert any current or future right of sovereign immunity as a defense to any claim or cause of action based solely in contract under this Agreement or any other Related Document or, with respect to this Agreement or any other Related Document, or under the General Bond Ordinance or the Supplemental Bond Ordinance.

*Section 5.14. Maintenance of Rating.* The City, for and on behalf of its Department of Aviation, shall cause to be maintained at all times at least one long-term unenhanced ratings on the Subordinate Bonds by any one of Moody’s, S&P or Fitch.

## **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) any material representation or warranty made by the City, for and on behalf of its Department of Aviation, in this Agreement (or incorporated herein by reference) or any material representation or warranty made by the City, for and on behalf

of its Department of Aviation, 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 this Agreement or with any of the other Related Documents, shall prove to have been incorrect, incomplete or misleading in any material respect when made;

(b) failure of the City for and on behalf of its Department of Aviation, to pay when due (i) the principal or purchase price of or interest or premium on the Series 2019A and Series 2019B Bonds or the Series 2019A and Series 2019B Credit Facility Bonds, (ii) any Bond Obligation or (iii) any Lender Obligation;

(c) default in the due observance or performance by the City, for and on behalf of its Department of Aviation, of any covenant set forth in Section 5.4, 5.5, 5.6(b), 5.7, 5.8, 5.10(a) (after any applicable grace period under any Related Document), 5.10(b), 5.13 and/or 5.14 hereof;

(d) default in the due observance or performance by the City, for and on behalf of its Department of Aviation, of any other term, covenant or agreement set forth in this Agreement and the continuance of such default for 30 days after the earlier to occur of (i) written notice thereof from the Majority Holder or (ii) an Authorized Officer obtains actual knowledge of such default;

(e) any “*event of default*” under any Related Document (as defined respectively therein) shall have occurred.

**Section 6.2. Remedies.** If an Event of Default specified in Section 6.1 hereof shall occur and be continuing, the Majority Holder may:

(a) by written notice to the Paying Agent and the City, for and on behalf of its Department of Aviation, declare the outstanding amount of the Lender Obligations under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue;

(b) deliver a written notice to the Paying Agent and the City, for and on behalf of its Department of Aviation, that an Event of Default has occurred and is continuing in order to cause a mandatory tender of the Series 2019A and Series 2019B Bonds to the Lender or take such other remedial action pursuant to the terms of the General Subordinate Bond Ordinance and the Supplemental Bond Ordinance;

(c) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Related Documents or to enforce performance or observance of any obligation, agreement or covenant of the City, for and on behalf of its Department of Aviation, under the Related Documents, whether for

specific performance of any agreement or covenant of the City, for and on behalf of its Department of Aviation, or in aid of the execution of any power granted to the Lender or the Majority Holder in the Related Documents;

(d) cure any Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however*, that the Majority Holder shall have no obligation to effect such a cure;

(e) exercise, or cause to be exercised, any and all remedies as it may have under the Related Documents (other than as provided for in clause (b) of this Section 6.2) and as otherwise available at law and at equity; and

(f) deliver a notice to the Paying Agent and the City, for and on behalf of its Department of Aviation, that an Event of Default has occurred and is continuing and directing the Paying Agent to take such remedial action as is provided for in the Ordinance.

*Section 6.3. Remedies Cumulative; Solely for the Benefit of Lender, the Majority Holder and the Holders.* To the extent permitted by, and subject to the mandatory requirements of, applicable Law, each and every right, power and remedy herein specifically given to the Lender, the Majority Holder and the Holders in the Related Documents shall be cumulative, concurrent and nonexclusive and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy (whether specifically herein given or otherwise existing) may be exercised from time to time and as often and in such order as may be deemed expedient by the Lender, the Majority Holder or the Holders, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy.

The rights and remedies of the Lender, the Majority Holder and the Holders specified herein are for the sole and exclusive benefit, use and protection of the Lender, the Majority Holder and the Holders, and the Lender, the Majority Holder and the Holders are entitled, but shall have no duty or obligation to the City, for and on behalf of its Department of Aviation, the Paying Agent or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Lender, the Majority Holder or the Holders hereunder or under any of the other Related Documents.

*Section 6.4. Waivers or Omissions.* No delay or omission by the Lender, the Majority Holder or the Holders in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right remedy or power or be construed to be a waiver of any default on the part of the Lender, the Majority Holder or the Holders or to be acquiescence therein. No express or implied waiver by the Lender, the Majority Holder or the Holders of any Event of Default shall in any way be a waiver of any future or subsequent Event of Default.

*Section 6.5. Discontinuance of Proceedings.* In case the Lender, the Majority Holder or the Holders shall proceed to invoke any right, remedy or recourse permitted hereunder or under

the Related Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Lender, the Majority Holder or the Holders shall have the unqualified right so to do and, in such event, the City, for and on behalf of its Department of Aviation, and the Lender, the Majority Holder and the Holders shall be restored to their former positions with respect to the Lender Obligations, the Subordinate Bond Obligations, the Related Documents and otherwise, and the rights, remedies, recourse and powers of the Lender, the Majority Holder and the Holders hereunder shall continue as if the same had never been invoked.

## **ARTICLE SEVEN MISCELLANEOUS**

*Section 7.1. No Deductions.* Except as otherwise required by law, each payment by the City, for and on behalf of its Department of Aviation, to the Lender or any Holder under this Agreement or any other Related Document shall be made without setoff or counterclaim and without withholding for or on account of any present or future taxes (other than overall net income taxes of the recipient imposed by any jurisdiction having taxing authority over such recipient) imposed by or within the jurisdiction in which the City is domiciled, any jurisdiction from which the City, for and on behalf of its Department of Aviation, makes any payment hereunder, or (in each case) any political subdivision or taxing authority thereof or therein. If any such withholding is so required, the City, for and on behalf of its Department of Aviation, shall make the withholding, pay the amount withheld to the appropriate Governmental Authority before penalties attach thereto or interest accrues thereon and forthwith pay such additional amount as may be necessary to ensure that the net amount actually received by the Lender or any Holder free and clear of such taxes (including such taxes on such additional amount) is equal to the amount which the Lender or such Holder would have received had such withholding not been made. If the Lender or any Holder pays any amount in respect of any such taxes, penalties or interest, the City, for and on behalf of its Department of Aviation, shall reimburse the Lender or such Holder, as applicable, for that payment on demand. If the City, for and on behalf of its Department of Aviation, pays any such taxes, penalties or interest, it shall deliver official tax receipts evidencing that payment or certified copies thereof to the Lender or such Holder, as applicable, on or before the thirtieth day after payment.

*Section 7.2. Right of Setoff; Other Collateral.* (a) Upon the occurrence and during the continuance of an Event of Default, the Holders are hereby authorized at any time and from time to time without notice to the City, for and on behalf of its Department of Aviation (any such notice being expressly waived by the City, for and on behalf of its Department of Aviation), and to the fullest extent permitted by law, but in all events subject to Section 2.10 hereof, to setoff, to exercise any banker's lien or any right of attachment and apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies at any time held and other indebtedness at any time owing by the Holders to or for the account of the City, for and on behalf of its Department of Aviation (irrespective of the currency in which such accounts, monies or indebtedness may be denominated and the Holders are authorized to convert such accounts, monies and indebtedness into United States dollars) against any and all of the Lender Obligations of the City, for and on behalf of its Department of Aviation, whether or not any Holder shall have made any demand for any amount owing to such Holder by the City, for and on behalf of its Department of Aviation.



(b) The rights of the Holders under this Section 7.2 are in addition to, in augmentation of, and, except as specifically provided in this Section 7.2, do not derogate from or impair other rights and remedies (including, without limitation, other rights of setoff) which the Holders may have.

*Section 7.3. Reimbursement.* In addition to any other amounts payable by the City, for and on behalf of its Department of Aviation, under this Agreement, the City, for and on behalf of its Department of Aviation, hereby agrees, to the extent permitted by law, to reimburse the Holders, promptly upon demand, in respect of all claims, demands, liabilities, damages, losses, reasonable costs, reasonable charges and reasonable expenses (including reasonable attorneys' fees) that the Holders may incur or be subject to solely as a direct consequence of (i) the execution and delivery of this Agreement, (ii) any breach by the City, for and on behalf of its Department of Aviation, or any official of the City, for and on behalf of its Department of Aviation, of any warranty, covenant, term or condition in, or the occurrence of any default under, this Agreement or any Related Document, including all reasonable fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default, and (iii) involvement in any legal suit, proceeding, or action as to which a Holder is involved solely as a direct consequence of execution and delivery of this Agreement, the holding or owning of any Series 2019A and Series 2019B Bonds or any Series 2019A and Series 2019B Credit Facility Bonds, its execution of this Agreement or any other event or transaction contemplated by any of the foregoing; *provided* that a Holder shall not be entitled to reimbursement under this Section to the extent that claims, demands, liabilities, damages, losses, costs, charges and expenses to be reimbursed are the result of the gross negligence or willful misconduct of such Holder; and *provided, further*, that Sections 7.1 and 7.13 shall control as to the liabilities, losses, costs, charges and expenses described therein.

*Section 7.4. Obligations Absolute.* Subject to Section 2.8 hereof, the obligations of the City, for and on behalf of its Department of Aviation, under this Agreement shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances.

*Section 7.5. Successors and Assigns; Participants.* (a)(i) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon the City, for and on behalf of its Department of Aviation, and its successors, transferees and assigns and shall inure to the benefit of the Holders and their respective permitted successors, transferees and assigns. The City, for and on behalf of its Department of Aviation, may not assign or otherwise transfer any of its rights or Lender Obligations hereunder without the prior written consent of the Majority Holder. Upon prior written notice to the City, for and on behalf of its Department of Aviation, the Majority Holder may, in its sole discretion and in accordance with applicable Law, from time to time assign, sell or transfer in whole or in part, this Agreement, its interest in the Series 2019A and Series 2019B Bonds (including Series 2019A and Series 2019B Credit Facility Bonds) and the Related Documents in accordance with paragraph (b) or (c) of this Section. The Majority Holder may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (d) of this Section. Each Holder may at any time pledge or assign a security interest subject to the restrictions of paragraph (e) of this Section.

(ii) Notwithstanding anything set forth herein to the contrary, prior to the occurrence of an Event of Default, State Street Public Lending Corporation, any Affiliate of State Street Public Lending Corporation or any commercial bank shall be the Majority Holder and (ii) from and after the occurrence of an Event of Default, the Holders owning a majority of the aggregate principal amount of Series 2019A and Series 2019B Credit Facility Bonds from time to time shall be the Majority Holder.

(b) *Assignments by Majority Holder to a Lender Transferee.* Without limitation of the foregoing generality, the Majority Holder may at any time sell or otherwise transfer to one or more transferees all or a portion of the Series 2019A and Series 2019B Bonds (including Series 2019A and Series 2019B Credit Facility Bonds) to a Person that is (i) an Affiliate of the Majority Holder, (ii) a trust or other custodial arrangement established by the Majority Holder or an Affiliate of the Majority Holder the owners of any beneficial interest in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “1933 Act”), or “accredited investors” as defined in Rule 501 of Regulation D under the 1933 Act (each, a “*Lender Transferee*”) or (iii) a commercial bank. From and after the date of such sale or transfer, the Majority Holder (and its successors) shall continue to have all of the rights of the Holders, the Lender and Majority Holder hereunder and under the other Related Documents as if no such transfer or sale had occurred; *provided, however*, that (A) no such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall in any way affect the obligations of the Majority Holder hereunder, (B) the City, for and on behalf of its Department of Aviation, shall be required to deal only with the Majority Holder with respect to any matters under this Agreement and (C) in the case of a sale or transfer referred to in clause (b)(i) or (b)(ii) hereof, only the Majority Holder shall be entitled to enforce the provisions of this Agreement against the City, for and on behalf of its Department of Aviation.

(c) *Assignments by Holder to a Non-Lender Transferee.* Without limitation of the foregoing generality, a Holder may at any time sell or otherwise transfer to one or more transferees which are not Lender Transferees (each a “*Non-Lender Transferee*”) all or a portion of the Series 2019A and Series 2019B Bonds (including Series 2019A and Series 2019B Credit Facility Bonds) if (i) written notice of such sale or transfer, including that such sale or transfer is to a Non-Lender Transferee, together with addresses and related information with respect to the Non-Lender Transferee, shall have been given to the City, for and on behalf of its Department of Aviation, and the Majority Holder (if different than the Holder) by such selling Holder and Transferee, and (ii) the Non-Lender Transferee shall have delivered to the City, for and on behalf of its Department of Aviation, and the Majority Holder, a purchaser letter substantially in the form of Exhibit D to the Bond Purchase Agreement in which it certifies that it is a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act, or an “accredited investor” as defined in Rule 501 of Regulation D under the 1933 Act (the “*Purchaser Letter*”).

From and after the date the City, for and on behalf of its Department of Aviation, and the Majority Holder have received an executed Purchaser Letter, (A) the Non-Lender Transferee thereunder shall be a party hereto and shall have the rights and Lender Obligations of a Holder hereunder and under the other Related Documents, and this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Non-Lender Transferee, and any reference to the assigning Holder hereunder and under the other Related

Documents shall thereafter refer to such transferring Holder and to the Non-Lender Transferee to the extent of their respective interests, and (B) if the transferring Holder no longer owns any Series 2019A and Series 2019B Bonds (including Series 2019A and Series 2019B Credit Facility Bonds), then it shall relinquish its rights and be released from its Lender Obligations hereunder and under the Related Documents. At any time prior to an Event of Default hereunder, no Non-Lender Transferee constitute all or any portion of the Majority Holder and from and after the occurrence of an Event of Default, one or more Non-Lender Transferees may constitute all or a portion of the Majority Holder.

(d) *Participations.* The Majority Holder shall have the right to grant participations in all or a portion of the Majority Holder's interest in the Series 2019A and Series 2019B Bonds (including Series 2019A and Series 2019B Credit Facility Bonds), this Agreement and the other Related Documents to one or more other banking institutions and such participants shall be entitled to the benefits of this Agreement, including, without limitation, Sections 7.1, 7.3 and 7.13 hereof, to the same extent as if they were a direct party hereto. Notwithstanding the foregoing, the City, for and on behalf of its Department of Aviation, may look solely to the Majority Holder as the entity to whom performance of any of its obligations hereunder are owed.

(e) *Certain Pledges.* In addition to the rights of the Holders set forth above in this Section 7.3, each Holder may at any time pledge or grant a security interest in all or any portion of its rights or interests under the Series 2019A and Series 2019B Bonds (including Series 2019A and Series 2019B Credit Facility Bonds), this Agreement and/or the Related Documents to secure obligations of such Holder, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to pay state or local governmental entity or with respect to public deposits; *provided* that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

(f) Notwithstanding, no assignee or participant of the Majority Holder shall be entitled to receive payment hereunder of any amount greater than the amount which would have been payable had the Majority Holder not assigned its rights or interests hereunder or granted a participation to such participant hereunder or in the Series 2019A and Series 2019B Credit Facility Bonds.

(g) The Majority Holder or any other Holder shall provide the City, for and on behalf of its Department of Aviation, prior written notice of any assignment or participation pursuant to this Section 7.5.

*Section 7.6. Survival of this Agreement.* All covenants, agreements, representations and warranties made in this Agreement shall continue in full force and effect so long as the Lender (or its successors and assigns) or any Holder is owner of the Series 2019A and Series 2019B Credit Facility Bonds or any Lender Obligations shall be outstanding and unpaid. The obligation of the City, for and on behalf of its Department of Aviation, to reimburse the Lender or any Holder pursuant to Sections 7.1, 7.3 and 7.13 hereof shall survive the payment of the Series 2019A and Series 2019B Bonds (including Series 2019A and Series 2019B Credit Facility Bonds) and termination of this Agreement.

*Section 7.7. Modification of this Agreement.* No amendment, modification or waiver of any provision of this Agreement and no consent to any departure by the City, for and on behalf of its Department of Aviation, therefrom, shall be effective unless the same shall be in writing and signed by the Majority Holder. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the City, for and on behalf of its Department of Aviation, in any case shall entitle the City, for and on behalf of its Department of Aviation, to any other or further notice or demand in the same, similar or other circumstances.

*Section 7.8. Waiver of Rights.* No course of dealing or failure or delay on the part of the Lender, the Majority Holder or any Holder in exercising any right, power or privilege hereunder 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 Lender, the Majority Holder and the Holders under this Agreement are cumulative and not exclusive of any rights or remedies which the Lender, the Majority Holder or the Holders would otherwise have.

*Section 7.9. Severability.* In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein 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 7.10. Governing Law.* (a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Colorado, without giving effect to conflict of law principles.

(b) The City, for and on behalf of its Department of Aviation, and the Lender and each Holder hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or any other Related Document or the transactions contemplated thereby.

*Section 7.11. 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:

If to the Lender, to:

State Street Public Lending Corporation  
State Street Financial Center  
One Lincoln Street, 5<sup>th</sup> Floor  
Boston, Massachusetts 02111  
Attn: Mimi Li  
Telephone: (617) 818-0340  
Facsimile: (617) 946-0188  
Email: mkli@statestreet.com

with a copy to: State Street Public Lending Corporation  
c/o State Street Bank and Trust Company  
State Street Financial Center  
One Lincoln Street, 5<sup>th</sup> Floor  
Boston, Massachusetts 02111  
Attn: Municipal Finance Administration  
Telephone: (617) 664-5862  
Email: munifinanceadministration@statestreet.com

If to the City, to: City and County of Denver, Colorado  
201 West Colfax, Dept 1010  
Denver, Colorado 80204  
Attention: Manager, Department of Finance  
Telephone: (303) 913-5500  
Telecopier: (303) 913-1514

with a copy to: City and County of Denver, Colorado  
8500 Pena Boulevard  
Denver, Colorado 80249  
Attention: Manager of Aviation  
Telecopier: (303) 342-2215

If to the Paying Agent, to: Zions Bancorporation, National Association  
1001 17th Street, Suite 850  
Denver, Colorado 80202  
Attention: Corporate Trust  
Telephone: (720) 947-7476  
Telecopier: (855) 547-6178  
E-mail: Stephanie.nicholls@zionsbancorp.com  
With a copy to:  
DenverCorporateTrust@zionsbancorp.com

*Section 7.12. Successors and Assigns.* Whenever in this Agreement the Lender or any Holder is referred to, such reference shall be deemed to include the successors of the Lender or such Holder and all covenants, promises and agreements by or on behalf of the City, for and on behalf of its Department of Aviation, which are contained in this Agreement shall inure to the benefit of any successors of the Lender or any Holders. The rights and duties of the City, for and on behalf of its Department of Aviation, hereunder, however, may not be assigned or transferred, except as specifically provided in this Agreement or with the prior written consent of the Majority Holder, and all obligations of the City, for and on behalf of its Department of Aviation, hereunder shall continue in full force and effect notwithstanding any assignment by the City, for and on behalf of its Department of Aviation, of any of its rights or obligations under any of the Related Documents or any entering into, or consent by the City, for and on behalf of its Department of Aviation, to, any supplement or amendment to any of the Related Documents.

*Section 7.13. Taxes and Expenses.* The City, for and on behalf of its Department of Aviation, shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement and the security contemplated by the Related Documents and any related documents and agrees to reimburse the Holders for any and all liabilities resulting from any delay in paying or omission to pay such taxes and fees; *provided, however*, that the City, for and on behalf of its Department of Aviation, may conduct a reasonable contest of any such taxes to the extent such taxes exceed \$50,000 with the prior written consent of the Majority Holder.

*Section 7.14. Pledge.* Subject only to the right of the City, for and on behalf of its Department of Aviation, to pay Operating and Maintenance Expenses and to pay all amounts due with respect to the Senior Bonds and Obligations relating thereto, the Gross Revenues and all moneys and securities paid or to be paid to, or held or to be held in the Subordinate Bond Fund in accordance with the provisions of the General Bond Ordinance and the General Subordinate Bond Ordinance (except moneys and securities held in any Escrow Account and except as otherwise provided in the General Bond Ordinance as being unavailable to secure the payment of Subordinate Bond Requirements) are hereby irrevocably pledged by the City, for and on behalf of its Department of Aviation, to secure the payment of the Series 2019A and Series 2019B Bonds, the Series 2019A and Series 2019B Credit Facility Bonds, its obligations under this Agreement, to the extent and with the priorities provided for herein and in the General Subordinate Bond Ordinance and each Supplemental Bond Ordinance. This pledge shall be valid and binding from and after the Closing Date, and such moneys and securities, as received by the City, for and on behalf of its Department of Aviation, and hereby pledged, shall immediately be subject to the Lien of this pledge without any physical delivery, filing or further act. The Lien of this pledge and the contractual obligations hereby made shall have priority over any or all other liabilities and obligations of the City, for and on behalf of its Department of Aviation (except in respect of Senior Bonds and any Obligations relating thereto); and the Lien of this pledge shall be valid and binding against all Persons having claims of any kind in tort, contract or otherwise against the City, for and on behalf of its Department of Aviation (except as otherwise provided in the General Bond Ordinance and the General Subordinate Bond Ordinance), whether or not such Persons have notice thereof. Notwithstanding the foregoing, the provisions of this Section 7.14 shall not prohibit or otherwise restrict the ability of the City, for and on behalf of its Department of Aviation, to cause moneys to be disbursed from any fund or account held under the General Bond Ordinance and the General Subordinate Bond Ordinance on the terms and subject to the conditions specified therein.

*Section 7.15. Headings.* The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

*Section 7.16. Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute an original but all taken together to constitute one instrument.

*Section 7.17. 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 7.18. Agreement to Control in the Event of Conflict.* Notwithstanding anything set forth in the Supplemental Bond Ordinance to the contrary, in the event that any provision, term or definition in the Supplemental Bond Ordinance contradicts any term, provision or definition set forth herein, such term, provision or definition set forth herein shall hereby amend and supersede such term, provision or definition set forth in the Supplemental Bond Ordinance.

*Section 7.19. USA PATRIOT Act Notice.* The Lender, on behalf of the Holders, hereby notifies the City, for and on behalf of its Department of Aviation, that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “*Patriot Act*”), the Holders are required to obtain, verify and record information that identifies the City, for and on behalf of its Department of Aviation, which information includes the name and address of the City, for and on behalf of its Department of Aviation, and other information that will allow the Holders to identify the City, for and on behalf of its Department of Aviation, in accordance with the Patriot Act. The City, for and on behalf of its Department of Aviation, shall, promptly following a request by the Lender, provide all documentation and other information that the Lender reasonably requests in order to comply with its ongoing obligations under applicable law or regulation, including, without limitation, “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, and shall comply with all applicable Bank Secrecy Act (“*BSA*”) laws and regulations, as amended.

Neither the City, for and on behalf of its Department of Aviation, nor, to the knowledge of the City, any Related Party, (a) is currently the subject of any Sanctions or (b) is located, organized or residing in any Designated Jurisdiction. The City, for and on behalf of its Department of Aviation, has conducted its business in compliance with anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

*Section 7.20. Assignment to Federal Reserve Bank.* Any Holder may assign and pledge all or any portion of the obligations owing to it (including, without limitation, Series 2019A and Series 2019B Credit Facility Bonds) to any Federal Reserve Bank or the United States Treasury as collateral security, *provided* that any payment in respect of such assigned obligations made by the City, for and on behalf of its Department of Aviation, to such Holder in accordance with the terms of this Agreement shall satisfy the City’s, for and on behalf of its Department of Aviation, obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release the Lender from its obligations hereunder.

*Section 7.21. Disclosure of Information.* The Holders may disclose to any of its affiliates and any permitted (actual or potential) assignee, transferee or participant any information about the City, for and on behalf of its Department of Aviation, as the Holders consider appropriate.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE.]

Please signify your agreement and acceptance of the foregoing by executing this Agreement in the space provided below.

Very truly yours,

STATE STREET PUBLIC LENDING CORPORATION

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

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

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



CITY AND COUNTY OF DENVER, COLORADO, for  
and on behalf of its Department of Aviation

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

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

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

## EXHIBIT A

### NOTICE OF TENDER

The undersigned, a duly authorized officer of State Street Public Lending Corporation (the “*Lender*”), hereby certifies to Zions Bancorporation, National Association (the “*Paying Agent*”) and the hereinafter defined Issuer, in accordance with the Credit Facility and Reimbursement Agreement, dated as of [July \_\_, 2019] (the “*Agreement*”), between the City and County of Denver, Colorado, for and on behalf of its Department of Aviation, the Issuer (the “*Issuer*”), the Lender, relating to the Issuer’s \$\_\_\_\_\_ aggregate principal amount of its “City and County of Denver, Colorado, for and on behalf of its Department of Aviation, Airport System Subordinate Revenue Bonds, Series 2019A” (the “*Series 2019A Bonds*”), and \$\_\_\_\_\_ aggregate principal amount of its “City and County of Denver, Colorado, for and on behalf of its Department of Aviation, Airport System Subordinate Revenue Bonds, Series 2019B” (the “*Series 2019B Bonds*”, and together with the Series 2019A Bonds the “*Series 2019A-B Bonds*”) (all capitalized terms herein having the meanings ascribed thereto in the Agreement), that:

1. **[[An Event of Default (as defined in the Agreement) has occurred under Section 6.1 of the Agreement and pursuant to Section 6.2(b) of the Agreement][A Determination of Taxability (as defined in the Agreement) has occurred under Section 2.10 of the Agreement and pursuant to Section \_\_\_\_ of the Ordinance], the Lender is exercising its right to cause a tender of the Series 2019A and Series 2019B Bonds.][Solely with respect to the Series 2019A Bonds, the Purchaser has not been paid the purchase price of the Series 2019A Bonds on the Series 2019A Mandatory Tender Date].**

2. The Series 2019A [and Series 2019B Subordinate Bonds]<sup>2</sup> have been deemed tendered by the Lender pursuant to Section 6.02(b) of the Agreement.

3. Upon completion of the tender, the Paying Agent will register such Bonds, or if a Bond for which notice of tender for purchase has been given is not delivered, a new Bond issued in replacement of the undelivered Bond, in the name of the Lender or, if directed in writing by the Lender, its nominee or designee on the books maintained by the Paying Agent, and will promptly deliver such Bonds as the Lender may otherwise direct in writing, and prior to such delivery will hold such Bonds in trust for the benefit of the Lender.

4. The Tender Date is \_\_\_\_\_, \_\_\_\_\_.

IN WITNESS WHEREOF, the Lender has executed and delivered this Notice of Tender as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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<sup>2</sup> Only applicable to the Series 2019B Bonds upon the occurrence of an Event of Default under Section 6.1 of the Agreement.

STATE STREET PUBLIC LENDING CORPORATION

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

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

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