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**CONTINUING DISCLOSURE AGREEMENT**

**by and between the**

**CITY OF SAN DIEGO**

**and**

**BNY WESTERN TRUST COMPANY,**

**as Trustee**

**Dated as of September 1, 1998**

**RELATING TO THE \$205,000,000  
CONVENTION CENTER EXPANSION FINANCING AUTHORITY  
LEASE REVENUE BONDS, SERIES 1998A**

## **CONTINUING DISCLOSURE AGREEMENT**

This Continuing Disclosure Agreement (the "Disclosure Agreement"), dated as of September 1, 1998, is executed and delivered by the City of San Diego (the "City") and BNY Western Trust Company (the "Trustee") in connection with the issuance of \$205,000,000 Convention Center Expansion Financing Authority Lease Revenue Bonds, Series 1998A (the "Bonds"). The Bonds are being issued pursuant to an Indenture, dated as of September 1, 1998 (the "Indenture"), between the Convention Center Expansion Financing Authority (the "Authority"), a public entity and agency duly organized and existing pursuant to a joint exercise of powers agreement between the City and the San Diego Unified Port District, and the Trustee. The Bonds will be payable from base rental payments to be made by the City pursuant to a Convention Center Facility Lease, dated as of September 1, 1998 (the "Facility Lease"), between the Authority and the City. Pursuant to Section 6.14 of the Indenture and Section 4.03 of the Facility Lease, the City and the Trustee covenant and agree as follows:

**SECTION 1. Purpose of the Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the City and the Trustee for the benefit of the Owners and Beneficial Owners of the Bonds and in order to assist the Participating Underwriters in complying with the Rule (defined below). The City and the Trustee acknowledge that the Authority has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Disclosure Agreement, and has no liability to any person, including any Owner or Beneficial Owner of the Bonds, with respect to the Rule.

**SECTION 2. Definitions.** In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

"Beneficial Owner" shall mean any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

"Disclosure Representative" shall mean the City Manager of the City or his or her designee, or such other officer or employee as the City shall designate in writing to the Trustee from time to time.

"Dissemination Agent" shall mean the Financial and Technical Services Business Center Manager of the City, acting in his or her capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the City and which has filed with the Trustee a written acceptance of such designation.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“National Repository” shall mean any Nationally Recognized Municipal Securities Information Repository for purposes of the Rule. The National Repositories currently approved by the Securities and Exchange Commission are set forth in Exhibit B.

“Participating Underwriter” shall mean any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“Repository” shall mean each National Repository and the State Repository, if any.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State” shall mean the State of California.

“State Repository” shall mean any public or private repository or entity designated by the State as the state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Disclosure Agreement, there is no State Repository.

### **SECTION 3. Provision of Annual Reports.**

(a) The City shall, or shall cause the Dissemination Agent to, not later than 285 days after the end of the City’s fiscal year (which fiscal year presently ends June 30), commencing with the report for the 1997-98 Fiscal Year, provide to each Repository and to Ambac Assurance (so long as the Municipal Bond Insurance Policy shall be in full force and effect and so long as Ambac Assurance is not in default under its Municipal Bond Insurance Policy) an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. If by such date the Trustee has not received a copy of the Annual Report, the Trustee shall contact the City and the Dissemination Agent to inquire if the City is in compliance with the first sentence of this subsection (a). The Trustee shall have no duty or obligation to review such Annual Report. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; *provided* that the audited financial statements of the City may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the City’s fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(f).

(b) Not later than fifteen (15) Business Days prior to the date specified in subsection (a) for providing the Annual Report to the Repositories, the City shall provide the Annual Report to the Dissemination Agent (if other than the City or an employee of the City).

(c) If the Trustee is unable to verify that an Annual Report has been provided to the Repositories by the date required in subsection (a), the Trustee shall send a notice to each

Repository, Ambac Assurance (so long as the Municipal Bond Insurance Policy shall be in full force and effect and so long as Ambac Assurance is not in default under its Municipal Bond Insurance Policy) and the Municipal Securities Rulemaking Board and the State Repository, if any, in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(i) determine each year prior to the date for providing the Annual Report the name and address of each National Repository and the State Repository, if any; and

(ii) file a report with the City, the Authority and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and listing all the Repositories to which it was provided.

**SECTION 4. Content of Annual Reports.** The City's Annual Report shall contain or include by reference the following:

(1) The audited financial statements of the City for the prior fiscal year, prepared in accordance with generally accepted accounting principles as promulgated from time to time by the Financial Accounting Standards Board or as otherwise required by applicable State law. If the City's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(2) Updates of information contained in tabular form in the Official Statement under the caption "San Diego Convention Center" and in the following tables in Appendix A to the Official Statement, dated September 1, 1998, relating to the Bonds:

(a) Table 7 – Transient Occupancy Tax.

(b) Table 11 - Building Permit Valuation and Number of Dwelling Units.

(c) Table 12 - Balance Sheet for the General Fund.

(d) Table 13 - Statement of Revenues, Expenditures and Changes in Fund Balance for the General Fund.

(e) Table 14 - Operating Budget Summary (Actual, Adopted).

(f) Table 15 - Assessed Valuation.

- (g) Table 16 - Secured Tax Levies and Collections.
- (h) Table 17 - Principal Property Taxpayers.
- (i) Information under the caption "Labor Relations."
- (j) Information under the caption "Pension Plan."
- (k) Table 18 - Annual Liability Claims Expenses and Settlement Costs.
- (l) Table 19 - Pooled Investment Fund.
- (m) Table 20 - General Obligation and General Fund Lease Obligations.
- (n) Table 21 - Short-Term Borrowings.
- (o) Table 22 - Future Minimum Rental Payments General Fund Operating Lease Commitments.
- (p) Table 23 - Statement of Direct and Overlapping Bonded Debt.

(3) Updates of information under the caption "The Expansion Project – Budget; Design/Build Contract" so as to provide a summary report of bid procedures including, the award of bids and the amounts thereof with respect to the Expansion Project, expenses in excess of the not-to-exceed amount, if any, and a summary of steps taken to address any such deficiency, including, but not limited to, cost saving measures, owner or City contributions, the removal of "deductive alternatives" from the Expansion Project, design revisions, budget revisions, negotiations, and the like, and the caption "The Expansion Project – Prospective Environmental Remediation" so as to provide a statement of costs of remediation in excess of budget, if any, which the City would expect not to be covered by the "owner's discretionary amount" as summarized thereunder or for which the City has elected to appropriate additional funding; *provided, however*, that in each case, such information shall be provided only in each Annual Report covering periods at or prior to the substantial completion of the Expansion Project.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or debt issues with respect to which the City is an "obligated person" (as defined by the Rule), which have been submitted to each of the Repositories or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The City shall clearly identify each such other document so included by reference.

## **SECTION 5. Reporting of Significant Events.**

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults;
- (iii) modifications to rights of Bondholders;
- (iv) optional, contingent or unscheduled bond calls;
- (v) defeasances;
- (vi) rating changes;
- (vii) adverse tax opinions or events adversely affecting the tax-exempt status of the Bonds;
- (viii) unscheduled draws on the debt service reserves reflecting financial difficulties;
- (ix) unscheduled draws on credit enhancements reflecting financial difficulties;
- (x) substitution of credit or liquidity providers, or their failure to perform;
- (xi) release, substitution or sale of property securing repayment of the Bonds.

(b) The Dissemination Agent shall, as soon as reasonably practicable after obtaining actual knowledge of the occurrence of any of the Listed Events, contact the Disclosure Representative, inform such person of the event, and request that the City promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to subsection (f) and promptly direct the Dissemination Agent whether or not to report such event to the Bondholders. In the absence of such direction, the Dissemination Agent shall not report such event unless otherwise required to be reported by the Dissemination Agent to the Bondholders under the Indenture. The Dissemination Agent may conclusively rely upon such direction (or lack thereof). For purposes of this Disclosure Agreement, "actual knowledge" of the occurrence of such Listed Events shall mean actual knowledge by the Dissemination Agent if other than the Trustee, and if the Dissemination Agent is the Trustee, then by the officer at the corporate trust office of the Trustee with regular responsibility for the administration of matters related to the Indenture. The Dissemination Agent shall have no responsibility to determine the materiality of any of the Listed Events.

(c) Whenever the City obtains knowledge of the occurrence of a Listed Event, whether because of a notice from the Trustee pursuant to subsection (b) or otherwise, the City shall as soon as possible determine if such event would be material under applicable federal securities laws.

(d) If the City has determined that knowledge of the occurrence of a Listed Event would be material under applicable federal securities laws, the City shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (f).

(e) If in response to a request under subsection (b), the City determines that the Listed Event would not be material under applicable federal securities laws, the City shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (f).

(f) If the Dissemination Agent has been instructed by the City to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the Municipal Securities Rulemaking Board and the Repositories with a copy to the City. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(4) and (5) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Owners of affected Bonds pursuant to the Indenture.

**SECTION 6. Termination of Reporting Obligation.** The City's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If the City's obligations under the Facility Lease are assumed in full by some other entity, such person shall be responsible for compliance with this Disclosure Agreement in the same manner as if it were the City and the original City shall have no further responsibility hereunder. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(f).

**SECTION 7. Dissemination Agent.** The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the City pursuant to this Disclosure Agreement.

**SECTION 8. Amendment; Waiver.** Notwithstanding any other provision of this Disclosure Agreement, the City and the Trustee may amend this Disclosure Agreement (and the Trustee shall agree to any amendment so requested by the City *provided* the Trustee shall not be obligated to enter into any such amendment that modifies or increases its duties or obligations hereunder), and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances

that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the City shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(f), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**SECTION 9. Additional Information.** Nothing in this Disclosure Agreement shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the City shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**SECTION 10. Default.** In the event of a failure of the City or the Trustee to comply with any provision of this Disclosure Agreement, the Trustee, at the written request of any Participating Underwriter or the Owners of at least 25% aggregate principal amount of Outstanding Bonds, shall, but only to the extent funds in an amount satisfactory to the Trustee have been provided to it or it has been otherwise indemnified to its satisfaction from any cost, liability, expense or additional charges and fees of the Trustee whatsoever, including, without limitation, fees and expenses of its attorneys, or any Owner or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City or the Trustee, as the case may be, to

comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture or the Facility Lease, and the sole remedy under this Disclosure Agreement in the event of any failure of the City or the Trustee to comply with this Disclosure Agreement shall be an action to compel performance.

**SECTION 11. Duties, Immunities and Liabilities of Trustee and Dissemination Agent.** Article VII of the Indenture is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Indenture and the Trustee shall be entitled to the protections, limitations from liability and indemnities afforded the Trustee thereunder. The Dissemination Agent (if other than the Trustee or the Trustee in its capacity as Dissemination Agent) and the Trustee shall have only such duties as are specifically set forth in this Disclosure Agreement, and the City agrees to indemnify and save the Dissemination Agent and the Trustee, their officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Trustee shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the City, the Authority, or the Bondholders or any other party. The Trustee shall not have any liability of any kind whatsoever related to or arising from this Disclosure Agreement. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

**SECTION 12. Notices.** Any notices or communications to or among any of the parties to this Disclosure Agreement may be given as follows:

To the City: City of San Diego  
Financial and Technical Services Business Center  
202 C Street, M.S. 9-B  
San Diego, California 92101-3868  
Attention: Ms. Patricia Frazier, Deputy City Manager  
Telephone/Fax: (619) 236-6070/(619) 236-7344

To the Trustee: BNY Western Trust Company  
700 South Flower Street, 2nd Floor  
Los Angeles, California 90017  
Attention: Corporate Trust Department  
Telephone/Fax: (213) 630-6409/(213) 630-6442

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

**SECTION 13. Beneficiaries.** This Disclosure Agreement shall inure solely to the benefit of the City, the Trustee, the Authority, the Dissemination Agent, the Participating

Underwriters and Owners and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

**SECTION 14. Counterparts.** This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Date: September 1, 1998.

CITY OF SAN DIEGO

By Patricia T. Hargis  
City Manager or designee

BNY WESTERN TRUST COMPANY,  
as Trustee

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

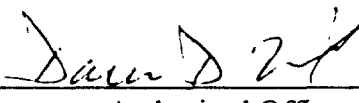
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Date: September 1, 1998.

CITY OF SAN DIEGO

By \_\_\_\_\_  
City Manager or designee

BNY WESTERN TRUST COMPANY,  
as Trustee

By   
Authorized Officer

**EXHIBIT A**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of Obligated Person: City of San Diego

Name of Bond Issue: Convention Center Expansion Financing Authority  
Lease Revenue Bonds, Series 1998A

Date of Issuance: September 17, 1998

NOTICE IS HEREBY GIVEN that the City of San Diego has not provided an Annual Report with respect to the above-named Bonds as required by Section 6.14 of the Indenture, dated September 1, 1998, between the Convention Center Expansion Financing Authority and BNY Western Trust Company and Section 4.03 of the Convention Center Facility Lease, dated as of September 1, 1998, between the City and the Convention Center Expansion Financing Authority. [The City anticipates that the Annual Report will be filed by \_\_\_\_\_.]

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

BNY WESTERN TRUST COMPANY,  
on behalf of the City of San Diego

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

cc: City of San Diego  
Ambac Assurance Corporation

## **EXHIBIT B**

### **NATIONALLY RECOGNIZED MUNICIPAL SECURITIES INFORMATION REPOSITORIES**

Nationally Recognized Municipal Securities Information Repositories approved by the Securities and Exchange Commission as of the date of this Disclosure Agreement:

#### **Bloomberg Municipal Repository**

P.O. Box 840  
Princeton, NJ 08542-0840  
Internet address: MUNIS@bloomberg.doc  
(609) 279-3200  
FAX (609) 279-3235 (609) 279-5963  
Contact: Dave Campbell

#### **JJ Kenny Information Services**

The Repository  
65 Broadway, 16th Floor  
New York, NY 10006  
(212) 770-4595  
FAX (212) 797-7994  
Contact: Joan Horai, Repository

#### **Thomson NRMSIR**

Secondary Market Disclosure  
395 Hudson Street, 3<sup>rd</sup> Floor  
New York, New York 10014  
Internet Address: Disclosure@muller.com  
(212) 807-5001 or (800) 689-8466  
FAX (212) 989-2078  
Contact: Carolyn Chin

#### **DPC Data, Inc.**

One Executive Drive  
Fort Lee, N.J. 07024  
Internet address: nrmsir@dpcdata.com  
(201) 346-0701  
FAX (201) 346-0107  
Contact: Dick Stout