
CONTINUING COVENANT AGREEMENT

between

CITY OF FRESNO

and

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK

Dated as of May 1, 2019

\$35,000,000

City of Fresno
Airport Revenue Bonds
Series 2019

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This CONTINUING COVENANT AGREEMENT dated as of May 1, 2019 (as amended, modified or restated from time to time, this “*Agreement*”), between the CITY OF FRESNO, a municipal corporation and charter city duly organized and existing under and by virtue of the Constitution and laws of the State of California (the “*City*”), and the CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK, a public instrumentality of the State of California (the “*IBank*” and, together with the City, the “*Parties*”).

RECITALS

WHEREAS, the City intends to issue the City of Fresno Airport Revenue Bonds, Series 2019 (the “*Series 2019 Bonds*”) pursuant to an Indenture of Trust, dated as of June 15, 2000 (the “*Master Indenture*”), as supplemented and amended by the First Supplemental Indenture, dated as of May 1, 2007 (the “*First Supplement*”), as further amended by the Second Supplemental Indenture, dated as of July 1, 2013 (the “*Second Supplement*”), and as further supplemented by the Third Supplemental Indenture, dated as of May 1, 2019 (the “*Third Supplement*”; the Master Indenture, the First Supplement, the Second Supplement and the Third Supplement, collectively, the “*Indenture*”), each by and between the City and The Bank of New York Mellon Trust Company, N.A., in its capacity as trustee;

WHEREAS, IBank desires to purchase the Series 2019 Bonds; and

WHEREAS, IBank is extending a financing to the City by purchasing its Series 2019 Bonds.

NOW, THEREFORE, to induce IBank to purchase the Series 2019 Bonds, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the City and IBank hereby agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. In addition to the terms defined in the recitals and elsewhere in this Agreement, the Third Supplement and the Master Indenture, the following terms shall have the meanings set forth below:

“*Act*” means the Bergeson-Peace Infrastructure and Economic Development Bank Act, constituting Division 1 of Title 6.7 of the California Government Code (commencing at section 63000 thereof) as now in effect and as it may from time to time hereafter be amended.

“*Additional Payments*” means the payments made pursuant to Section 2.03.

“*Bond Trustee*” means The Bank of New York Mellon Trust Company, N.A., as trustee for the Bonds.

“*Effective Date*” means May 3, 2019.

“*Facility*” means the capital improvements identified in Exhibit B to the Third Supplement.

“*Facility Funds*” mean the moneys provided by IBank for the purchase of the Series 2019 Bonds, the proceeds of which will be used to develop, design, and/or construct the Facility.

“*Independent Accountant*” means any certified public accountant or firm of certified public accountants duly licensed or registered or entitled to practice and practicing as such under the laws of the State, appointed by the City who, or each of whom:

(a) Is in fact independent and not under the direct or indirect control of the City or IBank;

(b) Does not have any substantial interest, direct or indirect, in the City, IBank, or the Facility; and

(c) Is not connected with the City or IBank as an officer or employee of the City or IBank, but who may be regularly retained to make reports to the City or IBank.

“*Independent Consultant*” means any consultant or firm of such consultants judged by the City to have experience in matters relating hereto or other experience with respect to similar projects, as appropriate, appointed and paid by the City who, or each of whom:

(a) Is in fact independent and not under the direct or indirect control of the City or IBank;

(b) Does not have any substantial interest, direct or indirect, in the City or IBank; and

(c) Is not connected with the City or IBank as a member, officer or employee of the City, but who may be regularly retained to make reports to the City or IBank.

“*Nongovernmental Person*” means any person or entity other than any state, or political subdivision of a state, but excludes the United States and its agencies or instrumentalities.

“*Proceeds Bonds*” means bonds issued, or to be issued, by IBank the proceeds of which may be used, in whole or part, to provide the Facility Funds.

“*Related Documents*” means this Agreement, the Indenture, the Series 2019 Bonds, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing permitted hereunder and thereunder.

“*Report*” means a written document signed by an Independent Consultant or an Independent Accountant, and including:

(a) A statement that the person or firm making or giving such Report has read the pertinent provisions of this Agreement to which such Report relates;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and

(c) A statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

“*Secured Bonds*” means bonds of one or more series issued, or to be issued, by IBank to which certain rights of IBank under this Agreement, including the right to receive the payment of interest on, and the Redemption Price of, the Series 2019 Bonds, may be from time to time pledged or assigned directly or indirectly as security for such bonds.

“*State*” means the State of California.

“*Trustee*” means the trustee acting in its capacity as such in connection with any Proceeds Bonds or Secured Bonds, or any successor or assignee as therein provided, including IBank.

Section 1.02 Other Interpretive Provisions. With reference to this Agreement, unless otherwise specified herein:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “*include*,” “*includes*” and “*including*” shall be deemed to be followed by the phrase “without limitation.” The word “*will*” shall be construed to have the same meaning and effect as the word “*shall*.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Related Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “*hereto*,” “*herein*,” “*hereof*” and “*hereunder*,” and words of similar import when used herein, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (iv) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

(b) In the computation of periods of time from a specified date to a later specified date, the word “*from*” means “*from and including*,” the words “*to*” and “*until*” each mean “*to but excluding*,” and the word “*through*” means “*to and including*.”

(c) Article and Section headings herein are included for convenience of reference only and shall not affect the interpretation of this Agreement.

Section 1.03 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the most

recent audited financial statements delivered to IBank, *except* as otherwise specifically prescribed herein.

ARTICLE II

TERMS OF SALE OF SERIES 2019 BONDS

Section 2.01 Purchase of Series 2019 Bonds.

(a) *Purchase Price.* Based on the representations, warranties and covenants of the City set forth herein, IBank hereby agrees to purchase from the City, and the City hereby agrees to sell to IBank, all, but not less than all, of the Series 2019 Bonds at the purchase price of \$35,000,000 representing the aggregate principal amount of the Series 2019 Bonds (the “*Purchase Price*”).

(b) *Closing.* Upon the satisfaction of all conditions precedent to closing, IBank will pay the Purchase Price for the Series 2019 Bonds in immediately available federal funds payable to the Bond Trustee on behalf of the City. On the Effective Date, one fully registered Series 2019 Bond, in the aggregate principal amount equal to the Purchase Price, shall be issued to, registered in the name of the IBank.

Section 2.02 Design, Acquisition, Construction and Sale of the Facility.

(a) The City represents and warrants that it intends to complete construction of the Facility on or before [November 1, 2022].

Section 2.03 Additional Payments.

(a) The City shall pay Additional Payments to IBank as follows:

(1) Amounts in each year as shall be required by IBank for the payment of extraordinary expenses of IBank in connection with an Event of Default under the Indenture, the enforcement of this Agreement or any amendments hereto requested by the City, including all expenses, fees and costs of accountants, trustees, and attorneys, litigation costs, insurance premiums and all other extraordinary costs of IBank. Extraordinary expenses and extraordinary costs are those expenses and costs related to this Agreement in excess of ordinary and customary expenses and costs. Such Additional Payments shall be billed by IBank from time to time.

Section 2.04 Limited Obligation. The City’s obligation to make principal and interest payments on the Series 2019 Bonds is a special, limited obligation of the City payable solely from the Net Revenues and the other moneys provided for such purpose pursuant to the Indenture and does not constitute a charge against the general credit of the City.

Section 2.05 Notice of Draws. The City shall provide written notice to IBank at least 10 Business Days prior to drawing proceeds of the Series 2019 Bonds from the 2019 Project Account. Such notice shall include, at a minimum, the City’s intended draw amount from the 2019 Project Account and invoices from the City’s direct contractor(s), design professionals, and

others providing services, labor, equipment, or materials for the 2019 Project, all in an aggregate amount equal to the City's intended draw amount.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE CITY

Section 3.01 Organization; Authority. The City is duly organized and existing as a municipal corporation and charter city under the laws of the State and has all necessary power and authority to enter into and perform its duties hereunder and to pledge the Trust Estate under the Indenture.

Section 3.02 No Conflict in Execution of Agreement. The execution and delivery by the City of this Agreement and compliance with the provisions hereof will not conflict with or constitute a breach of or default by the City under any law, administrative regulation, court decree, resolution, charter, by-law, or any agreement to which the City is subject or by which it is bound or by which its properties may be affected.

Section 3.03 No Litigation. There is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened against the City to restrain or enjoin the execution or delivery of this Agreement, or in any way contesting or affecting the validity of this Agreement, or contesting the powers of the City to enter into or perform its obligations under this Agreement, or that would affect the City's ability to perform its obligations under this Agreement, including, but not limited to, the pledge of the Trust Estate.

Section 3.04 No Breach or Default. The City is not in breach of or in default under any applicable law or administrative regulation of the State or the United States, the Constitution of the State (including article XVI, section 18 thereof), any applicable judgment or decree, any agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject which, if not resolved in favor of the City, would have a material adverse impact on the City's ability to perform its obligations under this Agreement and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument.

Section 3.05 Accuracy and Completeness of Information Submitted to IBank. The information relating to the City and City Airports submitted by the City to IBank, including, but not limited to, all information in the application for Facility Funds was true at the time submitted to IBank and, as of the Effective Date, remains true and correct in all material respects; and such information did not and does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made.

Section 3.06 Financial Statements of the City. The City's financial statements that have been furnished to IBank were prepared in conformity with generally accepted accounting principles, consistently applied, and fairly present in all material respects the financial condition of the City as of the date thereof and the results of its operations for the period covered thereby.

There has been no material adverse change in the business, condition (financial or otherwise), or operations of the City since the date of such financial statements.

Section 3.07 Authority to Operate the City Airports. The City has obtained or will obtain all licenses, permits, and approvals from any governmental agency or authority having jurisdiction over the City now required for the operation of the City Airports and will obtain all licenses, permits, and approvals as required in the future.

Section 3.08 Valid Title; No Conflict.

(a) The City, upon completion of the Facility, will have good and valid title to the Facility sufficient to carry out the purposes of this Agreement.

(b) To the best of the City's knowledge no officer or official of IBank has any material interest in the Facility or in the transactions contemplated by this Agreement.

Section 3.09 Continuing Validity of Representations and Warranties. Unless the representations and warranties set forth in this Article III are limited by their express terms to a specific time period or a point in time, the foregoing representations and warranties are true, accurate, and correct as of the Effective Date and shall continue to be true, accurate, and correct throughout the term of this Agreement.

ARTICLE IV

AFFIRMATIVE COVENANTS OF THE CITY

Section 4.01 Payment of Claims. The City hereby covenants that, from time to time, it will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies, which, if unpaid, might become liens or charges upon the City Airports and all personal and real property related thereto, or upon the Trust Estate or any part thereof, or which might impair the security for the payment of the principal and interest payments or Additional Payments, provided, however, nothing herein contained shall require the City to make any such payment so long as the City in good faith shall contest the validity of said claims and shall act promptly to remove any liens or charges arising from said claims, by, among other things, obtaining surety bonds to cause the release of such liens or charges.

Section 4.02 Entry into Replacement Agreement. The City acknowledges that IBank intends to issue, has issued, or may issue, Secured Bonds or Proceeds Bonds subsequent to the Effective Date of this Agreement, and that one requirement of the Secured Bonds and/or Proceeds Bonds will be the re-entry by the City into an agreement to replace this Agreement. So long as the terms of the replacement agreement are substantially identical to the term of this Agreement, the City hereby covenants and agrees to execute the replacement agreement and any related documents and to provide required certifications in a timely manner. The City understands and acknowledges that time is of the essence with respect to entry into such replacement agreement as such timing is mandated by Federal tax laws applicable to IBank's Proceeds Bonds and/or Secured Bonds.

Section 4.03 Agreement to Complete Facility.

(a) The City agrees that it will perform all acts necessary to complete the Facility, and construct, acquire, improve or install other facilities and real and personal property deemed by the City necessary for the operation of Facility.

(b) At any time, upon request of IBank, the City agrees to make available to IBank for review and copying all then current plans and specifications for the Facility. The City may identify any proprietary information in such plans and specifications and, to the extent legally permissible, IBank agrees to keep such information confidential. Provided, however, for the avoidance of doubt, and not by limitation of the foregoing, IBank may disclose any such confidential information in connection with any Proceeds Bonds or Secured Bonds or in the event IBank is served with a subpoena, a valid discovery request, a notice to appear and produce documents, or a valid California Public Records Act request, seeking, or that could be construed reasonably as seeking, such confidential information.

(c) As soon as the Facility is completed, the City shall evidence such completion by providing a certificate to IBank stating that (i) construction of the Facility has been completed substantially in accordance with the final plans and specifications therefor and all labor, services, materials, and supplies used in construction have been paid for, and (ii) all other facilities necessary in connection with the Facility have been constructed, acquired, and installed in accordance with the final plans and specifications therefor, and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights of the City against third parties for the payment of any amount not then due and payable which exist at the date of such certificate or which may subsequently exist.

(d) The City shall notify IBank forthwith upon the filing of a stop payment notice in connection with the Facility, the tender of a claim against any payment or performance bond related to the Facility, the recordation of a mechanics lien against Facility, the filing of litigation in connection with the Facility, the issuance of a mandatory or prohibitory injunction related to the Facility, or any other legal proceeding which may impact the completion of the Facility.

Section 4.04 The City's General Responsibility. The City is solely responsible for the completion of the Facility and the operation and maintenance of the Facility. Any review or approval of plans, specifications, bid documents, or other construction documents by IBank is solely for the purpose of proper administration of Facility Funds by IBank and shall not be deemed to relieve or restrict the City's responsibility or result in any duty, obligation, or responsibility on the part of IBank or the officers and agents thereof.

Section 4.05 The City's Assurances and Commitments – Facility Construction Activities. The City shall ensure that adequate supervision and inspection of Facility construction activities are maintained. IBank, either by itself or through its designee, reserves the right to conduct an audit of the City's construction expenditures during construction and for up to three years following receipt by IBank of notice of completion or other evidence of completion satisfactory to IBank. IBank, at its discretion, may require the City to conduct an interim and/or a final audit at the City's expense, such audit to be conducted by and a Report prepared by an Independent Accountant.

Section 4.06 Facility Access. The City shall ensure that IBank or its designee have suitable access to the Facility site at all reasonable times so long as the Series 2019 Bonds remain unpaid and shall include provisions ensuring such access in all contracts and subcontracts relating to the Facility. Notwithstanding the foregoing, and for avoidance of any doubt, this provision does not create a security interest in the Facility in favor of IBank.

Section 4.07 Performance and Payment Bonds.

(a) The City shall require its direct contractor(s) for the Facility to certify under penalty of perjury, and provide the City with a copy of such certification, which shall be available for IBank's inspection, if requested, that, in connection with the construction of the Facility, it has obtained a bond or bonds by one or more authorized surety companies satisfactory to the City; such surety companies must be authorized to do business in California, be an admitted surety insurer, and have an agent for service of process in California.

(b) Said bonds shall be in the following amounts and for the following purposes: (i) a performance bond(s) in an amount not less than one hundred percent (100%) of the total amount of the construction agreement(s) for the Facility, guaranteeing the faithful performance of the terms of the Facility construction agreement(s), including the maintenance of the work required under the Facility construction agreement(s) for a period of one year from the date of the City's final acceptance, and the prompt correction of any defective work or labor done, or defective materials furnished, pursuant to the Facility construction agreement(s) and (ii) a payment bond(s) in an amount not less than one hundred percent (100%) of the total amount of the Facility construction agreement(s), securing payment to the subcontractors and to persons renting equipment or furnishing labor or materials to such subcontractors or to the City's direct contractors, or to any other claimant as defined in Civil Code Section 8004, under the Facility construction agreement(s).

Section 4.08 Continuing Disclosure. The City covenants that it will deliver to IBank within one hundred eighty (180) days after the end of the Fiscal Year, the audited financial statements for such Fiscal Year prepared in the usual and customary format utilized by the City; provided, however, that failure to provide such audited financial statements within one hundred eighty (180) days after the end of the Fiscal Year shall not constitute a breach of or a default under this Agreement unless the City fails to deliver such audited financial statements forty five (45) days following the receipt of written notice from IBank informing the City of its failure to provide such audited financial statements within one hundred eighty (180) days after the end of the Fiscal Year.

Section 4.09 Notice of City Event of Default. The City covenants that it will deliver to IBank, within 10 calendar days after the City shall have obtained knowledge of the occurrence of an Event of Default as described in the Indenture, the written statement of an authorized officer of the City setting forth the details of such Event of Default, and the action which the City proposes to take with respect thereto.

Section 4.10 Facility Construction.

(a) The Facility is described in Exhibit B to the Third Supplement and the City shall make no changes thereto or the operation thereof without the prior written consent of IBank, which consent shall be granted or denied in IBank's reasonable discretion. Further, IBank may condition any such consent upon receipt of an Opinion of Bond Counsel to the effect that any such changes will not affect the qualification of the Facility for tax exempt financing under the Code.

(b) The City shall not enter into a contract for the construction of the Facility unless it is in the form of a fixed price construction contract.

Section 4.11 Business Interruption Insurance. The City covenants to procure business interruption insurance for the City Airports, if available on a commercially reasonable basis, upon or prior to the Effective Date.

ARTICLE V

TAX COVENANTS

Section 5.01 Tax Covenants.

The City recognizes that the Facility Funds may be derived from the proceeds of, or payments made hereunder may be pledged to secure, bonds issued or to be issued by IBank, the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Code. In order to maintain the tax-exempt status of, and perform its obligations with respect to, the Proceeds Bonds and Secured Bonds, the City will not take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Proceeds Bonds or Secured Bonds under the Code, and the City specifically agrees to comply with all terms and conditions contained herein and to provide annual certification of its compliance with the tax covenants set forth in this Section. The City will not directly or indirectly use or make any use of the Facility Funds or any other funds of the City, or take or omit to take any action, if such use or action would cause the Proceeds Bonds or Secured Bonds to be "arbitrage bonds" subject to federal income taxation by reason of section 148 of the Code. In addition, the City covenants and agrees that it, and/or any party related to it, will not acquire Proceeds Bonds or Secured Bonds in an amount related to the amount of the Facility Funds. The provisions of this Section shall survive the discharge of the City's obligations hereunder and shall apply to the Trustee or any other successor or assignee.

(a) Eligible Uses of Facility Funds. Unless otherwise agreed to by IBank, Facility Funds shall be used exclusively for the following purposes: (i) to pay or reimburse the City for capital expenditures paid with respect to the Facility that meet the requirements of subsection (b) of this Section; (ii) the Origination Fee (if applicable); and (iii) initial operating expenses directly associated with the Facility (in aggregate amount not exceeding five percent (5%) of the amount of the Facility Funds).

(b) Allocation of Facility Funds to Expenditures. On [February 14, 2019] the City adopted a resolution stating its official intent to be reimbursed from the proceeds of a

borrowing to finance costs of the Facility (the "Reimbursement Resolution"). Absent written agreement by IBank, all expenditures of Facility Funds will be used to pay or reimburse the City for capital expenditures with respect to the Facility that are either:

- (1) costs that are Preliminary Costs incurred with respect to the Facility prior to the start of construction and in an aggregate amount not exceeding twenty percent 20% of the Facility Funds;
- (2) costs paid by the City no earlier than the date which is sixty (60) days prior to the date of the adoption of the Reimbursement Resolution; or
- (3) costs paid by the City on or after the Effective Date.

In addition, Facility Funds shall be allocated to paying or reimbursing the City for capital expenditures no later than eighteen months after the later of the date the expenditure was paid or the date the Facility is placed in service, but in the case of costs described in clause (2), above, such allocations must be made in all events no later than three years after the cost was paid.

(c) Prohibited Uses of Facility Funds. The City will not loan any of the Facility Funds to any other person or entity. The City will not use Facility Funds directly or indirectly to make principal, interest, or premium payments with respect to any bond, note, certificate of participation or other obligation of the City or any person or entity that is a related party to the City within the meaning of Treasury Regulation Section 1.150-1(b).

(d) Expectations Regarding Facility Funds and Facility; No Change in Use. The City reasonably expects and consistent with this Section to use all Facility Funds and all of the Facility for the entire stated term to maturity of this Agreement. The City does not expect that the Facility or any part thereof will be sold or otherwise disposed of so long as the City's obligations under this Agreement are not discharged. Absent written agreement by IBank, the City hereby agrees that it will use all Facility Funds and all of the Facility as set forth in this Section.

(e) Funds for Making Debt Service. All amounts used to fund the 2019 Debt Service Account will be deemed to have been made from the City's funds by using a last-in, first-out accounting method, and amounts in the 2019 Debt Service Account will be treated as used to pay the debt service by using a first-in, first-out accounting method. The City agrees that the amounts used to pay debt service shall be both received by the City and utilized for the payment of debt service within a ninety (90) day period. The 2019 Debt Service Account will be used primarily to achieve a proper matching of revenues and debt service within each year; a matching of revenues means that revenue and debt service come in and go out at approximately the same level and the 2019 Debt Service Account is cleared out to a very low balance at least one time during the year. Current Revenues in the 2019 Debt Service Account shall be invested without regard to yield so long as the City complies with this section.

(f) Nongovernmental Use of Facility Funds and Facility. The City understands that the Facility Funds and the Facility are subject to certain restrictions on the use of the Facility Funds or the Facility by any Nongovernmental Person, other than use as a member

of the general public. For this purpose a Nongovernmental Person will be treated as “using” Facility Funds to the extent the Nongovernmental Person:

- (1) borrows Facility Funds;
- (2) acquires an ownership or lease interest with respect to any portion of the Facility;
- (3) uses any portion of the Facility (e.g., as a service provider, operator, or manager), except pursuant to a contract that meets the requirements of subsection (g) of this Section; or
- (4) in the case of a Facility that provides water, electricity, or natural gas, acquires such output from the Facility (except pursuant to generally applicable and uniformly applied rates that are available to the general public).

The City hereby represents and covenants that it will not allow more than five percent (5%) of the Facility Funds or more than five percent (5%) of the Facility to be used directly or indirectly by any Nongovernmental Person, other than as a member of the general public.

(g) Management Contracts. The City understands that an arrangement with any person or organization (other than a state or local governmental unit) which provides for such person or organization to manage, operate, maintain or provide services with respect to the Facility (a “Service Contract”) can give rise to use by a Nongovernmental Person that is subject to the limitations of Section 5.01(f) of this Agreement. However, as of the Effective Date the Internal Revenue Service (“IRS”) has issued two sets of guidelines that describe situations in which the IRS would rule that a Service Contract will not be treated as giving rise to a Nongovernmental Person’s use of the Facility: (i) the guidelines set forth in Revenue Procedure 97-13, as amended by Revenue Procedure 2001-39, and as amplified by Notice 2014-67 (the “Prior Guidelines”); and (ii) the guidelines set forth in Revenue Procedure 2017-13 (the “Current Guidelines”). The City may apply the Prior Guidelines to any Service Contract entered into before August 18, 2017 that is not modified materially or extended on or after that date (other than pursuant to a renewal option as defined in Treasury Regulation Section 1.141-1(b)). The City may apply the Current Guidelines to Service Contracts entered into at any time.

Commencing with the Effective Date, at least thirty (30) days prior to the execution of any modification to, extension or renewal of, or new operations and maintenance agreement relating to the Facility, the City shall (i) ensure that any such instrument meets the requirements for qualified management contracts under the Code, and (ii) provide IBank a copy of any such instrument together with an explanation of the basis for its conclusion that such instrument meets the requirements for qualified management contracts under the Code. Provided, however, the City is not obligated to provide to IBank contracts for services that are solely incidental to the primary governmental function, or functions, of the Facility (e.g., contracts for janitorial services, landscaping services, office equipment repair, escalator repair, elevator repair, auditing services, legal services, or similar services).

(1) Current Guidelines. Service Contracts that relate to the use or operation of the Facility by “service providers,” as that term is used in the Current Guidelines (the “Service Providers”), will satisfy the Current Guidelines if the requirements of each of the following subsections is satisfied:

(i) The compensation of the Service Provider under the contract must be reasonable for the services rendered.

(ii) The contract must not provide to the Service Provider a share of net profits from the operation of the Facility. Compensation to the Service Provider will not be treated as providing a share of net profits if no element of the compensation takes into account, or is contingent upon, either the Facility’s net profits or both the Facility’s revenues and expenses for any fiscal period. For this purpose, the elements of the compensation are the eligibility for, the amount of, and the timing of the payment of the compensation. Further, solely for purposes of determining whether the amount of the compensation meets the requirements of this section 5.01(g)(1)(ii), any reimbursements of actual and direct expenses paid by the Service Provider to unrelated parties are disregarded as compensation. Incentive compensation will not be treated as providing a share of net profits if the eligibility for the incentive compensation is determined by the Service Provider's performance in meeting one or more standards that measure quality of services, performance, or productivity, and the amount and the timing of the payment of the compensation meet the requirements of this section 5.01(g)(1)(ii).

(iii) The contract must not, in substance, impose upon the Service Provider the burden of bearing any share of net losses from the operation of the Facility. An arrangement will not be treated as requiring the Service Provider to bear a share of net losses if: (A) The determination of the amount of the Service Provider's compensation and the amount of any expenses to be paid by the Service Provider (and not reimbursed), separately and collectively, do not take into account either the Facility’s net losses or both the Facility’s revenues and expenses for any fiscal period, and (B) the timing of the payment of compensation is not contingent upon the Facility’s net losses. For example, a Service Provider whose compensation is reduced by a stated dollar amount (or one of multiple stated dollar amounts) for failure to keep the Facility’s expenses below a specified target (or one of multiple specified targets) will not be treated as bearing a share of net losses as a result of this reduction.

(iv) Without regard to whether the Service Provider pays expenses with respect to the operation of the Facility without reimbursement by the qualified user (e.g., the City), compensation for services will not be treated as providing a share of net profits or requiring the Service Provider to bear a share of net losses under sections 5.02(2) and 5.02(3) of the Current Guidelines if the compensation for services is: (A) based solely on a capitation fee, a periodic fixed fee, or a per-unit fee; (B) incentive compensation described in the last sentence of section 5.02(2) of the Current Guidelines; or (C) a combination of these types of compensation.

(v) Deferral due to insufficient net cash flows from the operation of the Facility of the payment of compensation that otherwise meets the requirements of sections 5.02(2) and 5.02(3) of the Current Guidelines will not cause the deferred compensation to be treated as contingent upon net profits or net losses under sections 5.02(2) and 5.02(3) of the Current Guidelines if the contract includes requirements that: (A) the compensation is payable at

least annually; (B) the qualified user is subject to reasonable consequences for late payment, such as reasonable interest rate charges or late payment fees; and (C) the qualified user will pay such deferred compensation (with interest or late payment fees) no later than the end of five years after the original due date of the payment.

(vi) The term of the contract, including all renewal options, must not be greater than the lesser of 30 years or 80 percent of the reasonably expected useful life of the Facility. For this purpose, economic life is determined in the same manner as under section 147(b) of the Internal Revenue Code as of the beginning of the term of the contract. A contract that is materially modified with respect to any matters relevant to section 5 of the Current Guidelines is retested under section 5 of the Current Guidelines as a new contract as of the date of the material modification.

(vii) The qualified user must exercise a significant degree of control over the Facility. Service Contract provides such control if it requires the qualified user to approve:

(A) The annual budget of the Facility;

(B) Capital expenditures with respect to the Facility (for this purpose, a qualified user may show approval of capital expenditures for the Facility by approving an annual budget for capital expenditures described by functional purpose and specific maximum amounts);

(C) each disposition of property that is part of the Facility;

(D) rates charged for use of the Facility (for this purpose, a qualified user may show approval of rates charged for use of the managed property by either expressly approving such rates (or the methodology for setting such rates) or by including in the Service Contract a requirement that the Service Provider charge rates that are reasonable and customary as specifically determined by an independent third party); and

(E) the general nature and type of use of the Facility (for example, the type of services).

(viii) The qualified user bears the risk of loss upon damage or destruction of the Facility (for example, upon force majeure). A qualified user does not fail to meet this risk of loss requirement as a result of insuring against risk of loss through a third party or imposing upon the Service Provider a penalty for failure to operate the Facility in accordance with the standards set forth in the Service Contract.

(ix) The Service Provider must agree that it is not entitled to and will not take any tax position that is inconsistent with being a Service Provider to the qualified user with respect to the Facility.

(x) The Service Provider must not have a role or relationship with the qualified user (e.g., the City) that, in effect, substantially limits the ability of the qualified user to exercise its rights, including cancellation rights, under the Service Contract, based on all the facts and circumstances. Accordingly:

(A) Not more than 20 percent of the voting power of the governing body of the qualified user (or IBank) in the aggregate may be vested in the Service Provider and its directors, officers, shareholders, partners, members and employees.

(B) The governing body of the qualified user does not include the chief executive officer of the Service Provider or the chairperson (or equivalent executive) of the Service Provider's governing body.

(C) The chief executive officer of the Service Provider is not the chief executive officer of the qualified user or any related person (within the meaning of Treasury Regulation 1.150-1(e)) to the qualified user.

For purposes of this section 5.01(g)(1)(x), the phrase Service Provider includes related persons (within the meaning of Treasury Regulation 1.150-1(e)) and the phrase "chief executive officer" includes a person with equivalent management responsibilities.

(xi) the Service Provider's use of the Facility that is functionally related to and subordinate to the performance of its services under a Service Contract for the Facility that meets the conditions of Section 5 of the Current Guidelines does not result in private business use of the Facility.

(2) Prior Guidelines. Service Contracts that relate to the use or operation of the Facility by a "service provider," as that term is used in the Prior Guidelines (the "Prior Guideline Service Providers"), will satisfy the Prior Guidelines if, among other ways of satisfying the Prior Guidelines, the requirements of each of the following requirements is satisfied:

(i) The compensation of the Prior Guidelines Service Provider under the contract must be reasonable for the services rendered.

(ii) The contract must not provide for any compensation for services based, in whole or in part, on a share of net profits from the operation of the Facility. Generally, compensation is not based on a share of net profits if such compensation is based on a "capitation fee" or a "per-unit fee." Under the Prior Guidelines, "capitation fee" means a fixed periodic amount for each person for whom the Prior Guidelines Service Provider assumes the responsibility to provide all needed services for a specified period (so long as the quantity and type of services actually provided to covered persons varies substantially). Under the Prior Guidelines, a "per-unit fee" means a fee based on a unit of service provided (e.g., a stated dollar amount for each specified medical procedure performed). Further, compensation based on a percentage of gross revenues or a percentage of expenses (but not both) will generally not be considered as based on a share of net profits.

(iii) A productivity reward for services in any annual period during the term of the contract generally also does not cause the compensation to be based on a share of net profits of the financed facility if (a) the eligibility for the productivity award is based on the quality of the services provided under the management contract, rather than increases in revenues or decreases in expenses of the facility; and (b) the amount of the productivity award is a stated

dollar amount, a periodic fixed fee, or a tiered system of stated dollar amounts or periodic fixed fees based solely on the level of performance achieved with respect to the applicable measure.

(iv) A Service Contract providing for a compensation arrangement that satisfies any one of the following paragraphs will meet the Prior Guidelines:

(A) All of the compensation for services is based on a stated amount; periodic fixed fee; a capitation fee; a per-unit fee; or a combination of the preceding. The compensation for services also may include a percentage of gross revenues, adjusted gross revenues, or expenses of the facility (but not both revenues and expenses). The term of the contract, including all renewal options, does not exceed five years. Such contract need not be terminable by the City prior to the end of the term. For purposes of this subsection 5.01(g)(2)(iv)(A), a tiered productivity award as described in subsection 5.01(g)(2)(iii) will be treated as a stated amount or a periodic fixed fee, as appropriate.

(B) For a contract with a term, including renewal options, that is not longer than (i) the lesser of 10 years or 80 percent of the reasonably expected useful life of the financed property, or (ii) the lesser of 15 years or 80 percent of the reasonably expected useful life of the financed property, at least 80 percent (in the case of a contract with a term described in (i) hereof) or at least 95 percent (in the case of a contract with a term described in (ii) hereof) is based on a periodic fixed fee. For purposes of this paragraph, a fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense (but not both) is reached if that award is equal to a single, stated dollar amount.

(v) The Prior Guidelines Service Provider may not have a role or relationship with the qualified user (or the City) that, in effect, substantially limits the ability of the qualified user to exercise its rights, including cancellation rights, under the Service Contract. Accordingly, not more than 20 percent of the voting power of the governing body of the qualified user (or the City) in the aggregate may be vested in the Prior Guidelines Service Provider and its directors, officers, shareholders and employees. Furthermore, the group of persons belonging to both the governing board of the qualified user (or the City) and the Prior Guidelines Service Provider may not include the chief executive officers of the qualified user (or the City) and the Prior Guidelines Service Provider, or their respective governing bodies. Finally, neither the qualified user nor the City may be members of the same “controlled group” (within the meaning of Treasury Regulations § 1.150-1(f)) or related person as the Prior Guidelines Service Provider.

(h) No Other Replacement Proceeds. The City is not using any Facility Funds and hereby agrees that it will not use any Facility Funds to replace funds of the City which are or will be used to acquire Investment Property reasonably expected to produce a yield that is materially higher than the yield on the Installment Payments under this Agreement.

(i) Federal Guarantee. The City will not directly or indirectly use or permit the use of any Facility Funds or take or omit to take any action that would cause the Proceeds Bonds or Secured Bonds to be obligations that are “federally guaranteed” within the meaning of section 149(b) of the Code. In furtherance of this covenant, the City will not allow the payment

of principal or interest under this Agreement to be guaranteed (directly or indirectly) in whole or in part by the United States or any agency or instrumentality thereof.

(j) No Hedge Bonds. The City reasonably expects that more than eighty-five percent (85%) of the Facility Funds will be expended for the purposes of this Agreement within three years of the Effective Date.

ARTICLE VI

MISCELLANEOUS

Section 6.01 California Law; Venue.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State. Any action or proceeding arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California, unless otherwise expressly agreed to by IBank in its sole and absolute discretion.

Section 6.02 Assignment of IBank's Rights.

The City hereby agrees and acknowledges that IBank's rights, including but not limited to the right to receive principal and interest payments under the Indenture and Additional Payments under this Agreement may, in IBank's sole and absolute discretion, be assigned by IBank to the Trustee or another party for the purpose of securing the payment of any bonds, notes, or other obligations issued by IBank and secured by this Agreement, the principal and interest payments under the Indenture and Additional Payments under this Agreement, without the need for consent by the City. Accordingly, the City agrees to make all payments due hereunder to the Trustee when so directed by IBank, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach hereof or otherwise) that the City may have from time to time against IBank. The City agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which IBank or the Trustee may request, in their sole and absolute discretion, in connection with any such assignment by IBank.

Section 6.03 Third Party Beneficiaries. The Trustee is hereby expressly designated as a third party beneficiary hereunder for the purpose of enforcing any of the rights hereunder assigned to said Trustee and for the purpose of said Trustee enforcing its own rights. Nothing in this Agreement, expressed or implied, is intended to give to any person other than IBank, the City, and the Trustee, any right, remedy, or claim under or by reason of this Agreement. All covenants, stipulations, promises, or agreements contained in this Agreement by and on behalf of the City shall be for the sole and exclusive benefit of IBank, the Trustee, and their permitted assigns.

Section 6.04 Successor Entities. Whenever in this Agreement either the City or IBank is named or referred to, such reference shall be deemed to include the permitted successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the City or IBank shall bind and inure to the benefit of the respective permitted

successors and assigns thereof, whether so expressed or not. The Trustee will be IBank's initial assignee.

Section 6.05 Amendment. No term or provision of this Agreement may be waived or otherwise modified except by a written agreement signed by the Parties. The Parties acknowledge and agree that the previous sentence shall be interpreted, enforced, and adhered to strictly, notwithstanding any legal doctrine, rule, statute, or case law that may permit oral modification of this Agreement, or that may find under certain circumstances the portion of this Section 6.05 requiring all modifications to this Agreement be in writing is waived orally or by the Parties' conduct. To the greatest extent permissible under the law, the Parties hereby agree to waive any legal doctrine, rule, statute, or case law that permits, or could be construed to permit, modification of this Agreement by means other than a writing signed by both Parties.

Section 6.06 Waiver of Personal Liability. No member, officer, agent, or employee of the City shall be individually or personally liable for the payment of the principal of, premium, if any, or the interest under this Agreement; but nothing herein contained shall relieve any such member, officer, agent, or employee from the performance of any official duty provided by law.

Section 6.07 Arm's Length Transaction. The City acknowledges and agrees that IBank is acting solely as purchaser of the Series 2019 Bonds under this Agreement and not an advisor to the City, including that: (i) the transaction contemplated by this Agreement is an arm's-length commercial transaction, (ii) in connection therewith and with the financing discussions, undertakings and procedures leading up to the consummation of such transaction, IBank is and has been acting solely as a principal and is not acting as the agent or fiduciary of or in any way advising the City, including, without limitation, a "Municipal Advisor" as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules, (iii) IBank has not provided any advice or assumed an advisory or fiduciary responsibility in favor of the City with respect to the financing contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether IBank, or any party related to IBank, has provided other services, or advised, or is currently providing other services, or advising, the City on other matters) and IBank has no obligation to the City with respect to the financing contemplated hereby except the obligations expressly set forth in this Agreement, (iv) IBank has financial and other interests that differ from those of the City, and (v) the City has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

Section 6.08 Notices.

All written notices to be given under this Agreement shall be given by first-class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time, except that notices from the City to IBank shall be given by registered mail, or by telecommunication confirmed in writing. Notice shall be effective forty-eight (48) hours after deposit in the United States mail, postage prepaid or, in the case of any notice to IBank, or in the case of personal delivery to any person, upon actual receipt at the address set forth below:

If to IBank:

California Infrastructure and Economic Development Bank

Attn: Loan Servicing Manager
P.O. Box 2830
Sacramento, CA 95812-2830

For overnight mail or personal delivery only:

California Infrastructure and Economic Development Bank
Attn: Loan Servicing Manager
1325 J Street, 13th Floor
Sacramento, CA 95814

With a copy to the General Counsel of IBank at the same address.

If to the City:

City of Fresno
2600 Fresno Street, Suite 2156
Fresno, CA 93721
Attention: Mike Lima, Controller

Or to such other address as may be designated in writing by the City.

Section 6.09 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon IBank and the City and their respective successors and assigns.

Section 6.10 Entire Agreement. Except as expressly stated herein, this Agreement, together with the exhibits and attachments hereto, constitutes the entire agreement among the Parties. Except as expressly stated herein, there are no understandings, agreements, representations or warranties, express or implied, not specified herein or therein regarding this Agreement or the Facility financed hereunder. Any terms and conditions of any purchase order or other document submitted by the City in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on IBank and will not apply to this Agreement.

Section 6.11 Indemnification. [To be reviewed/revised by the City Attorney's Office] The City shall, to the fullest extent permitted by law, indemnify, protect, hold harmless, save and keep harmless IBank and its members, directors, officers, attorneys, advisors, employees, and agents (collectively, the "*Indemnified Parties*") from and against any and all liability, obligations, losses, claims, demands, damages, actions, causes of action, liens, stop payment notices, or costs whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses as incurred, penalties and interest (collectively, a "*Claim*"), arising out of, related to or as the result of entering into this Agreement, and the acquisition, construction, operation, use, condition, or possession of the Facility and any portion thereof, including without limitation:

(a) any accident in connection with the operation, use, condition, or possession of the Facility resulting in damage to property or injury to or death to any person

including, without limitation, any claim alleging latent and other defects, whether or not discoverable by the City or IBank;

(b) patent, trademark or copyright infringement, or similar claims as a consequence of the operation, use, occupancy, or maintenance of the Facility;

(c) strict liability in tort as a consequence of the operation, use, occupancy, or maintenance of the Facility;

(d) any Claim based upon any environmental law or regulation relating to the Facility;

(e) any Claim of any nature directly arising from or related to the Facility, which Claim is based upon the operation of the Facility from and after the Effective Date;

(f) the existence, placement, delivery, storage, or release of hazardous materials on or from the Facility or contamination of property, arising therefrom;

(g) either (a) the application of the Facility Funds, or other amounts treated as “gross proceeds” of the Proceeds Bonds or Secured Bonds in such manner that any portion of the Proceeds Bonds or Secured Bonds becomes an “arbitrage bond” within the meaning of Internal Revenue Code sections 103(b)(2) and 148, with the result that interest on the Proceeds Bonds or Secured Bonds is or becomes subject to federal income taxation of the holder of the Proceeds Bonds or Secured Bonds; or (b) if as a result of any act, failure to act, or use of the proceeds of any portion of the Facility Funds or the Facility, or any misrepresentation or inaccuracy in any of the representations, warranties, or covenants contained in this Agreement or the enactment of any federal legislation or the promulgation of any federal rule or regulation after the date of this Agreement, all or any portion of the interest on any portion of the Proceeds Bonds or Secured Bonds becomes subject to federal income taxation;

(h) the consummation or carrying out of any of the transactions contemplated by this Agreement or any related document; and

(i) information provided by the City which is used in connection with the Proceeds Bonds or the Secured Bonds.

The indemnification arising under this Section 6.11 shall continue in full force and effect notwithstanding the full payment of all obligations hereunder and shall survive the termination of this Agreement for any reason. Any party seeking indemnity hereunder shall promptly give notice to the City of any Claim or liability hereby indemnified against upon learning of any circumstances giving rise to any such Claim or liability. The City’s obligation to indemnify, defend, protect, hold harmless, save, and keep harmless the Indemnified Parties as provided in this Section 6.11 shall arise immediately upon any Claim covered under this Section being asserted against an Indemnified Party, whether orally, in writing, or in any court or administrative action or proceeding.

Section 6.12 Time of the Essence. Subject to the remainder of this Section, time is of the essence with respect to this Agreement and the performance of each obligation contained in

this Agreement. Whenever the time for performance of any obligation under this Agreement, or if under this Agreement a Party must act by a particular time or date, or if an act is effective only if done by a particular time or date, and the last date for performance of such obligation or the doing or effectiveness of such act falls on a Saturday, Sunday, or legal holiday in the State, the time for performance of such obligation or the doing or effectiveness of such act shall be extended to the next day that is not a Saturday, Sunday, or a legal holiday in the State. The first day shall be excluded and the last day shall be included when computing the time in which an obligation is to be performed or an act is to be done under this Agreement. Unless otherwise provided herein all time periods shall end at 5:00 p.m. California time.

Section 6.13 Waiver of Consequential Damages. To the fullest extent permitted by law, the City shall not assert, and hereby waives, any claim against IBank on any theory of liability for special, indirect, consequential, or punitive damages (as opposed to direct actual damages) arising from, or in connection with, this Agreement.

Section 6.14 Nondiscrimination.

(a) During the performance of this Agreement, the City shall ensure that any direct contractor and its subcontractors constructing the Facility shall not deny the contracts' benefits to any person on the basis of race, color, religion, ancestry, national origin, ethnic group identification, marital status, gender, sex, sexual orientation, age, medical condition, physical handicap or disability, mental disability, political affiliation, or position in a labor dispute, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, religion, national origin, ethnic group identification, ancestry, physical handicap or disability, mental disability, medical condition, marital status, age, gender, sex, sexual orientation, political affiliation, or position in a labor dispute. The City shall ensure that any direct contractor and its subcontractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

(b) The City shall ensure that any direct contractor and its subcontractors constructing the Facility shall comply with the applicable provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0 et seq.) the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any regulations promulgated thereunder.

(c) The City shall ensure that any direct contractor and its subcontractors constructing the Facility shall not knowingly give preferential treatment of any kind whatsoever in connection with any business transaction related to the construction or operation of the Facility to any of its affiliates or to any business enterprise in which the City has any financial interest, but in such business transactions shall deal at all times with such affiliates and enterprises on the same basis as though dealing with any other parties.

(d) The City shall ensure that any direct contractor and its subcontractors constructing the Facility shall, with respect to the Facility, give written notice of their obligations under this section to labor organizations representing employees of the City and any contractor

or subcontractor performing work on the Facility which have a collective bargaining or other contract with the City, such contractor or subcontractor.

(e) The City shall ensure that any direct contractor and its subcontractors constructing the Facility shall include the provisions of this section in all subcontracts to perform work with respect to the Facility.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers as of the date first written above.

CALIFORNIA INFRASTRUCTURE AND
ECONOMIC DEVELOPMENT BANK

By _____
Acting Executive Director

CITY OF FRESNO

By _____
[Title]