

NON-ASSIGNMENT AGREEMENT

THIS NON-ASSIGNMENT AGREEMENT (“Agreement”) is entered into as of _____, 20__, by and between the City of Los Angeles, acting by and through its Board of Harbor Commissioners (“POLA”) and [Bond Insurer/Surety Provider Name], a _____ (“[Bond Insurer/Surety Provider]”).

RECITALS

WHEREAS, pursuant to the provisions of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the “Joint Powers Act”), POLA and The City of Long Beach, acting by and through its Board of Harbor Commissioners (“POLB”) have entered into an Amended and Restated Joint Exercise of Powers Agreement, dated as of December 18, 1996, creating the Alameda Corridor Transportation Authority (the “ACTA”);

WHEREAS, by Resolution No. _____ of POLA dated _____, 20__ (the “Resolution”), POLA authorized, among other things, the execution of certain documents in connection with the Alameda Corridor Transportation Authority Tax-Exempt Senior Lien Revenue Refunding Bonds, Series 2013A (the “2013 ACTA Bonds”);

WHEREAS, POLA and POLB (referred to herein together as the “Cities”), and ACTA, together with Union Pacific Railroad Company, and BNSF Railway Company (formerly known as The Burlington Northern and Santa Fe Railway Company) (referred to herein collectively as the “Railroads”) are parties to the Alameda Corridor Use and Operating Agreement dated as of October 12, 1998, as amended (the “Use and Operating Agreement”);

WHEREAS, Section 15.1(b)(iii) of the Use and Operating Agreement states:

“...the Owner [defined as POLA and POLB collectively] may assign any of its obligations (without any modification thereof) under this Agreement [defined herein as the Use and Operating Agreement] to an entity reasonably acceptable to the Railroads (which entity must agree in writing to perform all of the obligations of the Owner hereunder)...” (the “Assignment Rights”);

WHEREAS, the Assignment Rights allow the Cities, acting jointly, to transfer all obligations required under the Use and Operating Agreement to another entity, subject to the consent of the Railroads;

[WHEREAS, [Bond Insurer] has provided an insurance commitment on [a portion of the/the full] par amount of the 2013 ACTA Bonds;]

[WHEREAS, [Surety Provider] has provided a debt service reserve surety policy on the 2013 ACTA Bonds;]

[WHEREAS, [Bond Insurer] has requested as a condition of such insurance commitment that POLA agree not to exercise its Assignment Rights as provided herein without the consent of [Bond Insurer];]

[WHEREAS, [Surety Provider] has requested as a condition of providing such debt service reserve surety policy that POLA agree not to exercise its Assignment Rights as provided herein without the consent of [Surety Provider];]

WHEREAS, in the Resolution POLA also approved a board action which authorizes an Authorized Officer (as defined in the Resolution) to provide a written commitment to [Bond Insurer/Surety Provider] whereby POLA would not exercise its Assignment Rights without first receiving the consent of [Bond Insurer/Surety Provider].

NOW, THEREFORE, for and in consideration of the premises and the mutual agreements hereinafter contained, and other valuable consideration, receipt of which is hereby acknowledged, POLA and [Bond Insurer/Surety Provider] agree as follows:

Section 1. Subject to the provisions of Section 2 hereof, POLA agrees not to exercise its Assignment Rights without obtaining the prior written consent of [Bond Insurer/Surety Provider].

Section 2. [Bond Insurer/Surety Provider] agrees not to unreasonably withhold or delay its consent to any proposed exercise by POLA of its Assignment Rights, provided that it shall not be deemed reasonable for [Bond Insurer/Surety Provider] to withhold such consent unless [Bond Insurer/Surety Provider] concludes, based on its credit criteria, that the proposed assignment is reasonably likely to adversely affect the interests of the holders of the 2013 ACTA Bonds or of [Bond Insurer/Surety Provider].

Section 3. This Agreement may be executed in duplicate counterparts, all of which together shall constitute a single instrument, and each of which shall be deemed an original of this Agreement for all purposes, notwithstanding that less than all signatures appear on any one counterpart.

Section 4. This Agreement constitutes the entire and only understanding of the parties with respect to this subject matter.

Section 5. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 6. All notices hereunder shall be deemed to have been duly given upon personal delivery or three days after mailing thereof by United States registered or certified mail return receipt requested, postage prepaid, or by courier, to such party at the following addresses (or at such other address as shall be given in writing by either party to the other in the manner set forth in this section):

If to POLA:

425 South Palos Verdes Street
San Pedro, California 90731
Attention: []

If to [Bond Insurer/Surety Provider]:

[]
[]
[]

Fax [() -]

Attention: []

Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this paragraph, and that any person to be given notice actually receives such notice. A party may change or supplement the addresses given above, or designate additional addresses, for purposes of this Section by giving the other party written notice of the new address in the manner set forth above.

Section 9. This Agreement shall become effective immediately upon execution.

[End of Non-Assignment Agreement]

IN WITNESS WHEREOF, POLA and [Bond Insurer/Surety Provider] have each caused this Agreement to be duly executed in its name and on its behalf by its duly authorized officers as of the date first written above.

CITY OF LOS ANGELES, acting by and through
its Board of Harbor Commissioners

By: _____

Title: [_____]

Approved as to Form and Legality:

By _____

Title: _____

[BOND INSURER/SURETY PROVIDER NAME]

By: _____

Title: _____

[Signature page to Non-Assignment Agreement]