

OFFICE OF THE CITY ATTORNEY
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Long Beach, CA 90802-4511

1 RESOLUTION NO. RES-20-0055

2
3 A RESOLUTION OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH APPROVING THE INCURRENCE
5 AND ISSUANCE BY THE BOARD OF HARBOR
6 COMMISSIONERS, ON BEHALF OF THE CITY OF LONG
7 BEACH, IN AN AGGREGATE PRINCIPAL AMOUNT NOT
8 TO EXCEED \$500,000,000, OF A LOAN TO BE PROVIDED
9 BY THE UNITED STATES DEPARTMENT OF
10 TRANSPORTATION AND A RELATED SUBORDINATE
11 HARBOR REVENUE NOTE BOTH SECURED BY
12 SUBORDINATE HARBOR DEPARTMENT REVENUES AND
13 CERTAIN OTHER MATTERS
14

15 WHEREAS, the City Charter (the "Charter") of the City of Long Beach (the
16 "City") and Sections 3.52.110 through 3.52.150 of the Long Beach Municipal Code of the
17 City (the "Municipal Code") provide a procedure for the issuance of revenue bonds by the
18 City or by a Board of Commissioners, acting for and on behalf of the City; and

19 WHEREAS, pursuant to Article XII of the Charter, the City, acting by and
20 through its Board of Harbor Commissioners (the "Board"), is authorized to issue, on
21 behalf of the City, revenue bonds for harbor purposes; and WHEREAS, the City Charter
22 (the "Charter") of the City of Long Beach (the "City") and Sections 3.52.110 through
23 3.52.150 of the Long Beach Municipal Code of the City (the "Municipal Code") provide a
24 procedure for the issuance of revenue bonds by the City or by a Board of
25 Commissioners, acting for and on behalf of the City; and

26 WHEREAS, pursuant to Article XII of the Charter, the City, acting by and
27 through its Board of Harbor Commissioners (the "Board"), is authorized to issue, on
28 behalf of the City, revenue bonds for harbor purposes; and

1 WHEREAS, the City, acting by and through the Board, and the TIFIA
2 Lender (as hereinafter defined) (acting by and through the Federal Highway
3 Administrator), previously entered into a TIFIA loan agreement dated May 21, 2014,
4 pursuant to which the TIFIA Lender agreed to make a loan to the City, acting by and
5 through the Board (the "First TIFIA Loan") in a principal amount not to exceed
6 \$325,000,000 (the "First TIFIA Loan Amount"), for the purposes of financing and
7 refinancing the construction, acquisition, improvement and acquisition of a new bridge at
8 the Port of Long Beach to replace the existing Gerald Desmond Bridge; and

9 WHEREAS, the Board, acting on behalf of the City, has not drawn on the
10 First TIFIA Loan and the TIFIA Lender has not disbursed First TIFIA Loan proceeds to
11 the Board, acting on behalf of the City; and

12 WHEREAS, the Board, acting on behalf of the City, has determined that it is
13 in the best interest of the Board and the City to cancel the First TIFIA Loan and to incur a
14 new loan (the hereinafter defined TIFIA Loan) in a principal amount not to exceed
15 \$500,000,000; and

16 WHEREAS, the Board, acting on behalf of the City, pursuant to Article XII of
17 the Charter and certain sections of the Municipal Code, proposes to incur and issue, in
18 an aggregate principal amount not to exceed \$500,000,000 (a) a loan (the "TIFIA Loan")
19 to be provided by the United States Department of Transportation, acting by and through
20 the Executive Director of the Build America Bureau (the "TIFIA Lender"), and (b) to
21 evidence the payment obligations of the Board, acting on behalf of the City, on the TIFIA
22 Loan, a Subordinate Harbor Revenue Note (the "TIFIA Note"), respectively, for the
23 purposes of financing and refinancing the construction, acquisition, improvement and
24 acquisition of a new bridge at the Port of Long Beach to replace the existing Gerald
25 Desmond Bridge, pursuant to Resolution No. HD-2726 adopted by the Board on July 16,
26 2013, as amended (the "Master Subordinate Resolution"), as supplemented by a Sixth
27 Supplemental Subordinate Resolution adopted by the Board prior to the date hereof, a
28 draft form of which is attached hereto as "Exhibit A" (collectively, the "Subordinate Harbor

1 Resolutions”), and a TIFIA Loan Agreement to be entered into by the City, acting by and
2 through the Board, and the TIFIA Lender (the “TIFIA Loan Agreement”); and

3 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
4 follows:

5 Section 1. That the City Council, acting pursuant to Article XII of the
6 Charter and Sections 3.52.110 through 3.52.150 of the Municipal Code, does hereby
7 approve the incurrence and issuance, in an aggregate principal amount not to exceed
8 \$500,000,000, of the TIFIA Loan and, to evidence the payment obligations of the Board,
9 acting on behalf of the City, on the TIFIA Loan, the TIFIA Note pursuant to the
10 Subordinate Harbor Resolutions and the TIFIA Loan Agreement.

11 The TIFIA Loan and the TIFIA Note shall be incurred and issued,
12 respectively, as special, limited obligations of the City and shall be secured by a pledge
13 of and lien upon and shall be a charge upon and shall be payable from the subordinate
14 revenues of the Harbor Department and certain funds and accounts pledged under the
15 Subordinate Harbor Resolutions and the TIFIA Loan Agreement. Neither the TIFIA Loan
16 nor the TIFIA Note shall be a debt of the City, nor a legal or equitable pledge, charge, lien
17 or encumbrance upon any of the City’s property or upon any of the City’s income,
18 receipts or revenues, except the subordinate revenues of the Harbor Department and the
19 funds and accounts specifically pledged to the payment thereof under the Subordinate
20 Harbor Resolutions and the TIFIA Loan Agreement. The general fund of the City shall
21 not be liable for the payment of the TIFIA Loan or the TIFIA Note or the interest thereon,
22 nor shall the credit or the taxing power of the City be pledged therefor.

23 Section 2. That the City Manager, the City Treasurer, the City Clerk and
24 all other proper officers and officials of the City are hereby authorized and directed to
25 execute such other agreements, documents and certificates, and to perform such other
26 acts and deeds as may be necessary or convenient to effect the purposes of this
27 resolution.

28 Section 3. That the City Clerk is hereby authorized and directed to

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4511

1 forward to the Board, without delay, a certified copy of this resolution.

2 Section 4. That this resolution shall take effect immediately upon its
3 adoption by the City Council, and the City Clerk shall certify the vote adopting this
4 resolution.

5 I hereby certify that the foregoing resolution was adopted by the City
6 Council of the City of Long Beach at its meeting of April 21, 2020,
7 by the following vote:

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Ayes: Councilmembers: Zendejas, Pearce, Price, Supernaw,
Mungo, Andrews, Uranga, Austin,
Richardson.

Noes: Councilmembers: None.

Absent: Councilmembers: None.


City Clerk

EXHIBIT A

FORM OF SIXTH SUPPLEMENTAL SUBORDINATE RESOLUTION

RESOLUTION NO. HD-_____

RESOLUTION OF THE BOARD OF HARBOR COMMISSIONERS OF THE CITY OF LONG BEACH, CALIFORNIA, AUTHORIZING THE INCURRENCE OF A LOAN TO BE PROVIDED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION AND THE ISSUANCE OF THE CITY OF LONG BEACH, CALIFORNIA SUBORDINATE HARBOR REVENUE NOTE, SERIES 2020A (GERALD DESMOND BRIDGE – TIFIA LOAN); PROVIDING THE TERMS AND CONDITIONS OF SAID LOAN AND NOTE; AND PROVIDING FOR CERTAIN OTHER MATTERS RELATED THERETO

(SIXTH SUPPLEMENTAL SUBORDINATE RESOLUTION)

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RESOLUTION NO. HD-_____

RESOLUTION OF THE BOARD OF HARBOR COMMISSIONERS OF THE CITY OF LONG BEACH, CALIFORNIA, AUTHORIZING THE INCURRENCE OF A LOAN TO BE PROVIDED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION AND THE ISSUANCE OF THE CITY OF LONG BEACH, CALIFORNIA SUBORDINATE HARBOR REVENUE NOTE, SERIES 2020A (GERALD DESMOND BRIDGE – TIFIA LOAN); PROVIDING THE TERMS AND CONDITIONS OF SAID LOAN AND NOTE; AND PROVIDING FOR CERTAIN OTHER MATTERS RELATED THERETO

WITNESSETH:

WHEREAS, the City of Long Beach (the “*City*”) is a city organized and existing under a Charter (the “*Charter*”) duly and regularly adopted pursuant to the provisions of the Constitution of the State of California; and

WHEREAS, pursuant to Article XII of said Charter, the City, acting by and through its Board of Harbor Commissioners (the “*Board*”), is authorized to issue, on behalf of said City, revenue bonds for harbor purposes; and

WHEREAS, pursuant to Resolution No. HD-2726 adopted by the Board on July 16, 2013 (together with all amendments, modifications and supplements thereto, the “*Master Subordinate Resolution*”), the Board has heretofore authorized the issuance and/or incurrence of Subordinate Obligations (as defined in the Master Subordinate Resolution) on behalf of the City, by adoption of supplemental subordinate resolutions from time to time, with the payment of the principal, interest on and any redemption premiums thereon being secured by and payable solely from the Subordinate Revenues (as defined in the Master Subordinate Resolution); and

WHEREAS, the City, acting by and through the Board, and the TIFIA Lender (as hereinafter defined) (acting by and through the Federal Highway Administrator) previously entered into a TIFIA loan agreement dated May 21, 2014, pursuant to which the TIFIA Lender agreed to make a loan to the City, acting by and through the Board (the “*First TIFIA Loan*”) in a principal amount not to exceed \$325,000,000 (the “*First TIFIA Loan Amount*”), the proceeds of such First TIFIA Loan were expected to be used to finance and refinance the acquisition, construction, rehabilitation and equipping of the new bridge at the Port (as defined in the Master Subordinate Resolution) that will replace the existing Gerald Desmond Bridge; and

WHEREAS, the City, acting by and through the Board, has not drawn on the First TIFIA Loan and the TIFIA Lender has not disbursed First TIFIA Loan proceeds to the City, acting by and through the Board; and

WHEREAS, the Board has determined that it is in the best interest of the City to cancel the First TIFIA Loan and to incur a new loan (the hereinafter defined TIFIA Loan) in a principal amount not to exceed \$500,000,000; and

WHEREAS, the Board has determined that it is in the best interest of the City, to incur the TIFIA Loan pursuant to the TIFIA Loan Agreement (as hereinafter defined), from time to time, in a principal amount not to exceed \$500,000,000, in order to provide funds to finance and refinance the acquisition, construction, rehabilitation and equipping of the new bridge at the Port that will replace the existing Gerald Desmond Bridge; and

WHEREAS, public interest and necessity require the City, acting by and through the Board, to authorize the incurrence of the TIFIA Loan pursuant to the TIFIA Loan Agreement, from time to time, in a principal amount not to exceed \$500,000,000, and the issuance of the related TIFIA Note (as hereinafter defined), that will evidence the Board's payment obligations under the TIFIA Loan Agreement, for the purposes set forth in the Charter and this Sixth Supplemental Subordinate Resolution; and

WHEREAS, the TIFIA Loan, the TIFIA Note and the obligations incurred by the City, acting by and through the Board, pursuant to the terms of the TIFIA Loan Agreement, shall be Subordinate Obligations secured by, and payable from, Subordinate Revenues and such other funds and accounts as provided in the Master Subordinate Resolution and this Sixth Supplemental Subordinate Resolution; and

WHEREAS, there has been presented to this Board the following documents:

- (a) a form of the TIFIA Loan Agreement; and
- (b) a form of the Fiscal Agent Agreement (the "*Fiscal Agent Agreement*"), by and between the City, acting by and through the Board, and U.S. Bank National Association, as fiscal agent (the "*Fiscal Agent*");

NOW, THEREFORE, the Board of Harbor Commissioners of the City of Long Beach, California, DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

ARTICLE I

DETERMINATIONS; DEFINITIONS

Section 1.01. Sixth Supplemental Subordinate Resolution; Determinations. This Sixth Supplemental Subordinate Resolution is hereby adopted in accordance with the provisions of the Master Subordinate Resolution. The Board hereby determines that the incurrence of the TIFIA Loan and the issuance of the TIFIA Note, in the principal amount hereinafter authorized, for the purposes of financing and refinancing the acquisition, construction, rehabilitation and equipping of the Project (as hereinafter defined), is advisable from an economic and financial viewpoint.

In consideration of the acceptance of the TIFIA Loan Agreement and the TIFIA Note by the TIFIA Lender (as hereinafter defined) thereof from time to time, this Sixth Supplemental

Subordinate Resolution shall be deemed to be and shall constitute a contract between the City, acting by and through the Board, and the TIFIA Lender, and the covenants and agreements herein set forth to be performed by or on behalf of the City, the Board or the Department (as defined in the Master Subordinate Resolution) shall be for the benefit, security and protection of the TIFIA Lender.

Section 1.02. Definitions. All terms which are defined in Section 1.02 of the Master Subordinate Resolution shall, unless otherwise defined herein, have the same meanings, respectively, in this Sixth Supplemental Subordinate Resolution. Unless the context otherwise requires, the terms defined in this Section 1.02 shall, for all purposes of this Sixth Supplemental Subordinate Resolution and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and the plural forms of any of the terms herein defined. Unless otherwise defined in this Sixth Supplemental Subordinate Resolution, all terms used herein shall have the meanings assigned to such terms in the Master Subordinate Resolution.

“Adjusted Rate Coverage Ratio Deficiency” has the meaning given to such term in the TIFIA Loan Agreement.

“Administrative Officer to the Board” means the person at a given time who is the administrative officer to the Board (including any person serving in an acting or interim capacity) or such other title as the Board may from time to time assign for such position (including, but not limited to, Chief of Staff to the Board or Deputy Chief of Staff to the Board) and the officer or officers succeeding to such position as certified by the Board.

“Authorized Board Representative” means the President of the Board, the Vice President of the Board, the Executive Director, the Managing Director, Finance and Administration or the Director of Finance or such other officer or employee of the Board or the Department or other person which other officer, employee or person has been designated by the Board or the Department as an Authorized Board Representative by written notice delivered by the President of the Board, the Vice President of the Board, the Executive Director, the Managing Director, Finance and Administration or the Director of Finance to the TIFIA Lender and the Fiscal Agent.

“Bond Counsel” means Kutak Rock LLP or such other firm or firms of attorneys which are nationally recognized as experts in the area of municipal finance and which are familiar with the transactions contemplated under this Sixth Supplemental Subordinate Resolution and the TIFIA Loan Agreement and which are selected by the Board.

“Borrower’s Authorized Representative” means those individuals appointed as Borrower’s Authorized Representatives pursuant to Section 6.02 hereof and any other resolution of the Board to perform those duties set forth in the TIFIA Loan Agreement and this Sixth Supplemental Subordinate Resolution to be performed by a Borrower’s Authorized Representative.

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the federal government of the United States of America (including its departments and agencies) or the City are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or the State.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City or the Department and related to the execution and delivery of the TIFIA Loan Agreement, the incurrence of the TIFIA Loan and the issuance of the TIFIA Note, including but not limited to, advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of the Fiscal Agent, legal fees and charges, fees and disbursements of the TIFIA Lender, fees and disbursements of consultants and professionals, municipal and financial advisor fees and expenses, rating agency fees, fees and charges for preparation, execution, delivery and safekeeping of the TIFIA Loan Agreement and the TIFIA Note, and any other cost, charge or fee in connection with the original execution, delivery, issuance and incurrence of the TIFIA Loan Agreement, the TIFIA Note and the TIFIA Loan, respectively.

“Director of Finance” means the person at a given time who is the director of finance of the Department (including any person serving in an acting or interim capacity) or such other title as the Board may from time to time assign for such position and the officer or officers succeeding to such position as certified by the Board.

“Effective Date” has the meaning given to such term in the TIFIA Loan Agreement.

“First TIFIA Loan” has the meaning given to such term in the fourth recital paragraph of this Sixth Supplemental Subordinate Resolution.

“Fiscal Agent” means U.S. Bank National Association, and any successor appointed in accordance with Article VII of the Master Subordinate Resolution and the provisions of the Fiscal Agent Agreement.

“Fiscal Agent Agreement” means the Fiscal Agent Agreement, entered into by and between the City, acting by and through the Board, and the Fiscal Agent, with respect to the TIFIA Loan and the TIFIA Note.

“Master Subordinate Resolution” has the meaning given to such term in the third recital paragraph of this Sixth Supplemental Subordinate Resolution.

“Project” has the meaning given to such term in the TIFIA Loan Agreement.

“Semi-Annual Payment Date” has the meaning given to such term in the TIFIA Loan Agreement.

“Sixth Supplemental Subordinate Resolution” means this Resolution No. HD-_____ adopted by the Board on _____, 2020, as amended from time to time.

“Subordinate Resolution” means, collectively, the Master Subordinate Resolution, as amended and supplemented, and this Sixth Supplemental Subordinate Resolution, as amended and supplemented.

“Substantial Completion Date” has the meaning given to such term in the TIFIA Loan Agreement.

“*TIFIA Debt Service Reserve Fund*” means the “City of Long Beach, California Subordinate Harbor Revenue Note, Series 2020A (Gerald Desmond Bridge – TIFIA Loan) Reserve Fund” established and maintained pursuant to Article III hereof and the Fiscal Agent Agreement.

“*TIFIA Debt Service Reserve Requirement*” has the meaning given to such term in the TIFIA Loan Agreement.

“*TIFIA Lender*” means the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, and its successors and assigns.

“*TIFIA Loan*” has the meaning given to such term in the TIFIA Loan Agreement.

“*TIFIA Loan Agreement*” means the TIFIA Loan Agreement, by and between the City, acting by and through the Board, and the TIFIA Lender, and any and all modifications, alternations, amendments and supplements thereto.

“*TIFIA Loan Agreement Event of Default*” means the occurrence of any event or circumstance specified in Section 19(a) of the TIFIA Loan Agreement.

“*TIFIA Note*” means the “City of Long Beach, California Subordinate Harbor Revenue Note, Series 2020A (Gerald Desmond Bridge – TIFIA Loan)” authorized and issued pursuant to the Master Subordinate Resolution, as supplemented by this Sixth Supplemental Subordinate Resolution.

“*TIFIA Permitted Investments*” has the meaning specified for the definition of “Permitted Investments” as set forth in the TIFIA Loan Agreement.

ARTICLE II

THE TIFIA LOAN AND THE TIFIA NOTE

Section 2.01. Authorization to Cancel First TIFIA Loan, Incur TIFIA Loan and Issue TIFIA Note; Determinations of the Board.

(a) The Board hereby determines that the cancellation of the First TIFIA Loan and the incurrence, from time to time, of the TIFIA Loan and the issuance of the related TIFIA Note for the purposes of financing and refinancing the acquisition, construction, rehabilitation and equipping of the Project is advisable from an economic and financial viewpoint. The Board hereby authorizes (i) the cancellation of the First TIFIA Loan, and (ii) the incurrence of the TIFIA Loan, from time to time, and the issuance of the TIFIA Note pursuant to, and subject to, the terms of the Master Subordinate Resolution, this Sixth Supplemental Subordinate Resolution and the TIFIA Loan Agreement for the purposes of financing and refinancing the acquisition, construction, rehabilitation and equipping of the Project, provided that the aggregate principal amount of the TIFIA Loan outstanding at any one time shall not exceed \$500,000,000.

(b) The TIFIA Loan and the TIFIA Note shall be a Series of Subordinate Obligations created under the Master Subordinate Resolution, shall be incurred and issued, respectively, pursuant to the Law and under the Subordinate Resolution and the TIFIA Loan Agreement, and the TIFIA Note shall be designated as the “City of Long Beach, California Subordinate Harbor Revenue Note, Series 2020A (Gerald Desmond Bridge – TIFIA Loan)”. The TIFIA Loan and the TIFIA Note shall be incurred and issued, respectively, as, and shall constitute, Subordinate Obligations pursuant to Article III of the Master Subordinate Resolution.

Section 2.02. Form, Execution and Transfer of TIFIA Note.

(a) The TIFIA Note and the certificate of authentication to be executed thereon shall be in substantially the form set forth as Exhibit A attached hereto. The maturity date and interest rate of the TIFIA Note shall be inserted therein in conformity with the provisions of the TIFIA Loan Agreement. The TIFIA Note shall be issued in registered form, but shall not be issued in book-entry form.

(b) The TIFIA Note shall be executed in the name and on behalf of the City with the facsimile or manual signature of the President of the Board or the Treasurer, and attested by the facsimile or manual signature of the Administrative Officer to the Board.

(c) The entity in whose name the TIFIA Note shall be registered in the registration books of the Fiscal Agent at any time shall be deemed and treated as the absolute Holder thereof for all purposes of the Subordinate Resolution, whether or not the TIFIA Note shall be overdue, and the City and the Fiscal Agent shall not be affected by any notice to the contrary, but such registration may be changed as herein provided. Payment of, or on account of, the principal of and interest on the TIFIA Note shall be made only to such Holder. All such payments shall be valid and effectual to satisfy and discharge the liability upon the TIFIA Note to the extent of the sum or sums so paid. The Holder of the TIFIA Note shall at all times be the party to the TIFIA Loan Agreement having all rights and obligations of the “TIFIA Lender” thereunder. Accordingly, the TIFIA Note may be transferred by a Holder only to a transferee that is a party to the TIFIA Loan Agreement having all rights and obligations of the “TIFIA Lender” thereunder. The Fiscal Agent shall not register the transfer or exchange of the TIFIA Note unless the Holder’s prospective transferee delivers to the Fiscal Agent a letter substantially in the form as set forth in Exhibit B attached hereto. The Fiscal Agent may rely on the letter in making a transfer or exchange of the TIFIA Note without any investigation. In the event there is more than one Holder of the TIFIA Note, payments of principal of and interest on the TIFIA Note shall be made ratably, based on the aggregate principal amount of the TIFIA Note held by each such Holder.

Section 2.03. Terms of the TIFIA Loan and the TIFIA Note.

(a) Prior to the incurrence of the TIFIA Loan, all conditions precedent set forth in Section 12(b) of the TIFIA Loan Agreement shall be satisfied.

(b) Pursuant to the provisions of Section 3.01 of the Master Subordinate Resolution, the Board hereby elects to provide for additional terms and conditions of the TIFIA Loan and the TIFIA Note (including, but not limited to, the items listed in clauses (c), (d), (g) and (k) in the second paragraph of Section 3.01 of the Master Subordinate Resolution) in the TIFIA Loan Agreement. All of the terms and conditions of the TIFIA Loan and the TIFIA Note shall be governed by the terms and provisions of the Subordinate Resolution and the TIFIA Loan Agreement. The TIFIA Loan shall be incurred and the TIFIA Note shall be issued in accordance with the terms of the Subordinate Resolution and the TIFIA Loan Agreement.

(c) The TIFIA Loan and the TIFIA Note shall bear interest at the rate or rates set forth in the TIFIA Loan Agreement from the date the TIFIA Lender first disburses proceeds of the TIFIA Loan to the City, acting by and through the Board, and shall be payable on the dates set forth in the TIFIA Loan Agreement and the TIFIA Note. The TIFIA Loan and the TIFIA Note shall not have a term longer than 35 years from the Substantial Completion Date.

(d) The TIFIA Loan shall be subject to prepayment and acceleration, and the TIFIA Note shall be subject to redemption and acceleration, prior to maturity in the amounts, at the times and in the manner set forth in the TIFIA Loan Agreement.

(e) On the Effective Date, the City, acting by and through the Board, will issue the TIFIA Note in order to evidence the obligation of the City, acting by and through the Board, to repay the TIFIA Loan, together with interest thereon, from time to time at the rates and dates and times established in accordance with the TIFIA Loan Agreement. Principal of the TIFIA Loan as reflected in the TIFIA Note shall be payable on the dates established in accordance with the TIFIA Loan Agreement, subject to any prepayment or acceleration of the TIFIA Loan.

(f) The TIFIA Loan and the TIFIA Note may not be incurred or issued, as applicable, except in accordance with the Subordinate Resolution and the TIFIA Loan Agreement.

Section 2.04. Payment of TIFIA Loan and TIFIA Note. The City, acting by and through the Board, as provided in Section 6.02 of the Master Subordinate Resolution, covenants and agrees that it will duly and punctually pay or cause to be paid from the Subordinate Revenues and to the extent thereof the principal of and interest on the TIFIA Loan and the TIFIA Note. The Treasurer will make all payments of principal of and interest on the TIFIA Loan and the TIFIA Note directly to the TIFIA Lender in accordance with the provisions of the TIFIA Loan Agreement. The principal of and the interest on the TIFIA Loan and the TIFIA Note shall be paid in federal or other immediately available funds in such coin or currency of the United States of America as, at the respective times of payment, is legal tender for the payment of public and private debts. Notwithstanding anything herein or in the Master Subordinate Resolution to the contrary, no presentation or surrender of the TIFIA Note shall be required for any payment of principal of or interest on the TIFIA Loan and the TIFIA Note.

Section 2.05. Deposits to Interest Account and Principal Account.

(a) **Interest Account.** Notwithstanding anything in Section 5.02(a) of the Master Subordinate Resolution to the contrary, the Treasurer shall set aside in the Interest Account, as soon as practicable in each month after all required deposits described in paragraphs 1, 2 and 3 of Section 5.03(B) of the Master Senior Resolution have been made, an amount equal to at least one-sixth of the aggregate half-yearly amount of interest becoming due and payable on the TIFIA Loan and the TIFIA Note during the next ensuing six months, until the requisite half-yearly amount of interest on the TIFIA Loan and the TIFIA Note is on deposit in such account. No deposit need be made into the Interest Account with respect to interest coming due on the TIFIA Loan and the TIFIA Note if the amount contained therein is at least equal to the interest to become due and payable on the Semi-Annual Payment Date falling within the next six (6) months.

(b) **Principal Account.** Notwithstanding anything in Section 5.02(b) of the Master Subordinate Resolution to the contrary, the Treasurer shall set aside in the Principal Account, as soon as practicable in each month after all required deposits described in paragraphs 1, 2 and 3 of Section 5.03(B) of the Master Senior Resolution have been made, an amount equal to at least one-twelfth of the aggregate amount of principal becoming due and payable on the TIFIA Loan and the TIFIA Note within the next twelve (12) months. No deposit need be made into the Principal Account with respect to the TIFIA Loan and the TIFIA Note so long as there shall be in such account moneys sufficient to pay the principal of the TIFIA Loan and the TIFIA Note within the next twelve (12) months.

ARTICLE III

TIFIA DEBT SERVICE RESERVE FUND

Section 3.01. Establishment, Pledge and Funding of TIFIA Debt Service Reserve Fund.

(a) Pursuant to the Fiscal Agent Agreement, the City, acting by and through the Board, shall establish with the Fiscal Agent and shall cause the Fiscal Agent to administer and hold in trust a Subordinate Debt Service Reserve Fund designated as the “City of Long Beach, California Subordinate Harbor Revenue Note, Series 2020A (Gerald Desmond Bridge – TIFIA Loan) Reserve Fund” (the “**TIFIA Debt Service Reserve Fund**”). All amounts in the TIFIA Debt Service Reserve Fund are hereby pledged to the TIFIA Lender to secure the payment of the principal of and interest on the TIFIA Loan and the TIFIA Note in accordance with their terms.

(b) In accordance with Section 15(k)(iii) of the TIFIA Loan Agreement, if, at any time, after the Effective Date, there is an Adjusted Rate Coverage Ratio Deficiency, the Treasurer shall transfer, within sixty (60) days of the date on which the Harbor Department has knowledge or has been notified by the TIFIA Lender of such Adjusted Rate Coverage Ratio Deficiency and in any event prior to the next succeeding Semi-Annual Payment Date, any surplus revenues as described in the second paragraph of Section 5.01 of the Master Subordinate Resolution or such other available moneys of the Harbor

Department to the Fiscal Agent for deposit in the TIFIA Debt Service Reserve Fund in an amount sufficient to cause the balance in the TIFIA Debt Service Reserve Fund to equal the TIFIA Debt Service Reserve Requirement. At all times that an Adjusted Rate Coverage Ratio Deficiency exists, the Board shall maintain an amount equal to the TIFIA Debt Service Reserve Requirement in the TIFIA Debt Service Reserve Fund. If at any time, an Adjusted Rate Coverage Ratio Deficiency shall cease to exist, any amounts on deposit in the TIFIA Debt Service Reserve Fund may be withdrawn by the City, acting by and through the Board, and deposited into the Harbor Revenue Fund on (i) if the Adjusted Rate Coverage Ratio Deficiency existed for two (2) years or less, the first anniversary of the Semi-Annual Payment Date on which the Adjusted Rate Coverage Ratio Deficiency ceased to exist, or (ii) if the Adjusted Rate Coverage Ratio Deficiency existed for greater than two (2) years, the second anniversary of the Semi-Annual Payment Date on which the Adjusted Rate Coverage Ratio Deficiency ceased to exist.

(c) All amounts in the TIFIA Debt Service Reserve Fund shall be used and withdrawn by the Treasurer solely for the purpose of paying the principal of and interest on the TIFIA Loan and the TIFIA Note in the event moneys in the Principal Account and/or the Interest Account are insufficient therefor to pay the principal of and interest on the TIFIA Loan and the TIFIA Note. In the event amounts in the TIFIA Debt Service Reserve Fund exceed the TIFIA Debt Service Reserve Requirement, such excess shall be transferred or caused to be transferred by the Fiscal Agent to the Treasurer for deposit in the Harbor Revenue Fund.

Section 3.02. Investment of Moneys in the TIFIA Debt Service Reserve Fund. All moneys in the TIFIA Debt Service Reserve Fund shall be invested solely in TIFIA Permitted Investments maturing or available on demand not later than each date on which it is estimated that such moneys will be required by the Treasurer to pay the principal of and/or interest on the TIFIA Loan and the TIFIA Note.

All interest, profits and other income received from the investment of moneys in the TIFIA Debt Service Reserve Fund shall be transferred to the Harbor Revenue Fund when received, provided that after such transfer the amounts on deposit in the TIFIA Debt Service Reserve Fund are equal to or greater than the TIFIA Debt Service Reserve Requirement. Notwithstanding anything to the contrary contained in this paragraph, an amount of interest received with respect to any TIFIA Permitted Investment equal to the amount of accrued interest, if any, paid as part of the purchase price of such TIFIA Permitted Investment shall be credited to the TIFIA Debt Service Reserve Fund.

The Treasurer shall keep (and the City, acting by and through the Board, shall cause the Fiscal Agent to keep) proper books of record and accounts containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the moneys in the TIFIA Debt Service Reserve Fund. Such records shall specify for each TIFIA Permitted Investment (a) its purchase price, (b) identifying information, including par amount, coupon rate, and payment dates, (c) the amount received at maturity or its sale price, as the case may be, including accrued interest, (d) the amounts and dates of any payments made with respect thereto, and (e) the dates of acquisition and disposition or maturity.

ARTICLE IV

PLEDGE AND PAYMENT

The TIFIA Loan and the TIFIA Note are Subordinate Obligations and, as such, are special limited obligations of the City, acting by and through the Board, secured by a pledge of and shall be a lien upon and shall be payable solely from the funds, assets and security described hereunder and under the Subordinate Resolution.

The City, acting by and through the Board, hereby pledges, places a lien upon and assigns Subordinate Revenues to secure the payment of the principal of and interest on the TIFIA Loan and the TIFIA Note in accordance with their terms and the terms of the Subordinate Resolution and the TIFIA Loan Agreement. The Subordinate Revenues constitute a trust fund for the security and payment of the interest on and principal of the TIFIA Loan and the TIFIA Note. The TIFIA Lender, as holder of the TIFIA Note, any other holder of the TIFIA Note, and the holders from time to time of the other Subordinate Obligations and any other future parity Subordinate Obligations, shall share *pari passu* without priority or distinction of one over the other in the Subordinate Revenues.

To provide additional security for the payment of the principal of and interest on the TIFIA Loan and the TIFIA Note as the same shall become due and payable, the City, acting by and through the Board, hereby pledges and grants a lien upon, subject only to the provisions of the Subordinate Resolution permitting the application thereof for purposes of and on the terms and conditions set forth herein and therein, (a) amounts held for the payment of the TIFIA Loan and the TIFIA Note by the Treasurer in the Subordinate Debt Service Fund, (b) amounts held by the Fiscal Agent in the TIFIA Debt Service Reserve Fund, (c) the proceeds of any other evidences of indebtedness of the City, acting by and through the Board, issued or incurred solely for the payment of the principal of and interest on the TIFIA Loan and the TIFIA Note, and (d) any other moneys of the Board, the Department or the City hereafter pledged by the City, acting by and through the Board, to the payment of the principal of and interest on the TIFIA Loan and the TIFIA Note.

ARTICLE V

APPROVAL OF TIFIA LOAN AGREEMENT, FISCAL AGENT AND FISCAL AGENT AGREEMENT

Section 5.01. Approval of TIFIA Loan Agreement. The form, terms and provisions of the TIFIA Loan Agreement is in all respects approved, and an Authorized Board Representative, any one or more thereof, is hereby authorized, empowered and directed to execute, acknowledge and deliver the TIFIA Loan Agreement, including counterparts thereof, in the name and on behalf of the City, acting by and through the Board. The TIFIA Loan Agreement, as executed and delivered, shall be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the Authorized Board Representative executing the same; the execution thereof shall constitute conclusive evidence of the Board's approval of any and all changes or revisions therein from the form of the TIFIA Loan Agreement now before this meeting; and from and after the execution and delivery of the TIFIA Loan Agreement, the officers, agents and employees of the Board and the Department are hereby authorized, empowered and

directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the TIFIA Loan Agreement.

Section 5.02. Approval of Fiscal Agent and Fiscal Agent Agreement. U.S. Bank National Association is hereby appointed as Fiscal Agent with respect to the TIFIA Loan and the TIFIA Note. The Fiscal Agent shall signify its acceptance of its duties hereunder by executing and delivering to the City, acting by and through the Board, a written acceptance in the form of the Fiscal Agent Agreement, in which the Fiscal Agent agrees to perform said duties and obligations as set forth in the Master Subordinate Resolution, this Sixth Supplemental Subordinate Resolution and the Fiscal Agent Agreement. The form, terms and provisions of the Fiscal Agent Agreement are in all respects approved, and an Authorized Board Representative, any one or more thereof, is hereby authorized, empowered and directed to execute, acknowledge and deliver the Fiscal Agent Agreement including counterparts thereof, in the name and on behalf of the City, acting by and through the Board. The Fiscal Agent Agreement, as executed and delivered, shall be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the Authorized Board Representative executing the same; the execution thereof shall constitute conclusive evidence of the Board's approval of any and all changes or revisions therein from the form of the Fiscal Agent Agreement now before this meeting; and from and after the execution and delivery of the Fiscal Agent Agreement, the officers, agents and employees of the Board and the Department are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Fiscal Agent Agreement.

ARTICLE VI

ADDITIONAL AUTHORIZATIONS; BORROWER'S AUTHORIZED REPRESENTATIVES

Section 6.01. Additional Authorizations. Each Authorized Board Representative and all officers, agents and employees of the Board and the Department, for and on behalf of the City, acting by and through the Board, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the TIFIA Loan Agreement, the TIFIA Note and the Fiscal Agent Agreement and to carry out the terms thereof. Each Authorized Board Representative and all other officers, agents and other employees of the Board and the Department are further authorized and directed, for and on behalf of the City, acting by and through the Board, to execute all papers, documents, certificates and other instruments that may be required in order to carry out the authority conferred by this Sixth Supplemental Subordinate Resolution, the Master Subordinate Resolution, the TIFIA Loan Agreement and the Fiscal Agent Agreement or to evidence the same authority and its exercise. The foregoing authorization includes, but is in no way limited to, authorizing the Department to pay the Costs of Issuance associated with the execution and delivery of the TIFIA Loan Agreement and the TIFIA Note and the incurrence of the TIFIA Loan and the fees and costs of the TIFIA Lender, and authorizing the execution by an Authorized Board Representative, any one or more thereof, of an oversight agreement required by the TIFIA Loan Agreement. All actions heretofore taken by the officers, agents and employees of the Board and the Department in furtherance of this Sixth Supplemental Subordinate Resolution are hereby confirmed, ratified and approved.

Section 6.02. Borrower's Authorized Representatives. The President of the Board, the Vice President of the Board, the Executive Director, the Managing Director-Finance and Administration, the Director of Finance and such other officer or employee of the Board or the Department designated by the Board, are each appointed as Borrower's Authorized Representatives under the terms of this Sixth Supplemental Subordinate Resolution and the TIFIA Loan Agreement. The Borrower's Authorized Representatives are, and each of them is, hereby authorized and are hereby directed to perform those duties set forth in this Sixth Supplemental Subordinate Resolution, the TIFIA Loan Agreement and the TIFIA Note. The Borrower's Authorized Representatives are, and each of them is, also authorized to make representations, certifications and warranties in connection with the execution and delivery of the TIFIA Loan Agreement, the incurrence of the TIFIA Loan and the issuance of the TIFIA Note as and when required in this Sixth Supplemental Subordinate Resolution, the TIFIA Loan Agreement and the TIFIA Note. The Borrower's Authorized Representatives are hereby further authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of this Sixth Supplemental Subordinate Resolution, the TIFIA Loan Agreement and the TIFIA Note.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Approval of the City. The Board hereby requests the City Council to approve the incurrence of the TIFIA Loan and the issuance of the TIFIA Note pursuant to the Master Subordinate Resolution, this Sixth Supplemental Subordinate Resolution and the TIFIA Loan Agreement.

Section 7.02. TIFIA Loan and TIFIA Note Subject to the Master Subordinate Resolution. The TIFIA Loan and the TIFIA Note are and will be incurred and issued, respectively, under and subject to the terms of the Master Subordinate Resolution and will be secured and payable from Subordinate Revenues and other security as provided for in the Master Subordinate Resolution and this Sixth Supplemental Subordinate Resolution. Except as expressly provided in this Sixth Supplemental Subordinate Resolution, every term and condition contained in the Master Subordinate Resolution shall apply to this Sixth Supplemental Subordinate Resolution and to the TIFIA Loan and the TIFIA Note with the same force and effect as if it were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this Sixth Supplemental Subordinate Resolution.

Section 7.03. Additional Event of Default and Remedies.

(a) As permitted by Sections 10.01(f) and 10.10 of the Master Subordinate Resolution, there is hereby provided an additional Event of Default with respect to the TIFIA Loan and the TIFIA Note:

“A TIFIA Loan Agreement Event of Default shall be an Event of Default under Section 10.01 of the Master Subordinate Resolution with respect to the TIFIA Loan and the TIFIA Note.”

(b) As permitted by Sections 10.02(a)(v) and 10.10 of the Master Subordinate Resolution, there are hereby provided additional remedies upon the occurrence and continuance of any Event of Default with respect to the TIFIA Loan and the TIFIA Note:

“The remedies provided for in the TIFIA Loan Agreement upon the occurrence and continuation of an Event of Default shall be additional remedies allowed to be undertaken by the TIFIA Lender under Section 10.02 of the Master Subordinate Resolution with respect to the TIFIA Loan and the TIFIA Note.”

Section 7.04. Severability of Invalid Provisions. If any one or more of the provisions contained in this Sixth Supplemental Subordinate Resolution or the TIFIA Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Sixth Supplemental Subordinate Resolution or the TIFIA Note, as applicable, and such invalidity, illegality or unenforceability shall not affect any other provision of this Sixth Supplemental Subordinate Resolution or the TIFIA Note, as applicable, and this Sixth Supplemental Subordinate Resolution or the TIFIA Note, as applicable, shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Board hereby declares that it would have adopted this Sixth Supplemental Subordinate Resolution and each and every other Article, Section, paragraph, sentence, clause or phrase hereof and authorized the execution and delivery of the TIFIA Loan Agreement, the incurrence of the TIFIA Loan and the issuance of the TIFIA Note pursuant thereto irrespective of the fact that any one or more Articles, Sections, paragraphs, sentences, clauses or phrases of this Sixth Supplemental Subordinate Resolution may be held illegal, invalid or unenforceable.

Section 7.05. Proceedings Constitute Contract. The provisions of this Sixth Supplemental Subordinate Resolution shall constitute a contract between the City, acting by and through the Board, and the TIFIA Lender, and the provisions hereof shall be enforceable by the TIFIA Lender by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is now or may hereafter be authorized under the laws of the State in any court of competent jurisdiction.

After the Effective Date, this Sixth Supplemental Subordinate Resolution shall be irrevocable, but shall be subject to modification to the extent and in the manner provided in the Master Subordinate Resolution and the TIFIA Loan Agreement, but to no greater extent and in no other manner.

Section 7.06. Article and Section Headings and References; Interpretation. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Sixth Supplemental Subordinate Resolution.

All references herein to “Article,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Sixth Supplemental Subordinate Resolution; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Sixth Supplemental Subordinate Resolution as a whole and not to any particular

Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

Section 7.07. Governing Law. This Sixth Supplemental Subordinate Resolution shall be construed and governed in accordance with the laws of the State of California.

Section 7.08. Payments and Transfer on Business Day. Except as otherwise provided in the TIFIA Loan Agreement, any payments or transfers which would otherwise become due on any day which is not a Business Day shall become due or shall be made on the next succeeding Business Day and no interest shall accrue on the amount due on such Semi-Annual Payment Date or other non-Business Day.

Section 7.09. Effective Date of Sixth Supplemental Subordinate Resolution. This Sixth Supplemental Subordinate Resolution shall take effect immediately upon its adoption by the Board, and the Secretary of the Board shall certify to the vote adopting this Sixth Supplemental Subordinate Resolution and shall cause a certified copy of this Sixth Supplemental Subordinate Resolution to be filed forthwith with the City Clerk of the City of Long Beach (the "**City Clerk**"). The City Clerk shall post this Sixth Supplemental Subordinate Resolution in three conspicuous places in the City.

[Remainder of page intentionally left blank.]

I hereby certify that the foregoing resolution was adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of _____, 2020 by the following vote:

Ayes: Commissioners _____

Noes: Commissioners _____

Absent: Commissioners _____

Not Voting: Commissioners _____

Secretary

EXHIBIT A
FORM OF TIFIA NOTE

THIS TIFIA NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATE OR JURISDICTION.

UNITED STATES OF AMERICA

No. R-1

Not to Exceed \$500,000,000

CITY OF LONG BEACH, CALIFORNIA
SUBORDINATE HARBOR REVENUE NOTE
SERIES 2020A (GERALD DESMOND BRIDGE – TIFIA LOAN)

Holder:	UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau
Maturity Date:	The May 15th or November 15th occurring on or immediately prior to the 35th anniversary of the Substantial Completion Date
Maximum Principal Amount:	\$500,000,000 (FIVE HUNDRED MILLION AND NO/100 DOLLARS)
Interest Rate:	_____ %
Issue Date:	_____, 2020

THE CITY OF LONG BEACH, a municipal corporation and chartered city situated in the County of Los Angeles, State of California (the "City"), acting by and through its Board of Harbor Commissioners (hereinafter called the "Borrower"), FOR VALUE RECEIVED, hereby promises to pay, solely from Subordinate Revenues, as hereinafter provided, to the order of the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, and its successors and assigns (the "TIFIA Lender" or the "Holder"), the lesser of (a) the Maximum Principal Amount set forth above, and (b) the aggregate unpaid principal amount of all disbursements (the "Disbursements") made by the TIFIA Lender in accordance with the provisions of the TIFIA Loan Agreement, dated [_____], 2020 (the "TIFIA Loan Agreement"), by and between the Borrower and the TIFIA Lender (such lesser amount being hereinafter referred to as the "Outstanding TIFIA Loan Balance"), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate (as defined in the TIFIA Loan Agreement) on the Outstanding TIFIA Loan Balance, and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Loan Agreement, which is hereby made a part hereof. Each Disbursement made by the TIFIA Lender to the Borrower, pursuant to the TIFIA Loan Agreement, and each prepayment made on account of the Outstanding TIFIA Loan Balance,

shall be recorded by or on behalf of the TIFIA Lender and endorsed on the grid attached hereto as Appendix One, with a copy to the Harbor Department, in accordance with the terms of the TIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with Appendix Two, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. Such Appendix Two shall be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the TIFIA Loan Agreement. Payments hereon are to be made in accordance with Section 36 of the TIFIA Loan Agreement as the same become due. Principal of and interest on this TIFIA Note shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America which at the date of payment is legal tender for the payment of public and private debts.

This TIFIA Note has been executed under and pursuant to the TIFIA Loan Agreement and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Loan Agreement for all details relating to the obligations of the Borrower hereunder. All capitalized terms used in this TIFIA Note and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement.

This TIFIA Note comprises the duly authorized issue of "City of Long Beach, California Subordinate Harbor Revenue Note, Series 2020A (Gerald Desmond Bridge – TIFIA Loan)" (the "TIFIA Note") which has been issued pursuant to Article XII of the City Charter of the City of Long Beach, California, Title 3, Chapter 3.52, Division I of the Municipal Code of the City of Long Beach, California (collectively, the "Law"), Resolution No. HD-2726, adopted by the Board of Harbor Commissioners of the City (the "Board") on July 16, 2013 (together with all amendments and modifications thereto, the "Subordinated Master Resolution"), Resolution No. HD-_____, adopted by the Board on _____, 2020 (together with all amendments and modifications thereto, the "Sixth Supplemental Subordinate Resolution" and, together with the Subordinated Master Resolution, the "Subordinate Resolution") and the TIFIA Loan Agreement.

Reference is hereby made to the TIFIA Loan Agreement, the Subordinate Resolution and the Law for a description of the terms pursuant to which this TIFIA Note is issued and the provisions with regard to the nature and extent of the pledge of, and lien and charge upon, the Subordinate Revenues made by the Borrower in favor of the holder of this TIFIA Note pursuant to the TIFIA Loan Agreement, the Subordinate Resolution and the Law. All of the terms of the TIFIA Loan Agreement, the Subordinate Resolution and the Law are hereby incorporated herein and constitute a contract between the Borrower and the holder of this TIFIA Note, and by acceptance hereof, the holder of this TIFIA Note assents to said terms and conditions.

This TIFIA Note is a special limited obligation of the City payable from and secured by a pledge of, and a lien and charge upon, the Subordinate Revenues on a parity with all Subordinate Obligations (as defined in the Subordinated Master Resolution) and all other debt incurred and payable from Subordinate Revenues on a parity with the Subordinate Obligations. The principal of and interest on this TIFIA Note are not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues, except the Subordinate Revenues. The general fund of the City is not liable for the payment of this

TIFIA Note or any interest hereon, nor is the credit or the taxing power of the City pledged therefor. The holder of this TIFIA Note shall not compel the exercise of the taxing power of the City or the forfeiture of any of its property for the payment of this TIFIA Note or any interest hereon.

This TIFIA Note is payable as to principal and interest thereof, exclusively from the Subordinate Revenues and other funds pledged to the payment thereof under the Subordinate Resolution.

This TIFIA Note and the interest hereon are junior and subordinate in all respects to the Senior Bonds and the Senior Parity Debt as to lien on and source and security for payment from the Revenues.

This TIFIA Note may be redeemed at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be redeemed shall be determined by the Borrower in accordance with the TIFIA Loan Agreement; provided, however, that any redemption in part shall be in principal amounts of U.S.\$1,000,000 or any integral multiple of U.S.\$1 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender such principal amount of this TIFIA Note to be redeemed, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment in accordance with the TIFIA Loan Agreement.

On each payment due date, payments hereon are to be made in the manner and at the place specified by the Holder pursuant to the TIFIA Loan Agreement.

The rights and obligations of the Borrower and of the Holders of this TIFIA Note may be modified or amended from time to time in the manner, to the extent and upon the terms provided in the Subordinate Resolution and the TIFIA Loan Agreement.

This TIFIA Note may be transferred without charge upon the register required to be kept by the Fiscal Agent, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of this TIFIA Note for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form approved by the Fiscal Agent. Whenever this TIFIA Note is surrendered for transfer, the Borrower shall execute and the Fiscal Agent shall authenticate and deliver to the transferee a new TIFIA Note of the same tenor, interest rate and maturity and for a like aggregate principal amount.

Pursuant to the Sixth Supplemental Subordinate Resolution, the Holder of this TIFIA Note shall at all times be the party to the TIFIA Loan Agreement having all rights and obligations of the "TIFIA Lender" under the TIFIA Loan Agreement. The Fiscal Agent shall not register any transfer or exchange of this TIFIA Note unless the Holder's prospective transferee delivers to the Fiscal Agent a letter substantially in the form as set forth in Exhibit B attached to the Sixth Supplemental Subordinate Resolution.

Any delay on the part of the TIFIA Lender in exercising any right hereunder or under the TIFIA Loan Agreement shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in the issuance of this TIFIA Note do exist, have happened, and have been performed in due time, form and manner as required by the Constitution and laws of the State of California and the Charter of the City and that this TIFIA Note, together with all other indebtedness of the Borrower pertaining to the Subordinate Revenues, is within every debt and other limit prescribed by the Constitution and laws of the State of California and the Charter of the City and is not in excess of the amount of indebtedness permitted to be issued under the Subordinate Resolution.

This TIFIA Note is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State of California shall govern its construction to the extent such federal laws are not applicable.

This TIFIA Note shall not be entitled to any benefit under the Subordinate Resolution, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been executed and dated by the Fiscal Agent.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Board of Harbor Commissioners of the City of Long Beach, California has caused this TIFIA Note to be signed by the President of the Board and attested by the Chief of Staff to the Board as of the Issue Date specified above.

President, Board of Harbor Commissioners
of the City of Long Beach, California

ATTESTED

Chief of Staff to the Board
of Harbor Commissioners of the
City of Long Beach, California

FISCAL AGENT'S CERTIFICATE OF AUTHENTICATION

This is the TIFIA Note described in the within mentioned Subordinate Resolution.

Date of Authentication: _____

U.S. BANK NATIONAL ASSOCIATION, as Fiscal Agent

By _____
Authorized Signatory

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer unto

the within-mentioned registered TIFIA Note and hereby irrevocably constitute(s) and appoint(s) attorney, to transfer the same on the books of the Fiscal Agent with full power of substitution in the premises.

Dated: _____

Note: The signature(s) to this Assignment must correspond with the name(s) as written on the face of the within mentioned TIFIA Note in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed by:

Note: Signature must be guaranteed by an Eligible Guarantor Institution.

EXHIBIT B

FORM OF TRANSFEREE'S LETTER

U.S. Bank National Association,
as Fiscal Agent
633 West Fifth Street
24th Floor
Los Angeles, California 90071

Harbor Department of the City of Long Beach
Port of Long Beach
415 West Ocean Boulevard
Long Beach, California 90802

Re: City of Long Beach, California Subordinate Harbor Revenue Note, Series 2020A
(Gerald Desmond Bridge – TIFIA Loan)

Ladies and Gentlemen:

The undersigned representative of _____ (the “Purchaser”), hereby certifies, represents and warrants for the benefit of U.S. Bank National Association, as fiscal agent (the “Fiscal Agent”), that the Purchaser is a party to the TIFIA Loan Agreement having all rights and obligations of the “TIFIA Lender” thereunder. The Purchaser understands that in connection with any future transfer or exchange of the City of Long Beach, California Subordinate Harbor Revenue Note, Series 2020A (Gerald Desmond Bridge – TIFIA Loan) (the “TIFIA Note”) by the Purchaser, there must be delivered to the Fiscal Agent a letter of the transferee in substantially the form of Exhibit B to the Sixth Supplemental Subordinate Resolution.

The undersigned Purchaser hereby further represents as follows:

1. The Purchaser has full power and authority to carry on its business as now conducted, deliver this letter and make the representations contained herein.
2. The Purchaser has knowledge and experience in financial and business matters that make it capable of evaluating the TIFIA Note and the risks associated with the purchase of the TIFIA Note; has the ability to bear the economic risk of an investment in the TIFIA Note; and is an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended.
3. The Purchaser has conducted its own investigation of the financial condition of the Harbor Department, the Port, the TIFIA Note, the Master Subordinate Resolution, the Sixth Supplemental Subordinate Resolution, the Subordinate Revenues and the Senior Resolution, and has obtained such information regarding the TIFIA Note, such facilities, the Port and the Harbor Department and its operations, financial condition and

financial prospects as the Purchaser deems necessary to make an informed investment decision with respect to the purchase of the TIFIA Note.

4. The Purchaser is purchasing the TIFIA Note for its own account solely and not with a present view to any distribution of the TIFIA Note or any interest thereon or without a present intention of distributing or reselling the TIFIA Note or any interest thereon, provided that the Purchaser retains the right at any time to dispose of the TIFIA Note or any interest thereon as it may determine to be in its best interests, subject to the requirements and provisions of the Sixth Supplemental Subordinate Resolution. In the event that the Purchaser disposes of the TIFIA Note in the future, the Purchaser understands that it has the responsibility for complying with any applicable federal and state securities laws and all rules and regulations promulgated pursuant thereto.

5. The Purchaser understands that: (i) the TIFIA Note is a special limited obligation of the City payable from and secured by a pledge of and a lien and charge upon the Subordinate Revenues on a parity with all Subordinate Obligations and all other debt incurred and payable from Subordinate Revenues on a parity (with the exception of the TIFIA Debt Service Reserve Fund) with the Subordinate Obligations; (ii) the principal of and interest on the TIFIA Note are not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues, except the Subordinate Revenues; (iii) the general fund of the City is not liable for the payment of the TIFIA Note or any interest hereon, nor is the credit or the taxing power of the City pledged therefor; and (iv) as Holder of the TIFIA Note, it shall not compel the exercise of the taxing power of the City or the forfeiture of any of its property for the payment of the TIFIA Note or any interest hereon.

6. The Purchaser acknowledges that the TIFIA Note has not been registered under the Securities Act of 1933, as amended, and that such registration is not legally required. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any subsequent disposition of the TIFIA Note, and further acknowledges that any current exemption from registration of the TIFIA Note does not affect or diminish this requirement.

7. In entering into this transaction, the Purchaser has not relied upon any representations or opinions of the City, the Board or the Department, its counsel, Kutak Rock LLP or other counsel to the City, the Board or the Department relating to the legal consequences or other aspects of its investment in the TIFIA Note.

8. The Purchaser has been informed that the TIFIA Note (i) has not been and will not be registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any jurisdiction, and (ii) will not be listed on any stock or other securities exchange.

9. None of the City, the Board or the Harbor Department, its governing body, or any of its employees, counsel or agents will have any responsibility to the Purchaser for the accuracy or completeness of information obtained by the Purchaser from any source regarding the Harbor Department and the Port or its financial condition or regarding the

TIFIA Note, the provision for payment thereof, or the sufficiency of any security therefor. No written information has been provided by the City, the Board or the Harbor Department to the Purchaser with respect to the TIFIA Note. The Purchaser acknowledges that, as between the Purchaser and all of such parties, the Purchaser has assumed responsibility for obtaining such information and making such review as the Purchaser deemed necessary or desirable in connection with its decision to purchase the TIFIA Note.

Terms not defined herein shall have the meanings given to them under (a) Resolution No. HD-2726 adopted by the Board of Harbor Commissioners of the City of Long Beach, California, on July 16, 2013 (together with all amendments, modifications and supplements thereto, the "Master Subordinate Resolution"), and (b) Resolution No. HD-_____ adopted by the Board of Harbor Commissioners of the City of Long Beach, California, on [_____], 2020 (together with all amendments, modifications and supplements thereto, the "Sixth Supplemental Subordinate Resolution," and together with the Master Subordinate Resolution, the "Subordinate Resolution").

IN WITNESS WHEREOF, the undersigned representative has hereunto executed this letter as of the _____ day of _____, 20__.

[PURCHASER]

By: _____
Name: _____
Title: _____

[MUST BE SIGNED BY ACTUAL PURCHASER]

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

TIFIA LOAN AGREEMENT

For Up to U.S. \$500,000,000

With

CITY OF LONG BEACH, CALIFORNIA

acting by and through its

BOARD OF HARBOR COMMISSIONERS

For the

**GERALD DESMOND BRIDGE PROJECT
(TIFIA – 2020-1005A)**

Dated as of _____, 2020 .

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TIFIA LOAN AGREEMENT

THIS TIFIA LOAN AGREEMENT (this "Agreement"), dated as of [] [], 2020 is by and between the **CITY OF LONG BEACH, CALIFORNIA**, a municipal corporation and charter city, acting by and through its **BOARD OF HARBOR COMMISSIONERS**, with an address of Port of Long Beach, 415 W. Ocean Boulevard, Long Beach, California, 90802 (the "**Borrower**"), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the "**Executive Director**"), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the "**TIFIA Lender**").

RECITALS:

WHEREAS, the Congress of the United States of America (the "**Congress**") has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States of America and, in furtherance thereof, has enacted the Transportation Infrastructure Finance and Innovation Act of 1998 ("**TIFIA**"), § 1501 *et seq.* of Public Law 105-178 (as amended by Public Law 105-206, Public Law 109-59, Public Law 112-141, and Public Law 114-94) (the "**Act**"), codified as 23 U.S.C. §§ 601-609; and

WHEREAS, § 603 of the Act authorizes the TIFIA Lender to enter into agreements with one or more obligors to make secured loans; and

WHEREAS, the Borrower and the TIFIA Lender (acting by and through the Federal Highway Administrator) previously entered into a TIFIA loan agreement dated May 21, 2014, pursuant to which the TIFIA Lender agreed to make a loan to the Borrower (the "**First TIFIA Loan**") in a principal amount not to exceed U.S. \$325,000,000 (the "**First TIFIA Loan Amount**") to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for TIFIA credit assistance dated March 5, 2014 (the "**First Application**"); and

WHEREAS, as of the date of this Agreement, the Borrower has not drawn on the First TIFIA Loan and the TIFIA Lender has not disbursed First TIFIA Loan proceeds to the Borrower; and

WHEREAS, since the date of the First TIFIA Loan, Eligible Project Costs have increased due to cost overruns on the Project, mainly due to a redesign of the Project as required by Caltrans (defined herein); and

WHEREAS, the Borrower has requested that the TIFIA Lender cancel the First TIFIA Loan and make the TIFIA Loan (as defined herein) in a principal amount not to exceed U.S. \$500,000,000 (the "**TIFIA Loan**") to be used to pay a portion of the Eligible Project Costs related to the Project pursuant to the application for TIFIA credit assistance dated February 6, 2020 (the "**Application**"); and

WHEREAS, on [] [], 2020, the Secretary approved TIFIA credit assistance for the Project in the form of the TIFIA Loan; and

WHEREAS, the TIFIA Lender is prepared to extend credit upon the terms and conditions hereof; and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the TIFIA Note (as defined herein) in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the TIFIA Lender has entered into this Agreement in reliance upon, among other things, the Base Case Financial Model (as defined herein) delivered by the Borrower on the Effective Date (as defined herein).

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the TIFIA Lender as follows:

SECTION 1. Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“Accounts” means the Senior Debt Accounts and each Subordinated Debt Secured Account.

“Act” means the Act as defined in the recitals hereto.

“Additional Project Contracts” means any contract, agreement, letter of intent, understanding or instrument entered into by the Borrower after the Effective Date, providing for the design, construction, testing, start-up, safety, financial services, operation or maintenance of the Project, or otherwise relating to the Project; provided, however, that a contract or agreement shall not constitute an Additional Project Contract if it (a) is entered into (i) in the ordinary course of business in connection with the furnishing of goods or the performance of services or (ii) for necessary Project-related expenditures, (b) commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower in one contract or a series of related contracts of, no more than U.S.\$5,000,000 in the aggregate for any such contract or series of related contracts and (c) is for a term not exceeding two (2) years.

“Additional Rights” has the meaning set forth in Section 15(o).

“Additional Senior Bonds” means any Senior Bonds issued by the Borrower after the Effective Date in accordance with the terms of the Senior Master Resolution and this Agreement, which are intended to be secured by the Senior Revenue Lien.

“Additional Subordinated Debt” means any Subordinate Obligations (as defined in the Subordinated Master Resolution) incurred by the Borrower after the Effective Date (but excluding the TIFIA Loan and any related Subordinated Debt Obligation owed to the TIFIA

Lender from time to time pursuant to the terms of the TIFIA Loan Documents) in accordance with the terms of the Senior Master Resolution, the Subordinated Master Resolution and this Agreement, which are intended to be secured by the Subordinate Revenue Lien.

“Adjusted Rate Coverage Ratio” means, as of any date of determination, the ratio of Net Revenues actually received by or on behalf of the Borrower for the twelve (12) month period ending on the March 30 or September 30 occurring immediately prior to such date of determination, to the Maximum Annual Debt Service calculated as of such date of determination based on the Revised Financial Model; provided, that, for purposes of calculating the Adjusted Rate Coverage Ratio with respect to paragraphs (d) and (f) of the definition of Permitted Debt, Adjusted Rate Coverage Ratio means the ratio of (a)(i) Net Revenues for the last completed Borrower Fiscal Year or Net Revenues actually received by or on behalf of the Borrower for the twelve (12) month period ended not more than one month prior to such date of determination or (ii) the estimated Net Revenues for the first 12-month period following the completion of the improvements or extensions to the Port financed with the proceeds of the Additional Senior Bonds or Additional Subordinated Debt, as estimated by and set forth in a certificate of an independent certified public accountant or an independent engineer appointed by the Board, to (b) the Maximum Annual Debt Service calculated, on a Pro Forma Basis, and as of such date of determination based on the Revised Financial Model.

“Adjusted Rate Coverage Ratio Deficiency” means, as of any Semi-Annual Payment Date, that the Adjusted Rate Coverage Ratio as of such Semi-Annual Payment Date was less than 1.25:1.00.

“Adjusted Rate Coverage Test” has the meaning set forth in Section 15(m)(ii).

“Affected Existing Facility” means any Existing Facility leased under a Lease Agreement (except for Material Lease Agreements) having a term with an expiration date occurring within twelve (12) months of any date of determination thereof, in connection with which the Borrower has not obtained a written and binding commitment from (a) the existing lessee under such Lease Agreement to renew or extend the term of such Lease Agreement for, or (b) any new lessee to enter into a new Lease Agreement in connection with such Existing Facility with, in each case, a term in excess of twelve (12) months.

“Affected Material Existing Facility” means any Existing Facility leased under a Material Lease Agreement having a term with an expiration date occurring within twelve (12) months of any date of determination thereof, in connection with which the Borrower has not obtained a written and binding commitment from (a) the existing Material Lessee under such Material Lease Agreement to renew or extend the term of such Material Lease Agreement for, or (b) any new Material Lessee to enter into a new Material Lease Agreement in connection with such Existing Facility with, in each case, a term in excess of twelve (12) months.

“Agreement” has the meaning set forth in the preamble hereto.

“Annual Operating Budget” means the Annual Operating Budget of the Harbor Department submitted in accordance with Section 21(d)(i).

“Anticipated TIFIA Loan Disbursement Schedule” means the schedule set forth as **Exhibit J** to this Agreement, reflecting the anticipated disbursement of proceeds of the TIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(g).

“Anti-Corruption Laws” means all laws, rules and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption.

“Anti-Money Laundering Laws” means all U.S. and other applicable laws, rules and regulations of any jurisdiction from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“Application” means the Application as defined in the Recitals hereto.

“Assumed Senior Debt Service” means, for any period from the date the Board determines to treat the principal of a Series of Senior Debt Obligations as an Excluded Senior Principal Payment, the sum of the amount of principal of, and interest on, such Series of Senior Debt Obligations which would be payable in such period, assuming for the purpose of this calculation that:

(a) the principal of such Series of Senior Debt Obligations is payable on each May 15 occurring during, and amortized on a substantially level debt service basis for, a period equal to:

(i) if such Series of Senior Debt Obligations has a stated maturity date that is seven (7) years or less after the issuance thereof, the lesser of (A) the period specified by the Board in the applicable Supplemental Senior Resolution and (B) thirty (30) years, in each case, commencing on the stated maturity date of such Series of Senior Debt Obligations; or

(ii) if such Series of Senior Debt Obligations has a stated maturity date that is greater than seven (7) years after the issuance thereof, the lesser of (A) the period specified by the Board in the applicable Supplemental Senior Resolution and (B) thirty (30) years, in each case, commencing on the date such Series of Senior Debt Obligations were originally issued; and

(b) the interest on such Series of Senior Debt Obligations shall be (x) payable on each May 15 and November 15 occurring during the period determined in accordance with clause (a) above and (y) calculated (i) to the extent such Series of Senior Debt Obligations are not Variable Rate Indebtedness, based on a fixed interest rate equal to The Bond Buyer 25-Revenue Bond Index, or any successor or replacement index, for the last week of the month immediately preceding the date of calculation as published in The Bond Buyer, or if that index is no longer published, another similar index selected by the Board or (ii) to the extent such Series of Senior Debt Obligations are Variable Rate Indebtedness, at the applicable Interest Rate Cap;

provided, however, that if such Series of Senior Debt Obligations are secured pursuant to a credit or liquidity instrument which, if drawn upon, would create a repayment obligation which has a Lien on Revenues on a parity with the Lien of the relevant Series of Senior Debt Obligations, Assumed Senior Debt Service shall be the principal and interest which would be payable under the credit or liquidity instrument in the event that the credit or liquidity instrument were drawn upon to pay or purchase all of such Series of Senior Debt Obligations then Outstanding.

Notwithstanding anything to the contrary set forth above, if the Board determines that the aggregate principal of the Project BANs shall be treated as an Excluded Senior Principal Payment pursuant to the Supplemental Senior Resolution adopted with respect to such Project BANs, and only to the extent that principal of and interest on such Project BANs is anticipated to be repaid using TIFIA Loan proceeds, the Assumed Senior Debt Service on such Project BANs shall be calculated assuming the following:

(1) interest on such Project BANs shall be based on (A) prior to the issuance of such Project BANs, a fixed interest rate equal to The Bond Buyer 25-Revenue Bond Index, or any successor or replacement index, for the last week of the month immediately preceding the date of calculation as published in The Bond Buyer, or if that index is no longer published, another similar index selected by the Board, and (B) after the issuance of such Project BANs, the actual interest rate on such Project BANs, and

(2) no principal is due on such Project BANs.

“Assumed Subordinated Debt Service” means, for any period from the date the Board determines to treat the principal of a Series of Subordinated Debt Obligations as an Excluded Subordinated Principal Payment, the sum of the amount of principal of, and interest on, such Series of Subordinated Debt Obligations which would be payable in such period, assuming for the purpose of this calculation that:

(a) the principal of such Series of Subordinated Debt Obligations is payable on each May 15 occurring during, and amortized on a substantially level debt service basis for, a period equal to:

(i) if such Series of Subordinated Debt Obligations has a stated maturity date that is seven (7) years or less after the issuance thereof, the lesser of (A) the period specified by the Board in the applicable Supplemental Subordinated Resolution and (B) thirty (30) years, in each case, commencing on the stated maturity date of such Series of Subordinated Debt Obligations; or

(ii) if such Series of Subordinated Debt Obligations has a stated maturity date that is greater than seven (7) years after the issuance thereof, the lesser of (A) the period specified by the Board in the applicable Supplemental Subordinated Resolution and (B) thirty (30) years, in each case, commencing on the date such Series of Subordinated Debt Obligations were originally issued; and

(b) the interest on such Series of Subordinated Debt Obligations shall be (x) payable on each May 15 and November 15 occurring during the period determined in accordance with clause (a) above and (y) calculated (i) to the extent such Series of Subordinated Debt Obligations are not Variable Rate Indebtedness, based on a fixed interest rate equal to The Bond Buyer 25-Revenue Bond Index, or any successor or replacement index, for the last week of the month immediately preceding the date of calculation as published in The Bond Buyer, or if that index is no longer published, another similar index selected by the Board or (ii) to the extent such Series of Subordinated Debt Obligations are Variable Rate Indebtedness, at the applicable Interest Rate Cap;

provided, however, that if such Series of Subordinated Debt Obligations are secured pursuant to a credit or liquidity instrument which, if drawn upon, would create a repayment obligation which has a Lien on Subordinate Revenues on a parity with the Lien of the relevant Series of Subordinated Debt Obligations, Assumed Subordinated Debt Service shall be the principal and interest which would be payable under the credit or liquidity instrument in the event that the credit or liquidity instrument were drawn upon to pay or purchase all of such Series of Subordinated Debt Obligations then Outstanding.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508, codified as amended in various sections of 12 U.S.C. and 31 U.S.C.), as amended, and the regulations promulgated thereunder.

“Bankruptcy Related Event” means, with respect to any Person, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of TIFIA Debt Service in accordance with the provisions of Section 9, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing; or (c) any Person shall commence a process of exercising remedies in connection with the Senior Revenue Lien or the Subordinate Revenue Lien or to otherwise apply amounts on

deposit in, or credited to, any of the Accounts other than the application of such amounts to the payment of regularly scheduled principal and interest then due and payable on any applicable Senior Debt Obligations or Subordinated Debt Obligations (but excluding any principal or interest that is due and payable as a result of any acceleration of the principal amount of any of the Senior Debt Obligations or Subordinated Debt Obligations).

“Base Case Financial Model” means a financial model or models prepared by the Borrower forecasting the revenues and expenditures of the Harbor Department (including in respect of Operations and Maintenance Expenses, Project Costs, Revenues and Subordinate Revenues) for time periods through the final maturity of the TIFIA Loan and based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender which shall be provided to the TIFIA Lender as a fully functional Microsoft Excel-based financial model.

“Board” means the Board of Harbor Commissioners of the City.

“Borrower” has the meaning set forth in the preamble hereto.

“Borrower Fiscal Year” shall mean (a) a fiscal year of the Borrower commencing on October 1 of any calendar year and ending on September 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the TIFIA Lender.

“Borrower’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 25.

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the Government or the City are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or the State.

“Buy America Requirements” means the requirements set forth in 23 U.S.C. §313 and implementing regulations (23 C.F.R. §635.410).

“Calculation Period” means, as of any date of determination, each twelve (12) month period ending on each Semi-Annual Payment Date occurring on or after such date of determination through and including the Final Maturity Date, provided, however, that solely with respect to the determination of Revenues or Net Revenues, a reference to “Calculation Period” shall mean each twelve (12) month period ending on the March 30 or September 30 (or, if such date is not a Business Day, the next Business Day following such March 30 or September 30) occurring immediately prior to such date of determination through and including the Final Maturity Date.

“Caltrans” means the California Department of Transportation.

“**Capital Expenditures**” means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one (1) year which are capitalized in accordance with GASB.

“**Charter**” means the Charter of the City.

“**City**” means the City of Long Beach, California, a municipal corporation and charter city existing in the State pursuant to the Charter and the Constitution and laws of the State.

“**Congress**” has the meaning set forth in the recitals hereto.

“**Construction Period**” means the period from the Effective Date through the Substantial Completion Date.

“**Construction Schedule**” means the schedule on which the proposed construction timetable of the Project is set forth and attached as **Schedule II** to this Agreement as the same may be amended from time to time after the Effective Date by the Borrower upon notice to the TIFIA Lender in accordance with Section 15(g)(ix)(2).

“**Contractual Obligation**” means, as to any Person, any contractual provision or any security issued by such Person or of any indenture, mortgage, deed of trust, loan agreement, lease agreement, contract, agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property or assets is bound.

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “**Controlling**” and “**Controlled by**” have meanings correlative to the foregoing.

“**Cooperation Agreement**” means the Cooperative Agreement No. 07-4911, dated as of June 20, 2011, by and between the Borrower and the State of California, acting by and through its Department of Transportation.

“**Coverage Ratios**” means the Rate Coverage Ratio and the Adjusted Rate Coverage Ratio.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2020 as the base period.

“**Debt Management Policy**” means the Borrower’s internal debt management policy, approved by the Board on October 24, 2011 by Ordinance HD-2113.

“Debt Service Coverage Ratios” means the Gross Revenue Debt Service Coverage Ratio and the Net Revenue Debt Service Coverage Ratio.

“Debt Service Payment Commencement Date” means the first to occur of the (a) May 15th immediately following the disbursement of the TIFIA Loan and (b) November 15th immediately following the disbursement of the TIFIA Loan.

“Default Rate” means an interest rate of 200 basis points above the TIFIA Interest Rate.

“Design Build Contract” means that certain Design Build Contract dated July 23, 2012 by and among the City and each of the Design Build Contractors and any replacement contract or contracts entered into by the Borrower to the extent approved by the TIFIA Lender.

“Design Build Contractors” means each of Shimmick Construction Company, Inc., FCC Construcción S.A., Impreglio S.p.A. and any other Person (other than the City) party to any Design Build Contract from time to time.

“Development Default” means a failure by the Borrower to (a) diligently prosecute the work related to the Project or (b) complete the Project in accordance with the Financial Plan as the same may be amended from time to time pursuant to Section 21(a).

“Effective Date” means the date of this Agreement.

“Eligible Project Costs” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, all of which shall arise from the following:

(a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(b) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; or

(c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

“Eligible Project Costs Documentation” has the meaning set forth in Section 4(c).

“Environmental Laws” has the meaning set forth in Section 13(t).

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

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“**Error**” has the meaning set forth in the Design Build Contract.

“**Event of Default**” has the meaning set forth in Section 19.

“**Event of Loss**” means any event or series of events that causes any (a) material portion of the Port or (b) prior to the Transfer Date, any material portion of the Project, to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of such property, or a condemnation.

“**Event of Settlement**” means a settlement between the Borrower and the Design Build Contractors resulting in any change to the amount of Eligible Project Costs.

“**Excepted Lease**” means any Lease Agreement that relates solely to a Permitted Special Facility.

“**Excluded Senior Principal Payment**” means each payment of principal of Senior Debt Obligations which the Board determines (in the applicable Supplemental Senior Resolution or other document delivered on a date not later than the date of issuance of such Senior Debt Obligations) shall be paid with moneys which are not Revenues but from future debt obligations of the Borrower; provided, however, for the purposes of the calculation of Senior Debt Service and such other purposes hereunder, no principal of Senior Debt Obligations shall be treated as an Excluded Senior Principal Payment unless (i) at the time of such determination by the Board at least one Nationally Recognized Rating Agency has issued a long-term unenhanced underlying rating of at least “A-” (or the equivalent thereto) on the Senior Debt Obligations and (ii) such payment of principal represents the entire aggregate principal amount of the applicable Series of Senior Debt Obligations.

“**Excluded Subordinated Principal Payment**” means each payment of principal of Subordinated Debt Obligations which the Board determines (in the applicable Supplemental Subordinated Resolution or other document delivered on a date not later than the date of issuance of such Subordinated Debt Obligations) shall be paid with moneys which are not Subordinate Revenues but from future debt obligations of the Borrower; provided however, for the purposes of the calculation of Subordinated Debt Service and such other purposes hereunder, no principal of Subordinated Debt Obligations shall be treated as an Excluded Subordinated Principal Payment unless (i) at the time of such determination by the Board at least one Nationally Recognized Rating Agency has issued a long-term unenhanced underlying rating of at least “A-” (or the equivalent thereto) on the Subordinated Debt Obligations and (ii) such payment of

principal represents the entire aggregate principal amount of the applicable Series of Subordinated Debt Obligations.

“**Executive Director**” has the meaning set forth in the preamble hereto.

“**Existing Facilities**” means, collectively, any property or assets comprising part of the Port as of the Effective Date and any other property or assets that are projected to be included or developed as part of the Port as described in the Base Case Financial Model delivered on the Effective Date.

“**Existing Material Lease Agreement**” means each Material Lease Agreement in effect as of the Effective Date, as set forth on **Schedule III**.

“**Existing Senior Debt Obligations**” means the Senior Bonds and any other debt obligations Outstanding under any Senior Debt Document on the Effective Date as identified on **Schedule V**.

“**Existing Subordinated Debt Obligations**” means the Subordinated Debt Obligations Outstanding as of the Effective Date, and such other Subordinated Debt Obligations which may be incurred, from time to time (including any undrawn commitments), pursuant to the Existing Subordinated Debt Documents and as identified on **Schedule V**.

“**Existing Subordinated Debt Documents**” means (a) the Subordinated Master Resolution, (b) Resolution No. HD-2728, adopted by the Board on July 16, 2013, which authorized the issuance and/or incurrence, from time to time, of U.S.\$122 million aggregate principal amount of City of Long Beach, California Subordinate Harbor Revenue Revolving Obligations, Series B (Tax-Exempt) and Series C (Taxable) (the “**Series B/C Subordinate Revolving Obligations**”), (c) Resolution No. HD-2852, adopted by the Board on June 30, 2016, which, among other things, amended Resolution No. HD-2728 by increasing the amount of Series B/C Subordinate Revolving Obligations that are authorized to be issued and/or incurred, from time to time, to an aggregate principal amount of U.S.\$200 million, and (d) the Revolving Credit Agreement dated as of July 1, 2016, as amended by a First Amendment to Revolving Credit Agreement, dated May 16, 2019, each by and between the Borrower and MUFG Union Bank, N.A., relating to the Series B/C Subordinate Revolving Obligations.

“**Expected Substantial Completion Date**” means [____], 2020.

“**FHWA**” means the Federal Highway Administration, an agency of USDOT.

“**FHWA Division Office**” means the California Division Office of the FHWA.

“**FHWA Oversight Agreement**” means the agreement between the FHWA Division Office and Caltrans attached as **Exhibit E** and incorporated herein.

“**Final Maturity Date**” means the May 15th or November 15th occurring on or immediately prior to the 35th anniversary of the Substantial Completion Date.

“Financial Plan” means (a) the financial plan to be delivered within sixty (60) days after the Effective Date in accordance with Section 21(a) and (b) any updates thereto required pursuant to Section 21(a) and such other certificates and information required to be included in a Financial Plan as specified in Section 21.

“Financial Statements” has the meaning provided in Section 13(x).

“Fitch” means Fitch Ratings.

“GASB” means the generally accepted accounting principles for state and local governments, which are the uniform minimum standards of and guidelines for financial accounting and reporting prescribed by the Governmental Accounting Standards Board.

“Government” means the United States of America and its departments and agencies.

“Government Obligations” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person Controlled or supervised by and acting as an instrumentality of the Government pursuant to authority granted by the Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

“Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“Gross Revenue Debt Service Coverage Ratio” means, as of any date of determination, for any Calculation Period, the ratio of the Revenues projected to be received by or on behalf of the Borrower for such Calculation Period to the Total Debt Service projected to be payable by the Borrower during such Calculation Period, in each case calculated based on the Revised Financial Model.

“Harbor Department” means the Harbor Department of the City established pursuant to Article XII of the Charter.

“Harbor Revenue Fund” means the Harbor Revenue Fund established pursuant to the Charter.

“Hedging Transaction” means any agreement, arrangement or transaction with respect to any “swap”, “cap”, “collar”, “floor”, “forward”, “future”, “put”, “spot”, “option” or other hedging transaction involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of financial or pricing risk or value.

“Indemnitee” has the meaning provided in Section 17.

“Insolvency Laws” means the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship, or similar law now or hereafter in effect.

“Interest Rate Cap” means, with respect to any Variable Rate Indebtedness, the highest fixed rate of interest (including any applicable interest rate margin and any other component which is taken into account in computing the applicable interest rate for such Variable Rate Indebtedness) that is permitted to apply to such Variable Rate Indebtedness pursuant to the terms of the applicable Supplemental Resolution and/or Contractual Obligation governing the payment of interest on such Variable Rate Indebtedness.

“Investment Policy” means the investment policy of the City, as amended and supplemented from time to time.

“Lease Abstract” means any lease abstract substantially in the form of **Exhibit I** hereto.

“Lease Agreement” means each Contractual Obligation to which the Borrower is a party from time to time in respect of the use of the Port that requires the payment to the Borrower of any Revenues, Subordinate Revenues or Special Facilities Revenues.

“Lessee” means any Person (other than the City or the Harbor Department) that is a party to any Lease Agreement or any related guarantor or surety in respect of such Person’s obligations under any Lease Agreement from time to time.

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any applicable law.

“Loan Amortization Schedule” means the Loan Amortization Schedule attached as **Appendix Two** to the TIFIA Note, a copy of which is attached hereto as Exhibit A, delivered pursuant to Section 9(f), as amended from time to time in accordance with Section 7.

“Material Adverse Effect” means a material adverse change in (a) the business, operations, properties or condition (financial or otherwise) of (i) the Port, or (ii) prior to the Transfer Date, the Project, (b) the legality, validity or enforceability of any material provision of any Related Document, (c) the ability of the Borrower to perform or comply with any of its material obligations under any Related Document to which it is a party, (d) the validity, perfection or priority of the Senior Revenue Lien or Subordinate Revenue Lien or (e) the TIFIA Lender’s rights or remedies available under any TIFIA Loan Document.

“Material Lease Agreements” means, as of any date of determination, the highest revenue generating Lease Agreements which collectively are responsible for contributing at least 90% of the Revenues of the Borrower in the most recently ended Borrower Fiscal Year (each of such Lease Agreements, a **“Material Lease Agreement”**).

“Material Lessee” means any Person (other than the City or the Harbor Department) that is party to any Material Lease Agreement or any related guarantor or surety in respect of such Person’s obligations under any Material Lease Agreement from time to time.

“Maximum Annual Debt Service” means, (a) with respect to the Coverage Ratios, as of any date of determination, the greatest amount of Senior Debt Service and Subordinated Debt Service as set forth in the Revised Financial Model, to become due and payable on the outstanding Senior Debt Obligations and outstanding Subordinated Debt Obligations in any single Calculation Period occurring on or after such date of determination, and (b) with respect to the Projected Coverage Ratios, as of any date of determination, the greatest amount of Senior Debt Service and Subordinated Debt Service projected under the Revised Financial Model, to become due and payable on the Senior Debt Obligations and Subordinated Debt Obligations in any single Calculation Period occurring on or after such date of determination.

“Moody’s” means Moody’s Investors Service, Inc.

“Nationally Recognized Rating Agency” means S&P, Moody’s, Fitch or any other nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission.

“NEPA” means the National Environmental Policy Act of 1969, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“NEPA Determination” means the Finding of No Significant Impact for the Project issued by Caltrans on September 23, 2010 in accordance with NEPA.

“Net Revenues” means, for any period, the Revenues (for such period) less Operations and Maintenance Expenses for such period.

“Net Revenue Debt Service Coverage Ratio” means, as of any date of determination, for any Calculation Period, the ratio of Net Revenues projected to be received by or on behalf of the Borrower for such Calculation Period to the Total Debt Service projected to be payable by the Borrower during such Calculation Period, in each case based on the Revised Financial Model.

“Nonconforming Work” has the meaning set forth in the Design Build Contract.

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

“Operations and Maintenance Expenses” means all actual cash maintenance and operation costs (excluding costs of Capital Expenditures) incurred and paid (or if applicable forecasted to be incurred and paid) by the Borrower in connection with the operation and maintenance of the Port in any particular calendar year, Borrower Fiscal Year or other period to which said term is applicable, including, payments for taxes, insurance, consumables, advertising, marketing, payments under real property agreements pursuant to which the Borrower has any rights in the Port, payments pursuant to agreements for the management, operation or maintenance of the Port, reasonable legal fees and expenses paid by the Borrower in connection with the management, maintenance or operation of the Port, fees paid in connection with obtaining, transferring, maintaining or amending any approvals from any Governmental Authority, costs incurred in connection with the performance of environmental mitigation work to be carried out by the Borrower and reasonable general and administrative expenses, but exclusive in all cases of noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“Other Subordinated Debt Document” means any Subordinated Debt Document in effect from time to time other than any TIFIA Loan Document.

“Other Subordinated Debt Obligations” means any Subordinated Debt Obligations owed by the Borrower from time to time other than any Subordinated Debt Obligations owed in respect of the TIFIA Loan (or the TIFIA Note).

“Outstanding” has the meaning set forth in the Senior Master Resolution or the Subordinated Master Resolution, as applicable.

“Outstanding TIFIA Loan Balance” means the aggregate principal amount drawn by the Borrower and then outstanding with respect to the TIFIA Loan, as determined in accordance with Section 7.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and all regulations promulgated thereunder.

“Payment Default” has the meaning set forth in Section 19(a)(i).

“Permitted Debt” means:

- (a) the TIFIA Loan (and related TIFIA Note);
- (b) any bond, note, certificate, warranty, lease, contract, indebtedness for borrowed money or other financial obligation or security of the Borrower that is not secured, in whole or in part, by the Revenues, any Subordinate Revenues, any Special Facilities Revenues, any Account, any right of the Harbor Department under any Lease Agreement (other than any Excepted Lease), or any property or assets comprising the Project;
- (c) the Existing Senior Debt Obligations;
- (d) Additional Senior Bonds (including any Refunding Bonds (as defined in the Senior Master Resolution)); provided, that, at the time such Additional Senior Bonds are issued and any Senior Debt Obligations are incurred by the Borrower in connection therewith, the following conditions are satisfied: (i) the issuance of such Additional Senior Bonds is permitted under Section 6.11 of the Senior Master Resolution, (ii) the terms and conditions of such Additional Senior Bonds and any related Senior Debt Documents do not conflict with, or result in a breach of any other provision of any of the Senior Debt Documents or Subordinated Debt Documents in effect at such time, (iii) no Event of Default or Prospective Event of Default shall have occurred and be continuing (or would result from the issuance of such Additional Senior Bonds or incurrence of Senior Debt Obligations in connection therewith), (iv) the Coverage Ratios when calculated on a Pro Forma Basis using the Revised Financial Model for the twelve (12) month period ending on the Semi-Annual Payment Date occurring on or immediately prior to the date of determination in connection with the issuance of such Additional Senior Bonds or incurrence of Senior Debt Obligations in respect thereof shall be equal to or greater than (A) in the case of the Adjusted Rate Coverage Ratio, 1.00:1.00 for the applicable period and (B) in the case of the Rate Coverage Ratio, 1.10:1.00 for each applicable period and (v) the Nationally Recognized Rating Agency that provided the most recent public rating of the TIFIA Loan in accordance with Section 15(j) shall have provided a credit rating of the TIFIA Loan that is equal to or higher than the lower of (A) the initial credit rating furnished as of the Effective Date and (B) the credit rating of the TIFIA Loan immediately prior to the incurrence of such Additional Senior Bonds;
- (e) Existing Subordinated Debt;
- (f) Additional Subordinated Debt; provided, that, at the time the Borrower enters into any Subordinated Debt Document in connection with the incurrence of such Additional Subordinated Debt or incurs such Additional Subordinated Debt, the following conditions are satisfied: (i) the incurrence of such Additional Subordinated Debt is permitted under Section 6.11 of the Subordinated Master Resolution, (ii) the terms and conditions of such Additional Subordinated Debt any related Subordinated Debt Document do not conflict with, or result in a breach of any other provisions of any Senior Debt Document or Subordinated Debt Document in effect at such time, (iii) no Event of Default or Prospective Event of Default shall have occurred and be continuing

(or would result from the incurrence of such Additional Subordinated Debt), (iv) the Coverage Ratios when calculated on a Pro Forma Basis using the Revised Financial Model for the twelve (12) month period ending on the Semi-Annual Payment Date occurring on or immediately prior to the date of determination in connection with the incurrence of Additional Subordinated Debt in respect thereof shall be equal to or greater than (A) in the case of the Adjusted Rate Coverage Ratio, 1.00:1.00 for the applicable period and (B) in the case of the Rate Coverage Ratio, 1.10:1.00 for each applicable period and (v) the Nationally Recognized Rating Agency that provided the most recent public ratings of the TIFIA Loan in accordance with Section 15(j) shall have provided a credit rating of the TIFIA Loan that is equal to or higher than the lower of (A) the initial credit rating furnished as of the Effective Date and (B) the credit rating of the TIFIA Loan immediately prior to the incurrence of such Additional Subordinated Debt;

(g) indebtedness or other obligations owed by the Borrower in respect of any Hedging Transaction consented to by the TIFIA Lender in writing from time to time; and

(h) Special Facility Obligations to the extent incurred in respect of any Permitted Special Facility; provided, that, such Special Facility Obligations shall be payable solely from the Special Facilities Revenue arising from such Permitted Special Facility and shall otherwise be non-recourse to the Borrower and any of the Revenues or Subordinate Revenues.

“Permitted Investments” means:

(a) with respect to amounts on deposit in or credited to the TIFIA Debt Service Reserve Fund from time to time,

(i) Government Obligations;

(ii) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a)(i) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by an agency of the Government;

(iii) repurchase agreements, when collateralized by securities of the type described in clause (a)(i) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(iv) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated, at the time such agreement or contract is entered into, in one of the two (2) highest Rating Categories for comparable types of obligations by any Nationally Recognized Rating Agency; and

(v) money market funds that invest solely in obligations of the United States, its agencies and instrumentalities, and having a rating by a Nationally Recognized Rating Agency equal to the then applicable rating of the United States of America by such Nationally Recognized Rating Agency; and

(b) with respect to amounts on deposit or credited to the other Accounts from time to time, such investments in which the Borrower may legally invest from time to time, and as are expressly permitted under the Charter and the City's adopted Investment Policy as in effect from time to time.

“Permitted Liens” means:

(a) prior to the Transfer Date, with respect to the Project;

(i) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 15(n);

(ii) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 15(n);

(iii) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;

(iv) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(v) judgment liens in respect of judgments that do not constitute an Event of Default under Section 19(a)(vi); and

(vi) easements, zoning restrictions, rights of way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Project;

(b) with respect to the Revenues:

(i) the Senior Revenue Lien; and

(ii) the Subordinate Revenue Lien;

(c) with respect to the Subordinate Revenues (other than Subordinate Revenues deposited in or credited to the TIFIA Debt Service Reserve Fund), the Subordinate Revenue Lien;

(d) with respect to the TIFIA Debt Service Reserve Fund and the amounts on deposit therein or credited thereto from time to time pursuant to this Agreement and the TIFIA Resolution, the Lien granted in favor of, and for the sole benefit of the TIFIA Lender pursuant to this Agreement and the TIFIA Resolution;

(e) with respect to any Excepted Lease, any Special Facilities Lien; and

(f) with respect to any Special Facilities Revenue, any Special Facilities Lien for the benefit of the applicable Special Facility Obligations.

“Permitted Special Facility” means any property or assets of the Port or the Borrower (whether an Existing Facility, property or assets intended to be developed or acquired by the Borrower in connection with the Port or any other property or assets) that is designated a Special Facility in accordance with Section 16(n); provided, that, (a) immediately after giving effect to the designation of any property or assets of the Port or the Borrower (whether an Existing Facility, property or assets intended to be developed or acquired by the Port or the Borrower in connection with the Port or otherwise) as a Special Facility, each of the Projected Coverage Ratios when calculated on a Pro Forma Basis using the Revised Financial Model referred to in Section 16(n)(iii)(C) for each Calculation Period occurring on or after such designation shall be equal to or greater than (i) in the case of the Projected Adjusted Rate Coverage Ratio, 1.00:1.00 for each applicable Calculation Period and (ii) in the case of the Projected Rate Coverage Ratio, 1.10:1.00 for each applicable Calculation Period, (b) in connection with such designation, the Nationally Recognized Rating Agency that provided the most recent public rating of the TIFIA Loan in accordance with Section 15(j) shall have provided a credit rating of the TIFIA Loan that is equal to or higher than the lower of (i) the initial credit rating of the TIFIA Loan furnished as of the Effective Date and (ii) the credit rating of the TIFIA Loan immediately prior to the designation of such Special Facility, (c) the designation of such property or assets as a Special Facility and the development, construction, operation and maintenance thereof could not reasonably be expected to have an adverse impact on the Revenues and Subordinate Revenues or any other Material Adverse Effect, (d) the Operations and Maintenance Expenses and any indebtedness associated with such Special Facility shall not be payable from any Revenues or Subordinate Revenues; and (e) in the case of any designation of any Existing Facility as a Special Facility, the Net Revenue Debt Service Coverage Ratio when calculated on a Pro Forma Basis using the applicable Financial Plan referred to in Section 16(n)(iii)(C) for each Calculation Period occurring on or after such designation shall be equal to or greater than 2.00:1.00 for each such Calculation Period.

“Person” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“Port” means the entire harbor system subject to and under the jurisdiction of the Board as defined in the Charter, and including, without limitation, all harbor or port

improvements, work utilities, appliances, facilities and water craft, owned, controlled or operated by the City in or upon or pertaining to the waterfront or navigable waters of the City as such system now exists together with all additions acquired, constructed or financed with surplus revenues or funds derived from the sale of indebtedness authorized by the Senior Master Resolution, the Subordinated Master Resolution or any subsequent resolution of the Board, together with all improvements and extensions to the said system later constructed or acquired.

“Principal Contracts” means (a) prior to the Transfer Date, the Design Build Contract, (b) the Cooperation Agreement and (c) the Project O&M Agreement.

“Principal Party” means any Person (other than the Borrower) party to a Principal Contract and any surety or guarantor of such a Person with respect to such Person’s obligations under such Principal Contract, for so long as such Principal Contract remains in effect.

“Pro Forma Basis” means, with respect to the calculation of any Coverage Ratio, Debt Service Coverage Ratio or Projected Coverage Ratio, a pro forma calculation of such Coverage Ratio, Debt Service Coverage Ratio or Projected Coverage Ratio, assuming for purposes of such calculation: (a) in the case of the incurrence of any indebtedness, that such indebtedness is outstanding as of the date of such calculation and was incurred on the immediately preceding Semi-Annual Payment Date, (b) in the case of the designation of any property or assets comprising part of the Port as a Special Facility, that such property or assets constitute a Special Facility (and that such designation occurred as of the immediately preceding Semi-Annual Payment Date) and all revenues related thereto are Special Facilities Revenues, and/or (c) in the case of the sale or assignment of any Existing Facilities, that such sale or assignment of such Existing Facilities occurred as of the immediately preceding Semi-Annual Payment Date.

“Project” means the development and construction of a new six lane bridge to replace the existing Gerald Desmond Bridge to be located in the City at the southern end of State Route (SR) 710 in Los Angeles County and including a 14-foot separated pedestrian bicycle facility connecting to the City of Los Angeles’ bikeway system and all related approach structures, roads and interchange connectors.

“Project BANs” means any Senior Debt Obligation of the Borrower (i) that is issued as a short-term obligation having a final maturity or repayment date not later than one year after the Expected Substantial Completion Date and (ii) the proceeds of which have been or are intended to be applied to the payment or refinancing of Eligible Project Costs.

“Project Budget” means the budget for the Project in the aggregate amount of U.S.\$[] attached to this Agreement as **Schedule I** showing a summary of all Eligible Project Costs and the estimated sources and uses of funds for the Project, as amended, supplemented or otherwise modified from time to time, in each case with the prior written approval of the TIFIA Lender.

“Project Costs” means (a) the costs paid or incurred (to the extent paid, such costs shall be reimbursed to the Person who paid such costs) or to be paid or incurred by the

Borrower in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and financing costs; (b) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) on any indebtedness of the Borrower (other than the TIFIA Loan) incurred for the Project, including, without limitation, the Project BANs; (c) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower other than to the extent such amounts constitute direct or indirect costs unallowable to the Borrower and its contractors under 48 C.F.R. Part 31; and (d) the repayment of obligations incurred by the Borrower, the proceeds of which obligations were used to pay items (a) through (c) of this definition.

“Project O&M Agreement” means the Operation and Maintenance Agreement dated July 18, 2012 by and between the State of California, acting by and through its Department of Transportation and the Borrower.

“Projected Adjusted Rate Coverage Ratio” means, as of any date of determination, for any Calculation Period, the ratio of Net Revenues projected to be received by or on behalf of the Borrower for such Calculation Period to the Maximum Annual Debt Service projected to be due and payable as of such date of determination, in each case calculated based on the Revised Financial Model.

“Projected Coverage Ratios” means each of the Projected Adjusted Rate Coverage Ratio and the Projected Rate Coverage Ratio. The calculation of any Projected Coverage Ratio prior the actual disbursement of the TIFIA Loan in full shall be calculated assuming that the TIFIA Loan was outstanding as of any date of determination and that TIFIA Debt Service is to be paid in accordance with the Loan Amortization Schedule.

“Projected Rate Coverage Ratio” means, as of any date of determination, for any Calculation Period, the ratio of Revenues projected to be received by or on behalf of the Borrower for such Calculation Period to the Maximum Annual Debt Service projected to be due and payable as of such date of determination, in each case calculated based on the Revised Financial Model.

“Prospective Event of Default” means an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default.

“Rate Coverage Ratio” means, as of any date of determination, the ratio of Revenues actually received by or on behalf of the Borrower for the twelve (12) month period ending on the March 30 or September 30 occurring immediately prior to such date of determination to the Maximum Annual Debt Service calculated as of such date of determination based on the Revised Financial Model; provided, that, for purposes of calculating the Rate Coverage Ratio with respect to paragraphs (d) and (f) of the definition of Permitted Debt, Rate Coverage Ratio means the ratio of (i)(A) Revenues for the last completed Borrower Fiscal Year or Revenues actually received by or on behalf of the Borrower for the twelve (12) month period ended not more than one month prior to such date of determination or (B) the estimated Revenues for the first 12-month period following the completion of the improvements or

extensions to the Port financed with the proceeds of the Additional Senior Bonds or Additional Subordinated Debt, as estimated by and set forth in a certificate of an independent certified public accountant or an independent engineer appointed by the Board, to (ii) the Maximum Annual Debt Service calculated, on a Pro Forma Basis, and as of such date of determination based on the Revised Financial Model.

“Rate Coverage Test” has the meaning set forth in Section 15(m)(i).

“Rating Category” means one of the generic rating categories of a Nationally Recognized Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

“Related Documents” means, without duplication, the TIFIA Loan Documents, the Principal Contracts in effect from time to time, the Senior Debt Documents in effect from time to time, the Subordinated Debt Documents in effect from time to time and the Special Facilities Debt Documents in effect from time to time.

“Requisition” has the meaning set forth in Section 4(a).

“Resolution Rate Tests” means each of the covenants of the Borrower set forth in Section 6.10 of the Senior Master Resolution and Section 6.10 of the Subordinated Master Resolution and any similar financial agreement, undertaking or covenant of the Borrower set forth in any of the Related Documents that requires the Borrower to collect or maintain Revenues or Subordinate Revenues at a certain level sufficient to cover payment of debt service on the Senior Debt Obligations, debt service on the Subordinated Debt Obligations, Operations and Maintenance Expenses or other financial obligations of the Borrower.

“Revenues” means all revenues and all money secured or collected for the benefit of and received by the Board from or arising out of the use or operation of the Port, including, without limitation, all tolls, charges, rentals, compensations or fees required to be paid for services, franchises or licenses, as permitted or required by the Charter or otherwise by law, ordinance or order, to the City for the operation of any public service utility upon lands and waters under the control and management of the Harbor Department and all investment earnings credited to the Harbor Revenue Fund and not required to be credited to a sub-fund, excepting therefrom (a) Special Facilities Revenues and (b) any revenues arising from any lease, contract or other agreement providing for the drilling for, developing, producing, extracting, taking or removing, storing and disposing of oil, gas or other hydrocarbon substances from the tide and submerged lands granted to the City by the State.

“Revised Financial Model” means the Base Case Financial Model, as it may be updated from time to time pursuant to Section 21(a)(ii)(B).

“S&P” means S&P Global Ratings.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Government, including those administered by OFAC or the U.S. Department of State.

“Secretary” means the United States Secretary of Transportation.

“Semi-Annual Payment Date” means each May 15 and November 15.

“Senior Bond” or **“Senior Bonds”** has the meaning specified for the definition of “Bond” or “Bonds” as set forth in the Senior Master Resolution.

“Senior Debt Accounts” means any and all of the accounts and funds established in accordance with Section 5.03(B) of the Senior Master Resolution and any Supplemental Senior Resolution.

“Senior Debt Document” means each of the Senior Master Resolution, each Supplemental Senior Resolution and any other Contractual Obligation of the Borrower entered into or issued in connection with the Borrower’s incurrence of any Senior Debt Obligations and the granting of the Senior Revenue Lien; provided, however, that no Contractual Obligation relating to any Hedging Transaction shall constitute a Senior Debt Document except to the extent that such Hedging Transaction has been consented to by the TIFIA Lender.

“Senior Debt Holder” means any Person owed any Senior Debt Obligations from time to time.

“Senior Debt Obligations” means all obligations owing from time to time by the Borrower in respect of any Senior Bond or any Senior Debt Document, including, without limitation, all principal and interest due and payable in respect thereof from time to time, any fees or other amounts due in respect thereof from time to time and all interest accrued or accruing (or which would, absent the commencement of a Bankruptcy Related Event, accrue) after commencement of any Bankruptcy Related Event in accordance with the terms of such Senior Bond or Senior Debt Document, as applicable; provided, however, that (a) in connection with the calculation of Maximum Annual Debt Service or Total Debt Service with respect to the Projected Coverage Ratios and the Debt Service Coverage Ratios, **“Senior Debt Obligations”** shall include any Additional Senior Bonds and any related Senior Debt Obligations projected to be issued by the Borrower, whether or not such Additional Senior Bonds have actually been issued or such related Senior Debt Obligations have been incurred as of such date of calculation and (b) in connection with the calculation of Maximum Annual Debt Service with respect to any calculation of the Coverage Ratios on a Pro Forma Basis for the purposes of the incurrence of any Permitted Debt, **“Senior Debt Obligations”** shall include the Additional Senior Bonds and related Senior Debt Obligations (if any) that are proposed to be issued or incurred as Permitted Debt requiring such calculation.

“Senior Debt Service” means, as of any date of determination, for any period, the aggregate amount of principal, interest and fees becoming due and payable (or projected to be due and payable) in respect of all outstanding Senior Debt Obligations and all projected Senior Debt Obligations, if applicable, for such period; provided, however, that for the purposes of computing Senior Debt Service for any applicable period:

(a) Excluded Senior Principal Payments and interest and fees thereon shall be excluded from such calculation and Assumed Senior Debt Service shall be included in such calculation;

(b) if any Senior Debt Obligations are Variable Rate Indebtedness, the interest rate on such Senior Debt Obligations shall be assumed to be equal to the Interest Rate Cap applicable to such Variable Rate Indebtedness;

(c) principal, interest and fee payments on Senior Debt Obligations shall be excluded (i) to the extent such payments are to be paid from amounts on deposit with the Treasurer, any Fiscal Agent (as defined in the Senior Master Resolution) or any other fiduciary in an escrow specifically therefor, or (ii) to the extent that such interest or fee payments are to be paid from the proceeds of Senior Debt Obligations held by the Treasurer, a Fiscal Agent or any other fiduciary as capitalized interest or fees specifically to pay such interest or fees;

(d) in determining the principal amount due in the relevant period, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments (as defined in the Senior Master Resolution) or any scheduled redemption or payment of Senior Debt Obligations on the basis of Accreted Value (as defined in the Senior Master Resolution) and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Bond (as defined in the Senior Master Resolution); and

(e) if any interest rate swap agreement is in effect with respect to, and is payable on parity with, the Senior Debt Obligations to which it relates, no amounts payable under such interest rate swap agreement shall be included in the calculation of Senior Debt Service unless the sum of (i) interest payable on such Senior Debt Obligations; *plus* (ii) amounts payable under such interest rate swap agreement; *less* (iii) amounts receivable under such interest rate swap agreement, is expected to be greater than the interest payable on the Senior Debt Obligations to which it relates, then, in such instance, the amount of such payments expected to be made that exceed the interest expected to be paid on the Senior Debt Obligations shall be included in such calculation.

“Senior Master Resolution” means that certain Resolution No. 1475 adopted by the Board on November 8, 1989, as amended by: (a) Resolution No. HD-1677, adopted by the Board on October 4, 1993; (b) Resolution No. HD-1940, adopted by the Board on November 2,

1998; (c) Resolution No. HD-2115, adopted by the Board on May 28, 2002; (d) Resolution No. HD-2729, adopted by the Board on July 16, 2013; and (e) Resolution No. HD-2762, adopted by the Board on May 5, 2014.

“Senior Revenue Lien” means (a) the first priority senior Lien created for the benefit of the Senior Debt Obligations on the Revenues and (b) the first priority senior Lien created for the benefit of the applicable Senior Debt Obligations on all amounts held in each of the Senior Debt Accounts, in each case, pursuant to Section 5.01 of the Senior Master Resolution.

“Series” has the meaning set forth in the Senior Master Resolution or the Subordinated Master Resolution, as applicable.

“Series B/C Subordinate Revolving Obligations” has the meaning set forth in the definition of “Existing Subordinated Debt Documents”.

“Servicer” means such entity or entities as the TIFIA Lender shall designate from time-to-time to perform, or assist the TIFIA Lender in performing, certain duties hereunder.

“Significant Portion” means any Existing Facilities or portions thereof which, if such facilities had been sold or disposed of by the Borrower at the beginning of an annual period which includes the month of commencement of the 12-month period ending on the day of such disposition, would have resulted in a reduction in Revenues for such annual period of more than 4% when the actual Revenues for such annual period are decreased by the Revenues directly attributable to such Existing Facilities and increased by the expenses of the Borrower directly attributable to such Existing Facilities.

“Special Facilities” or **“Special Facility”** has the meaning set forth in the Senior Master Resolution.

“Special Facilities Debt Document” means, without duplication, each of the Senior Master Resolution, each Special Facilities Supplemental Resolution and any other resolution or Contractual Obligation of the Borrower authorized, entered into or issued in connection with the Borrower’s designation of any Special Facility and/or issuance of Special Facility Obligations.

“Special Facilities Lien” means any Lien granted to secure any Special Facility Obligations, to the extent such Special Facility Obligations relate to a Permitted Special Facility, including, without limitation, any Lien on Special Facilities Revenues associated with such Special Facility and any Lien on the Excepted Lease associated with such Special Facility.

“Special Facilities Revenue” has the meaning set forth in the Senior Master Resolution.

“Special Facilities Supplemental Resolutions” means any resolution adopted by the Board, from time to time, designating a Special Facility, authorizing the issuance of Special

Facility Obligations and/or setting forth the terms of Special Facility Obligations and such other items related to any Special Facility and/or Special Facility Obligations.

“Special Facility Obligations” has the meaning set forth in the Senior Master Resolution.

“State” means the State of California.

“Subordinate Debt Service Reserve Fund” means any debt service reserve fund (other than the TIFIA Debt Service Reserve Fund) established by the Treasurer, the Board, a fiscal agent or any other fiduciary appointed by the Treasurer pursuant to any Supplemental Subordinate Resolution with respect to any Subordinated Debt Obligations as contemplated by Section 5.02(c) of the Subordinated Master Resolution.

“Subordinate Harbor Debt Service Fund” means the “Subordinate Harbor Debt Service Fund” established and maintained by the Treasurer pursuant to Section 5.03(a) of the Subordinated Master Resolution.

“Subordinate Interest Account” means the “Interest Account” established and maintained by the Treasurer within the Subordinate Harbor Debt Service Fund pursuant to Section 5.03(a) of the Subordinated Master Resolution.

“Subordinate Principal Account” means the “Principal Account” established and maintained by the Treasurer within the Subordinate Harbor Debt Service Fund pursuant to Section 5.03(a) of the Subordinated Master Resolution.

“Subordinate Redemption Fund” means the “Subordinate Harbor Redemption Fund” established and maintained by the Treasurer in accordance with Section 5.05 of the Subordinated Master Resolution.

“Subordinate Revenue Lien” means (a) the first priority senior Lien created for the benefit of the Subordinated Debt Obligations on the Subordinate Revenues and all amounts held in each of the Subordinated Debt Secured Accounts (other than the TIFIA Debt Service Reserve Fund) and (b) the first priority senior Lien created for the benefit of the TIFIA Lender on all amounts held in the TIFIA Debt Service Reserve Fund, in each case, pursuant to Section 5.01 of the Subordinated Master Resolution.

“Subordinate Revenues” means the Revenues remaining after (a) the payment of principal and redemption premium, if any, of and interest on the Senior Debt Obligations, and (b) any deposits to any debt service reserve funds established with respect to the Senior Bonds.

“Subordinated Debt Document” means, without duplication, each of the TIFIA Loan Documents, the Subordinated Master Resolution, each Supplemental Subordinate Resolution, the Existing Subordinated Debt Documents and any other Contractual Obligation of the Borrower entered into or issued in connection with the Borrower’s incurrence of any Subordinated Debt Obligations and the granting of the Subordinate Revenue Lien; provided, however, that no Contractual Obligation relating to any Hedging Transaction shall constitute a

Subordinated Debt Document except to the extent that such Hedging Transaction has been consented to by the TIFIA Lender.

“Subordinated Debt Holder” means any Person owed any Subordinated Debt Obligations from time to time.

“Subordinated Debt Obligations” means all obligations owing from time to time by the Borrower in respect of the TIFIA Loan (and the TIFIA Note), any Existing Subordinated Debt Obligations, any Additional Subordinated Debt or any Subordinated Debt Document, including, without limitation, all principal and interest due and payable in respect thereof from time to time, any fees or other amounts due in respect thereof from time to time and all interest accrued or accruing (or which would, absent the commencement of a Bankruptcy Related Event, accrue) after commencement of any Bankruptcy Related Event in accordance with the terms of the TIFIA Loan (and the TIFIA Note), any Existing Subordinated Debt Obligations, any Additional Subordinated Debt or any Subordinated Debt Document, as applicable; provided, however, that (a) in connection with the calculation of Maximum Annual Debt Service or Total Debt Service with respect to the Projected Coverage Ratios and the Debt Service Coverage Ratios, **“Subordinated Debt Obligations”** shall include the TIFIA Loan and any Additional Subordinated Debt projected to be issued by the Borrower whether or not the TIFIA Loan or such Additional Subordinated Debt has actually been incurred as of such date of calculation and (b) in connection with the calculation of Maximum Annual Debt Service with respect to any calculation of the Coverage Ratios on a Pro Forma Basis for the purposes of the incurrence of any Permitted Debt, **“Subordinated Debt Obligations”** shall include the Additional Subordinated Debt (if any) and any related Subordinated Debt Obligations that is proposed to be issued or incurred as Permitted Debt requiring such calculation.

“Subordinated Debt Secured Account” means each of (a) the Subordinate Harbor Debt Service Fund, (b) the Subordinate Principal Account, (c) the Subordinate Interest Account, and (d) the TIFIA Debt Service Reserve Fund.

“Subordinated Debt Service” means, as of any date of determination, for any period, the aggregate amount of principal, interest and fees becoming due and payable (or projected to be due and payable) in respect of all outstanding Subordinated Debt Obligations for such period; provided, however, that for the purposes of computing Subordinated Debt Service for any applicable period:

(a) Excluded Subordinated Principal Payments and interest and fees thereon shall be excluded from such calculation and Assumed Subordinated Debt Service shall be included in such calculation;

(b) if any Subordinated Debt Obligations are Variable Rate Indebtedness the interest rate on such Subordinated Debt Obligations shall be assumed to be equal to the Interest Rate Cap applicable to such Variable Rate Indebtedness;

(c) principal, interest and fee payments on Subordinated Debt Obligations shall be excluded (i) to the extent such payments are to be paid from amounts on deposit with the Treasurer, any Fiscal Agent (as defined in the Subordinated Master Resolution)

or any other fiduciary in an escrow specifically therefor, or (ii) to the extent that such interest or fee payments are to be paid from the proceeds of Subordinated Debt Obligations held by the Treasurer, a Fiscal Agent or any other fiduciary as capitalized interest or fees specifically to pay such interest or fees;

(d) in determining the principal amount due in the relevant period, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments (as defined in the Subordinated Master Resolution) or any scheduled redemption or payment of Subordinated Debt Obligations on the basis of Accreted Value (as defined in the Subordinated Master Resolution) and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Subordinate Obligations (as defined in the Subordinated Master Resolution); and

(e) if any interest rate swap agreement is in effect with respect to, and is payable on parity with, the Subordinated Debt Obligations to which it relates, no amounts payable under such interest rate swap agreement shall be included in the calculation of Subordinated Debt Service unless the sum of (i) interest payable on such Subordinated Debt Obligations; *plus* (ii) amounts payable under such interest rate swap agreement; *less* (iii) amounts receivable under such interest rate swap agreement, is expected to be greater than the interest payable on the Subordinated Debt Obligations to which it relates, then, in such instance, the amount of such payments expected to be made that exceed the interest expected to be paid on the Subordinated Debt Obligations shall be included in such calculation.

“Subordinated Master Resolution” means that certain Resolution No. HD-2726 adopted by the Board on July 16, 2013, as amended by Resolution No. HD-2764 adopted by the Board on May 12, 2014.

“Substantial Completion” means the date on which the Borrower issues a “Notice of Substantial Completion” to the Design Build Contractors pursuant to Section 19.1.4 of the Design Build Contract.

“Substantial Completion Date” means the date on which Substantial Completion occurs.

“Supplemental Resolutions” means the Supplemental Senior Resolutions and the Supplemental Subordinate Resolutions.

“Supplemental Senior Resolution” has the meaning specified for the definition of “Supplemental Resolution” as set forth in the Senior Master Resolution.

“Supplemental Subordinate Resolution” has the meaning set forth in the Subordinated Master Resolution.

“**TIFIA**” has the meaning set forth in the Recitals hereto.

“**TIFIA Debt Service**” means, with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (a) as set forth on **Exhibit F** and (b) due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(b).

“**TIFIA Debt Service Reserve Fund**” means the “City of Long Beach, California Subordinate Harbor Revenue Note, Series 2020 (Gerald Desmond Bridge – TIFIA Loan) Reserve Fund”, established with the TIFIA Fiscal Agent pursuant to the TIFIA Resolution and the TIFIA Fiscal Agent Agreement, into which the TIFIA Debt Service Reserve Requirement shall be paid in accordance with Section 15(k)(iii).

“**TIFIA Debt Service Reserve Requirement**” means, as of any date of determination (a) if the Borrower has established and maintains one or more debt service reserve funds with respect to any Senior Debt Obligations, Existing Subordinated Debt Obligations or Additional Subordinated Debt, an amount equal to the least of (i) 10% of the initial principal amount of the TIFIA Loan, (ii) the greatest amount of TIFIA Debt Service due or to become due in any consecutive twelve (12) month period and (iii) 125% of the average TIFIA Debt Service payable by the Borrower during each Borrower Fiscal Year, or (b) if the Borrower is not then maintaining any debt service reserve funds with respect to any Senior Debt Obligations, Existing Subordinated Debt Obligations or Additional Subordinated Debt, the greatest amount of TIFIA Debt Service due or to become due on any Semi-Annual Payment Date occurring on or prior to the earlier to occur of (i) the tenth (10th) anniversary of such date of determination and (ii) the Final Maturity Date.

“**TIFIA Fiscal Agent**” means U.S. Bank National Association, as fiscal agent for the TIFIA Loan and the TIFIA Note.

“**TIFIA Fiscal Agent Agreement**” means that Fiscal Agent Agreement, dated [_____] [___], 2020, by and between the Borrower and the TIFIA Fiscal Agent, with respect to the TIFIA Loan and the TIFIA Note.

“**TIFIA Interest Rate**” has the meaning provided in Section 6.

“**TIFIA Lender**” has the meaning provided in the preamble hereto.

“**TIFIA Lender’s Authorized Representative**” means the Executive Director and any other Person who shall be designated as such pursuant to Section 26.

“**TIFIA Loan**” means the loan secured by the Subordinate Revenue Lien, evidenced by the TIFIA Note and made by the TIFIA Lender to the Borrower hereunder, pursuant to the Act, in a principal amount not to exceed U.S.\$500,000,000, to be used to pay Eligible Project Costs.

“**TIFIA Loan Documents**” means this Agreement, the TIFIA Note, the TIFIA Fiscal Agent Agreement, the Subordinated Master Resolution and the TIFIA Resolution.

“**TIFIA Note**” means the note in substantially the form of **Exhibit A**, issued by the Borrower to the TIFIA Lender pursuant to the TIFIA Resolution to evidence the payment of obligations of the Borrower on the TIFIA Loan.

“**TIFIA Obligations**” means all Subordinated Debt Obligations owed to the TIFIA Lender from time to time pursuant to the terms of the TIFIA Loan Documents.

“**TIFIA Resolution**” means Resolution No. HD-____ adopted by the Board on _____, 2020 approving and authorizing the execution and delivery of this Agreement, the incurrence of the TIFIA Loan and the issuance of the TIFIA Note.

“**Total Debt Service**” means, for any Calculation Period, the aggregate amount of Senior Debt Service and Subordinated Debt Service projected to be payable by the Borrower in respect of the Senior Debt Obligations and the Subordinated Debt Obligations in the relevant Calculation Period.

“**Transfer Date**” means the date on which ownership of the Project is transferred to the State in accordance with the terms of the Cooperation Agreement.

“**Treasurer**” means the Treasurer of the City.

“**Uncontrollable Force**” means any cause beyond the control of the Borrower, including: (a) a tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided, that, the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided, however, that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State.

“**USDOT**” means the United States Department of Transportation.

“**Variable Rate Indebtedness**” means any indebtedness the interest rate on which is not fixed at the time of incurrence of such indebtedness, and has not at some subsequent date been fixed.

“**Warranty**” has the meaning set forth in the Design Build Contract.

“Warranty Work” has the meaning set forth in the Design Build Contract.

“Work” has the meaning set forth in the Design Build Contract.

SECTION 2. Interpretation. Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof” and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to sections, subsections, schedules, exhibits, appendices and provisions are to the applicable sections, subsections, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time-to-time in accordance with the terms thereof and hereof. For the avoidance of doubt, to the extent that any defined term used herein is defined by reference to the definition of such term in either of the Senior Master Resolution or the Subordinated Master Resolution, such defined term shall have the meaning specified for such term in the Senior Master Resolution or the Subordinated Master Resolution as in effect as of the Effective Date except to the extent that the TIFIA Lender has expressly consented to any amendment, modification, supplement, restatement or replacement thereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 36 and signed by a duly authorized representative of such party.

SECTION 3. TIFIA Loan Amount. The principal amount of the TIFIA Loan shall not exceed U.S.\$500,000,000. TIFIA Loan proceeds shall be disbursed from time-to-time in accordance with Section 4 and Section 12(b).

SECTION 4. Disbursement Conditions.

(a) The proceeds of the disbursement of the TIFIA Loan shall be available solely to reimburse the Borrower for its prior payment of Eligible Project Costs, including Eligible Project Costs paid with proceeds of Project BANs, which may be effectuated through the payment or redemption of such Project BANs with TIFIA Loan proceeds. TIFIA Loan

proceeds shall be disbursed in one or more disbursements and shall be made pursuant to one or more requisitions and certifications (each a “**Requisition**”) in the form set forth in **Appendix One to Exhibit C**, along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the TIFIA Lender, all in accordance with the procedures of **Exhibit C** and subject to (i) the conditions set forth in this Section 4 and (ii) the conditions set forth in Section 12(b) having being satisfied as of the disbursement date; provided, however, that no disbursements of TIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date.

(b) The Borrower shall deliver copies of each Requisition to the TIFIA Lender, the Servicer (if any) and the FHWA Division Office on or before the 15th Business Day of the month preceding the month in which a disbursement of the TIFIA Loan is requested. If the TIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, the disbursement of funds shall be made on the 1st day of the month following the date on which such Requisition is received, or on the next succeeding Business Day if such 1st day is not a Business Day. Express TIFIA Lender approval or denial shall be substantially in the form annexed hereto as **Appendix Two to Exhibit C**.

(c) The Borrower shall deliver to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any), copies of all invoices and other records evidencing Eligible Project Costs (the “**Eligible Project Costs Documentation**”) by the following applicable date: (x) with respect to Eligible Project Costs incurred by the Borrower prior to, and up to three (3) months after, the Effective Date, the last Business Day of the third (3rd) month immediately following the Effective Date, and (y) with respect to Eligible Project Costs incurred by the Borrower after the 3-month period referred to in clause (x) above, the last Business Day of the third (3rd) month immediately following such 3-month period referred to in clause (x) above, and the last Business Day of each third (3rd) month thereafter.

(d) Each time the Borrower delivers Eligible Project Costs Documentation to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any), the Borrower shall also deliver to such entities a duly executed certificate from the Borrower’s Authorized Representative certifying as to the following:

(i) the amount of Eligible Project Costs financed or refinanced from the proceeds of Project BANs for the period of time for which such Eligible Project Costs Documentation is being provided, including a tracing of such Eligible Project Costs as they are financed and/or refinanced with the proceeds of subsequent issuances of Project BANs;

(ii) that such proceeds of the Project BANs were expended solely in connection with the financing or refinancing of the payment or reimbursement of Eligible Project Costs;

(iii) the amount of Eligible Project Costs paid by or on behalf of the Borrower from sources other than the Project BANs, and identifying such sources; and

(iv) there does not currently exist any Event of Default or Prospective Event of Default or, if there does currently exist an Event of Default or Prospective Event of Default, the certificate shall specify all the actions that the Borrower is taking to remedy such Event of Default or Prospective Event of Default. The Eligible Project Costs Documentation and certificate submitted pursuant to this Section 4 must be satisfactory to the TIFIA Lender.

(e) The Eligible Project Costs Documentation must provide sufficient detail to enable the TIFIA Lender to verify that such costs are Eligible Project Costs paid by or on behalf of the Borrower. The Eligible Project Costs Documentation and the certificate must provide sufficient detail to enable the TIFIA Lender to verify that such proceeds of the Project BANs were expended for Eligible Project Costs, to trace the payment of Eligible Project Costs as they are financed or refinanced with proceeds of Project BANs, and to audit Eligible Project Costs paid by sources other than the Project BANs. All Eligible Project Costs Documentation shall have been delivered to the TIFIA Lender, the Servicer (if any) and FHWA Division Office not less than one (1) month prior to the Borrower's submission of the Requisition contemplated in clause (b) above.

(f) The certificate and Eligible Project Costs Documentation referred to above is intended to document Eligible Project Costs in connection with the reimbursement of such Eligible Project Costs, and the TIFIA Lender shall review each such certificate for compliance with TIFIA disbursement requirements. In no event shall the Borrower issue and/or deliver a Requisition for the reimbursement of any Eligible Project Costs in connection with which Eligible Project Costs Documentation has not been delivered to the TIFIA Lender. The applicable amount of Eligible Project Costs will be disbursed following the Borrower's submittal of a Requisition and upon satisfaction of the conditions precedent to disbursement set forth in Section 4(a), Section 12(a) and Section 12(b).

(g) The Borrower may amend the Anticipated TIFIA Loan Disbursement Schedule by submitting a revised version thereof to the TIFIA Lender no later than thirty (30) days prior to the proposed effective date thereof, together with a detailed explanation of the reasons for such revisions.

(h) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4, Section 12, or Exhibit C), in no event shall the TIFIA Lender have any obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower if the TIFIA Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

SECTION 5. Term. The term of the TIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

SECTION 6. Interest Rate. The interest rate with respect to the TIFIA Loan (the "TIFIA Interest Rate") shall be [] and [] hundredths percent ([]%) per

annum. Interest will be computed on the Outstanding TIFIA Loan Balance (as well as on any past due interest) from time-to-time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed and will be compounded semi-annually; provided, however, that upon the occurrence of an Event of Default, the interest rate on the Outstanding TIFIA Loan Balance and on any accrued but unpaid interest thereon shall be the Default Rate and the TIFIA Note shall continue to bear interest at such rate until such Event of Default has been cured or, if earlier, the TIFIA Loan has been irrevocably paid in full in cash.

SECTION 7. Outstanding TIFIA Loan Balance; Revisions to Exhibit F and the Loan Amortization Schedule.

(a) The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; and (ii) decreased upon each payment or prepayment of the Outstanding TIFIA Loan Balance, by the amount of principal so paid. The TIFIA Lender may in its discretion at any time and from time-to-time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding TIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error. Upon any determination of the Outstanding TIFIA Loan Balance, the TIFIA Lender may, but shall not be obligated to, make applicable revisions to **Exhibit F** and the Loan Amortization Schedule pursuant to Section 9(f) and in such event shall provide the Borrower with a copy of such **Exhibit F** and Loan Amortization Schedule as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents.

(b) The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule in **Exhibit F** from time-to-time, in accordance with the principles set forth in **Exhibit K**, to reflect (i) any change to the Outstanding TIFIA Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the TIFIA Lender may determine is necessary for administering the TIFIA Loan and this Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any partial prepayments of the Outstanding TIFIA Loan Balance pursuant to Section 10 shall be applied in accordance with Section 10(c). Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit F** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. The TIFIA Lender shall provide the Borrower with a copy of **Exhibit F** as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents.

SECTION 8. Security and Priority; Flow of Funds.

(a) As security for the TIFIA Loan, the Borrower shall pledge, assign and grant a Lien on the Subordinate Revenues, and each Subordinated Debt Secured Account in accordance with the provisions of the Subordinated Master Resolution and the TIFIA Resolution. The TIFIA Loan shall be issued as a Subordinated Debt Obligation, shall be subordinate to the Lien on the Revenues and each Senior Debt Account pledged to secure the Senior Debt Obligations, and shall at all times be secured by (i) a first priority security interest in the Subordinate Revenues and each Subordinated Debt Secured Account (other than the TIFIA Debt Service Reserve Fund) on parity with the Other Subordinated Debt Obligations, and (ii) a first priority security interest on the TIFIA Debt Service Reserve Fund and on amounts on deposit therein or credited thereto from time to time which shall not be subject to any other Liens.

(b) (i) Except for Permitted Liens specified in clause (b)(i) of the definition thereof, the Revenues and each Senior Debt Account will be free and clear from any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with the Senior Revenue Lien and all action on the part of the Borrower to that end has been duly and validly taken; (ii) except for Permitted Liens specified in clauses (b)(ii) and (c) of the definition thereof, the Subordinate Revenues and each Subordinated Debt Secured Account (other than the TIFIA Debt Service Reserve Fund) will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with the Subordinate Revenue Lien, and all action on the part of the Borrower to that end has been duly and validly taken; and (iii) except for Permitted Liens specified in clause (d) of the definition thereof, the TIFIA Debt Service Reserve Fund and amounts on deposit therein or credited thereto from time to time pursuant to this Agreement and the TIFIA Resolution will be free and clear of any pledge, lien, charge or encumbrance thereon and all action on the part of the Borrower to that end has been duly and validly taken.

(c) The Borrower shall not use Revenues or Subordinate Revenues to make any payments or satisfy any obligations other than in accordance with the terms of the Charter, this Agreement, the Senior Master Resolution, the Subordinated Master Resolution and the TIFIA Resolution, and shall not apply any portion of the Revenues or Subordinate Revenues in contravention of the Charter, this Agreement, the Senior Master Resolution, the Subordinated Master Resolution, or the TIFIA Resolution.

(d) The Subordinated Master Resolution provides that all Revenues shall be deposited into the Harbor Revenue Fund and thereafter the Borrower shall cause the Treasurer to:

(i) *first*, for so long as any Senior Debt Obligations are Outstanding, transfer moneys from the Harbor Revenue Fund (a) to each of the "Interest Account" and "Principal Account", in each case, as established and maintained by the Treasurer within the "Bond Service Fund" (as defined in the Senior Master Resolution) pursuant to Sections 5.02(A) of the Senior Master Resolution and (b) to each reserve fund established pursuant to Section 5.03(B)(3) of the Senior Master Resolution, and in the

priority set forth in paragraphs 1, 2 and 3 of Section 5.03(B) of the Senior Master Resolution, and

(ii) *second*, for so long as any Subordinated Debt Obligations are Outstanding, transfer moneys from the Harbor Revenue Fund to the Subordinate Harbor Debt Service Fund, and the TIFIA Debt Service Reserve Fund and any other Subordinate Debt Service Reserve Fund established under a Supplemental Subordinate Resolution, and set aside such moneys in such funds in the amounts (with respect to the TIFIA Debt Service Reserve Fund, as specified in Section 15(k)(iii) below) and order of priority as set forth in **Exhibit H** hereto.

SECTION 9. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the TIFIA Loan by making payments in accordance with the provisions of this Agreement and the other TIFIA Loan Documents on each Semi-Annual Payment Date, beginning on the Debt Service Payment Commencement Date, and on each other date (including the Final Maturity Date and any date on which payment thereof is due by reason of the acceleration of the maturity of the TIFIA Loan) on which payment thereof is required to be made hereunder; provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment of the TIFIA Note shall be treated as a payment of the TIFIA Loan and any prepayment of the TIFIA Loan shall be treated as a redemption of the TIFIA Note to the extent so paid.

(b) Payment of TIFIA Debt Service. On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay TIFIA Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date on **Exhibit F** hereto, as the same may be revised as provided in Section 7, which payments shall be made in accordance with Section 9(d).

(c) Accrual of Amounts.

(i) Notwithstanding anything in Section 5.02(a) of the Subordinated Master Resolution to the contrary, the Borrower shall cause the Treasurer to set aside in the Subordinate Interest Account, as soon as practicable in each month after all required deposits described in paragraphs 1, 2 and 3 of Section 5.03(B) of the Senior Master Resolution have been made, an amount equal to at least one-sixth of the aggregate half-yearly amount of interest becoming due and payable on the TIFIA Loan and the TIFIA Note on the immediately succeeding Semi-Annual Payment Date, until the half-yearly amount of interest on the TIFIA Loan and the TIFIA Note becoming due and payable on the immediately succeeding Semi-Annual Payment Date is on deposit in such account. No deposit need be made into the Subordinate Interest Account with respect to interest coming due on the TIFIA Loan and the TIFIA Note on the immediately succeeding Semi-Annual Payment Date if the amount contained therein is at least equal to the interest to become due and payable on the immediately succeeding Semi-Annual Payment Date.

(ii) Notwithstanding anything in Section 5.02(b) of the Subordinated Master Resolution to the contrary, the Borrower shall cause the Treasurer to set aside in the Subordinate Principal Account, as soon as practicable in each month after all required deposits described in paragraphs 1, 2 and 3 of Section 5.03(B) of the Senior Master Resolution have been made, an amount equal to at least one-twelfth of the aggregate amount of principal becoming due and payable on the TIFIA Loan and the TIFIA Note within the next twelve (12) months. No deposit need be made into the Subordinate Principal Account with respect to the TIFIA Loan and the TIFIA Note so long as there shall be in such account moneys sufficient to pay the principal of the TIFIA Loan and the TIFIA Note within the next twelve (12) months.

(d) Manner of Payment. Payments under this Agreement and the TIFIA Note shall be made by wire transfer on or before each Semi-Annual Payment Date in immediately available funds in accordance with payment instructions provided by the TIFIA Lender's Authorized Representative pursuant to Section 36, as modified in writing from time-to-time by the TIFIA Lender's Authorized Representative.

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding TIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the maturity of the TIFIA Loan shall be accelerated pursuant to the provisions of Section 19).

(f) Evidence of TIFIA Loan; Adjustments to Loan Amortization Schedule. As evidence of the Borrower's obligation to repay the TIFIA Loan, the Borrower shall issue and deliver to the TIFIA Lender, on or prior to the Effective Date, the TIFIA Note substantially in the form of **Exhibit A**, having a maximum principal amount of U.S.\$500,000,000 (subject to increase or decrease as herein provided) and bearing interest at the rate set forth in Section 6.

SECTION 10. Prepayments and Redemption.

(a) Mandatory Prepayments. The Borrower shall prepay the TIFIA Loan in whole or in part by redeeming the TIFIA Note in whole or in part, without penalty or premium, following the occurrence of an Event of Settlement to the extent the maximum principal amount of the TIFIA Loan disbursed by the TIFIA Lender, together with the amount of any other credit assistance provided under the Act, exceeds thirty-three percent (33%) of Eligible Project Costs, in an amount sufficient to reduce the Outstanding TIFIA Loan Balance (and the outstanding principal amount of the TIFIA Note) to an amount not to exceed thirty-three (33%) of Eligible Project Costs, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Notice of an Event of Settlement and each prepayment pursuant to this Section 10(a) shall be made in accordance with Section 15(p).

(b) Optional Prepayments. The Borrower may prepay the TIFIA Loan by redeeming the TIFIA Note in whole or in part (and, if in part, the amounts thereof to be prepaid (and redeemed) shall be determined by the Borrower; provided, however, that such prepayments (and the corresponding redemption) shall be in principal amounts of U.S.\$1,000,000 or any integral multiple of U.S.\$1.00 in excess thereof), at any time or from time-to-time, without penalty or premium, by paying to the TIFIA Lender such principal

amount of the TIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Each prepayment of the TIFIA Loan and corresponding redemption of the TIFIA Note shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the TIFIA Lender. In the case of any optional prepayment (and redemption), such written notice shall be delivered to the TIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment (or redemption), unless otherwise agreed by the TIFIA Lender.

(c) General. Notice having been given as provided in Section 10(a) or Sections 10(b) and 15(p), as applicable, the principal amount of the TIFIA Loan and the TIFIA Note stated in such notice or the whole thereof, as the case may be, shall become due and payable on the prepayment (and redemption) date stated in such notice, together with interest accrued and unpaid to the prepayment (and redemption) date on the principal amount then being prepaid (and redeemed). Upon the TIFIA Lender's receipt of confirmation that payment in full of the entire Outstanding TIFIA Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of a mandatory or optional prepayment, the TIFIA Lender shall surrender the TIFIA Note to the Borrower or its representative at the principal office of the TIFIA Lender. If the Borrower prepays (and redeems) only part of the unpaid balance of principal of the TIFIA Loan, the TIFIA Lender may make a notation on the TIFIA Note indicating the amount of principal of the TIFIA Note then being prepaid (and redeemed). Absent manifest error, the TIFIA Lender's notations and revisions to the TIFIA Note shall be conclusive evidence thereof; provided, however, that neither the failure to make any such notations nor any error in such notation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. All such partial prepayments (and redemptions) of principal shall be applied to reduce future payments due on the TIFIA Loan on a pro rata basis across all principal maturities or as otherwise agreed to by the TIFIA Lender, in its sole discretion. If said monies shall not have been so paid on the prepayment date, such principal amount of the TIFIA Note shall continue to bear interest until payment thereof at the rate provided for in Section 6, including, with respect to a mandatory prepayment pursuant to Section 10(a), at the Default Rate.

SECTION 11. Compliance with Laws. The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with all applicable federal and state laws, including, without limitation, the Buy America Requirements. The list of federal laws attached as **Exhibit D** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. Pursuant to the FHWA Oversight Agreement, Caltrans will be responsible for certain Project oversight activities. The Borrower acknowledges receipt of the FHWA Oversight Agreement and hereby agrees to cooperate with Caltrans and the FHWA Division Office in carrying out their duties under the FHWA Oversight Agreement. The Borrower represents that it has not made any irreversible or irretrievable commitment of resources, including physical construction, before all state and/or federal environmental permits required for commencement of construction of the relevant portion of the Project were finalized and approved by the appropriate resource agencies.

In the event that, as of any date of determination, any environmental permit that has not been obtained is required, the Borrower shall take immediate steps to acquire that permit. The Borrower assumes all risk of loss to the extent construction activities occur before all required permits have been obtained.

SECTION 12. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent has been satisfied or waived in writing by the TIFIA Lender:

(i) The Borrower shall have delivered to the TIFIA Lender (A) a certified true and complete copy of the Charter, Section 3.52.110 *et seq.* of the City of Long Beach Municipal Code, each Subordinated Debt Document (including the TIFIA Resolution but excluding this Agreement and the TIFIA Note) and each Senior Debt Document in effect as of the Effective Date, (B) an executed counterpart of this Agreement and (C) a duly executed and delivered TIFIA Note, in form and substance satisfactory to the TIFIA Lender.

(ii) Counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion that include those opinions set forth on **Exhibit G**.

(iii) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit B** with respect to the Borrower and its principals (as defined in 2 C.F.R. § 180.995).

(iv) The Borrower shall have provided to the TIFIA Lender satisfactory evidence that the Project has been included in the metropolitan transportation improvement program of the Southern California Association of Governments and by the California Transportation Commission in the State transportation plan and the approved State transportation improvement program, in each case to the extent required by 23 U.S.C. §§ 134 and 135 and 23 U.S.C. § 602(a)(3); and the financial plan for each such program or plan shall reflect the costs of, and the sources of funding for, the Project.

(v) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction, no more than thirty (30) days but no less than fourteen (14) days prior to the Effective Date, of the assignment by at least two (2) Nationally Recognized Rating Agencies of a public rating of "A-" or better on the TIFIA Loan and on the Outstanding Senior Debt Obligations.

(vi) The Borrower shall have delivered to the TIFIA Lender a certificate designating the Borrower's Authorized Representative and such Person's position and incumbency, in form and substance satisfactory to the TIFIA Lender.

(vii) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that the aggregate of all committed sources of funds shown in the Base Case Financial Model and **Schedule IV** hereof to pay Project Costs have been fully and completely committed and allocated to the Borrower by the provider(s) thereof (including evidence of other funding sources or funding commitments in respect of the Project Costs), and that such funds shall be sufficient to pay Project Costs necessary to achieve Substantial Completion.

(viii) The Borrower shall have provided to the TIFIA Lender (A) true, complete, fully executed and certified copies of the Principal Contracts (including any amendments, waivers or modifications in effect in respect thereof) and such agreements shall be in full force and effect and (B) a true, complete and certified schedule identifying in detail each of the Existing Material Lease Agreements (including any amendments, waivers or modifications in effect in respect thereof) as of the Effective Date, in each case in form and substance satisfactory to the TIFIA Lender. Each Existing Material Lease Agreement shall be in full force and effect as of the Effective Date.

(ix) The Borrower shall have delivered to the TIFIA Lender a complete and certified Base Case Financial Model in form and substance acceptable to the TIFIA Lender on or prior to the Effective Date demonstrating that (A) the projected Revenues and Subordinate Revenues shall (1) be sufficient to pay (a) Senior Debt Service and Subordinated Debt Service projected to be due and payable from time to time through the Final Maturity Date, (b) Maximum Annual Debt Service projected to be due and payable as of the Effective Date (assuming for the purposes of such calculation that the full amount of the TIFIA Loan was outstanding as of the Effective Date as reflected in the Base Case Financial Model delivered to the TIFIA Lender as of the Effective Date and that TIFIA Debt Service is to be paid in accordance with the Loan Amortization Schedule), and (c) TIFIA Debt Service in accordance with the Loan Amortization Schedule, (2) be sufficient to (a) comply with the Resolution Rate Tests and (b) result in Debt Service Coverage Ratios for each Calculation Period acceptable to the TIFIA Lender, and (B)(1) the Gross Revenue Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date is not less than 4.62x, and (2) the Net Revenue Debt Service Coverage Ratio for each Calculation Date through the Final Maturity Date that is not less than 2.90x.

(x) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that it has obtained all Governmental Approvals necessary to commence construction of the Project and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation).

(xi) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender that the Borrower is authorized, pursuant to the Charter and Section 3.52.110 *et seq.* of the City of Long Beach Municipal Code, to pledge, assign, and grant the Liens created for the benefit of the TIFIA Lender purported to be pledged, assigned,

and granted pursuant to the TIFIA Loan Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Liens created for the benefit of the TIFIA Lender to the extent contemplated by the TIFIA Loan Documents, and (C) paid, or caused to be paid, all taxes and filing fees, if any, that are due and payable in connection with the execution, delivery or recordation of any TIFIA Loan Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xii) The Borrower shall have paid in full all invoices delivered by the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) to the Borrower as of the Effective Date for the reasonable fees and expenses of the TIFIA Lender's counsel and financial advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xiii) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender of compliance with NEPA, and (B) complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and shall have provided evidence satisfactory to the TIFIA Lender of such compliance upon request by the TIFIA Lender.

(xiv) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Data Universal Numbering System number, and (C) registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov).

(xv) The Borrower shall have delivered to the TIFIA Lender (A) true, correct and complete certificates of insurance evidencing that the Design Build Contractors have obtained the insurance policies required by the Design Build Contract, which, in the case of the Design Build Contractors' liability policies (other than workers' compensation insurance), shall reflect the TIFIA Lender as an additional insured, (B) at the TIFIA Lender's request, copies of such insurance policies and (C) true, correct and complete certificates of insurance maintained by the Borrower in respect of the Port.

(xvi) The Borrower shall provide evidence satisfactory to the TIFIA Lender that (A) the Borrower's use of the Subordinate Revenues to make payments of Subordinated Debt Service is permitted under the Charter, each Senior Debt Document and each Subordinated Debt Document in effect as of the Effective Date and any applicable City ordinance, (B) the Borrower's use of the Revenues and Subordinate Revenues to make payments of Senior Debt Service, Subordinated Debt Service and to make payments of other costs of or related to the Project is permitted under all

applicable laws and permits and any Contractual Obligation binding on the Borrower or any of its properties or assets, and (C) the Borrower has complied with the requirements of the Charter, the Senior Debt Documents and the Subordinated Debt Documents, and received all approvals required thereunder from any Governmental Authority, to use the Revenues and Subordinate Revenues in accordance with the provisions of the Senior Debt Documents and the Subordinated Debt Documents.

(xvii) The Borrower shall have provided the TIFIA Lender true and complete records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the TIFIA Lender and in sufficient time prior to the Effective Date to permit the TIFIA Lender and the FHWA Division Office to audit such costs.

(xviii) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction that the performance security instruments to be delivered or received by the Borrower under any Principal Contract have been obtained and delivered and that each such instrument is in full force and effect.

(xix) The representations and warranties of the Borrower set forth in this Agreement (including Section 13) and in each other TIFIA Loan Document shall be true and correct as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xx) The Borrower shall have provided evidence, to the TIFIA Lender's satisfaction, of its compliance with Section 603(b)(6)(B) of the Act, including that (A) the Borrower is a public agency, (B) the TIFIA Loan is rated "A-" or higher by a Nationally Recognized Rating Agency, and (C) Revenues will not be affected by Project performance.

(xxi) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as **Exhibit L** in accordance with 49 C.F.R. §20.100(b).

(xxii) The Borrower shall have provided the TIFIA Lender with evidence satisfactory to the TIFIA Lender that, as of the Effective Date (A) the maximum principal amount of the TIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (B) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan, does not exceed eighty percent (80%) of Eligible Project Costs.

(xxiii) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender, including evidence that all other

Project funding requirements have been met (including evidence of other funding sources or funding commitments).

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the TIFIA Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower until each of the following conditions precedent has been satisfied or waived in writing by the TIFIA Lender:

(i) The Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 21(a).

(ii) If the Transfer Date has not occurred, the Borrower shall have demonstrated to the TIFIA Lender's satisfaction that it has all Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project.

(iii) (A)(1) The Borrower shall have obtained property insurance (including business interruption insurance for a period of at least twelve (12) months) in respect of the Port (including, if the Transfer Date has not occurred, the Project), with such policy limits, coverages and other term and conditions as are customary for facilities similar to the Port (as applicable); and (2) the Borrower shall have delivered certificates of such insurance obtained pursuant to clause (2) above or, at the TIFIA Lender's request, copies of such insurance policies;

(B) The Borrower shall have delivered an updated Schedule 13(v) reflecting the information required pursuant to Section 13(v) with respect to the insurance policies obtained pursuant to clause (2) of Section 12(b)(iii)(A) above.

(iv) At the time of, and immediately after giving effect to, any disbursement of TIFIA Loan proceeds then currently requested, (A) no Event of Default or event of default (howsoever described or designated) under any Related Document then in effect and (B) no Prospective Event of Default or event or condition that, with the lapse of time or giving of notice, would constitute an event of default (howsoever described or designated) under any Related Document then in effect, in each case, shall have occurred and be continuing.

(v) The representations and warranties of the Borrower set forth in this Agreement (including Section 13) and in each other TIFIA Loan Document shall be true and correct as of each date on which any disbursement of the TIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(vi) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrower submitted the Application to the TIFIA Lender.

(vii) To the extent not already delivered under Section 12(a)(xvii), the Borrower shall have provided the TIFIA Lender true and complete copies of any Eligible Project Costs Documentation in accordance with Section 4(c) hereof, in form and substance satisfactory to TIFIA Lender and in sufficient time prior to the delivery of the Requisition referred to in Section 12(b)(viii) below.

(viii) The Borrower shall have delivered to the TIFIA Lender a Requisition that complies with the provisions of Section 4, and the TIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 4(b)) such Requisition.

(ix) The Borrower shall have delivered such other agreements, documents, certificates, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender.

(x) The Borrower shall have provided evidence satisfactory to the TIFIA Lender of the Project's compliance with the Buy America Requirements.

(xi) Substantial Completion shall have been achieved.

(xii) Each of the conditions set forth in Section 12(a) shall have been satisfied or waived in writing by the TIFIA Lender.

(xiii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have provided certified copies of all Principal Contracts and all Additional Project Contracts (including, in each case, any amendment, modification or supplement thereto) then in effect.

(xiv) As of the date of disbursement of the TIFIA Loan, the Financial Plan shall demonstrate on a Pro Forma Basis that the projected Revenues and Subordinate Revenues shall be sufficient to result in Projected Coverage Ratios for each Calculation Period occurring from and after the date of disbursement of the TIFIA Loan equal to or greater (A) in the case of the Projected Adjusted Rate Coverage Ratio, 1.00:1.00 for each applicable Calculation Period and (B) in the case of the Projected Rate Coverage Ratio, 1.10:1.00 for each applicable Calculation Period.

(xv) The Borrower shall have paid in full all invoices received from the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) as of the date of disbursement of the TIFIA Loan, for the reasonable fees and expenses of the TIFIA Lender's counsel and financial advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

SECTION 13. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the

representations and warranties below other than those contained in clauses (b) and (l) of this Section, as of each date on which any disbursement of the TIFIA Loan is requested or made:

(a) Organization; Power and Authority. (i) The City is a charter city and municipal corporation organized and existing under its Charter and the Constitution and laws of the State, (ii) the Harbor Department is a proprietary department of the City under the exclusive control and management of the Board, a commission duly established and existing under the Charter, (iii) the Borrower has (or, if already adopted, had at the time of adoption) full legal right, power and authority to adopt the Senior Master Resolution, the Subordinated Master Resolution and the TIFIA Resolution, and to carry out and consummate all transactions contemplated thereby, and (iv) the Borrower has (or, if already executed, had at the time of execution) full legal right, power and authority to execute, deliver and perform this Agreement, the TIFIA Note and the other Related Documents, and to carry out and consummate all transactions contemplated hereby and thereby. Each of the Related Documents adopted or executed by the Borrower on or before any date on which this representation and warranty is made is in full force and effect and, except as permitted under this Agreement, has not been modified without the prior written consent of the TIFIA Lender.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing this Agreement, the TIFIA Note and the TIFIA Fiscal Agent Agreement are duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. (i) Each of the TIFIA Loan Documents and Principal Contracts has been duly adopted or authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (B) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(ii) The provisions of the Subordinated Master Resolution and the TIFIA Resolution constitute a contract between the Borrower and the TIFIA Lender subject to the provisions thereof, and the TIFIA Lender may, at law or in equity, by suit, action, mandamus or other proceedings, enforce and compel the performance of all duties required to be performed by the Borrower as a result of the disbursement of the TIFIA Loan and the issuing of the TIFIA Note.

(d) Non-Contravention. The adoption or execution and delivery of the Related Documents to which the Borrower is a party as of any date on which this representation and warranty is made, the consummation of the transactions contemplated in any such Related Document and the fulfillment of or compliance with the terms and conditions of any such Related Document will not (i) conflict with the Charter, or (ii) conflict with, or constitute a violation, breach or default (with due notice or the passage of time or both) by the Borrower of or under, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or

order, or any Contractual Obligation to which the Borrower is a party or by which it or its properties (including (A) prior to the Transfer Date, the Project and (B) the Revenues and Subordinate Revenues) are otherwise subject or bound, or result in the creation or imposition of any Lien of any nature whatsoever upon any of the property or assets of the Borrower (including (x) the Revenues, Subordinate Revenues and any of the Accounts and (y) prior to the Transfer Date, the Project), other than Permitted Liens.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is or was necessary in connection with (i) the adoption of the Senior Master Resolution, the Subordinated Master Resolution or the TIFIA Resolution or execution and delivery by the Borrower of the Related Documents in effect on the date on which this representation and warranty is made, except as have been obtained or made and as are in full force and effect or, (ii) (A) the consummation of any transaction contemplated by the Related Documents in effect on the date on which this representation and warranty is made or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of the Related Documents in effect on the date on which this representation and warranty is made, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. There is no legislation, litigation, action, suit, proceeding, inquiry or investigation before or by any court or other Governmental Authority, pending, or to the knowledge of the Borrower, threatened against or affecting (i) the TIFIA Loan Documents, the Subordinate Revenue Lien or the Senior Revenue Lien, or (ii) the Borrower, the Harbor Department, the Port, the Project, the Revenues or any other assets, properties or operations of the Borrower, that, solely in the case of clause (ii) could reasonably be expected to result in a Material Adverse Effect. To the Borrower's actual knowledge, there are no actions of the type described above pending or, threatened against or affecting any of the Principal Parties or any Material Lessee, except for matters arising after the Effective Date that could not reasonably be expected to result in a Material Adverse Effect. The Borrower is not in default (and no event has occurred and is continuing that with the giving of notice or the passage of time or both could constitute a default) with respect to any Governmental Approval described in Section 13(n), order or decree of any court or any order, regulation or demand of any Governmental Authority, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests.

(i) The Subordinated Master Resolution together with the TIFIA Resolution establish, for the benefit of the TIFIA Lender, as the holder of the TIFIA Note, a valid and perfected first priority Lien, on parity with the Existing Subordinated Debt Obligations and any Additional Subordinated Debt, on the

Subordinate Revenues and the Subordinated Debt Secured Accounts (other than the TIFIA Debt Service Reserve Fund) and all amounts or Permitted Investments on deposit therein or credited thereto, and such Lien is in full force and effect and is not subordinate or junior to any other Liens in respect of the Subordinate Revenues or the Subordinated Debt Secured Accounts.

(ii) The Subordinated Master Resolution together with the TIFIA Resolution establish, for the sole benefit of the TIFIA Lender, as the holder of the TIFIA Note, a valid and perfected first priority Lien on the TIFIA Debt Service Reserve Fund and all amounts or Permitted Investments on deposits therein or credited thereto, and such Lien is in full force and effect and is not subject to any other Lien.

(iii) Pursuant to Section 5451 of the Government Code of the State, no filing, registration, recording or publication of the Subordinated Master Resolution, the TIFIA Resolution or any other instrument nor any prior separation or physical delivery of Subordinate Revenues is required to establish the pledge provided for under the Subordinated Master Resolution or the TIFIA Resolution or to perfect, protect or maintain the Lien created thereby on the Subordinate Revenues and on the TIFIA Debt Service Reserve Fund, and amounts held in the Subordinated Debt Secured Accounts to secure the TIFIA Loan and the TIFIA Note.

(iv) The Borrower is not in breach of any covenants set forth in Section 15(a) of this Agreement or in any Senior Debt Document or Subordinated Debt Document with respect to the Subordinate Revenue Lien or the Lien on the TIFIA Debt Service Reserve Fund.

(v) The TIFIA Lender is entitled to the rights of a Subordinated Debt Holder for all purposes of the Subordinated Master Resolution and the benefit of the Subordinate Revenue Lien is enforceable under State law without any further action by the Borrower or any other Person.

(vi) Set forth on **Schedule 13(g)(vi)** is a complete and correct list and description of any account or fund in existence or maintained as of the Effective Date by the Borrower or any other Person in respect of which any of the Revenues or Subordinate Revenues are treated as held on deposit in or credited to or otherwise held in trust or subject to any Lien for the benefit of any Person including each of the Senior Debt Accounts and the Subordinated Debt Secured Accounts in effect as of the Effective Date.

(vii) As of the Effective Date (A) no Hedging Transaction is in effect or is entitled to the benefit of the Senior Revenue Lien or the Subordinate Revenue Lien and (B) the only indebtedness or obligations that are entitled to the benefit of the Senior Revenue Lien or the Subordinate Revenue Lien are, (1) in the case of the Senior Revenue Lien, the Existing Senior Debt Obligations, and (2) in the

case of the Subordinate Revenue Lien, the Existing Subordinated Debt Obligations and the TIFIA Loan.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms that neither it, nor any of the Design Build Contractors, nor any of their respective principals (as defined in 2 C.F.R. § 180.995) has been debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 12(a)(iii).

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and in each other TIFIA Loan Document are true and accurate, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(j) Compliance with Federal Requirements. The Borrower has complied, with respect to the Project, with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*).

(k) Transportation Improvement Program. The Project has been included in the metropolitan transportation improvement program of the Southern California Association of Governments and by the California Transportation Commission in the State transportation plan and the approved State transportation improvement program, in each case to the extent required by 23 U.S.C. §§ 134 and 135 and 23 U.S.C. § 602(a)(3), as applicable. The financial plan for each such program or plan reflects the costs of, and the sources of funding for, the Project.

(l) Credit Ratings. The TIFIA Loan and the Outstanding Senior Debt Obligations have received a public rating of "A-" or better from at least two (2) Nationally Recognized Rating Agencies, and written evidence of each such public rating has been provided to the TIFIA Lender prior to the Effective Date, and neither of such public ratings has been reduced, withdrawn or suspended as of the Effective Date.

(m) No Defaults. The Borrower is not in (i) default under the terms of any Related Document other than a Principal Contract, and no event has occurred or condition exists which, with due notice or lapse of time or both, would constitute an event of default under any Related Document and (ii) material default under the terms of any Material Lease Agreement, and no event has occurred or condition exists which, with due notice or lapse of time or both, would constitute a material event of default under any Material Lease Agreement. No Prospective Event of Default has occurred or is continuing.

(n) Governmental Approvals. (i) All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Borrower of the Project have been obtained or effected and are in full force and effect and there is no basis for the revocation of any such Governmental Approval.

(ii) All Governmental Approvals necessary for the operation and maintenance of the Port, the collection of the Revenues and Subordinate Revenues, and the Borrower's performance under each of the Related Documents in effect as of any date on which this representation and warranty is made have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(o) Related Documents and Material Lease Agreements. (i) Each Principal Contract is in full force and effect and all conditions precedent to the obligations of the respective parties under each Principal Contract have been satisfied.

(ii) Set forth on **Schedule III** of this Agreement is a true and complete list of each of the Existing Material Lease Agreements in effect as of the Effective Date.

(iii) As of the Effective Date, each of the Existing Material Lease Agreements is in full force and effect, and all conditions precedent to the obligations of the respective parties under each of the Existing Material Lease Agreements have been satisfied.

(iv) Set forth on (A) **Part A.a.** of **Schedule V** is a true and complete list of each of the Existing Senior Debt Obligations, (B) **Part A.b.** of **Schedule V** is a true and complete list of each of the Senior Debt Documents in effect as of the Effective Date, (C) **Part B.a.** of **Schedule V** is a true and complete list of each of the Existing Subordinated Debt Obligations and (D) **Part B.b.** of **Schedule V** is a true and complete list of each of the Subordinated Debt Documents in effect as of the Effective Date. Other than as set forth on **Schedule V**, as of the Effective Date, there is no other indebtedness that is entitled to any Lien in respect of the Revenues, Subordinate Revenues or the Accounts. As of the Effective Date, there are no Special Facility Obligations outstanding.

(v) The Borrower has delivered to the TIFIA Lender a duly adopted or fully executed and complete copy of each Principal Contract, Senior Debt Document, Subordinated Debt Document and Special Facilities Debt Document in effect as of any date on which this representation and warranty is made (including all exhibits, schedules and other attachments), and including any amendments or modifications thereto and any related performance security instruments or side letters.

(vi) No event has occurred that gives the Borrower or, to the Borrower's knowledge, any Principal Party, the right to terminate any Principal Contract or any related performance security instruments.

(vii) The Borrower is not in breach of any material term in or in default under any Principal Contract and the Borrower is not in breach of any term in or in default under any related performance security instruments, Senior Debt Document, Subordinated Debt Document or Special Facilities Debt Document in effect as of the date on which this representation is made and to the knowledge of the Borrower no other Person that is a party to any Principal Contract in effect as of any date on which this representation is made is in breach of any material term therein or in default thereunder.

(viii) As of the Effective Date there is no Supplemental Senior Resolution or Supplemental Subordinate Resolution in effect that alters the application of the Revenues as contemplated by the last sentence of Section 5.03 of the Senior Master Resolution and Section 5.02 of the Subordinated Master Resolution.

(p) Information. All information, reports and other papers and data furnished by, or on behalf of, the Borrower to the TIFIA Lender, at the time the same were so furnished, were accurate in all material respects, and when taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided, however, that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(q) OFAC; Anti-Corruption Laws.

(i) None of the Borrower, nor, to the actual knowledge of the Borrower, any Principal Party or any Lessee is a Sanctioned Person.

(ii) None of the Borrower, nor, to the actual knowledge of the Borrower, any Principal Party or any Lessee is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal; or

(iii) There are no pending or, to the actual knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower or any Principal Party or any Lessee, with respect to any possible or alleged violations of any Sanctions,

Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of the TIFIA Loan or other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(r) Buy America. None of the Borrower, any of the Design Build Contractors or Design Build Contract, is in violation of the Buy America Requirements. The Project is being constructed in accordance with the Buy America Requirements.

(s) Compliance with Law. (i) The Borrower and the Harbor Department are in compliance in all material respects with, and have conducted (or caused to be conducted) their business and operations and the business and operations of the Port and, prior to the Transfer Date, the Project, in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in clause (t) of this Section 13) including those set forth on **Exhibit D**, to the extent applicable. To the Borrower's knowledge, each Principal Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, related to the Project, including those set forth on **Exhibit D**, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by the Borrower or, to the Borrower's knowledge in respect of any Principal Party that relates to the Project, the Port or any Related Document and that in each case could reasonably be expected to result in a Material Adverse Effect.

(ii) The terms of the TIFIA Loan Documents regarding the calculation of interest and fees do not violate any (A) usury laws, or (B) applicable federal or state laws.

(t) Environmental Matters. The Borrower and the Harbor Department, and, to the Borrower's knowledge, each other Principal Party is in compliance with all applicable laws relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species) and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> ("**Environmental Laws**"), in each case to the extent related to the Project or the Port. All Governmental Approvals for the Project and the Port relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower has not received any communication or notice (written or

oral), whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower or the Harbor Department are not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and the Port and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future. The Borrower has provided to the TIFIA Lender all assessments, reports, data, results of investigations or audits, and other information in the possession of or reasonably available to the Borrower regarding environmental matters pertaining to the Project.

(u) Sufficient Rights and Utilities. The Borrower possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project and the Port, in each case as is necessary and sufficient for the construction, operation, maintenance and repair of the Project and the Port. The Principal Contracts and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Borrower sufficient to enable the Borrower to construct and operate (prior to the Transfer Date) the Project and to perform its obligations under the Principal Contracts to which it is a party. All utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project and the Port (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project or the Port, as applicable, and arrangements in respect thereof have been made on commercially reasonable terms.

(v) Insurance. **Schedule 13(v)** lists all insurance policies maintained by the Borrower with respect to the Project and the Port as of the Effective Date, as well as a summary of the material terms of each such policy. The Borrower is in compliance with all insurance obligations required under this Agreement and the Related Documents.

(w) No Liens. Except for Permitted Liens, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien upon the Project, the Revenues, the Subordinate Revenues, the Accounts or the Borrower's rights under or in respect of any Lease Agreement.

(x) Financial Statements. Each income statement, balance sheet and cash flow statement (collectively, "**Financial Statements**") delivered to the TIFIA Lender pursuant to Section 21(d) has been prepared in accordance with GASB and presents fairly, in all material respects, the financial condition of the Harbor Department as of the respective dates of the balance sheets included therein and the results of operations of the Harbor Department for the respective periods covered by the income statements included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Harbor Department of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GASB.

(y) Sufficient Funds. The aggregate of all funds that are committed, excluding any funds which may be expended by the Borrower as a result of an Event of Settlement, for the development and construction of the Project under the various sources of funds set forth on **Schedule IV** hereto are sufficient to pay all Project Costs necessary to achieve Substantial Completion.

(z) Federal Involvement. As required pursuant to Section 603(b)(9) of the Act, the total federal assistance provided to the Project does not exceed eighty percent (80%) of Eligible Project Costs.

(aa) Sovereign Immunity. The Borrower is subject to claims and to suit for damages in connection with its obligations under this Agreement and the other TIFIA Loan Documents pursuant to and in accordance with the laws of the State applicable to public entities such as the Borrower; provided, however, that a claimant shall be required to comply with the provisions of the Tort Claims Act set forth in California Government Code Section 810 et seq. in tort or contract suits, actions or proceedings brought against the Borrower.

(bb) No Proposed Legal Changes. There is no amendment or, to the knowledge of the Borrower, no proposed amendment certified for placement on a statewide or local ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State, the Charter or any applicable laws, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, which could reasonably be expected to have a Material Adverse Effect on the ability of the Borrower to collect the Revenues, Subordinate Revenues or the application of the Revenues or Subordinate Revenues in accordance with the terms of the Senior Master Resolution, the Subordinated Master Resolution, the TIFIA Resolution and this Agreement.

(cc) ERISA. Neither the Borrower nor any ERISA Affiliate maintains or otherwise has any liability in respect of any plan or other arrangement that is subject to ERISA or Section 412 of the Code.

(dd) Investment Policy. The Borrower has neither made any investment nor entered into any agreements for the purpose of effecting any investment that (i) is not permitted pursuant to the Subordinated Master Resolution, the TIFIA Resolution or any other TIFIA Loan Document, or (ii) is contrary to the Investment Policy.

(ee) Special Facilities. None of the property or assets of the Port or the Borrower has been designated a Special Facility except to the extent such property or assets constitute a Permitted Special Facility.

(ff) Intellectual Property. The Borrower owns, or has adequate licenses or other valid rights to use, all material patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature necessary for the Project and the operation of its business as currently contemplated without, to the

Borrower's knowledge, any conflict with the rights of others. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by, (x) prior to the Transfer Date, the Project or (y) the Port, in each case, infringes or will infringe any material patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(gg) Patriot Act. The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.¹

(hh) Investment Company Act. The Borrower is not, and after applying the proceeds of the TIFIA Loan will not be, required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and is not "controlled" by a company required to register as an "investment company" under the Investment Company Act of 1940, as amended.

(ii) Taxes. The Borrower is not required to file tax returns with any Governmental Authority.

SECTION 14. Representations and Warranties of TIFIA Lender. The TIFIA Lender represents and warrants that:

(a) Power and Authority. The TIFIA Lender has all requisite power and authority to make the TIFIA Loan and to perform all transactions contemplated by the TIFIA Loan Documents to which it is a party.

(b) Due Execution; Enforceability. The TIFIA Loan Documents to which it is a party have been duly authorized, executed and delivered by TIFIA Lender, and are legally valid and binding agreements of the TIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the TIFIA Lender executing each of the TIFIA Loan Documents to which the TIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

SECTION 15. Affirmative Covenants. The Borrower covenants and agrees as follows from the Effective Date until the date all TIFIA Obligations (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every

¹ Borrower and Bond Counsel: please confirm.

such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable to assure, convey, grant, assign, secure, confirm and maintain (x) the Subordinate Revenue Lien and (y) the Lien granted in connection with the TIFIA Debt Service Reserve Fund, and to ensure that the Revenues, Subordinate Revenues, Special Facilities Revenues and the Subordinated Debt Secured Accounts are and will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, other than in respect of any Permitted Liens. The Borrower shall take all actions as may be necessary or desirable to effect the foregoing. The Borrower shall at all times defend, preserve and protect the Subordinate Revenue Lien and the Lien granted in connection with the TIFIA Debt Service Reserve Fund against all claims and demands of all Persons whomsoever. The Borrower shall not create or establish or permit to be created or established any account or fund into which any of the Revenues or Subordinated Revenues are deposited or credited except (i) in the case of any Revenues, such account or fund is expressly contemplated by Section 5.03(B) of the Senior Master Resolution and any such Revenues are deposited or credited thereto solely in accordance with Section 5.03(B) of the Senior Master Resolution and (ii) in the case of any Subordinate Revenues, such account or fund is expressly contemplated by Section 5.02 of the Subordinated Master Resolution and any such Subordinate Revenues are deposited or credited thereto solely in accordance with Section 5.02 of the Subordinated Master Resolution.

(b) Copies of Documents. (i) The Borrower shall furnish to the TIFIA Lender (A) promptly (but in any event within fifteen (15) Business Days after the issuance of Permitted Debt or the execution of amendment referred to below), certified fully executed copies of each Senior Debt Document, Other Subordinated Debt Document or Special Facilities Debt Document, as applicable, including any offering document and cash flow projections prepared in connection with the incurrence of such Permitted Debt and any executed amendments to such Senior Debt Documents, Other Subordinated Debt Documents or Special Facilities Debt Documents and (B) copies of any reports or other notices filed with the Information Services (as defined in the Subordinated Master Resolution) in compliance with Rule 15c2-12 promulgated under the Securities and Exchange Act of 1934, as amended, relating to such Permitted Debt, promptly following the preparation or filing thereof.

(ii) The Borrower shall deliver to the TIFIA Lender a certified copy of each executed Additional Project Contract promptly after the date of execution thereof. The Borrower shall furnish to the TIFIA Lender term sheet summaries of any Additional Project Contract and any amendments thereto promptly upon execution by the Borrower of such agreement.

(iii) The Borrower shall deliver to the TIFIA Lender a certified copy of each amended or modified Construction Schedule, promptly after the date of such amendment or modification thereof, together with such other documents or updates associated with or relevant in connection with such amendment or modification as the TIFIA Lender may reasonably request.

(iv) The Borrower shall deliver to the TIFIA Lender, certified copies of such other documents, agreements, schedules and/or exhibits related to the TIFIA Loan and the Related Documents, promptly after such documents, agreements, schedules and/or exhibits have been reasonably requested by the TIFIA Lender.

(v) The Borrower shall deliver to the TIFIA Lender a certified copy of the final official documentation evidencing the Event of Settlement.

(vi) The Borrower shall furnish to the TIFIA Lender a written notice of its intention to issue or incur any Permitted Debt at least fifteen (15) Business Days prior to the issuance or incurrence of such Permitted Debt, which notice shall provide reasonable information as to the material terms of the applicable Permitted Debt proposed to be issued or incurred, if available.

(vii) The Borrower shall, promptly, furnish to the TIFIA Lender copies of any notices, reports and such other information (other than those that are non-substantive or ministerial in nature) delivered to any Senior Debt Holder or any other Subordinated Debt Holder.

(viii) The Borrower shall deliver to the TIFIA Lender a copy of the "Notice of Substantial Completion" issued by the Borrower to the Design Build Contractors pursuant to Section 19.1.4 of the Design Build Contract.

(ix) In connection with sub-clauses (b)(ii) and (b)(iii) above, the Borrower shall deliver along with such Additional Project Contract(s) and/or such amended or modified Construction Schedule, as the case may be, a certificate signed by the Borrower's Authorized Representative demonstrating that the Borrower has sufficient funds to pay Project Costs necessary to achieve Substantial Completion, the amount and source of such funds, and describing whether such Additional Project Contract(s) and/or such amended or modified Construction Schedule has an effect on the Borrower's internal Debt Management Policy.

(c) Use of Proceeds. The Borrower shall use the proceeds of the TIFIA Loan only to pay, or to reimburse the Borrower for, Eligible Project Costs, and may be used to pay or redeem the Project BANs to the extent the proceeds thereof have been applied to the payment of Eligible Project Costs incurred by or on behalf of the Borrower from time to time in connection with the Project.

(d) Construction Project; Compliance with Laws; Cooperation with FHWA Division Office. The Borrower shall:

(A) diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with the highest standards of Borrower's industry, using its best efforts at all times;

(B) comply with the Design Build Contract in all material respects;

(C) cause the Project to be constructed in accordance with the Buy America Requirements;

(D) abide, and shall require its contractors and subcontractors to, abide by all applicable federal and state laws;

(E) cooperate with FHWA Division Office and Caltrans in carrying out their duties under the FHWA Oversight Agreement in accordance with Section 11;

(F) ensure that each Design Build Contractor complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Design Build Contractor to the Borrower and shall ensure that any letter of credit provided pursuant to any Principal Contract meets the requirements therefor set forth in such Principal Contract; and

(G) comply with, and shall ensure that each Design Build Contractor complies with, the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320.

(e) Operations and Maintenance. (i) The Borrower shall (A) operate and maintain the Port in a reasonable and prudent manner, (B) maintain the Port in good repair, working order and condition and (C) from time to time make or cause to be made all necessary and proper replacements, repairs, renewals and improvements so that the Port shall not be materially impaired. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights or franchises material to the conduct of its business and otherwise relating to (x) prior to the Transfer Date, the Project and (y) at all times, the Port, the Revenues and the Subordinate Revenues, and comply in all material respects with all applicable federal, state and local laws, rules, regulations, orders, decrees, judgments or administrative decisions, whether now in effect or hereafter enacted, of any Governmental Authority having jurisdiction over the Borrower or its assets or operations (including, without limitation, NEPA and all other federal, state and local laws, rules, regulations, orders, decrees, judgments and administrative decisions relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous materials or to other health and safety matters).

(ii) For the period commencing after the Substantial Completion Date until the Transfer Date, the Borrower shall (A) operate and maintain the Project (1) in a reasonable and prudent manner and (2) substantially in accordance with the Financial Plan (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material

portions of the Project) and (B) maintain the Project in good repair, working order and condition and in accordance with the requirements of the Cooperation Agreement.

(iii) Following the Substantial Completion Date but prior to the Transfer Date, (A) the Borrower shall have the right to incur Operations and Maintenance Expenses in connection with the Project without any consent or approval of the TIFIA Lender, and (B) the Borrower shall have the right to incur Capital Expenditures, in connection with the Project without any consent or approval of the TIFIA Lender, if such costs do not exceed an amount equal to one hundred ten percent (110%) of the amount budgeted therefor in the Financial Plan. Such Capital Expenditures in excess of such amounts will require the approval of the TIFIA Lender.

(f) Insurance.

(i) The Borrower shall at all times maintain or cause to be maintained insurance for the construction of the Project, with responsible insurers, as is customarily maintained in the United States with respect to works and properties of like character, against accident to, loss of or damage to such works or properties, which shall include pollution and other environmental liability and remediation related coverage, and in the case of the Design Build Contractors' liability policies (other than workers' compensation insurance), shall reflect the TIFIA Lender as an additional insured.

(ii) The Borrower shall at all times maintain with responsible insurers or through a program of self-insurance all such insurance on the Port as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties. If any useful part of the Port shall be damaged or destroyed, unless the Borrower determines that restoration would be uneconomical, such part shall be restored to use, to the extent it can be so restored, using insurance proceeds and other moneys available therefor. The money collected from insurance against accident to or destruction of the Port shall be used for repairing or rebuilding the damaged or destroyed Port and, to the extent not so applied, shall be applied at the option of the Borrower to acquire and/or construct improvements and extensions of the Port or to pay or call or redeem Senior Debt Obligations and Subordinated Debt Obligations. The Borrower shall also (by self-insuring or maintaining with responsible insurers or by a combination thereof) provide for workers' compensation insurance for Harbor Department workers and insurance against public liability and property damage to the Port to the extent reasonably necessary to protect the City, the Harbor Department and the TIFIA Lender.

(iii) Promptly upon request, the Borrower shall deliver to the TIFIA Lender copies of any underlying insurance policies obtained by or on behalf of the Borrower in respect of the Project or the Port, which, in the case of the Design

Build Contractors' liability policies (other than workers' compensation insurance), shall reflect the TIFIA Lender as an additional insured.

(g) Notice. The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence or takes such action (unless otherwise prescribed herein), give the TIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(i) Events of Default: any Event of Default or any Prospective Event of Default;

(ii) Litigation: the filing of any actual litigation, suit or action or the commencement of any proceeding, before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim relating to (1) the TIFIA Loan Documents, the Senior Revenue Lien or the Subordinate Revenue Lien or, prior to the Transfer Date, the Project or (2) the Borrower, the Harbor Department, the Port, any other Related Document, to the extent, solely, in the case of this clause (2), such litigation, suit or action could reasonably be expected to have a Material Adverse Effect;

(iii) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval related to the Project or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority relating to the Project, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(iv) Environmental Notices: any material notice of violation under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(v) Insurance Claim: any insurance claims in respect of any Event of Loss involving (1) prior to the Transfer Date, the Project in excess of U.S.\$1,000,000 either individually or in the aggregate and (2) at all times, the Port in excess of U.S.\$10,000,000 either individually or in the aggregate;

(vi) Amendments: any amendments delivered to, received from or entered into in respect of any Related Document or Material Lease Agreement;

(vii) Defaults, termination: any material breach, default or event of default on the part of the Borrower or any other party under, or any termination of, any Related Document or Material Lease Agreement;

(viii) Uncontrollable Force: the occurrence of any Uncontrollable Force (1) prior to the Transfer Date, with respect to the Project, and (2) with respect to the Port, in each case, to the extent such Uncontrollable Force could reasonably be expected to have a Material Adverse Effect;

(ix) Project Changes: any (1) change to the then current forecast of Project Costs in excess of U.S.\$5,000,000, which notice shall be accompanied with a revised sources and uses of funds, and (2) material change to the Construction Schedule;

(x) Coverage Ratios: in the event that, as of any Semi-Annual Payment Date, (1) the Rate Coverage Ratio shall be equal to or less than 1.50:1.00, or (2) an Adjusted Rate Coverage Ratio Deficiency shall have occurred;

(xi) Ratings Changes: within ten (10) Business Days after the Borrower learns of such occurrence, any change in the rating assigned to the Senior Debt Obligations, the TIFIA Loan, or any Subordinated Debt Obligations by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness or the Borrower;

(xii) 2 C.F.R. Notices: (1) that any of the information set forth in the certificate provided pursuant to Section 12(a)(iii) was incorrect at the time the certificate was delivered or there has been a change in status of the Borrower or any of its principals with respect to the criteria set forth in 2 C.F.R. § 180.335; (2) any other notification required pursuant to 2 C.F.R. § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the TIFIA Loan as described in 2 C.F.R. § 200.113, and the Borrower shall require the Design Build Contractors to provide the Borrower with notice of any such violation;

(xiii) Other Adverse Events: the occurrence of any other event or condition that could reasonably be expected to result in a Material Adverse Effect; and

(xiv) Additional Project Contracts: the approval by the Board of any Additional Project Contract to be entered into by the Borrower.

(h) Remedied Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 15(g) (other than in Section 15(g)(vi), Section 15(g)(xi) (in the case of a ratings upgrade) or Section 15(g)(xiv)), the Borrower's Authorized Representative shall provide a statement setting forth the actions the Borrower proposes to take with respect thereto, if any.

(i) Maintain Legal Structure. The Borrower shall maintain its existence as a municipal corporation and chartered city organized and existing under the laws of the State.

(j) Annual Rating. The Borrower shall, no later than the last Business Day of June of each year during the term of the TIFIA Loan, at no cost to the TIFIA Lender, provide to the TIFIA Lender a public rating by a Nationally Recognized Rating Agency on the TIFIA Loan, together with the rating report or letter delivered by such Nationally Recognized Rating Agency in connection with such public rating, in each case prepared no earlier than June 1 of such year.

(k) Subordinate Harbor Debt Service Fund; Etc. (i) Subordinate Interest Account. The Borrower shall, at all times prior to the Final Maturity Date, cause the Treasurer to maintain within the Subordinate Harbor Debt Service Fund, the Subordinate Interest Account, and shall cause Subordinate Revenues to be set aside from time to time in the Subordinate Interest Account in accordance with the terms of Sections 5.02(a) of the Subordinated Master Resolution and as set forth in **Exhibit H** hereto. Amounts in the Subordinate Interest Account shall be used and withdrawn by the Treasurer solely for the purpose of paying interest on Subordinated Debt Obligations as such interest becomes due and payable.

(ii) Subordinate Principal Account. The Borrower shall, at all times prior to the Final Maturity Date, cause the Treasurer to maintain within the Subordinate Harbor Debt Service Fund, the Subordinate Principal Account, and shall cause Subordinate Revenues to be set aside from time to time in the Subordinate Principal Account in accordance with the terms of Sections 5.02(b) of the Subordinated Master Resolution and as set forth in **Exhibit H** hereto. Amounts in the Subordinate Principal Account shall be used and withdrawn by the Treasurer solely for the purpose of making principal payments on Subordinated Debt Obligations as such principal becomes due and payable.

(iii) TIFIA Debt Service Reserve Fund.

(A) The Borrower shall, at all times prior to the Final Maturity Date, maintain (or cause to be maintained) the TIFIA Debt Service Reserve Fund in accordance with the terms of the TIFIA Resolution. If, at any time after the Effective Date, there is an Adjusted Rate Coverage Ratio Deficiency, the Borrower shall cause the Treasurer to deposit or cause to be deposited, within sixty (60) days of the date on which the Borrower has knowledge or has been notified by the TIFIA Lender of such Adjusted Rate Coverage Ratio Deficiency and in any event prior to the next succeeding Semi-Annual Payment Date, surplus revenues as described in the second paragraph of Section 5.01 of the Subordinated Master Resolution or such other available moneys of the Borrower into the TIFIA Debt Service Reserve Fund in an amount equal to the TIFIA Debt Service Reserve Requirement; provided, however, that no transfer need be made pursuant to this sub-clause (iii)(A) if the amount set aside in the TIFIA Debt Service Reserve Fund is at least equal to the TIFIA Debt Service Reserve Requirement. Amounts in the TIFIA Debt Service

Reserve Fund shall be made available for the sole purpose of ensuring the timely payment of TIFIA Debt Service on the TIFIA Loan.

(B) If at any time, an Adjusted Rate Coverage Ratio Deficiency shall cease to exist, any amounts on deposit in the TIFIA Debt Service Reserve Fund may be withdrawn by the Treasurer and deposited into the Harbor Revenue Fund on (x) if the Adjusted Rate Coverage Ratio Deficiency existed for two (2) years or less, the first anniversary of the Semi-Annual Payment Date on which the Adjusted Rate Coverage Ratio Deficiency ceased to exist, or (y) if the Adjusted Rate Coverage Ratio Deficiency existed for greater than two (2) years, the second anniversary of the Semi-Annual Payment Date on which the Adjusted Rate Coverage Ratio Deficiency ceased to exist.

(C) If at any time, moneys deposited in the TIFIA Debt Service Reserve Fund are withdrawn by the Treasurer and applied to the payment of TIFIA Debt Service resulting in the amount deposited in the TIFIA Debt Service Reserve Fund to be less than the TIFIA Debt Service Reserve Requirement, the Borrower shall cause the Treasurer to deposit or cause to be deposited, within sixty (60) days of the date on which the Borrower has knowledge or has been notified by the TIFIA Lender of such deficiency in the TIFIA Debt Service Reserve Fund, and in any event prior to the next succeeding Semi-Annual Payment Date, surplus revenues as described in the second paragraph of Section 5.01 of the Subordinated Master Resolution or such other available moneys of the Borrower into the TIFIA Debt Service Reserve Fund in a sufficient amount so that the aggregate amount on deposit in the TIFIA Debt Service Reserve Fund is at least equal to the TIFIA Debt Service Reserve Requirement, provided, that, subject to sub-clause (iii)(B) above, an Adjusted Rate Coverage Ratio Deficiency shall continue to exist at such time.

(iv) Accounts. The Borrower shall at all times prior to the Final Maturity Date maintain the Senior Debt Accounts in accordance with the terms of the Senior Master Resolution and the Supplemental Senior Resolutions and apply the Revenues in accordance with Article V of the Senior Master Resolution.

(l) Senior Master Resolution, Subordinated Master Resolution and TIFIA Resolution Covenants. The Borrower shall at all times comply with its obligations under the Senior Master Resolution, the Subordinated Master Resolution and the Supplemental Resolutions, including, without limitation, the covenants provided for in Article VI of the Senior Master Resolution and Article VI of the Subordinated Master Resolution.

(m) Rate Coverage. The Borrower, acting by and through the Board, shall prescribe, revise and collect such charges, rentals, compensation or fees required to be paid for services, franchises, leases or licenses, as permitted or required by the Charter or otherwise by law, ordinance or order, for the benefit of the City for operation upon lands

and waters under the control and management of the Board, and after making allowances for contingencies and error in the estimates, shall produce Revenues to maintain:

(i) a Rate Coverage Ratio of not less than 1.10:1.00 as of each Semi-Annual Payment Date (the “**Rate Coverage Test**”), and

(ii) an Adjusted Rate Coverage Ratio of not less than 1.00:1.00 as of each Semi-Annual Payment Date (the “**Adjusted Rate Coverage Test**”);

and which Revenues and/or Subordinate Revenues, as applicable, are sufficient taking into account all other moneys available or reasonably expected to be available to the Harbor Department to pay the following amounts:

(A) the interest on and principal of all Senior Debt Obligations and all Subordinated Debt Obligations as the same shall become due and payable;

(B) all payments required for compliance with the Senior Master Resolution, the Subordinated Master Resolution, the TIFIA Resolution and this Agreement including payments required to be made into any other reserve fund required to be maintained pursuant to any Supplemental Resolution;

(C) all payments required to meet any other obligations of the Borrower which are charges, liens and encumbrances upon or payable from the Revenues or Subordinate Revenues; and

(D) all Maintenance Costs (as defined in the Subordinated Master Resolution).

(n) Material Obligations; Liens. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Revenues or its other income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GASB, applied on a consistent basis.

(o) Additional Rights. In the event that the Borrower shall, directly or indirectly, enter into or otherwise consent to any Contractual Obligation with respect to Permitted Debt, which provides any counterparty to such Contractual Obligation with additional or more restrictive covenants (including, without limitation, financial

covenants) and/or additional or more restrictive events of default (collectively, the “**Additional Rights**”) than are provided to the TIFIA Lender in this Agreement, then, such Additional Rights shall automatically be deemed to be incorporated into this Agreement and the TIFIA Lender shall have the benefits of such Additional Rights. The Borrower shall promptly, upon entering into or otherwise consenting to a Contractual Obligation containing such Additional Rights, notify the TIFIA Lender hereunder of such Contractual Obligation and enter into an amendment to this Agreement to include such Additional Rights, provided, that, the TIFIA Lender shall have the benefit of such Additional Rights even if the Borrower fails to provide such notice or enter into an amendment hereto to include said Additional Rights into this Agreement. If the Borrower shall amend the related Contractual Obligation such that it no longer provides for such Additional Rights, then, without the consent of the TIFIA Lender, this Agreement shall automatically no longer contain the related Additional Rights and the TIFIA Lender shall no longer have the benefits of any of the related Additional Rights.

(p) Event of Settlement. The Borrower shall provide written notice to the TIFIA Lender of the occurrence of an Event of Settlement within [] days of its occurrence, which notice shall specify:

(i) if the Event of Settlement will result in an increase to the Eligible Project Costs, the amount of such increase and a certification of the Borrower’s Authorized Representative detailing the source of funds that will be used to pay for such increase; or

(ii) if the Event of Settlement will result in a decrease to the Eligible Project Costs to the extent the maximum principal amount of the TIFIA Loan disbursed by the TIFIA Lender, together with the amount of any other credit assistance provided under the Act, exceeds thirty-three percent (33%) of Eligible Project Costs, the date on which the Borrower will make any required prepayment and redemption pursuant to Section 10(a), which date shall not be more than [] days after the TIFIA Lender’s receipt of the notice of the Event of Settlement from the Borrower.

(q) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the TIFIA Lender evidence of such active registration status with no active exclusions reflected in such registration, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

(r) Event of Loss. If an Event of Loss shall occur with respect to the Project or any part thereof prior to the Transfer Date, the Borrower shall (i) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such event and (ii) pay or apply all loss proceeds

stemming from such event in accordance with the Charter, the Senior Master Resolution and the Subordinated Master Resolution.

(s) Immunity. To the fullest extent permitted by applicable law, the Borrower agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Borrower under this Agreement or any other TIFIA Loan Document.

(t) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to the Borrower, then the Borrower will provide written notice to the TIFIA Lender of the same and will promptly establish an anti-money laundering compliance program that complies with all requirements of the Patriot Act.

(u) Cargo Preference Act. Pursuant to 46 C.F.R. Part 381, the Borrower hereby agrees as follows, and shall insert the following clauses in contracts entered into by the Borrower pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

(i) At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with TIFIA Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(ii) Within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to both the TIFIA Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(v) Lobbying. The Borrower shall comply with all applicable certification, declaration and/or disclosure requirements under 49 C.F.R. Part 20.

(w) Incorporation of Covenants. The covenants of the Borrower set forth in each of the TIFIA Loan Documents are hereby incorporated by reference in this Agreement for the benefit of the TIFIA Lender. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion, report or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such compliance shall be waived, or such provision shall be consented to, only if it is waived or consented to, as the case may be, by the TIFIA Lender and such document, opinion, report or other instrument shall be acceptable or satisfactory to the TIFIA Lender. So long as (i) the commitment hereunder has not been terminated pursuant to the terms of this Agreement or (ii) any portion of the TIFIA Loan remains outstanding, the Borrower shall continue to comply with the covenants and undertakings set forth in the Senior Master Resolution,

the Subordinated Master Resolution and the TIFIA Resolution, notwithstanding anything therein limiting such compliance to when a Senior Bond or a Subordinated Debt Obligation, as applicable, remains outstanding thereunder.

SECTION 16. Negative Covenants. The Borrower covenants and agrees as follows from the Effective Date until the date all TIFIA Obligations (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Indebtedness. (i) Except for Permitted Debt, the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur indebtedness of any kind.

(ii) The Borrower shall not, without the prior written consent of the TIFIA Lender, issue any Variable Rate Indebtedness, except to the extent that the Supplemental Resolution and/or the Contractual Obligation pursuant to which such Variable Rate Indebtedness is issued or incurred includes an Interest Rate Cap which provides for a maximum fixed rate of interest in respect of such Variable Rate Indebtedness.

(iii) The Borrower shall not, without the prior written consent of the TIFIA Lender, enter into any Hedging Transaction.

(b) No Lien Extinguishment. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the TIFIA Lender, extinguish, impair, or transfer the Subordinate Revenue Lien or the Lien granted on the TIFIA Debt Service Reserve Fund and on amounts on deposit therein or credited thereto from time to time.

(c) No Prohibited Liens. (i) Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on the Revenues, any Subordinated Debt Secured Account, the Project (prior to the Transfer Date) or any Lease Agreement, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof.

(ii) The Borrower shall not create or grant, or permit the creation or grant, of any Lien on the TIFIA Debt Service Reserve Fund or any amounts or Permitted Investments on deposits therein or credited thereto, other than the Lien granted in favor of, and for the sole benefit of the TIFIA Lender pursuant to this Agreement and the TIFIA Resolution.

(iii) The Borrower shall not create any Lien on the Subordinate Redemption Fund (other than as contemplated under the Subordinated Master Resolution) except to the extent that the Subordinate Redemption Fund shall become subject to the Subordinate Revenue Lien.

(d) No Prohibited Business. Except as otherwise provided in the Charter, the Senior Master Resolution, the Subordinated Master Resolution, the TIFIA Resolution or any State or federal tidelands trust rules and regulations, the Borrower will not at any time engage in any business or activity other than the design, construction, operation and maintenance of the Port (including with respect to the Project) and activities incidental or related thereto.

(e) Amendments etc.

(i) The Borrower shall neither (A) amend, modify or supplement in any manner whatsoever Sections 3.01, 3.02, 3.03, 5.01, 5.02, 5.03(B), 5.05, 5.06, 8.01, 10.01, 10.02, 10.08, 10.09, 10.11, 10.12 or Article VI of the Senior Master Resolution or Sections 3.01, 3.02, 3.03, 5.01, 5.02, 5.03, 5.04, 5.06, 8.01, 10.01, 10.02, 10.08 or Article VI of the Subordinated Master Resolution, in each case, in effect as of the Effective Date, without the prior written consent of the TIFIA Lender, nor (B) amend, modify or supplement any provision of the Senior Master Resolution, the Subordinated Master Resolution or any Supplemental Resolutions, in a manner which would result in a Material Adverse Effect occurring. Notwithstanding the foregoing, the Borrower shall be entitled to enter into (1) one or more Supplemental Senior Resolutions (x) in order to issue or incur Additional Senior Bonds so long as the Borrower complies with the Senior Master Resolution, this Agreement and the issuance or incurrence of such indebtedness would not otherwise result in a Prospective Event of Default or an Event of Default, or (y) in accordance with the provisions of Section 8.01(B) of the Senior Master Resolution, or (2) one or more Supplemental Subordinate Resolutions (x) in order to issue or incur Additional Subordinated Debt so long as the Borrower complies with the Subordinated Master Resolution, this Agreement and the issuance or incurrence of such indebtedness would not otherwise result in a Prospective Event of Default or an Event of Default or (y) in accordance with the provisions of Section 8.01(b) of the Subordinated Master Resolution.

(ii) The Borrower shall neither (A) amend, modify, supplement or grant or receive any waiver with respect to any Senior Debt Document, Subordinated Debt Document, the Project O&M Agreement or the Cooperation Agreement in a manner that could adversely affect the TIFIA Lender in connection with the TIFIA Loan, without the TIFIA Lender's prior written consent nor (B) terminate (other than to the extent such Senior Debt Document or Subordinated Debt Document terminates in accordance with its terms as a result of the natural expiration or termination date occurring or to the extent all obligations to be performed thereunder have been satisfied), assign, amend, modify, or waive or permit a waiver of timely performance by Borrower or any other party of material covenants under, any Senior Debt Document or Subordinated Debt Document, or the Cooperation Agreement except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect, without the TIFIA Lender's prior written consent. Except as otherwise agreed by the TIFIA Lender

in writing, the Borrower shall provide to the TIFIA Lender copies of any proposed amendments to any Senior Debt Document, Subordinated Debt Document or the Cooperation Agreement at least thirty (30) days prior to the effective date thereof.

(f) Transfer of Project; Disposition of Existing Facilities.

(i) The Borrower shall not sell or assign its rights in and to the Project or any substantial portion of the assets of the Project other than the transfer of the Project to the State in accordance with the terms of the Cooperation Agreement.

(ii) The Borrower shall not sell or assign its rights in and to any of the Existing Facilities, except (A) Existing Facilities that are inadequate, obsolete or worn out and no longer useful to the business conducted at the Port; (B) non-revenue producing property or assets of the Port; (C) in connection with the designation of such Existing Facility as a Special Facility but only to the extent such designation would constitute a Permitted Special Facility; or (D) Existing Facilities, that along with Existing Facilities disposed of during the 12-month period ending on the day of such transfer (but excluding property disposed of under (A) above), will not, in the aggregate, constitute a Significant Portion, provided, that, the Borrower shall, in connection with clause (D) above, (1) furnish the TIFIA Lender with thirty (30) days prior written notice of its intention to sell or assign its rights in and to any of the Existing Facilities, which notice shall (x) identify which Existing Facilities the Borrower is proposing to sell or assign and (y) specify what (if any) impact such a sale or assignment would have on the Revenues, (2) (x) reinvest all proceeds received from the disposition of such Existing Facility into new revenue producing property or assets of the Port or in such other property or assets of the Port that shall maintain or enhance the operations and/or the facilities of the Port, or (y) apply such proceeds to such purposes required pursuant to the Internal Revenue Code of 1986, as amended, if such proceeds are related to an Existing Facility financed with Senior Debt Obligations or Subordinated Debt Obligations, the interest on which is exempt from gross income for federal income tax purposes, and (3) deliver to the TIFIA Lender (x) an updated Financial Plan in form and substance satisfactory to the TIFIA Lender reflecting the sale or assignment of such Existing Facilities and (y) a certificate of the Borrower's Authorized Representative certifying that the Net Revenue Debt Service Coverage Ratio when calculated on a Pro Forma Basis, based on the Financial Plan referred to in clause (3)(x) hereof, for each Calculation Period occurring on or after such sale or assignment shall be equal to or greater than 2.00:1.00 for each applicable Calculation Period through the Final Maturity Date.

(g) Lease Agreements. Except for Permitted Liens, the Borrower shall not sell, assign or otherwise create any Lien on, or in respect of any of its rights, under any Lease Agreement to which it is a party from time to time.

(h) Investments. The Borrower shall not invest any of the Revenues, the Subordinate Revenues or any amounts on deposit in, or credited to any Account other than in Permitted Investments. Any moneys held in the Subordinate Principal Account shall be invested in Permitted Investments which mature or are redeemable at the election of the holder on a date no later than when principal is due and payable on the Subordinated Debt Obligations. Any moneys held in the Subordinate Interest Account shall be invested in Permitted Investments which mature or are redeemable at the election of the holder on a date no later than when interest is due and payable on the Subordinated Debt Obligations. Any moneys held in the TIFIA Debt Service Reserve Fund shall be invested in Permitted Investments which mature or are redeemable at the election of the holder on a date no later than the next Semi-Annual Payment Date.

(i) OFAC Compliance. The Borrower:

(i) shall not violate (A) any applicable Anti-Money Laundering Laws, (B) any applicable Sanctions, (C) Anti-Corruption Laws or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(ii) shall not use the proceeds of the TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents;

(iii) shall ensure that each of its directors, officers, employees, and agents, shall not, directly or indirectly, use the proceeds of the TIFIA Loan or lend to, make any payment to, contribute or otherwise make available any funds to any Person (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (B) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (C) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (D) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the TIFIA Lender or any Principal Party); or

(iv) shall not make a payment, directly or indirectly, to any Principal Party that has violated any of the laws referenced in Section 16(i)(i) or that is a Sanctioned Person.

(j) Project. (i) The Borrower shall not (A) grant any Lien to secure any obligations of the Borrower in respect of the Project (other than any Permitted Lien) or (B) establish any type of cash collateral, debt service reserve or other cash segregated fund or account to secure any of the Borrower's obligations in respect of the Project.

(ii) Prior to the Transfer Date, the Borrower shall not sell or assign (A) its rights and obligations under any Principal Contract, unless, in connection with (B) only, such sale or assignment could not reasonably be expected to result

in a Material Adverse Effect and is made by the Borrower in the ordinary course of business.

(k) Charter Amendments; Fiscal Year. The Borrower shall provide the TIFIA Lender with notice of (i) any amendments to the Charter which could have an adverse impact on Revenues or Subordinate Revenues, or the operations of the Port, and (ii) any change to its fiscal year if other than the Borrower Fiscal Year.

(l) Consolidation, Merger, Etc. The Borrower shall not dissolve or otherwise dispose of all or substantially all of the assets of the Borrower or the Harbor Department or consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into the Borrower or the Harbor Department; provided, however, that the Borrower or the Harbor Department may consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into the Borrower or the Harbor Department if each of the following conditions shall have been fulfilled:

(i) such merger or consolidation shall be with or into another governmental entity which shall assume in writing, reasonably satisfactory in form and substance to the TIFIA Lender, or by operation of law, the due and punctual performance and observance of all of the covenants, agreements and conditions of this Agreement and the other TIFIA Loan Documents;

(ii) such merger or consolidation shall not adversely affect or impair to any extent or in any manner (A) the Subordinate Revenues, (B) the availability of the Subordinate Revenues for the payment and security of the obligations of the Borrower under this Agreement, or (C) the pledge or security afforded by the (x) Senior Master Resolution to the Senior Debt Obligations and (y) the Subordinated Master Resolution to the Subordinated Debt Obligations, and the Borrower shall have furnished to the TIFIA Lender, for the benefit of the TIFIA Lender, an opinion of its counsel, satisfactory in form and substance to the TIFIA Lender, to such effect; and

(iii) the Borrower shall have given the TIFIA Lender not less than sixty (60) days' prior written notice of such merger or consolidation and furnished to the TIFIA Lender all such information concerning such merger or consolidation as shall have been reasonably requested by the TIFIA Lender.

(m) Other Debt Service Reserve Funds. The Borrower shall not furnish or provide, or agree to furnish or provide, to any holder of any Permitted Debt, a debt service reserve fund in excess of an amount equal to the least of (i) 10% of the initial principal amount of such Permitted Debt, (ii) the greatest amount of debt service in respect of such Permitted Debt due or to become due in any consecutive twelve (12) month period and (iii) 125% of the average debt service in respect of such Permitted Debt payable by the Borrower during each Borrower Fiscal Year.

(n) Special Facilities.

(i) The Borrower shall not designate any property or assets of the Borrower or the Port (whether an Existing Facility, property or assets intended to be developed or acquired by the Borrower or any other property or assets of the Borrower or the Port) as a Special Facility unless the Borrower complies with the provisions of this Section 16(n) and the TIFIA Lender shall have agreed in writing that such Special Facility constitutes a Permitted Special Facility.

(ii) The Borrower shall not incur any Special Facilities Obligations unless the Borrower complies with the provisions of this Section 16(n) to the extent applicable.

(iii) If at any time the Borrower intends to either (x) designate any property or assets (whether an Existing Facility, property or assets intended to be developed or acquired by the Borrower in connection with the Port or any other property or assets of the Borrower or the Port) of the Borrower or the Port as a Special Facility or (y) incur any Special Facility Obligations, the Borrower shall:

(A) give the TIFIA Lender not less than ninety (90) days' notice of such proposed designation or incurrence;

(B) promptly provide the TIFIA Lender all material information, reports and data that relate to such Special Facility and/or Special Facilities Obligations and any information that the TIFIA Lender may request in connection with the designation of such Special Facility or incurrence of Special Facility Obligations, as the case may be, including (1) drafts or adopted or executed copies of any resolutions, ordinances, or any other form of Borrower authorization of the Board or Contractual Obligations of the Borrower that relate to such Special Facility and/or Special Facility Obligations and (2) detailed information and calculations demonstrating, to the reasonable satisfaction of the TIFIA Lender, that the designation of such Special Facility and/or incurrence of Special Facility Obligations could not reasonably be expected to have an adverse impact on the Revenues and Subordinate Revenues;

(C) deliver an updated Financial Plan in form and substance satisfactory to the TIFIA Lender reflecting the designation of such property or assets as a Special Facility and/or the incurrence of such Special Facility Obligations;

(D) provide the rating as required under clause (b) of the definition of Permitted Special Facility; and

(E) deliver a certificate of the Borrower signed by the Borrower's Authorized Representative to the effect that (1) the designation of such Special Facility, the development, construction,

operation and maintenance thereof and/or, to the extent applicable, the incurrence of such Special Facility Obligations could not reasonably be expected to have an adverse impact on the Revenues and Subordinate Revenues or a Material Adverse Effect, (2) after giving effect to such designation or the incurrence of such Special Facility Obligations, as applicable, no Prospective Event of Default or Event of Default shall have occurred and be continuing, (3) immediately after giving effect to the designation of such Special Facility or the incurrence of such Special Facility Obligations, as applicable, each of the Projected Coverage Ratios when calculated on a Pro Forma Basis based on the Financial Plan referred to in clause (C) above for each Calculation Period occurring on or after such designation or incurrence shall be equal to or greater than (i) in the case of the Projected Adjusted Rate Coverage Ratio, 1.00:1.00 for each applicable Calculation Period and (ii) in the case of the Projected Rate Coverage Ratio, 1.10:1.00 for each applicable Calculation Period, (4) the Borrower has delivered to the TIFIA Lender all material information, reports and data that relate to the relevant Special Facility and/or incurrence of Special Facility Obligations and such information, reports and data, at the time the same was so furnished, did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the information and statements contained therein not misleading as of the date made or furnished, and (5) with respect to the designation of any Existing Facility as a Special Facility or the incurrence of any Special Facility Obligations in respect of any such Special Facility, the Net Revenue Debt Service Coverage Ratio when calculated on a Pro Forma Basis based on the Financial Plan referred to in clause (C) above for each Calculation Period occurring on or after such designation or incurrence shall be equal to or greater than 2.00:1.00 for each such Calculation Period, provided, that, (x) in calculating the Net Revenue Debt Service Coverage Ratio, Revenues attributable to any Affected Material Existing Facility shall not be included in the determination of Net Revenues, and (y) the aggregate sum of Revenues attributable to all Affected Existing Facilities shall not exceed 5% of total Revenues for the 12-month period from the date thereof.

(iv) The TIFIA Lender may appoint, in its sole discretion, or may instruct the Borrower to appoint, one or more independent third party nationally recognized consultants, which consultant(s), if appointed by the Borrower, shall be acceptable to the TIFIA Lender, to review the designation of such Special Facility, including the accuracy and adequacy of the updated Financial Plan delivered pursuant to clause (iii)(C) above, the matters contemplated by clauses (a), (c), (d) and (e) of the definition of Permitted Special Facility and as to such other matters as the TIFIA Lender deems reasonably necessary in connection with its review of the designation of any property or assets of the Port as a Special Facility, and obtain a report from such consultant, which report shall be addressed to the TIFIA Lender and shall be in form and substance acceptable to the TIFIA

Lender. Notwithstanding whether or not the TIFIA Lender shall have agreed in writing that such Special Facility constitutes a Permitted Special Facility, the Borrower agrees to reimburse the TIFIA Lender on demand for any and all fees and expenses incurred by the TIFIA Lender in connection with the appointment of such independent third party nationally recognized consultants and their review of the designation of such Special Facility by the Borrower.

(o) Calculations, Etc. The Borrower shall not, and shall cause the Board not to,

(i) in connection with the determination by the Board that a payment of principal of any Series of Senior Debt Obligations or Subordinated Debt Obligations shall be paid from a future debt obligation, (A) with respect to any Series of Senior Debt Obligations or Subordinated Debt Obligations, with a maturity of seven (7) years or less, specify an amortization period in the applicable Supplemental Resolution for such future debt obligations that is greater than thirty (30) years commencing on the stated maturity date of such Series of Senior Debt Obligations or Subordinated Debt Obligations (as applicable), or (B) with respect to any Series of Senior Debt Obligations or Subordinated Debt Obligations, with a maturity in excess of seven (7) years, specify an amortization period in the applicable Supplemental Resolution for such future debt obligations which, when added to the tenor of such Series of Senior Debt Obligations or Subordinated Debt Obligations shall be greater than thirty (30) years; or

(ii) determine that any payment of principal of any Series of Senior Debt Obligations or Subordinated Debt Obligations shall be paid from a future debt obligation, unless (A) at the time of such determination by the Board at least one Nationally Recognized Rating Agency has issued a long-term unenhanced underlying rating of at least "A-" (or the equivalent thereto) on the Senior Debt Obligations or the Subordinated Debt Obligations, as applicable, and (B) such payment of principal represents the entire aggregate principal amount of the applicable Series of Senior Debt Obligations or Subordinated Debt Obligations, as applicable.

SECTION 17. Indemnification. To the extent permitted by applicable law, the Borrower shall indemnify the TIFIA Lender (in its capacity as TIFIA Lender) and any official, employee, agent or representative of the TIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or

to health and safety matters; provided, however, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided, however, that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 17 is made shall be entitled, (x) with respect to the TIFIA Lender, its employees, and any official, employee, or representative of any Federal department or agency [that is an Indemnitee], after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim, and (y) with respect to any Indemnitee not otherwise included in the prior clause (x), with the consent of the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 17. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the TIFIA Lender shall assert, and each of the Borrower and the TIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the TIFIA Loan and the other transactions contemplated hereby and thereby, or the use of the proceeds thereof; provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 17 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 17 shall survive the payment or prepayment in full or transfer of the TIFIA Loan (and the related redemption of the TIFIA Note), the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 17) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

SECTION 18. Sale of TIFIA Loan; Assignment of Commitment. The TIFIA Lender shall not, at any time prior to the earlier of (a) the first anniversary of the Substantial Completion Date and (b) the TIFIA Loan being fully disbursed, assign its commitment hereunder. After such date, the TIFIA Lender may sell the TIFIA Loan or assign its commitment hereunder to another entity or reoffer the TIFIA Loan into the capital markets only in accordance with the provisions of this Section. Such sale or reoffering shall be on such terms as the TIFIA Lender shall deem advisable. However, in making such sale or reoffering the TIFIA Lender shall not change the terms and conditions of the TIFIA Loan without the prior written consent of the Borrower, which consent shall not be unreasonably withheld. The TIFIA Lender shall

provide (a) at least sixty (60) days prior to any sale or reoffering of the TIFIA Loan or assignment of its commitment hereunder as applicable, written notice to the Borrower to the effect that the TIFIA Lender is considering the sale or reoffering of the TIFIA Loan or assignment of its commitment hereunder as applicable and (b) at least thirty (30) days prior to any sale or reoffering of the TIFIA Loan or assignment of its commitment as applicable, written notice to the Borrower confirming TIFIA Lender's intention to consummate such a sale, reoffering or assignment; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section shall not (i) obligate the TIFIA Lender to sell nor (ii) provide the Borrower with any rights or remedies in the event the TIFIA Lender, for any reason, does not sell the TIFIA Loan or assign its commitment hereunder.

SECTION 19. Events of Default and Remedies.

(a) An "**Event of Default**" shall exist under this Agreement if:

(i) Payment Default. The Borrower shall fail to pay any of the principal amount of or interest on the TIFIA Note or the TIFIA Loan (including TIFIA Debt Service required to have been paid pursuant to the provisions of Section 9), and any mandatory prepayment required pursuant to the provisions of Section 10(a), when and as the payment thereof shall be required under this Agreement or the TIFIA Note or on the Final Maturity Date (each such failure, a "**Payment Default**");

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the TIFIA Note or any other TIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the TIFIA Lender of written notice thereof and (B) the Borrower's knowledge of such failure; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause (ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as within such thirty (30) day period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured; provided, however, that such failure is cured within one hundred eighty (180) days of the first occurrence of such failure;

(iii) Development Default. A Development Default shall occur;

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the TIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the TIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect);

provided that no Event of Default shall be deemed to have occurred under this Section 19(a)(iv) if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 13(h), Section 13(j), Section 13(k), Section 13(q), Section 13(r), Section 13(t), and Section 13(gg);

(C) in the reasonable determination of the TIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower diligently pursues such cure during such thirty (30) day period.

(v) Cross Default. The occurrence of any event of default under the Senior Master Resolution, which is not waived pursuant to the terms thereof, any event of default under the Subordinated Master Resolution, which is not waived pursuant to the terms thereof, or any event of default or termination under the TIFIA Resolution, which is not waived pursuant to the terms thereof;

(vi) Judgments. The existence of one or more final, non-appealable judgments, attachments or levies against the Borrower for the payment of money payable out of Revenues or Subordinate Revenues, the operation or result of which, individually or in the aggregate, equals or exceeds U.S.\$20,000,000, and such judgment, attachment or levy shall remain unpaid or the lien created thereby shall remain unsatisfied, undischarged or unbonded (by property other than any of the Revenues or Subordinate Revenues) for a period of ninety (90) days;

(vii) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to (A) the Borrower or the Harbor Department (to the extent applicable) or (B) any Principal Party, provided, that, (1) a Bankruptcy Related Event in connection with one Design Build Contractor shall not constitute an Event of Default if at the time of such occurrence, the Borrower shall have provided evidence satisfactory to the TIFIA Lender demonstrating that the other Design Build Contractors have sufficient financial resources and operating expertise to complete the Project in accordance with the Construction Schedule, and (2) after Substantial Completion shall have occurred, the occurrence of a Bankruptcy Related Event in

connection with any Design Build Contractor shall not constitute an Event of Default if at the time of such occurrence, (I) no Error in the Work or Nonconforming Work exist, and no Warranty Work or claims against the Warranty exist or remain outstanding, or (II) the Borrower provides evidence satisfactory to the TIFIA Lender showing that (x) the Borrower has sufficient moneys to correct any Error in the Work or Nonconforming Work, or to carry out any Warranty Work, and (y) it has a plan to carry out the Works referred to in clause (x) hereof;

(viii) Project Abandonment. The Borrower shall abandon (A) prior to the Transfer Date, the Project or (B) at any time, the Port;

(ix) Cessation of Operations. Operation of the Port shall cease for a continuous period of not less than one hundred eighty (180) days unless such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the Borrower (and which the Borrower could not reasonably have avoided or mitigated) and the Borrower shall have in force an insurance policy or policies under which the Borrower is entitled to recover substantially all Senior Debt Service, TIFIA Debt Service, Subordinated Debt Service and any costs and expenses of the Borrower during such cessation of operations;

(x) TIFIA Loan Documents.

(A) Any provision of this Agreement, the TIFIA Note or any other TIFIA Loan Document related to (1) payment of principal of or interest on the TIFIA Loan and the TIFIA Note or (2) the validity or enforceability of the pledge of, and Lien on, the Subordinate Revenues shall, at any time and for any reason, cease to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction, or shall be declared, in a final non-appealable judgment by any court of competent jurisdiction, to be null and void, invalid or unenforceable;

(B) the validity or enforceability of any material provision of this Agreement, the TIFIA Note or any other TIFIA Loan Document related to (1) payment of principal of or interest on the TIFIA Loan and the TIFIA Note, or (2) the validity or enforceability of the pledge of and Lien on the Subordinate Revenues shall be publicly contested, repudiated or denied by the Borrower; or

(C) any other material provision of this Agreement, the TIFIA Note or any other TIFIA Loan Document, other than a provision described in sub-clause (A) above, shall, at any time and for any reason, cease to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or shall be declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid, or unenforceable, or the validity or enforceability thereof shall be publicly contested by the Borrower;

(xi) Ratings. To the extent the Existing Subordinated Debt Obligations remain outstanding and the applicable Existing Subordinated Debt Documents remain in effect, for so long as three Nationally Recognized Rating Agencies are then rating any Senior Bonds, any two of such Nationally Recognized Rating Agencies either (i) withdraw or suspend the long-term unenhanced underlying rating of any Senior Bonds for credit related reasons, or (ii) reduce the long-term underlying rating of any Senior Bonds below "A3" (or its equivalent) from Moody's, "A-" (or its equivalent) from Fitch or "A-" (or its equivalent) from S&P; provided, however, that if only two Nationally Recognized Rating Agencies are then rating any Senior Bonds, then the action of one Nationally Recognized Rating Agency as contemplated under this clause (xi) shall be an Event of Default hereunder;

(xii) Liens. Any Lien created by this Agreement or any other TIFIA Loan Document in favor of, or for the benefit of, the TIFIA Lender shall at any time or for any reason (except as expressly permitted to be released by the terms of such governing document) not constitute a valid Lien; or

(xiii) Principal Contract Default. The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Principal Document or any Principal Contract shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and the Borrower shall have failed to cure such default or to obtain an effective written waiver prior to the expiration of the applicable grace period specified in such Principal Contract, or to obtain an effective revocation of such termination (as the case may be); provided, however, that no Event of Default shall be deemed to have occurred or be continuing under this clause if, in the case of any termination of the Design Build Contract, the Borrower replaces such Design Build Contractor with a replacement agreement (1) entered into with another counterparty that (I) is of similar or greater creditworthiness (including credit support), technical capability, and relevant experience as the counterparty being replaced was at the time the Design Build Contract was originally executed (or otherwise reasonably acceptable to the TIFIA Lender), (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, and (III) is not, at the time of such replacement, in violation of any applicable laws referenced in Section 13(q), and is in compliance with all applicable laws referenced in Section 13(s) and Section 13(t), (2) that is on substantially the same terms and conditions as the Design Build Contract, (3) that is effective as of the date of termination of the Design Build Contract being replaced, and (4) each performance security instrument required under the replacement agreement is in full force and effect at the time of such replacement and is on substantially the same terms and conditions as the comparable performance security instrument required under the Design Build Contract being replaced (or otherwise reasonably acceptable to the TIFIA Lender).

(b) (i) Upon the occurrence of an Event of Default described in clause (iii) or clause (xiii) of Section 19(a), the TIFIA Lender may (A) suspend the disbursement of TIFIA

Loan proceeds under this Agreement, (B) terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and (C) request that the Borrower repay any unexpended and legally available TIFIA Loan proceeds previously disbursed to the Borrower.

(ii) Upon the occurrence of any Event of Default described in clause (vii)(A) of Section 19(a), (A) all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and (B) the Outstanding TIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Note or the other TIFIA Loan Documents, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived, provided that, with respect to sub-clause (B), the TIFIA Lender shall not declare the unpaid principal amount of the TIFIA Loan to be immediately due and payable until seven (7) days after the occurrence of such Event of Default.

(iii) Upon the occurrence of any other Event of Default, the TIFIA Lender, by written notice to the Borrower, may (A) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan and (B) declare the Outstanding TIFIA Loan Balance to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Note or the other TIFIA Loan Documents, all without presentment, demand, notice, protest or other requirements of any kind, all of which are hereby expressly waived, provided, that, with respect to sub-clause (B), the TIFIA Lender shall not declare the unpaid principal amount of the TIFIA Loan to be immediately due and payable until (1) in the case of any Event of Default specified in Sections 19(a)(i), 19(a)(vi) and 19(a)(x)(A) and (B), seven (7) days after the occurrence of thereof, and (2) in the case of any Event of Default not specified in immediately preceding sub-clause (1), ninety (90) days after the occurrence thereof. Notwithstanding the foregoing, if any other holder or credit enhancer of any Senior Debt Obligations or Subordinated Debt Obligations or any counterparty under any Hedging Transaction related thereto causes any Senior Debt Obligations or Subordinated Debt Obligations or any other obligations of the Borrower to become immediately due and payable, the TIFIA Lender may immediately, without notice, avail itself of the remedies set forth in the foregoing clause (b)(ii)(B) or clause (b)(iii)(B) and/or declare or cause to be declared the unpaid principal amount of the TIFIA Note, all interest accrued and unpaid thereon and all other amounts owing or payable hereunder to be immediately due and payable.

(c) Whenever any Event of Default hereunder shall have occurred and be continuing, in addition to the remedies otherwise described in this Section 19, the TIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the TIFIA Note or the other TIFIA Loan Documents, and may prosecute any such judgment or final decree against

the Borrower including confession of judgment by the Borrower against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the TIFIA Lender may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by Borrower under this Agreement, the TIFIA Note or the other TIFIA Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the TIFIA Note or the other TIFIA Loan Documents.

(d) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower from further participation in any Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

(e) No action taken pursuant to this Section shall relieve Borrower from its obligations pursuant to this Agreement, the TIFIA Note or the other TIFIA Loan Documents, all of which shall survive any such action.

(f) No failure on the part of the TIFIA Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. No delay or omission by the TIFIA Lender in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right remedy or power or be construed to be a waiver of any default on the part of the TIFIA Lender or to be acquiescence therein. No express or implied waiver by the TIFIA Lender of any Event of Default shall in any way be a waiver of any future or subsequent Event of Default.

(g) In case the TIFIA Lender shall proceed to invoke any right, remedy or recourse permitted hereunder or under any other TIFIA Loan Document and shall thereafter elect to discontinue or abandon the same for any reason, the TIFIA Lender shall have the unqualified right so to do and, in such event, the Borrower and the TIFIA Lender shall be restored to their former positions with respect to the TIFIA Obligations, this Agreement, the TIFIA Note and the other TIFIA Loan Documents and otherwise, and the rights, remedies, recourse and powers of the TIFIA Lender hereunder shall continue as if the same had never been invoked.

SECTION 20. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Port-related transactions (including collection of Revenues, and TIFIA Loan requisitions received and disbursements made with regard to the Project), so that audits may be performed to ensure compliance with and enforcement of this Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GASB, including, with respect to the TIFIA Loan, accounting of principal and interest

payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) So long as the TIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the TIFIA Loan shall have been paid in full, the TIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the TIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 20(b) is intended to confer any right to exclude any such representative of the Borrower from such discussions), all at such reasonable times and intervals as the TIFIA Lender may desire; provided, however, that the TIFIA Lender agrees that it shall only exercise its rights under this Section 20(b) for purposes of evaluating its position under this Agreement or the other Related Documents. The Borrower agrees to pay all out-of-pocket expenses incurred by the TIFIA Lender in connection with the TIFIA Lender's exercise of its rights under this Section 20(b) at any time when an Event of Default shall have occurred and be continuing.

(c) The Borrower shall maintain and retain all files relating to the Harbor Department and the Port, the Revenues and the TIFIA Loan until five (5) years after the later of the date on which (i) all rights and duties hereunder and under the TIFIA Note (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the TIFIA Loan or this Agreement is finally resolved or, if the TIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the TIFIA Lender and the Borrower. The Borrower shall provide to the TIFIA Lender in a timely manner all records and documentation relating to the Harbor Department, the Port, the Revenues or the Project that the TIFIA Lender may reasonably request from time to time.

(d) The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (i) all reports or other written materials of a financial or operational nature, other than those that are ministerial in nature, sent to any Nationally Recognized Rating Agency that has provided, or is being requested to provide, a rating on any indebtedness of the Borrower, (ii) all notices and other written communications, other than those that are non-substantive or ministerial in nature, relating to any of the Related Documents, the Revenues, the Subordinate Revenues, Special Facilities Revenues or, prior to the Transfer Date, the Project, (iii) all reports, notices and other written materials, other than those that are non-substantive or ministerial in nature, required to be sent to any owner of Senior Debt Obligations or Subordinated Debt Holder, including all submissions to the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access system pertaining to the Borrower's issuance of Senior Debt Obligations or Subordinate Debt Obligations, as applicable, and (iv) all material notices relating to any of the Principal Contracts; unless, in each case, the TIFIA Lender notifies the Borrower that any such reports, notices and/or other written materials no longer need to be provided.

(e) The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 in [insert current year] and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the USDOT, or designees thereof, pursuant to 49 C.F.R. § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the TIFIA Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

SECTION 21. Financial Plan, Statements and Reports.²

(a) The Borrower shall provide to the TIFIA Lender and the FHWA Division Office, within sixty (60) days after the Effective Date and annually thereafter not later than ninety (90) days after the beginning of each Borrower Fiscal Year, a Financial Plan. The Financial Plan submitted within sixty (60) days after the Effective Date should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model.

(i) The Financial Plan shall be prepared in accordance with recognized financial reporting standards, such as those in the “Guide for Prospective Financial Information” of the American Institute of Certified Public Accountants, shall meet the requirements of FHWA’s Major Project Financial Plan Guidance, as amended from time to time and shall be in a form and substance satisfactory to the TIFIA Lender.

(ii) The Financial Plan shall include:

(A) a certificate signed by the Borrower’s Authorized Representative,

(1) to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower’s knowledge and belief, and

(2) demonstrating that annual projected Revenues and Subordinate Revenues shall be sufficient to (a) meet the Loan Amortization Schedule, (b) result in Projected Coverage Ratios for each Calculation Period occurring on and after the date of delivery of such Financial Plan equal to or greater than (i) in the case of the Projected Adjusted Rate Coverage Ratio, 1.00:1.00 for each applicable Calculation Period through the Final Maturity Date and (ii) in the case of the Projected Rate Coverage Ratio, 1.10:1.00 for each applicable Calculation Period through the Final Maturity Date and (c) comply with the Resolution Rate Tests on a projected basis for each Calculation Period occurring on and after the date of delivery of such certificate.

² All reporting obligations are currently under internal review.

(B) an electronic copy of the Revised Financial Model for the period from inception thereof through the Final Maturity Date, in substantially the form heretofore provided to the TIFIA Lender, based upon assumptions and projections with respect to the Revenues, expenses and other financial aspects of the Harbor Department and the Port which shall reflect the prior experience and current status of the Harbor Department and the Port, and the expectations of management with respect to the Harbor Department and the Port, as of the most recent practicable date prior to the delivery of such Revised Financial Model, and setting forth (x) calculations of the Coverage Ratios and the projected Debt Service Coverage Ratios for each Calculation Period occurring through the Final Maturity Date and (y) any Excluded Senior Principal Payments and Excluded Subordinated Principal Payments and the applicable interest rate and amortization period in connection thereto; and

(C) a statement as to what dispositions of Existing Facilities have occurred during the immediately preceding 12-month period and any further dispositions of Existing Facilities projected to occur during the next succeeding 12-month period, in each case, in accordance with Section 16(f)(ii)(D).

(iii) For the period through Substantial Completion, the Financial Plan shall:

(A) provide the current estimate of the total cost of the Project and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss reasons for and implications of the cost changes, and include a summary table showing the history of Project Costs by major activity or category since the Base Case Financial Model delivered as of the Effective Date and since the preceding Financial Plan;

(B) provide the current schedule and implementation plan for completing the Project, including the projected Substantial Completion Date;

(C) identify major milestones for each phase of the Project and compare current milestone dates with milestone dates in the Base Case Financial Model delivered as of the Effective Date and since the preceding Financial Plan, and discuss reasons for changes in Project milestones;

(D) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the preceding Financial Plan, discuss reasons for and implications of the funding changes, and include a summary table showing the history of Project funding since the Base Case Financial Model as of the Effective Date and since the preceding Financial Plan;

(E) provide cost containment strategies and risk mitigation plans that have been or may be implemented to address factors that are affecting or could affect the scheduled completion of the Project;

(F) provide the total value of approved changes in Project design or scope, and provide a listing of each individual change valued at U.S.\$5,000,000 or more, setting forth the rationale or need for the proposed change and describing the impact of such change on the Project;

(G) contain, in form and substance satisfactory to the TIFIA Lender, a written narrative report on the progress of design, permitting, acquisition and construction of the Project since the Base Case Financial Model as of the Effective Date and since the preceding Financial Plan, describing in reasonable detail all significant activities concerning Project status including any material matters that may affect the future performance of the Borrower's obligations under this Agreement and the causes thereof; and

(H) comply in all respects with FHWA's Major Project Financial Plan requirements.

(iv) For the period until repayment of the TIFIA Loan in full, the Financial Plan shall:

(A) provide an updated cash flow schedule showing annual cash inflows (Revenues, Subordinate Revenues, Special Facilities Revenues, interest and other income) and outflows (Operations and Maintenance Expenses, Capital Expenditures, Senior Debt Service, Subordinated Debt Service, Special Facility Obligations, replenishment of reserves and other uses) with a narrative identifying any potential revenue or funding shortfall and discussing contingency measures that will or may be taken to address any shortfalls;

(B) provide current and estimated amounts of Revenues and Subordinate Revenues received and the amounts deposited into each of the Senior Debt Accounts and the Subordinated Debt Secured Accounts, and the amount disbursed from such funds and accounts and the balance in each of the funds and accounts;

(C) provide an updated schedule of actual and projected Revenues and Subordinate Revenues, showing annual cash needs versus available revenue and funding to meet those needs and identify any potential revenue and funding shortfalls, and addressing contingency measures that will or may be taken to address any shortfalls; and

(D) include a written narrative report explaining any variances in costs or revenues from the previous Borrower Fiscal Year and describing in reasonable detail any material matters that may affect the future performance of the Borrower's obligations under this Agreement and the causes thereof.

(b) Not later than ninety (90) days following Substantial Completion, the Borrower shall provide the TIFIA Lender with a final written narrative report, summarizing all significant activities and events, since the Base Case Financial Model, affecting the operation,

maintenance, financing, or management of the Harbor Department and the Port in a form reasonably satisfactory to the TIFIA Lender. Such report shall include an updated cash flow schedule and currently Projected Coverage Ratios and projected Debt Service Coverage Ratios for all Borrower Fiscal Years during the term of the TIFIA Loan. For the avoidance of doubt, the Borrower must comply with the continued reporting requirements of the FHWA Major Projects Financial Plan Guidance, as amended from time to time.

(c) For the period through Substantial Completion, the Borrower shall provide the TIFIA Lender with written notification at least thirty (30) days prior to instituting any increase or decrease of the overall Project Costs in an amount equal to or greater than U.S.\$5,000,000, which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the Project and the Financial Plan. The Borrower's notice shall demonstrate that (i) the proposed increase or decrease (A) is consistent with the provisions of this Agreement, (B) is necessary or beneficial to the Project and (C) does not impair the completion of the Project, and (ii) in connection with any such increase, committed funding is available to the Borrower with which to pay such Project Costs.

(d) The Borrower shall furnish to the TIFIA Lender:

(i) (A) no later than thirty (30) days prior to the commencement of each Borrower Fiscal Year, a preliminary budget for the Harbor Department and (B) not later than ten (10) Business Days from the start of each Borrower Fiscal Year, a final budget, in each case, on a cash flow basis of projected Revenues, Subordinate Revenues, Operations and Maintenance Expenses, Senior Debt Service, Subordinated Debt Service and other costs for such Borrower Fiscal Year (collectively, an "**Annual Operating Budget**"), accompanied by a certificate of a Borrower's Authorized Representative to the effect that such officer has no reason to believe that such Annual Operating Budget is incorrect or misleading in any material respect based upon information then known by such Borrower's Authorized Representative;

(ii) As soon as available, but no later than,

(A) one hundred and twenty (120) days after the end of the first, second and third quarterly period of each Borrower Fiscal Year, an unaudited income statement and balance sheet of the Harbor Department as of the end of such period and the related unaudited statement of cash flows and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous quarterly period and the analogous quarterly period in the prior Borrower Fiscal Year, certified by a Borrower's Authorized Representative fairly stating in all material respects the financial condition of the Harbor Department as at the end of such period and the cash flows for such period (subject to normal year end audit adjustments), along with (1) a memorandum of the Borrower summarizing the amount of Revenues and Subordinate Revenues received in the applicable quarter; and (2) a certificate of the Borrower signed by the Borrower's Authorized Representative, setting

forth the Borrower's calculation of the Rate Coverage Ratio, the Adjusted Rate Coverage Ratio, the Debt Service Coverage Ratios and any other applicable Resolution Rate Test as of any Semi-Annual Payment Date occurring during the relevant quarter (if any), and

(B) one hundred and twenty (120) days after the end of each financial quarter, an operating report showing the operating data for the Port, including total Revenues and Subordinate Revenues received and total Operations and Maintenance Expenses and Capital Expenditures incurred for such quarter and for the period from the beginning of the then current Borrower Fiscal Year to the end of such quarter, setting forth in comparative form (1) any variance in Revenues and Subordinated Revenues received and Operations and Maintenance Expenses and Capital Expenditures incurred from the corresponding figures for the corresponding period of the previous Borrower Fiscal Year and (2) any variance in Revenues and Subordinated Revenues received and Operations and Maintenance Expenses and Capital Expenditures incurred from the corresponding figures set forth in the Financial Plan and Annual Operating Budget then in effect for each such period, in each case, in reasonable detail, together with a brief narrative explanation of any variance of ten percent (10%) or more from the prior periods and/or the Financial Plan and Annual Operating Budget; and

(iii) As soon as available, but no later than two hundred and ten (210) days after the end of each Borrower Fiscal Year, (A) a copy of the audited income statement and balance sheet of the Harbor Department as of the end of such Borrower Fiscal Year and the related audited statement of cash flows of the Harbor Department for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and which is reasonably acceptable to the TIFIA Lender and (B) a certificate of the Borrower signed by the Borrower's Authorized Representative, setting forth the Borrower's calculation of the Resolution Rate Test as of each Semi-Annual Payment Date occurring during the relevant Borrower Fiscal Year.

All such financial statements with respect to the Harbor Department shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GASB applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(e) The Borrower shall furnish to the TIFIA Lender, together with each delivery of annual audited or interim unaudited financial statements of the Harbor Department pursuant to Section 21(d), a certificate signed by the Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the quarterly or annual period (as the case may be) covered by such financial statements, there occurred any Event of Default or Prospective Event of Default, and, if any such Event of Default or Prospective Event of Default shall have occurred during such period, the nature of such Event of Default or Prospective

Event of Default and the actions that the Borrower has taken or intends to take in respect thereof.

(f) Within fifteen (15) Business Days of each Semi-Annual Payment Date, the Borrower shall provide to the TIFIA Lender a certificate signed by the Borrower's Authorized Representative, setting forth the Borrower's calculation of the Adjusted Rate Coverage Ratio, the Rate Coverage Ratio and any other applicable Resolution Rate Test for the twelve (12) month period ending on such Semi-Annual Payment Date.

SECTION 22. Project Oversight; Monitoring; and Port Operations.

(a) Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. Caltrans and the FHWA shall be responsible for administering construction oversight of the Project in accordance with the FHWA Oversight Agreement. The FHWA Division Office's and Caltrans' oversight of Project development, environmental compliance, design, right-of-way acquisition, and construction monitoring shall be conducted pursuant to the FHWA Oversight Agreement, which may be amended from time to time upon mutual agreement of Caltrans and the FHWA Division Office, or when so required by federal statute or otherwise required by the Congress. The Borrower agrees to cooperate in good faith with the TIFIA Lender and the FHWA Division Office in the conduct of such monitoring by promptly providing the TIFIA Lender with such reports, documentation or other information as shall be requested by the TIFIA Lender or the FHWA Division Office, or their agents, including any independent engineer reports, documentation or information.

(b) Reporting. The Borrower shall furnish to the TIFIA Lender:

(i) Quarterly Construction Progress Report. On or before the last Business Day of any calendar quarter during the Construction Period, a report executed by a Borrower's Authorized Representative (A) of the amount of Project Costs expended since the Effective Date as well as during the preceding calendar quarter and the amount of Project Costs estimated to be required to complete the Project, (B) providing an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule, (C) specifying the projected Substantial Completion Date, (D) providing a detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any) encountered or anticipated in connection with the construction of the Project since the date of the last report, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems, (E) specifying the delivery status of major equipment and the effect, if any, that the anticipated delivery dates of such equipment has on the overall Construction Schedule, (F) specifying any proposed or pending change orders, (G) specifying any material changes or deviations from the Borrower's land procurement plans or schedule, and (H) a discussion or analysis of such other

matters related to the Project as the TIFIA Lender may reasonably request. The Borrower shall respond, and use commercially reasonable efforts to cause the Design Build Contractors to respond, to the TIFIA Lender's inquiries regarding such report, the construction of the Project and any Design Build Contractor's performance of its obligations under the Design Build Contract.

(ii) Design Build Contractor Reports. During the Construction Period, promptly after receipt thereof, a copy of each report delivered by each Design Build Contractor to the Borrower pursuant to the Design Build Contract.

(iii) Project Operating Report. For the period commencing after the Substantial Completion Date until the Transfer Date, deliver to the TIFIA Lender, not later than ninety (90) days after the end of each financial quarter, an operating report in respect of (A) the total Operations and Maintenance Expenses and Capital Expenditures incurred by the Borrower in connection with the Project, and (B) a detailed update on the process of transferring the Project to the State pursuant to the Cooperation Agreement including, without limitation, details of any delays or issues encountered in connection with such transfer.

(iv) Permits. Promptly after the receipt or filing thereof, as the case may be (but in no event later than thirty (30) days after such receipt or filing), a copy of each Governmental Approval or other consent or approval obtained by the Borrower (along with each filing made by the Borrower in respect thereof), or obtained by any Design Build Contractor and delivered to the Borrower pursuant to the Design Build Contract after the Effective Date, with respect to the Project.

(v) Leases. (A) Certified copies of Lease Abstracts in respect of any Material Lease Agreements or any amendment, modification or supplement in respect of any Material Lease Agreements that the Borrower enters into after the Effective Date within ten (10) Business Days of the Borrower's execution thereof, and (B) within forty-five (45) days of the end of each Borrower Fiscal Year, a certified updated schedule of Material Lease Agreements which shall include any Material Lease Agreements entered into in the immediately preceding Borrower Fiscal Year.

(c) Operations. (i) The TIFIA Lender shall have the right, in its sole discretion, to require reporting on the operation and management of the Port and to provide copies of any contracts relating to the operation, maintenance and safety services for the Port as may be required from time to time. The Borrower agrees to cooperate in good faith with the TIFIA Lender by promptly providing the TIFIA Lender with such reports, documentation, or other information as shall be reasonably requested by the TIFIA Lender. In the event that the TIFIA Lender retains a financial oversight advisor under contract with the TIFIA Lender, which decision shall be within the sole and reasonable discretion of the TIFIA Lender, to carry out the provisions of this Section, the full cost of such monitoring shall be borne by the Borrower. Any costs incurred by the TIFIA Lender for such monitoring shall be promptly reimbursed by the Borrower upon demand therefor in the form of an invoice reasonably acceptable to the Borrower.

(ii) For the period following Substantial Completion until the Transfer Date, the TIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project's operations and to require reporting on the operation and management of the Project and to provide copies of any contracts relating to the operation, maintenance and safety services for the Project as may be required from time to time. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing the TIFIA Lender with such reports, documentation, or other information as shall be requested by the TIFIA Lender. In the event that the TIFIA Lender retains a financial oversight advisor under contract with the TIFIA Lender, which decision shall be within the sole discretion of the TIFIA Lender, to carry out the provisions of this Section, the full cost of such monitoring shall be borne by the Borrower. Any costs incurred by the TIFIA Lender for such monitoring shall be promptly reimbursed by the Borrower upon demand therefor in the form of an invoice reasonably acceptable to the Borrower.

SECTION 23. No Personal Recourse. No official, employee or agent of the TIFIA Lender or the Borrower or any Person executing this Agreement or any of the other TIFIA Loan Documents shall be personally liable on this Agreement or such other TIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof, except that nothing in this Section shall be construed to relieve the Borrower from any liability it may incur under this Agreement or any of the other TIFIA Loan Document.

SECTION 24. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the United States or the TIFIA Lender, solely by virtue of the TIFIA Loan, and the Borrower agrees to indemnify and hold the above Federal parties harmless, to the extent permitted by law and in accordance with Section 17, from any lawsuit or claim arising in law or equity solely by reason of the TIFIA Loan, and that no third party creditor or creditors of the Borrower shall have any right against the TIFIA Lender with respect to the TIFIA Loan made pursuant to this Agreement.

SECTION 25. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

SECTION 26. TIFIA Lender's Authorized Representative.

(a) The TIFIA Lender shall at all times have appointed the TIFIA Lender's Authorized Representative by designating such Person or Persons from time to time to act on the TIFIA Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the TIFIA Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the

Executive Director of the Build America Bureau, the further delegation of authority, dated August 31, 2016 (the “**Delegation**”) by the Executive Director of the Build America Bureau to the Director of the Credit Office of the Build America Bureau, the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the TIFIA Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the TIFIA Lender’s Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

SECTION 27. Servicer. The TIFIA Lender may from time to time designate an entity or entities to perform, or assist the TIFIA Lender in performing, the duties of the Servicer or specified duties of the TIFIA Lender under this Agreement and the TIFIA Note. The TIFIA Lender shall give the Borrower written notice of the appointment of any Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the TIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the TIFIA Lender shall have delegated to such Servicer. The TIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the TIFIA Note. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

SECTION 28. Fees and Expenses.

(a) Commencing in Federal Fiscal Year (“FFY”) 2021 and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the TIFIA Lender a loan servicing fee on or before the fifteenth (15th) of November. The TIFIA Lender shall establish the amount of this annual fee and shall notify the Borrower of the amount, at least thirty (30) days before payment is due.

(b) In establishing the amount of the loan servicing fee, the TIFIA Lender will adjust the previous year’s base amount in proportion to the percentage change in CPI. For the FFY 2021 calculation, the TIFIA Lender will use the FFY 2020 base amount of U.S.\$13,694.49 which applies to other TIFIA borrowers, as the previous year’s base amount. The TIFIA Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year’s base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year’s base amount using increments of U.S.\$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

(c) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time-to-time on and after the Effective Date for any and all fees, costs, charges and expenses incurred by it (including the reasonable fees, costs and expenses of counsel and other advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the other TIFIA Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys', engineers', and planning fees and professional costs, including all such fees, costs and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other TIFIA Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under, this Agreement, any other Related Document or in respect of the Senior Revenue Lien or the Subordinate Revenue Lien, or advice in connection with the administration, preservation in full force and effect and enforcement of this Agreement or any other Related Document or the rights of the TIFIA Lender thereunder;

(iii) any work-out, restructuring or similar arrangement of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents during the pendency of one or more Events of Default; and

(iv) the TIFIA Lender's review and consideration of the matters set forth in Section 16(n), including the fees and expenses of any independent third party nationally recognized consultants appointed in connection with Section 16(n).

(d) The Borrower shall pay to the TIFIA Lender, within thirty (30) days after receipt by the Borrower of invoices for the same, the fees and expenses of the TIFIA Lender's counsel and financial advisor and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof and for which the Borrower has received invoices in respect thereof.

(e) The obligations of the Borrower under this Section shall survive the payment or redemption in full or transfer of the TIFIA Note, the enforcement of any provision of this Agreement or the other TIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring or similar arrangement.

SECTION 29. Amendments and Waivers. No amendment, modification, termination or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

SECTION 30. Governing Law. This Agreement shall be governed by the federal laws of the United States if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

SECTION 31. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 32. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the TIFIA Lender.

SECTION 33. Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under any other TIFIA Loan Document or now or hereafter existing at law or in equity or by statute.

SECTION 34. Delay or Omission Not Waiver. No delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or under any other TIFIA Loan Document or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.

SECTION 35. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

SECTION 36. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective upon receipt (except as otherwise provided herein) and (c) given by (i) nationally recognized courier service, (ii) hand delivery or (iii) email, in each case to:

If to TIFIA Lender: Build America Bureau
United States Department of Transportation
Room W12-464
1200 New Jersey Avenue, SE
Washington, DC 20590
Attention: Director, Office of Credit Programs
Telephone: (202) 366-_____
Facsimile: (202) 366-_____
E-mail: BureauOversight@dot.gov

with copies to: Federal Highway Administration
California Division Office
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814
Attention: Division Administrator

If to Borrower: Harbor Department of the City of Long Beach,
Port of Long Beach, 415 W. Ocean Boulevard
Long Beach, California 90802
Attention: Managing Director, Finance and
Administration
Email: sam.joumblat@polb.com
[Facsimile: (562) 901-1733]
Telephone: (562) 283-7055

Unless otherwise instructed by the TIFIA Lender's Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative with respect to notices to the Borrower or by the TIFIA Lender's Authorized Representative with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the TIFIA Note in accordance with the payment instructions hereafter provided by the TIFIA Lender's Authorized Representative, as modified from time-to-time by the TIFIA Lender's Authorized Representative. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party) and all necessary confirmations have been received in accordance herewith; provided, however, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

SECTION 37. Effectiveness. This Agreement shall be effective on the Effective Date.

SECTION 38. Termination. This Agreement shall terminate upon payment in full by the Borrower of the Outstanding TIFIA Loan Balance, together with all accrued interest and fees with respect thereto, provided, however, that the indemnification requirements of Section 17, the reporting and record keeping requirements of Section 20(b) and (c) and the payment requirements of Section 28 shall survive the termination of this Agreement as provided in such sections.

SECTION 39. Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[Remainder of page intentionally left black; signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

CITY OF LONG BEACH, CALIFORNIA
acting by and through its Board of Harbor
Commissioners

By: _____
Sam Joublat, Managing Director, Finance
and Administration, Harbor Department of the
City of Long Beach, California

Approved as to form:

J. CHARLES PARKIN, City Attorney

By: _____
Senior Deputy City Attorney

**UNITED STATES DEPARTMENT OF
TRANSPORTATION**, acting by and through the
Executive Director of the Build America Bureau

By: _____
Name: _____
Title: _____

SCHEDULE I
PROJECT BUDGET

SCHEDULE II
CONSTRUCTION SCHEDULE

SCHEDULE III

EXISTING MATERIAL LEASE AGREEMENTS

No.	Lease / Preferential Assignment No.	Lessee / Assignee	Effective Date	Expiration Date	Description	Pier
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

SCHEDULE IV
SOURCES AND USES OF FUNDS

SCHEDULE V

EXISTING DEBT

A. Senior Obligations

- a. Existing Senior Obligations**
- b. Senior Debt Documents (in effect on the Effective Date)**

B. Subordinated Debt Obligations

- a. Existing Subordinated Debt Obligations**
- b. Subordinated Debt Documents (in effect on the Effective Date)**

SCHEDULE 13(g)(vi)

ACCOUNTS

- A. Senior Debt Accounts**
- B. Subordinated Debt Accounts**

SCHEDULE 13(t)

GOVERNMENT APPROVALS (ENVIRONMENTAL LAWS)

Agency	Permit / Approval	Comment
<i>Federal</i>		
FHWA		
U.S. Coast Guard (USCG)		
U.S. Fish and Wildlife Service		
Environmental Protection Agency (EPA)		
<i>State</i>		
CALTRANS		
State Historic Preservation Officer (SHPO)		
Los Angeles Regional Water Quality Control Board (LARWQCB)		
Los Angeles Regional Water Quality Control Board (LARWQCB)		
Southern California Association of Governments (SCAG)		
State Water Resources Control Board (SWRCB)		
SWRCB		
California Department of Conservation – Division of Oil Gas and Geo Thermal Resources (DOGGR)		
South Coast Air Quality Management Department (SCAQMD)		
Long Beach Fire Department		
Cal-Occupational Safety and Health Administration (Cal-OSHA)		
<i>Local</i>		
City of Long Beach		
Port of Long Beach		

SCHEDULE 13(u)

GOVERNMENTAL APPROVALS (REAL PROPERTY)

SCHEDULE 13(v)

INSURANCE

EXHIBIT A

FORM OF TIFIA NOTE

THIS TIFIA NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATE OR JURISDICTION.

UNITED STATES OF AMERICA

No. R-1

Not to Exceed \$ _____

**CITY OF LONG BEACH, CALIFORNIA
SUBORDINATE HARBOR REVENUE NOTE
SERIES 2020A (GERALD DESMOND BRIDGE – TIFIA LOAN)**

Holder: UNITED STATES DEPARTMENT OF TRANSPORTATION,
acting by and through the Executive Director of the Build America
Bureau

Maturity Date: The May 15th or November 15th occurring on or immediately prior
to the 35th anniversary of the Substantial Completion Date

Maximum Principal: \$ _____ (_____ MILLION AND NO/100
Amount: DOLLARS)

Interest Rate: _____ %

Issue Date: _____, 20__

THE CITY OF LONG BEACH, a municipal corporation and chartered city situated in the County of Los Angeles, State of California (the "City"), acting by and through its Board of Harbor Commissioners (hereinafter called the "Borrower"), FOR VALUE RECEIVED, hereby promises to pay, solely from Subordinate Revenues, as hereinafter provided, to the order of the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, and its successors and assigns (the "TIFIA Lender" or the "Holder"), the lesser of (a) the Maximum Principal Amount set forth above, and (b) the aggregate unpaid principal amount of all disbursements (the "Disbursements") made by the TIFIA Lender in accordance with the provisions of the TIFIA Loan Agreement, dated [_____] [____], 2020 (the "TIFIA Loan Agreement"), by and between the Borrower and the TIFIA Lender (such lesser amount being hereinafter referred to as the "Outstanding TIFIA Loan Balance"), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate (as defined in the TIFIA Loan Agreement) on the Outstanding TIFIA Loan Balance, and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Loan Agreement, which is hereby made a part hereof. Each Disbursement made by the TIFIA Lender to the Borrower, pursuant to the TIFIA Loan Agreement, and each prepayment made on account

of the Outstanding TIFIA Loan Balance, shall be recorded by or on behalf of the TIFIA Lender and endorsed on the grid attached hereto as Appendix One, with a copy to the Harbor Department, in accordance with the terms of the TIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with Appendix Two, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. Such Appendix Two shall be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the TIFIA Loan Agreement. Payments hereon are to be made in accordance with Section 36 of the TIFIA Loan Agreement as the same become due. Principal of and interest on this TIFIA Note shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America which at the date of payment is legal tender for the payment of public and private debts.

This TIFIA Note has been executed under and pursuant to the TIFIA Loan Agreement and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Loan Agreement for all details relating to the obligations of the Borrower hereunder. All capitalized terms used in this TIFIA Note and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement.

This TIFIA Note comprises the duly authorized issue of “City of Long Beach, California Subordinate Harbor Revenue Note, Series 2020A (Gerald Desmond Bridge – TIFIA Loan)” (the “TIFIA Note”) which has been issued pursuant to Article XII of the City Charter of the City of Long Beach, California, Title 3, Chapter 3.52, Division I of the Municipal Code of the City of Long Beach, California (collectively, the “Law”), Resolution No. HD-2726, adopted by the Board of Harbor Commissioners of the City (the “Board”) on July 16, 2013 (together with all amendments and modifications thereto, the “Subordinated Master Resolution”), Resolution No. HD-[____], adopted by the Board on [____] [____], 2020 (together with all amendments and modifications thereto, the “[____] Supplemental Subordinate Resolution” and, together with the Subordinated Master Resolution, the “Subordinate Resolution”) and the TIFIA Loan Agreement.

Reference is hereby made to the TIFIA Loan Agreement, the Subordinate Resolution and the Law for a description of the terms pursuant to which this TIFIA Note is issued and the provisions with regard to the nature and extent of the pledge of, and lien and charge upon, the Subordinate Revenues made by the Borrower in favor of the holder of this TIFIA Note pursuant to the TIFIA Loan Agreement, the Subordinate Resolution and the Law. All of the terms of the TIFIA Loan Agreement, the Subordinate Resolution and the Law are hereby incorporated herein and constitute a contract between the Borrower and the holder of this TIFIA Note, and by acceptance hereof, the holder of this TIFIA Note assents to said terms and conditions.

This TIFIA Note is a special limited obligation of the City payable from and secured by a pledge of, and a lien and charge upon, the Subordinate Revenues on a parity with all Subordinate Obligations (as defined in the Subordinated Master Resolution) and all other debt incurred and payable from Subordinate Revenues on a parity with the Subordinate Obligations. The principal of and interest on this TIFIA Note are not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or

revenues, except the Subordinate Revenues. The general fund of the City is not liable for the payment of this TIFIA Note or any interest hereon, nor is the credit or the taxing power of the City pledged therefor. The holder of this TIFIA Note shall not compel the exercise of the taxing power of the City or the forfeiture of any of its property for the payment of this TIFIA Note or any interest hereon.

This TIFIA Note is payable as to principal and interest thereof, exclusively from the Subordinate Revenues and other funds pledged to the payment thereof under the Subordinate Resolution.

This TIFIA Note and the interest hereon are junior and subordinate in all respects to the Senior Bonds and the Senior Parity Debt as to lien on and source and security for payment from the Revenues.

This TIFIA Note may be redeemed at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be redeemed shall be determined by the Borrower in accordance with the TIFIA Loan Agreement; provided, however, that any redemption in part shall be in principal amounts of U.S.\$1,000,000 or any integral multiple of U.S. \$1 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender such principal amount of this TIFIA Note to be redeemed, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment in accordance with the TIFIA Loan Agreement.

On each payment due date, payments hereon are to be made in the manner and at the place specified by the Holder pursuant to the TIFIA Loan Agreement.

The rights and obligations of the Borrower and of the Holders of this TIFIA Note may be modified or amended from time to time in the manner, to the extent and upon the terms provided in the Subordinate Resolution and the TIFIA Loan Agreement.

This TIFIA Note may be transferred without charge upon the register required to be kept by the Fiscal Agent, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of this TIFIA Note for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form approved by the Fiscal Agent. Whenever this TIFIA Note is surrendered for transfer, the Borrower shall execute and the Fiscal Agent shall authenticate and deliver to the transferee a new TIFIA Note of the same tenor, interest rate and maturity and for a like aggregate principal amount.

Pursuant to the [_____] Supplemental Subordinate Resolution, the Holder of this TIFIA Note shall at all times be the party to the TIFIA Loan Agreement having all rights and obligations of the "TIFIA Lender" under the TIFIA Loan Agreement. The Fiscal Agent shall not register any transfer or exchange of this TIFIA Note unless the Holder's prospective transferee delivers to the Fiscal Agent a letter substantially in the form as set forth in Exhibit B attached to the [_____] Supplemental Subordinate Resolution.

Any delay on the part of the TIFIA Lender in exercising any right hereunder or under the TIFIA Loan Agreement shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to have happened and to have been performed precedent to and in the issuance of this TIFIA Note do exist, have happened, and have been performed in due time, form and manner as required by the Constitution and laws of the State of California and the Charter of the City and that this TIFIA Note, together with all other indebtedness of the Borrower pertaining to the Subordinate Revenues, is within every debt and other limit prescribed by the Constitution and laws of the State of California and the Charter of the City and is not in excess of the amount of indebtedness permitted to be issued under the Subordinate Resolution.

This TIFIA Note is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State of California shall govern its construction to the extent such federal laws are not applicable.

This TIFIA Note shall not be entitled to any benefit under the Subordinate Resolution, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been executed and dated by the Fiscal Agent.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Board of Harbor Commissioners of the City of Long Beach, California has caused this TIFIA Note to be signed by the President of the Board and attested by the Chief of Staff to the Board as of the Issue Date specified above.

President, Board of Harbor Commissioners
of the City of Long Beach, California

ATTESTED

Chief of Staff to the Board
of Harbor Commissioners of the
City of Long Beach, California

FISCAL AGENT'S CERTIFICATE OF AUTHENTICATION

This is the TIFIA Note described in the within mentioned Subordinate Resolution.

Date of Authentication: _____, 20__

U.S. BANK NATIONAL ASSOCIATION,
as Fiscal Agent

By: _____
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer unto

the within-mentioned registered TIFIA Note and hereby irrevocably constitute(s) and appoint(s)

attorney, to transfer the same on the books of the Fiscal Agent with full power of substitution in
the premises.

Dated: _____

Note: the signature(s) to this Assignment
must correspond with the name(s) as written
on the face of the within mentioned TIFIA
Note in every particular, without alteration
or enlargement or any change whatsoever.

Signature Guaranteed by:

Note: Signature must be guaranteed by
an Eligible Guarantor Institution.

APPENDIX ONE

Maturity Date: The May 15th or November 15th occurring on or immediately prior to the 35th anniversary of the Substantial Completion Date

Maximum Principal Amount: \$ _____

Borrower: City of Long Beach, California, acting by and through its Board of Harbor Commissioners.

TIFIA Lender: The United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau.

DISBURSEMENTS AND PAYMENTS OF PRINCIPAL

Date	Amount of Disbursement	Amount of Principal Paid	Unpaid Principal Sum	Notation Made By

APPENDIX TWO

Loan Amortization Schedule

EXHIBIT B

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS –
PRIMARY COVERED TRANSACTIONS**

The undersigned on behalf of [INSERT NAME OF PARTY], hereby certifies, to the best of the undersigned's knowledge and belief, that [INSERT NAME OF PARTY] and its principals (as defined in 2 C.F.R. § 180.995):

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- (b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement, dated as of [_____] [___], 2020, between the City of Long Beach, acting by and through its Board of Harbor Commissioners, and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, as the same may be amended from time to time.

Dated: _____

[BORROWER / OTHER BORROWER
RELATED PARTY / PRINCIPAL
PROJECT PARTY]

By: _____

EXHIBIT C

REQUISITION PROCEDURES

This Exhibit C sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of TIFIA Loan proceeds to pay directly for, or reimburse the Borrower for, Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through 4 set out the circumstances in which the TIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the TIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the TIFIA Lender under the TIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the TIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the TIFIA Loan Agreement during the term thereof.

Section 1. General Requirements. Prior to the delivery of any Requisition, the Borrower shall cause all Eligible Project Costs Documentation to be delivered to the TIFIA Lender in accordance with Section 4 of the TIFIA Loan Agreement for the purpose of review, audit and verification by the TIFIA Lender.

All requests by the Borrower for the disbursement of TIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the TIFIA Lender, in accordance with Section 36 of the TIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the TIFIA Lender and completed and executed by a duly authorized representative of the Borrower. The form of Requisition is attached as Appendix One to this Exhibit C. Supporting documentation should be submitted with the requisition.

The TIFIA Lender agrees to promptly send to the Borrower in accordance with Section 36 of the TIFIA Loan Agreement, an acknowledgement of receipt of each Requisition in the form attached as Appendix Two to this Exhibit C setting forth the date of receipt by the TIFIA Lender of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the TIFIA Lender. All disbursement requests must be received by the TIFIA Lender at or before 5:00 P.M. (EST) on or before the fifteenth (15th) Business Day of a calendar month preceding such calendar month for which a disbursement is requested, or the next succeeding Business Day if such 15th day is not a Business Day, in order to obtain disbursement by the requested date of disbursement, which date will be the 1st day of the month following the date on which such Requisition is received, or on the next succeeding Business Day if such 1st day is not a Business Day. If a Requisition is approved by the TIFIA Lender, the TIFIA Lender will notify the Borrower of such approval and of the amount so approved.

Section 2. Rejection. A Requisition may be rejected by the TIFIA Lender if it is:

- (a) submitted without signature;

- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the TIFIA Loan; or
- (d) submitted without prior delivery of Eligible Project Costs Documentation to the TIFIA Lender in accordance with Section 4 of the TIFIA Loan Agreement.

The TIFIA Lender will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified in (i) or (ii) above must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the TIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the TIFIA Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the TIFIA Lender, after telephonic notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount. The TIFIA Lender will confirm correction of the error, to the Borrower, in writing.

Section 4. Withholding. The TIFIA Lender shall be entitled to withhold approval of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds if:

- (a) the Borrower fails to pay any principal or interest on the TIFIA Loan when the same is due and payable;
- (b) the Borrower applies TIFIA Loan proceeds for purposes other than the payment of, or reimbursement for, Eligible Project Costs which have been the subject of an approved disbursement request hereunder;
- (c) the Borrower knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby;
- (d) a Prospective Event of Default or an Event of Default under the TIFIA Loan Agreement shall have occurred and be continuing;
- (e) the Borrower fails to construct the Project in a manner consistent with plans, specifications, engineering reports or facilities plans previously submitted to and approved by the TIFIA Lender, or with good engineering practices, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by the Borrower with applicable federal or local law pertaining to the Project, or with the terms and conditions of the TIFIA Loan Agreement; or

- (f) the Borrower fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement.

APPENDIX ONE

FORM OF REQUISITION

United States Department of Transportation
c/o Director, TIFIA Joint Program Office (HITJ)
Federal Highway Administration
Room E64-301
1200 New Jersey Avenue, SE
Washington, DC 20590

Federal Highway Administration Office
[State] Division Office
[Address]
Attention: Division Administrator

[Loan Servicer]
[Address]
[Attention]

Re: GERALD DESMOND BRIDGE PROJECT (TIFIA # 20__-____)

Ladies and Gentlemen:

Pursuant to Section 4 of the TIFIA Loan Agreement, dated as of [____] [__], 2020 (the "TIFIA Loan Agreement"), by and between the CITY OF LONG BEACH, acting by and through its BOARD OF HARBOR COMMISSIONERS (the "Borrower") and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"), we hereby request disbursement in the amount of \$_____ for Eligible Project Costs. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [_____].
2. The Substantial Completion Date has occurred.
3. The amounts previously disbursed under the TIFIA Loan Agreement equal, in the aggregate, \$[_____].
4. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), the total federal assistance provided to the Project shall not exceed eighty percent (80%) of Eligible Project Costs (as required pursuant to Section 603(b)(9) of the Act).

5. The requested date of disbursement is [_____] 1][_], which is the first Business Day following [_____] 1, ____] (the "Disbursement Date").
6. The amounts hereby requisitioned have been incurred by or on behalf of the Borrower for Eligible Project Costs and such amounts will not exceed as of the Disbursement Date thirty-three percent (33%) of reasonably anticipated Eligible Project Costs.
7. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the TIFIA Loan.
8. All amounts requisitioned hereunder are for Eligible Project Costs.
9. The Borrower has provided the TIFIA Lender true and complete Eligible Project Costs Documentation for the amount of the Requisition in accordance with Section 4(c) of the TIFIA Loan Agreement.
10. The Borrower has all permits and Governmental Approvals necessary as of the date hereof and on the Disbursement Date (immediately after giving effect to the above requested disbursement of TIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project.
11. Each of the insurance policies obtained by the Borrower in satisfaction of Section 15(f) of the TIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
12. The Borrower has obtained property insurance (including business interruption insurance for a period of at least twelve (12) months) in respect of the Port, with such policy limits, coverages and other term and conditions as are customary for facilities similar to the Project or Port.
13. The representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other TIFIA Loan Document are true and correct in all material respects (except to the extent that any representation and warranty itself is qualified by "materiality", "Material Adverse Effect" or a similar qualifier, in which case, it is true and correct in all respects) as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct in all material respects (except to the extent that such any representation and warranty itself is qualified by "materiality", "Material Adverse Effect" or a similar qualifier, in which case, it shall be true and correct in all respects) as of such earlier date).
14. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), (i) the Borrower is in compliance with all of the terms and conditions of the TIFIA Loan Agreement and the TIFIA Resolution, (ii) no Event of Default or event of default under any other Related Document in effect and (iii) no Prospective Event of Default or no prospective event of

default under any other Related Document in effect, in each case, has occurred and is continuing.

15. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since [_____] [___], 2020.
16. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Government deems appropriate.
17. A copy of this Requisition has been delivered to each of the above named addressees.
18. The undersigned is duly authorized to execute and deliver this Requisition on behalf of the Borrower.
19. The Borrower requests that the proceeds of the disbursement be disbursed as follows [insert wire instructions for the Borrower].

Date: _____

Borrower's Authorized Representative

Name: _____

Title: _____

APPENDIX TWO

**FORM OF ACKNOWLEDGEMENT OF RECEIPT OF REQUISITION FOR
DISBURSEMENT OF TIFIA LOAN PROCEEDS**

Harbor Department of the City of Long Beach,
Port of Long Beach, 415 W. Ocean Boulevard
Long Beach, California 90802
Attention: Managing Director, Finance and Administration
Email: sam.joumblat@polb.com

Re: Receipt of Requisition for Disbursement of TIFIA Loan Proceeds

Ladies and Gentlemen:

Pursuant to Section 4 of the TIFIA Loan Agreement, dated as of [_____] [____], 2020 by and between the CITY OF LONG BEACH, acting by and through its Board of Harbor Commissioners (the "Borrower") and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"), the undersigned authorized representative of the TIFIA Lender hereby acknowledges receipt of the attached Requisition for Disbursement of TIFIA Loan proceeds (the "Requisition") from the Borrower. In connection therewith, we hereby represent and certify the following:

1. The date of receipt of the Requisition is _____.
2. Unless this Requisition is denied, disbursement shall be made on or before _____.

Date: _____

TIFIA Lender's Authorized Representative

Name: _____

Title: _____

APPENDIX THREE

[APPROVAL / DISAPPROVAL] OF THE TIFIA LENDER

(To be delivered to the Borrower)

Requisition Number _____ is [approved] [approved in part]¹ [not approved]² by the TIFIA Lender (as defined herein) pursuant to Section 4 of the TIFIA Loan Agreement, dated as of [_____] [____], 2020 by and between the CITY OF LONG BEACH, acting by and through its Board of Harbor Commissioners (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”).

Any determination, action or failure to act by the TIFIA Lender with respect to the Requisition set forth above, including the withholding of a disbursement, shall be at the TIFIA Lender’s sole discretion, and in no event shall the TIFIA Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES DEPARTMENT
OF TRANSPORTATION**, acting by
acting by and through the
Executive Director of the Build
America Bureau

By: _____
TIFIA Lender’s Authorized Representative

Name: _____

Title: _____

Dated: _____

¹ Those portions of the Requisition that are approved and those portions that are not approved are described in Schedule A attached hereto, with explanations for items not approved.

² Attached hereto as Exhibit A are reasons for denial of approval.

EXHIBIT A
REASONS FOR DENIAL

EXHIBIT D

COMPLIANCE WITH LAWS

The Borrower agrees to abide by any and all applicable Federal and state laws. The following list of Federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive. The Borrower shall require that its contractors and subcontractors comply with applicable laws:

1. The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. §§ 12101 et seq.; 28 C.F.R. § 35; 29 C.F.R. § 1630);
2. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d et seq.) and United States Department of Transportation regulation, 49 C.F.R. Part 21;
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 et seq.), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
4. Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 C.F.R. §§ 1625- 27, 1630; 28 C.F.R. § 35; 41 C.F.R. § 60; and 49 C.F.R. § 27);
5. Restrictions governing the use of Federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 C.F.R. § 20);
6. The Clean Air Act, as amended (42 U.S.C. §§ 1857 et seq., as amended by Pub. L. 91-604);
7. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.);
8. The Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq., as amended by Pub. L. 92-500);
9. The environmental mitigation requirements and commitments made by the Borrower that result in TIFIA Lender's approval of the Final Environmental Impact Statement (issued pursuant to 42 U.S.C. § 4332(2)(C)) and issuance of the Record of Decision for the Project;
10. The Endangered Species Act, 16 U.S.C. § 1531, et seq.;
11. 23 U.S.C. §138;

12. The health and safety requirements set forth in 23 C.F.R. § 635.108;
13. The prevailing wage requirements set forth in 40 U.S.C. § 276a, 23 U.S.C. § 113, as supplemented by 29 C.F.R. Part 5, 23 C.F.R. §§ 635.117(f), 635.118 and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;
14. The Buy America requirements set forth in 23 U.S.C. §313 and implementing regulations (23 C.F.R. §635.410);
15. The requirements of 23 U.S.C. §§ 101 et seq. and 23 C.F.R.; and
16. The applicable requirements of 49 C.F.R. Part 26 relating to the Disadvantaged Business Enterprise program.

EXHIBIT E
OVERSIGHT AGREEMENT

(attached)

EXHIBIT F

**TIFIA Debt Service
Gerald Desmond Bridge Project**

Date	Principal Repayment	Interest Paid	Semiannual Debt Service	Annual Debt Service

EXHIBIT G

OPINION MATTERS

An opinion of the counsel of the Borrower, dated the Effective Date, to the effect that: (a) the Borrower is duly formed, validly existing and in good standing under the laws of the State of California; (b) the Borrower has all requisite corporate power and authority to conduct its business and to execute and deliver, and to perform its obligations under the TIFIA Loan Documents to which it is a party; (c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the TIFIA Loan Documents to which it is a party, have been duly authorized by all necessary corporate action; (d) the Borrower has duly executed and delivered each TIFIA Loan Document to which it is a party and each such TIFIA Loan Document constitutes the legal, valid and binding obligation of the Borrower; enforceable against the Borrower in accordance with their respective terms; (e) no authorization, consent or other approval of, or registration, declaration or other filing with any governmental authority of the United States or of the State of California is required on the part of the Borrower for the execution, delivery and performance by the Borrower of the TIFIA Loan Documents, and prior to the Transfer Date, for the operating and maintenance of the Project; (f) the execution and delivery by the Borrower of, and compliance with the provisions of the TIFIA Loan Documents do not (i) violate the Charter, the Senior Master Resolution or the Subordinated Master Resolution, (ii) violate the law of the United States of America or the state of California or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower presently is subject; (g) opinions regarding the creation and attachment of security interests in the Subordinate Revenues, Subordinated Debt Secured Accounts (other than the TIFIA Debt Service Reserve Fund) and the TIFIA Debt Service Reserve Fund under the federal and state laws applicable to the Borrower; (h) the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended; and (i) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other governmental authority in connection with the TIFIA Loan Documents that are pending.

EXHIBIT H

FLOW OF FUNDS

All capitalized terms used in this Exhibit H not defined herein or in the TIFIA Loan Agreement shall have the meaning given to such terms in the Subordinated Master Resolution.

1. The Treasurer shall set aside any Revenues remaining in the Harbor Revenue Fund after the transfers described in paragraphs 1, 2 and 3 of Section 5.03(B) of the Senior Master Resolution and any Supplemental Senior Resolution, to the Subordinate Harbor Debt Service Fund and any Subordinate Debt Service Reserve Fund established under a Supplemental Subordinate Resolution and shall set aside such moneys in such funds in the following amounts, in the following order of priority, the requirements of each such fund (including the making up of any deficiencies in any such fund resulting from lack of Subordinate Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any fund subsequent in priority.

- a. Subordinate Interest Account. At least five (5) Business Days prior to each date on which (i) interest on the Subordinated Debt Obligations is due and payable, and (ii) such other amounts payable from the Subordinate Interest Account as described in Paragraph 2 below are due and payable (collectively, the "Interest Account Requirements"), the Treasurer shall set aside in the Subordinate Interest Account Subordinate Revenues in an amount equal to the Interest Account Requirements due and payable on such payment date(s). No deposit need be made into the Subordinate Interest Account if the amount contained therein is at least equal to the Interest Account Requirements due and payable on such payment date(s).

Notwithstanding anything in the previous paragraph to the contrary, the Treasurer shall set aside in the Subordinate Interest Account, as soon as practicable in each month after all required deposits described in paragraphs 1, 2 and 3 of Section 5.03(B) of the Senior Master Resolution have been made, an amount equal to at least one-sixth of the aggregate half-yearly amount of interest becoming due and payable on the TIFIA Loan and the TIFIA Note during the next ensuing six months, until the requisite half-yearly amount of interest on the TIFIA Loan and the TIFIA Note is on deposit in such account. No deposit need be made into the Subordinate Interest Account with respect to interest coming due on the TIFIA Loan and the TIFIA Note if the amount contained therein is at least equal to the interest to become due and payable on the Semi-Annual Payment Date falling within the next six (6) months.

- b. Subordinate Principal Account. At least five (5) Business Days prior to each maturity date, mandatory sinking fund redemption date or purchase date of the Subordinated Debt Obligations or any other date the principal

of the Subordinated Debt Obligations may be due and payable (except for redemption dates described in paragraph 4 below), the Treasurer shall set aside in the Subordinate Principal Account Subordinate Revenues in an amount equal to the principal of the Subordinated Debt Obligations due and payable on such maturity date, mandatory sinking fund redemption date, purchase date and/or other date the principal of the Subordinated Debt Obligations may be due and payable (except for redemption dates described in paragraph 4 below). No deposit need be made into the Subordinate Principal Account if the amount contained therein is at least equal to the principal due and payable on such maturity date, mandatory sinking fund redemption date, purchase date and/or other date the principal of the Subordinated Debt Obligations may be due and payable (except for redemption dates described in paragraph 4 below).

Notwithstanding anything in the previous paragraph to the contrary, the Treasurer shall set aside in the Subordinate Principal Account, as soon as practicable in each month after all required deposits described in paragraphs 1, 2 and 3 of Section 5.03(B) of the Senior Master Resolution have been made, an amount equal to at least one-twelfth of the aggregate amount of principal becoming due and payable on the TIFIA Loan and the TIFIA Note within the next twelve (12) months. No deposit need be made into the Subordinate Principal Account with respect to the TIFIA Loan and the TIFIA Note so long as there shall be in such account moneys sufficient to pay the principal of the TIFIA Loan and the TIFIA Note within the next twelve (12) months.

- c. Subordinate Debt Service Reserve Fund. The Treasurer shall deposit or cause to be deposited as soon as possible in each month in any Subordinate Debt Service Reserve Fund established under a Supplemental Subordinate Resolution for a Series of Subordinate Obligations, upon the occurrence of any deficiency therein, one-twelfth of the aggregate amount of each unreplenished prior withdrawal from such Subordinate Debt Service Reserve Fund and the full amount of any deficiency due to any required valuations of the investments in such Subordinate Debt Service Reserve Fund until the balance in such Subordinate Debt Service Reserve Fund is at least equal to the amount required pursuant to the Supplemental Subordinate Resolution or other document creating such Subordinate Debt Service Reserve Fund.
- d. Any Revenues remaining in the Harbor Revenue Fund after the transfers described in paragraphs 1, 2 and 3 of Section 5.03(B) of the Senior Master Resolution and the transfers described in paragraphs (a), (b) and (c) above, except as otherwise provided in a Supplemental Subordinate Resolution, shall be applied as set forth in Section 5.01 of the Senior Master Resolution and Section 5.01 of the Subordinated Master Resolution.

2. The Subordinated Master Resolution provides that all amounts in the Subordinate Interest Account shall be used and withdrawn by the Treasurer solely for the purpose of (i) paying interest on the Subordinated Debt Obligations as it shall become due and payable (including accrued interest on any Subordinated Debt Obligations purchased or redeemed prior to maturity), (ii) making payments to providers of credit and liquidity enhancement for any Subordinated Debt Obligations with respect to reimbursement to such providers of interest payments on any Subordinated Debt Obligations made by such providers, (iii) making regularly scheduled payments to the counterparty or counterparties to an interest rate swap agreement entered into by the City, acting by and through the Board, with respect to one or more Series of Subordinated Debt Obligations, and (iv) making such other payments as shall be set forth and required pursuant to a Supplemental Subordinate Resolution.
3. The Subordinated Master Resolution provides that all amounts in the Subordinate Principal Account shall be used and withdrawn by the Treasurer solely for the purposes of paying the principal of the Subordinated Debt Obligations when due and payable at maturity, upon mandatory sinking fund redemption, upon a mandatory or optional tender or on any other date the principal of the Subordinated Debt Obligations may be due and payable (except for redemption dates described in paragraph 4 below) and making payments to providers of credit and liquidity enhancement for any Subordinated Debt Obligations with respect to reimbursement to such providers of payments of Subordinated Debt Obligations made by such providers.

Notwithstanding the previous paragraph, the Treasurer may apply moneys in the Subordinate Principal Account to the purchase of Subordinated Debt Obligations, at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Subordinate Interest Account) as is directed by the Board. All Subordinated Debt Obligations purchased pursuant to this paragraph shall be delivered to the Fiscal Agent for such Subordinated Debt Obligations and cancelled by the Fiscal Agent.

4. The Treasurer shall establish, maintain and hold in trust a special fund designated as the "Subordinate Harbor Redemption Fund." All moneys deposited with the Treasurer for the purpose of optionally redeeming Subordinated Debt Obligations shall, unless otherwise directed by the Board or as otherwise provided in a Supplemental Subordinate Resolution, be deposited in the Subordinate Harbor Redemption Fund. All amounts deposited in the Subordinate Harbor Redemption Fund shall be used and withdrawn by the Treasurer solely for the purpose of redeeming Subordinated Debt Obligations of any series, in the manner, at the times and upon the terms and conditions specified in the Supplemental Subordinate Resolution pursuant to which the series of Subordinated Debt Obligations was issued; provided that, at any time prior to the fiscal agent for such series giving notice of redemption, the Treasurer shall, upon receipt of a request of the Board, apply such amounts to the purchase of Subordinated Debt

Obligations at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest which is payable from the Subordinate Interest Account) as is directed by the Board, except that the purchase price (exclusive of such accrued interest) may not exceed the redemption price or accreted value then applicable to such Subordinated Debt Obligations, unless otherwise provided in a Supplemental Subordinate Resolution. All Term Subordinate Obligations (as defined in the Subordinated Master Resolution) purchased or redeemed from the Subordinate Harbor Redemption Fund shall be allocated to Mandatory Sinking Account Payments (as defined in the Subordinated Master Resolution) applicable to such series and maturity of Term Subordinate Obligations as may be specified in a request of the Board.

EXHIBIT I
FORM OF LEASE ABSTRACT

EXHIBIT J

**Anticipated TIFIA Loan Disbursement Schedule
Gerald Desmond Bridge Project**

EXHIBIT K

TIFIA LOAN REAMORTIZATION METHODOLOGY

[to be added]

EXHIBIT L

**CERTIFICATION REGARDING THE PROHIBITION ON THE USE OF
APPROPRIATED FUNDS FOR LOBBYING**

The undersigned, on behalf of CITY OF LONG BEACH, acting by and through its Board of Harbor Commissioners (the "Borrower"), hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the TIFIA Loan.

(b) If any funds other than proceeds of the TIFIA Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the TIFIA Loan, the Borrower shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the TIFIA Lender entered into this Agreement. Submission of this certification is a prerequisite to the effectiveness of this Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: _____

Borrower's Authorized Representative

Name: _____

Title: _____