

SURETY AGREEMENT

THIS SURETY AGREEMENT dated as of [_____], 2012 (the "Surety Agreement") by and among the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, a joint powers authority established under Article I, Chapter 5, Division 7, of Title 1 of the California Government Code and pursuant to an Amended and Restated Joint Exercise of Powers Agreement dated as of December 18, 1996, as amended, by and between the City of Long Beach and the City of Los Angeles (the "Obligor"), U.S. BANK NATIONAL ASSOCIATION, as trustee (the "Trustee"), the CITY OF LONG BEACH, acting by and through its Board of Harbor Commissioners ("POLB") and the CITY OF LOS ANGELES, acting by and through its Board of Harbor Commissioners ("POLA" and, together with POLB, the "Surety Providers").

WITNESSETH:

WHEREAS, the Obligor intends to issue and deliver \$[83,710,000] in aggregate principal amount of Taxable Senior Lien Revenue Refunding Bonds, Series 2012 (the "Series 2012 Bonds") for the purpose of refinancing certain of the Obligor's outstanding Senior Lien Bonds with funds provided by the Federal Railroad Administration (the "2012 Lender") pursuant to the RRIF Financing Agreement dated the date hereof ("2012 Financing Agreement");

WHEREAS, the Series 2012 Bonds are being issued and delivered pursuant to the terms of the Master Trust Indenture dated as of January 1, 1999 (the "Master Indenture") by and between the Obligor and the Trustee, as amended and supplemented, including as amended and supplemented by the Eighth Supplemental Indenture dated as of [_____], 2012 (the "Eighth Supplemental Indenture");

WHEREAS, as a condition to the issuance of the Series 2012 Bonds, the Eighth Supplemental Indenture requires that the Obligor deliver to the Trustee for deposit in the Series 2012 Debt Service Reserve Account (as defined in the Eighth Supplemental Indenture) a surety agreement or other form of Debt Service Reserve Surety Policy (as defined in the Master Indenture) in an amount equal to the Debt Service Reserve Requirement (as defined in the Master Indenture) for the Series 2012 Bonds for the purpose of paying the principal of, and interest on, the Series 2012 Bonds in the event that amounts in the Series 2012 Debt Service Fund (as defined in the Eighth Supplemental Indenture) are insufficient to pay such amounts;

WHEREAS, the refinancing is being undertaken by the Obligor for the purpose of restructuring a portion of its existing debt service and to reduce the expected Shortfall Advance obligations of the Surety Providers with respect to Obligor's debt service payments; and

WHEREAS, the Surety Providers will receive benefits from the expected reduction in Shortfall Advance obligations and are willing to enter into this Surety Agreement in order to satisfy the Debt Service Reserve Requirement on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and of the agreements herein contained, the Authority, the Ports and the Trustee agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. **Definitions.** Except as otherwise expressly provided herein or unless the context otherwise requires, the terms which are capitalized herein shall have the meanings specified in the Master Indenture or the Eighth Supplemental Indenture, as applicable.

ARTICLE II SURETY

Section 2.01. **Surety.**

(a) Each Surety Provider, severally and not jointly, hereby unconditionally and absolutely agrees to pay from legally available funds when due the principal of, and interest on, the Series 2012 Bonds, whether at stated maturity, by acceleration, demand or otherwise, as and when such payments are required to be made from the Series 2012 Debt Service Reserve Account pursuant to the provisions of Section 3.05 of the Master Indenture and Section 4.04 of the Eighth Supplemental Indenture (collectively, the "Secured Obligations"); provided, however, that the total liability of each Surety Provider hereunder, regardless of any amendment or modification to the Master Indenture or the Eighth Supplemental Indenture, is limited to three million six hundred thousand dollars \$3,600,000 and the total aggregate liability of both Surety Providers shall not exceed seven million two hundred thousand dollars \$7,200,000), as may be reduced pursuant to Sections 2.01(b) and (c) hereof (individually and collectively, the "Liability Cap"). Each Surety Provider's obligations and liability under this Surety Agreement shall be limited to payment obligations only and each Surety Provider shall have no obligation to perform any duty or requirement under the Master Indenture or the Eighth Supplemental Indenture. Neither Surety Provider shall be responsible for the payment obligations of the other Surety Provider. Each demand for payment under this Surety Agreement shall be paid by the Surety Providers on a pro rata basis.

(b) The Liability Cap shall be automatically reduced on or after October 1 following written notice by the Trustee to the Obligor and the Surety Providers that Revenues (as defined in the Master Indenture) have been deposited into the Series 2012 Debt Service Reserve Account on or prior to October 1 in each of the respective years and the amounts set forth on Schedule A (the "Annual Cash Deposit") such that, following the Annual Cash Deposit and after giving effect to the reduction of the Liability Cap, the amount available in the Series 2012 Debt Service Reserve Account is equal to the Debt Service Reserve Requirement for the Series 2012 Bonds. Notwithstanding anything contained herein to the contrary, in the event that the full amount of the Annual Cash Deposit is not made for any reason and/or the available amount in the Series 2012 Debt Service Reserve Account following any Annual Cash Deposit does not equal the Debt Service Reserve Requirement, then (i) the Liability Cap shall be reduced by the amount of such Annual Cash Deposit, if any, and (ii) the Annual Cash Deposit for the next year as shown on Exhibit A shall be deemed to be automatically increased by the greater of (x) the difference between the Annual Cash Deposit set forth in Exhibit A (as the same may previously have been adjusted) and the Revenues deposited in the Series 2012 Debt Service Reserve Account in the applicable year and (y) the difference between the applicable Debt Service Reserve Requirement and the amount then on deposit in the Series 2012 Debt Service Reserve Account. The Trustee

shall reflect such automatic increase in the schedule set forth in Exhibit A as required by the previous sentence but in no event shall the total aggregate liability of both Surety Providers exceed the limit set forth in Section 2.01(a) above.

(c) Payments made under this Surety Agreement shall also reduce the Liability Cap to the extent of such payment, provided that the Liability Cap shall be automatically reinstated to the extent of the reimbursement of such payments by the Trustee as provided in Section 3.02 hereof. The Trustee shall notify the Surety Providers and the Obligor in writing no later than the fifth (5th) day following the reimbursement to the Surety Providers by the Trustee that the Liability Cap has been reinstated to the extent of such reimbursement as provided in Section 3.02 hereof.

(d) The Obligor and the Trustee acknowledge and agree that all payments required to be made by each Surety Provider pursuant to this Surety Agreement shall be payable from legally available revenues or other sources in POLA's and POLB's respective "Harbor Revenue Fund" and not from any other fund or account of POLA, the City of Los Angeles, POLB or the City of Long Beach. For sake of clarity, all payments made by the Surety Providers hereunder shall be payable from the same sources from which Shortfall Advances are made by POLA and POLB. With respect to payments made by POLA pursuant to this Surety Agreement, the Obligor and the Trustee acknowledge and agree that such payments shall not constitute operation and maintenance costs or expenses under POLA's existing bond indenture, nor shall such payments be included in the calculation of the debt service coverage ratio for purposes of such bond indenture.

Section 2.02. **Surety Absolute**. The liability of Surety Providers under this Surety Agreement shall be absolute and unconditional irrespective of:

- (a) any lack of validity or enforceability of or defect or deficiency applicable to the Obligor in the Master Indenture or the Eighth Supplemental Indenture or any other documents executed in connection therewith; or
- (b) any modification, extension, waiver or change in scope of any of the terms of the Master Indenture or the Eighth Supplemental Indenture; or
- (c) any renewal, extension, acceleration or any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the Master Indenture or the Eighth Supplemental Indenture or any other agreement or instrument executed in connection therewith; or
- (d) except as to applicable statutes of limitation, any failure, omission, delay, waiver or refusal by the Trustee or Obligor to exercise, in whole or in part, any right or remedy held by Trustee or Obligor with respect to the Master Indenture or the Eighth Supplemental Indenture, including, but not limited to, any lack of diligence in collection, any failure to resort to or exhaust other rights, powers or remedies, or any other waiver or failure of the Trustee or Obligor to enforce any of the terms, covenants, agreements, conditions and provisions contained in the Master Agreement or the Eighth Supplemental Indenture; or

- (e) any change in the existence, structure or legal status of any Surety Provider or Obligor, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Obligor or its assets.

The obligations of the Surety Providers hereunder are several from each other or any other person, and are primary obligations of each Surety Provider. There are no conditions precedent to the enforcement of this Surety Agreement, except as expressly contained in Section 2.05. It shall not be necessary for the Trustee, in order to enforce payment by the Surety Providers under this Surety Agreement, to show any proof of Obligor's default, to exhaust its remedies against Obligor or any other guarantor or insurer, or any other person liable for the payment or performance of the Secured Obligations.

This Surety Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Secured Obligations (including accrued interest) are annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded or repaid by the Trustee or Obligor upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Obligor or any other guarantor or insurer, or upon or as a result of the appointment of a receiver or conservator of, or trustee for Obligor or any other guarantor or insurer or any substantial part of its property or otherwise, all as though such payment or payments had not been made.

Section 2.03. **Waiver.** This surety is a guaranty of payment and not of collection. Each Surety Provider hereby waives:

- (a) notice of acceptance of this Surety Agreement, of the creation or existence of any of the Secured Obligations and of any action by Trustee or Obligor in reliance hereon or in connection herewith;
- (b) notice of the entry into any amendments, supplements or modifications to the Master Indenture or the Eighth Supplemental Indenture or any other agreement or instrument executed in connection therewith; or any waiver or consent thereunder, including waivers of the payment and performance of the obligations thereunder;
- (c) notice of any increase, reduction or restructuring of Obligor's obligations under the Master Indenture or the Eighth Supplemental Indenture or any extension of time for the payment of any sums due and payable to the Bondholders;
- (d) except as expressly set forth in Section 2.05 hereof, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest, notice of default under the Master Indenture or the Eighth Supplemental Indenture or any other notice with respect to the Secured Obligations;
- (e) any requirement that suit be brought against, or any other action by Trustee or Obligor be taken against, or any notice of default or other notice be given to, or any demand be made on the Trustee or Obligor any other person, or that any other action be taken or not taken as a condition to each Surety Provider's liability for

the Secured Obligations under this Surety Agreement or as a condition to the enforcement of this Surety Agreement against each Surety Provider; and

- (f) any rights to set offs, recoupment, counterclaims, promptness, or diligence.

Section 2.04. **Enforcement Expenses**. Subject to the limit on each Surety Provider's liability hereunder set forth in Section 2.01, each Surety Provider agrees to pay on demand any and all out-of-pocket costs, including reasonable legal fees and expenses, and other expenses incurred by the Trustee in enforcing each Surety Provider's payment obligations under this Surety Agreement.

Section 2.05. **Demand and Payment**. Any demand by the Trustee for payment hereunder shall be in writing, signed by a duly authorized representative of the Trustee and delivered to each Surety Provider pursuant to Section 4.06 hereof, and shall include (a) reference this Surety Agreement, (b) the amount of the deficiency in the Series 2012 Debt Service Fund to pay the principal of, and interest on, the Series 2012 Bonds when due, (c) the amount of the demand made under this Surety Agreement necessary to address such deficiency, and (d) payment instructions, including bank name, routing number and bank account number, and such other information as may be relevant. Each Surety Provider shall pay, or cause to be paid, their pro rata share of the amount of each such demand within ten (10) Business Days of receipt of such demand. In addition, in the event that the Obligor anticipates that a demand may be required in any Bond Year, the Obligor shall provide written notice thereof to each Surety Provider (including an estimate of the amount of such demand) concurrently with the notice of estimated Shortfall Advances required pursuant to Section 7.3(h) of the Use and Operating Agreement. Except as set forth in this Section 2.05, there are no other requirements of notice, presentment or demand.

Section 2.06. **Waiver of Defenses**. Each Surety Provider agrees that except as expressly set forth herein, it will remain bound upon this Surety Agreement notwithstanding any defenses which, pursuant to the laws of suretyship or otherwise, would otherwise relieve a guarantor of its obligations under a surety or guaranty.

ARTICLE III

REPAYMENT OBLIGATIONS OF OBLIGOR AND SECURITY THEREFORE

Section 3.01. **Reimbursement for Payments Under Surety Agreement**. Each payment made by the Surety Providers under this Surety Agreement shall constitute a Debt Service Reserve Surety Repayment Obligation under Section 3.05 of the Master Indenture and, as such, shall be repaid by the Trustee from available Revenues, at such times and in such amounts, as provided in accordance with the flow of funds under Sections 3.03 and 3.05 of the Master Indenture. In particular, pursuant to Section 3.03(c) of the Master Indenture, five (5) Business Days prior to the last Business Day of each month, and subject to the prior transfer required under Section 3.03(a), the Trustee shall repay to each Surety Provider one-twelfth (1/12) of any Debt Service Reserve Surety Repayment Obligation, plus accrued interest thereon at a rate per annum equal to the interest rate on the six (6) month U.S. Treasury Bill (the "Interest Rate"), from the date of such payment by the Surety Provider to, but excluding, the date such payment is repaid in full. Such repayments shall be made without demand or notice by the Surety Providers. To the extent

that such repayment, including any interest thereon, is not repaid in full within twelve (12) months following the date of payment by the Surety Providers, then interest shall continue to accrue on all unpaid amounts at the Interest Rate until such unpaid amounts are repaid in full. Each Surety Provider acknowledges and agrees that repayments made by the Trustee under Sections 3.03 and 3.05 of the Master Indenture are subject to, and conditioned upon, the availability of sufficient Revenues under the Master Indenture and, to the extent that Revenues are not available to repay such payments and accrued interest when due, such failure shall not constitute a default or breach by the Trustee or Obligor hereunder.

Section 3.02. **Allocation of Repayments Between Surety Providers; Reinstatement of Liability Cap.** The Trustee and each Surety Provider agree that all Revenues applied to repay each Debt Service Reserve Surety Repayment Obligation pursuant to Section 3.01 hereof shall be equally divided between each Surety Provider. The Surety Providers and Trustee further agree that each repayment made pursuant to Section 3.01 hereof shall be applied to reinstate all or a portion of the Liability Cap to the extent of such repayment; provided, however, all interest payable pursuant to Section 3.01 hereof shall not be applied to the reinstatement of any portion of the Liability Cap. The Liability Cap shall be automatically reinstated to the extent of the reimbursement of such payments by the Trustee as provided in Section 3.01 hereof. The Trustee shall provide written notice to the Surety Providers and the Obligor no later than the fifth (5th) Business Day following such reinstatement, however, such notice is not a condition to the reinstatement.

Section 3.03. **Security for Repayments; Instruments of Further Assurance.** To the extent, but only to the extent, that the Maser Indenture pledges to the provider of a Debt Service Reserve Surety Policy, and grants a security interest and lien on Revenues in order to secure the Secured Obligations or provide a source of payment for the Secured Obligations, the Obligor hereby grants to each Surety Provider a security interest in and lien on, as the case may be, and pledges to each Surety Provider such Revenues as security for payment of all amounts due hereunder, which security interest, lien and pledge created or granted under this Section 3.03 shall be subordinate only to the interests of the Senior Lien Bondholders as provided in Section 3.03 of the Master Indenture. The Obligor agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all financing statements, if applicable, and all other further instruments as may be required by law or as shall reasonably be requested by the Surety Providers for the perfection of the security interest, if any, granted under this Section 3.03 and for the preservation and protection of all rights of the Surety Providers under this Section 3.03.

Section 3.04. **Certain Other Expenses.** The Obligor shall pay all reasonable fees and disbursements of each Surety Provider's counsel related to the preparation and execution of this Surety Agreement and any modifications hereto.

ARTICLE IV MISCELLANEOUS

Section 4.01. **Term.** This Surety Agreement shall continue in full force and effect until the earlier of (i) seven (7) years from the date of execution and delivery of this Surety Agreement; and (ii) the date on which all of the Secured Obligations are paid in full. Notwithstanding the

foregoing, at least thirty (30) days prior to the expiration of this Surety Agreement, the Trustee shall provide written notice to the Obligor and each Surety Provider of the estimated amount of cash, including investment earnings (or the available amount under any other then existing Debt Service Reserve Surety Policy) on deposit in the Series 2012 Debt Service Reserve Account as of the expiration date. If the amount on deposit is not expected to equal or exceed the Debt Service Reserve Requirement for the Series 2012 Bonds as of the expiration date, then each Surety Provider shall, upon written request from the Obligor, enter into a replacement surety agreement, on substantially the same terms and conditions contained in this Surety Agreement, such replacement surety agreement to be effective upon the expiration of this Surety Agreement; provided however, if the 2012 Lender is the then holder of the Series 2012 Bonds, then the Obligor shall not enter into such a replacement surety agreement without the prior written consent of the 2012 Lender, which consent shall not be unreasonably delayed, conditioned or withheld. This Surety Agreement may be terminated by the Obligor at any time prior to its expiration but only in the event that: (i) the Obligor provides at least sixty (60) days' prior written notice to the Trustee, each Surety Provider and the 2012 Lender, if the 2012 Lender is the then holder of the Series 2012 Bonds; and (ii) on or prior to the termination date, cash or, with the consent of the 2012 Lender, if the 2012 Lender is the then holder of the Series 2012 Bonds, a replacement surety or other form of Debt Service Reserve Surety Policy is delivered to the Trustee pursuant to and in accordance with Section 4.4 of the Eighth Supplemental Indenture. Upon termination hereof, each Surety Provider agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Secured Obligations that have accrued prior to the termination date.

Section 4.02. **Representations and Warranties**. Each Surety Provider represents and warrants as follows:

- (a) The Surety Provider is duly organized, validly existing and in good standing under the laws of the State of California and has full corporate power to execute, deliver and perform this Surety Agreement.
- (b) The execution, delivery and performance of this Surety Agreement have been and remain duly authorized by all necessary corporate action and do not contravene the Surety Provider's constitutional documents or any contractual restriction binding on the Surety Provider or its assets.
- (c) This Surety Agreement constitutes the legal, valid and binding obligation of the Surety Provider enforceable against the Surety Provider in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to general equity principles.

Section 4.03. **Exercise of Rights**. No failure or delay on the part of the Trustee to exercise any right, power or privilege under this Surety Agreement and no course of dealing among the Surety Providers and the Trustee or any other party shall operate as a waiver of any such right, power or privilege, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or

With a copy to attention; Chief Counsel

If to POLA:

City of Los Angeles Harbor Department
425 South Palos Verdes Street
San Pedro, California 90731
Attention: Chief Financial Officer

With a copy to:

City of Los Angeles Harbor Department
Thomas A. Russell, General Counsel
425 South Palos Verdes Street
San Pedro, California 90731

If to POLB:

[to come]

Section 4.07. Governing Law. This Surety Agreement and the rights and obligations of the parties under this Surety Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California.

Section 4.08. Counterparts. This Surety Agreement may be executed in any number of copies and by the different parties hereto on the same or separate counterparts, each of which shall be deemed to be an original instrument. Complete counterparts of this Surety Agreement shall be maintained by the Trustee.

Section 4.09. Severability. In the event any provision of this Surety Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

Approved as to form this ____ day of _____,
2012

**ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY**

By:
Title: Co-General Counsel

By: _____
By:
Title:

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

By: _____
By:
Title:

Approved as to form this ____ day of _____,
2012

**CITY OF LOS ANGELES, acting by and
through the Board of Harbor
Commissioners of the Port of Los Angeles**

CARMEN A. TRUTANICH, City Attorney

By: _____
By:
Title:

By:
Title:

Approved as to form this ____ day of _____,
2012

**CITY OF LONG BEACH, acting by and
through the Board of Harbor
Commissioners of the Port of Long Beach**

ROBERT E. SHANNON, City Attorney

By: _____
By:
Title:

By:
Title:

EXHIBIT A

On or prior to October 1	Annual Cash Deposit
2013	\$1,028,572
2014	1,028,572
2015	1,028,572
2016	1,028,572
2017	1,028,572
2018	1,028,572
2019	1,028,568