



AGENDA FOR THE ANNUAL MEETING OF THE GOVERNING BOARD OF THE INTERMODAL CONTAINER TRANSFER FACILITY JOINT POWERS AUTHORITY TO BE HELD BY VIDEO CONFERENCE, ON THURSDAY, SEPTEMBER 9, 2021, AT 5:00 P.M.

The Civic Chambers will not be accessible for public observance of the meeting or public comment pursuant to executive order N-08-21 issued by Governor Newsom on June 11, 2021.

The meeting will be conducted via WebEx and members of the public may observe and participate by joining the meeting here:

<https://polb.webex.com/polb/j.php?MTID=mf11ab0ba030d3c5749acab6475f2b74d>

Event number: 146 711 5361

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Members of the public may address the Board in connection with an agenda item or during the public comment period by calling (562) 317-3026 or by emailing info@ictf-jpa.org. All public comment requests need to be submitted by 4:45 p.m. on the day of the meeting.

A recording of the meeting will be available for viewing following the live event at www.polb.com/webcast.

The Intermodal Container Transfer Facility Joint Powers Authority intends to provide reasonable accommodations in accordance with the Americans with Disabilities Act of 1990. This agenda is available in an alternative format by request. If a special accommodation is desired, please call (562) 283-7056, 48 hours prior to the meeting.



A. ROLLCALL

B. OPENING STATEMENT

Members of the public may address this Board in connection with any agenda item or during the public comment period via the WebEx link provided above or by emailing info@ictf-jpa.org. If emailing, please include your name, your telephone number for a return call and the item number you would like to comment on (or specify “public comment”). You will be called during the meeting on the item you specify. If you do not answer when called, we will move on to the next public speaker. As provided by the Brown Act, the Board will limit each individual’s speaking time to three minutes. All public comment requests need to be submitted by 4:45 p.m. on the day of the meeting.

C. ELECTION OF OFFICERS

Election of Officers for fiscal year 2021-2022

D. APPROVAL OF MINUTES

Approval of minutes from the annual meeting on September 9, 2020.

E. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Comments from the public on non-agenda items within the purview of the ICTF JPA.

F. BOARD REPORTS OF THE EXECUTIVE DIRECTOR

1. Executive Director Remarks
2. Recommendation to receive and file audited financial statements for fiscal year ending June 30, 2020.
3. Recommendation to receive and file Agreed-Upon Procedures (AUP) for year ending November 1, 2020.
4. Recommendation to adopt annual budget and distribution of funds for fiscal year 2021-2022.
5. Recommendation to authorize Agreement with Moss Adams LLP for Audit Services

G. ADJOURNMENT



C. ELECTION OF OFFICERS



DATE: September 09, 2021

TO: Governing Board, Intermodal Container Transfer Facility Joint Powers Authority

FROM: Richard D. Cameron, Executive Director

SUBJECT: Election of Officers for FY 2021-2022

Pursuant to Section 3D of the Joint Powers Agreement, the Governing Board shall elect one member as Chairperson. The Governing Board may elect a second member as Vice Chairperson. The term for both Chairperson and Vice Chairperson is one year with no specific guidelines for selection of any officer, including no restriction on re-election for successive terms of either office. Further, Section 3D dictates that the Governing Board shall appoint a Secretary and the Treasurer of the Joint Powers Authority.

It is recommended that the Governing Board nominate and elect a Chairperson and a Vice Chairperson for the fiscal year 2021-2022.

It is also recommended that the Board make the following finding:

“The Board finds the activity is an administrative activity that will not result in direct or indirect physical changes in the environment, and, as such, is not a “project” as defined by CEQA Guidelines section 15378.”

Richard D. Cameron
Executive Director



D. APPROVAL OF MINUTES

Approval of minutes of the special meeting on September 9, 2020.



Annual Meeting of the Governing Board of the Intermodal Container Transfer Facility Joint Powers Authority Minutes

Minutes of the Annual Meeting of the Governing Board of the Intermodal Container Transfer Facility Joint Powers Authority, held by video conference, on Wednesday, September 9, 2020 at 5:00 p.m. Transcript and video of this meeting are available at <http://ictf-jpa.org/>

Present: Board Members: Moreno-Linares, Neal, Cordero, Gioiello (alternate)
Chairperson Moreno-Linares presided

Also present:

R.	Cameron	Executive Director of the ICTF JPA
M.	Bleavins	Treasurer of the ICTF JPA
J.	Sidley	General Counsel of the ICTF JPA
J.	Cröse	Staff Counsel of the ICTF JPA
E.	Flores	Secretary of the ICTF JPA

Public Speakers:
None

Agenda Items

Election of Officers – Item C

Executive Director Richard D. Cameron recommended that the JPA Board nominate Officers for fiscal year 2020 – 2021. Cameron recommended the board appoint a Chair and Vice Chair. Cameron asked for recommendations for Chairperson.

Moreno-Linares nominated Neal to be Chairperson, Cordero seconded, carried by the following vote:

Ayes:	Board Members:	Neal, Gioiello, Cordero, Moreno-Linares
Noes:	Board Members:	None

Executive Director Cameron recommended the board appoint a Vice Chair. Cameron asked for recommendations.

Board Member Neal nominated Chairperson Moreno-Linares to be Vice Chairperson, Gioiello seconded, carried by the following vote:

Ayes: Board Members: Neal, Gioiello, Cordero, Moreno-Linares
Noes: Board Members: None

Receive and File of Minutes – September 11, 2019 – Item D

Executive Director Cameron recommended the board approve the minutes of the annual meeting on September 11, 2019. Cameron asked for a motion to receive and file the minutes.

Moreno-Linares moved, seconded by Neal, carried by the following vote:

Ayes: Board Members: Neal, Gioiello, Cordero, Moreno-Linares
Noes: Board Members: None

Public Comment on Non-Agenda Items – Item E

Executive Director Cameron asked if there was anyone that wished to discuss non-agenda items.

No public comments.

Board Reports of Executive Director – Item F

I. Executive Director Remarks

Executive Director Cameron stated that the City of Carson project is on hold at this time until a decision to move forward with the full project is made. The City did not provide a time frame on when a decision would be made. The project will continue to be monitored if anything changes with the City of Carson. Additional coordination with the City of Carson related to coordination of corridor projects will continue. Executive Director Cameron also stated that the Union Pacific Modernization project is currently on hold. While the project has not been pulled, no indication to move forward has been made. Cameron stated that the board would be kept apprised should anything change.

Moreno-Linares asked about the City of Carson obligation amount being a fixed rate or a percentage. Cameron stated the project amount is a legal obligation with a fixed amount of \$2.25M. Marla Bleavins confirmed this statement. Neal inquired if there was a sunset to this agreement and if there is a time parameter for the City of Carson to come up with this project. Sidley confirmed there is no sunset in the agreement, however, no one anticipated the project to linger as long as it has. Sidley stated that discussions would be had prior to making any decisions regarding ending the agreement. Bleavins confirmed there is no sunset for the agreement and the budget continues to roll over each year. There were no additional questions or public comments. Executive Director Cameron asked for a motion to receive and file.

Moreno-Linares moved, seconded by Cordero, carried by the following vote:

Ayes: Board Members: Neal, Gioiello, Cordero, Moreno-Linares
Noes: Board Members: None

III. Agreed-Upon Procedures (AUP) for Year Ending November 1, 2019

Executive Director Cameron recommended the JPA Board receive and file the agreed-upon procedures (AUP) for year ending November 1, 2019. There were no questions or public comments. Cameron asked for a motion to receive and file the AUP.

Neal moved, seconded by Moreno-Linares, carried by the following vote:

Ayes:	Board Members:	Neal, Gioiello, Cordero, Moreno-Linares
Noes:	Board Members:	None

IV. Annual Budget and Distribution of Funds for Fiscal Year 2020 – 2021

Executive Director Cameron recommended to adopt the budget and distribution of funds for fiscal year 2020 – 2021. There were no questions or public comments. Cameron asked for a motion to adopt the budget and distribution of funds.

Neal moved, seconded by Moreno-Linares, carried by the following vote:

Ayes:	Board Members:	Neal, Gioiello, Cordero, Moreno-Linares
Noes:	Board Members:	None

V. Amendment to Contract with EnSafe Inc.

Executive Director Cameron stated that EnSafe acts as administrative staff and helps to prepare for meetings and keeping up with the website. EnSafe originally came onboard as part of the effort for the proposed Union Pacific Modernization project. Cameron recommended approving the amendment to keep EnSafe onboard to continue supporting the JPA. There were no questions or public comments. Cameron asked for a motion to approve the amendment to the contract with EnSafe.

Cordero moved, seconded by Neal, carried by the following vote:

Ayes:	Board Members:	Neal, Gioiello, Cordero, Moreno-Linares
Noes:	Board Members:	None

VI. Southern California Edison License Agreement

Executive Director Cameron recommended authorizing the licensing agreement with Southern California Edison. There were no questions or public comments. Cameron asked for a motion to authorize the agreement.

Neal moved, seconded by Moreno-Linares, carried by the following vote:

Ayes:	Board Members:	Neal, Gioiello, Cordero, Moreno-Linares
Noes:	Board Members:	None

Adjournment

Executive Director Cameron asked for a motion to adjourn.

Cordero moved, Moreno-Linares by Gioiello, carried by the following vote:

Ayes:	Board Members:	Neal, Gioiello, Cordero, Moreno-Linares
Noes:	Board Members:	None

Cameron adjourned the meeting at 5:24 p.m.



E. COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS



F. BOARD REPORTS OF THE EXECUTIVE DIRECTOR



DATE: September 09, 2021

TO: Governing Board, Intermodal Container Transfer Facility Joint Powers Authority

FROM: Richard D. Cameron, Executive Director

SUBJECT: Financial Audit – Fiscal Year Ended June 30, 2020

Macias, Gini & O’Connell LLP (MGO) has completed the financial audit of the Intermodal Container Transfer Facility Joint Powers Authority (ICTF JPA) for the fiscal year that ended June 30, 2020. Their audit has determined that ICTF JPA’s financial statements for the fiscal year ended June 30, 2020, the financial position, changes in financial position, and cash flows are presented fairly.

Operating revenues for the fiscal year decreased 5.3% to \$4,889,810 due to the impact of the pandemic during the fiscal year ended June 30, 2020. Since March 2020, the outbreak of the COVID-19 pandemic has affected the global supply chain resulting in an 8.8% decline in annual containers volume relative to the prior fiscal year. Net position increased by 7.5% to \$13,221,504 over the same period. Interest income increased by \$2.7 thousand or 2.0% due to higher market values for the investment portfolio in the City of Long Beach’s investment pool at June 30, 2020 compared to 2019. An investment settlement resulting from the claim filed by the City of Long Beach against Lehman Brothers is shown as nonoperating revenue.

It is recommended that the Governing Board receive and file the financial audit report for the fiscal year ended June 30, 2020.

It is also recommended that the Board make the following finding:

“The Board finds the activity is an administrative activity that will not result in direct or indirect physical changes in the environment, and, as such, is not a “project” as defined by CEQA Guidelines section 15378.”

Richard D. Cameron
Executive Director

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Basic Financial Statements

June 30, 2020 and 2019

(With Independent Auditor's Report Thereon)



Certified
Public
Accountants

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

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Independent Auditor's Report

To the Board of Directors
Intermodal Container Transfer Facility Joint Powers Authority

We have audited the accompanying financial statements of the Intermodal Container Transfer Facility Joint Powers Authority (Authority) as of and for the years ended June 30, 2020 and 2019, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Authority, as of June 30, 2020 and 2019, and the changes in its financial position and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Emphasis of Matter

As discussed in Note 7, measures taken by various governments to contain the COVID-19 pandemic have affected global and international economies. This has affected the Authority's container volumes and revenues where the Authority reported an 8.8% decline in annual container volume compared to the prior year. Our opinion is not modified with respect to this matter.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, as listed in the table of contents, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Macias Gini & O'Connell LLP

Los Angeles, California
February 19, 2021

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Management's Discussion and Analysis

June 30, 2020 and 2019

(Unaudited)

The Intermodal Container Transfer Facility Joint Powers Authority (Authority) was formed in 1983 pursuant to an agreement between the Ports of Los Angeles and Long Beach, California (Venturers) for purposes of financing and constructing the Intermodal Container Transfer Facility (Facility) and leasing the Facility to Southern Pacific Transportation Company (subsequently, a wholly owned subsidiary of Union Pacific Corporation) (Tenant).

This section of the Authority's annual financial report presents management's discussion and analysis of the Authority's financial performance during the years ended June 30, 2020 and 2019. This discussion has been prepared by management and should be read in conjunction with the Authority's basic financial statements and related notes.

Overview of the Basic Financial Statements

This section serves as an introduction to the Authority's basic financial statements. The basic financial statements comprise of the following components:

The *Statements of Net Position* present information on all of the Authority's assets, deferred outflows of resources, liabilities, deferred inflows of resources, and net position. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of the Authority is improving or deteriorating.

The *Statements of Revenues, Expenses, and Changes in Net Position* present information showing how the Authority's net position changed during the fiscal year. All changes in net position are reported as soon as the underlying event that gives rise to the change occurs, regardless of the timing of the related cash flows.

The *Statements of Cash Flows* present the inflows and outflows of cash and cash equivalents and resulting cash and cash equivalents position at fiscal year-end.

The *Notes to the Basic Financial Statements* present information that is not displayed on the face of the basic financial statements. Such information is essential to a full understanding of the Authority's financial activities.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Management's Discussion and Analysis (Continued)

June 30, 2020 and 2019

(Unaudited)

Financial Highlights and Analysis of Net Position

The following is a condensed summary of the Authority's net position as of June 30, 2020, 2019, and 2018:

	Schedules of Net Position			Increase (Decrease) Over Prior Year	
	FY 2020	FY 2019	FY 2018	FY 2020	FY 2019
	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Current assets	\$ 11,514,237	\$ 10,507,440	\$ 9,214,360	\$ 1,006,797	\$ 1,293,080
Capital assets, net	<u>1,762,768</u>	<u>1,870,798</u>	<u>1,978,828</u>	<u>(108,030)</u>	<u>(108,030)</u>
Total Assets	<u>13,277,005</u>	<u>12,378,238</u>	<u>11,193,188</u>	<u>898,767</u>	<u>1,185,050</u>
Other liabilities	<u>55,501</u>	<u>79,216</u>	<u>85,798</u>	<u>(23,715)</u>	<u>(6,582)</u>
Total liabilities	<u>55,501</u>	<u>79,216</u>	<u>85,798</u>	<u>(23,715)</u>	<u>(6,582)</u>
Net position					
Investment in capital assets	1,762,768	1,870,798	1,978,828	(108,030)	(108,030)
Unrestricted	<u>11,458,736</u>	<u>10,428,224</u>	<u>9,128,562</u>	<u>1,030,512</u>	<u>1,299,662</u>
Total net position	<u>\$ 13,221,504</u>	<u>\$ 12,299,022</u>	<u>\$ 11,107,390</u>	<u>\$ 922,482</u>	<u>\$ 1,191,632</u>

Fiscal Year 2020

The \$1.0 million, or 9.6%, increase in current assets is primarily due to an increase in cash and cash equivalents that is a result of cash collection from the Tenant. Current fiscal year's depreciation of \$0.1 million accounted for the decrease in net capital assets. Liabilities decreased by \$23.7 thousand due to primarily a reduction in Tenant advances.

Net position of the Authority increased by 7.5% to \$13.2 million at June 30, 2020. Of the \$13.2 million net position as of June 30, 2020, \$1.8 million, or 13.3%, are invested in capital assets. There is no debt outstanding related to these capital assets. There are no assets subject to external restrictions on how they may be used. The remaining \$11.5 million, or 86.7%, in net position are unrestricted and may be used to meet the Authority's ongoing obligations.

Fiscal Year 2019

The \$1.3 million, or 14.0%, increase in current assets is primarily due to an increase in cash and cash equivalents that is a result of cash collection from the Tenant. Current fiscal year's depreciation of \$0.1 million accounted for the decrease in net capital assets. Liabilities decreased by \$6.6 thousand due to more paid invoices at fiscal year-end compared to fiscal year 2018.

Net position of the Authority increased by 10.7% to \$12.3 million at June 30, 2019. Of the \$12.3 million net position as of June 30, 2019, \$1.9 million, or 15.2%, are invested in capital assets. There is no debt outstanding related to these capital assets. There are no assets subject to external restrictions on how they may be used. The remaining \$10.4 million, or 84.8%, in net position are unrestricted and may be used to meet the Authority's ongoing obligations.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Management's Discussion and Analysis (Continued)

June 30, 2020 and 2019

(Unaudited)

Summary of Operations and Analysis of Changes in Net Position

The following is a summary of the Authority's changes in net position for the years ended June 30, 2020, 2019, and 2018:

	Schedules of Changes in Net Position			Increase (Decrease) Over Prior Year	
	FY 2020	FY 2019	FY 2018	FY 2020	FY 2019
Operating revenue					
Facility rental	\$ 4,889,810	\$ 5,161,483	\$ 4,015,038	\$ (271,673)	\$ 1,146,445
Operating expense					
Depreciation	108,030	108,030	108,030	--	--
Net operating income	4,781,780	5,053,453	3,907,008	(271,673)	1,146,445
Nonoperating revenue (expense)					
Interest income	140,450	137,709	92,973	2,741	44,736
Settlement from Lehman Brothers	252	470	1,443	(218)	(973)
Distribution to Venturers	(4,000,000)	(4,000,000)	(4,000,000)	--	--
Net nonoperating revenue (expense)	(3,859,298)	(3,861,821)	(3,905,584)	2,523	43,763
Changes in net position	922,482	1,191,632	1,424	(269,150)	1,190,208
Net position, beginning of year	12,299,022	11,107,390	11,105,966	1,191,632	1,424
Net position, end of year	<u>\$ 13,221,504</u>	<u>\$ 12,299,022</u>	<u>\$ 11,107,390</u>	<u>\$ 922,482</u>	<u>\$ 1,191,632</u>

Container volumes that moved through the Authority's gate are 352,144, 385,937, and 293,801 containers for fiscal years 2020, 2019, and 2018, respectively.

Fiscal Year 2020

The \$0.3 million or 5.3% decrease in facility rental revenue was mainly due to the impact of the pandemic during the fiscal year ended June 30, 2020. Since March 2020, the outbreak of the COVID-19 pandemic has affected the global supply chain resulting in an 8.8% decline in annual containers volume relative to the prior fiscal year.

Interest income increased by \$2.7 thousand or 2.0% due to higher market values for the investment portfolio in the City of Long Beach's investment pool at June 30, 2020 compared to 2019. An investment settlement resulting from the claim filed by the City of Long Beach against Lehman Brothers is shown as nonoperating revenue. Distributions to Venturers totaled \$4.0 million in fiscal year 2020.

Fiscal Year 2019

The \$1.1 million or 28.6% increase in facility rental revenue was mainly due to the increase in containers that moved through the Authority's facility during the fiscal year ended June 30, 2019. The increase in container volume this year at the facility reflects efficiency improvements through collaboration in supply chain.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Management's Discussion and Analysis (Continued)

June 30, 2020 and 2019

(Unaudited)

Interest income increased by \$44.7 thousand or 48.1% due to higher market values for the investment portfolio in the City of Long Beach's investment pool at June 30, 2019 compared to 2018. An investment settlement resulting from the claim filed by the City of Long Beach against Lehman Brothers is shown as nonoperating revenue. Distributions to Venturers totaled \$4.0 million in fiscal year 2019.

Capital Assets

The Authority's investment in capital assets, net of accumulated depreciation, as of June 30, 2020, 2019, and 2018 amounted to approximately \$1.8 million, \$1.9 million, and \$2.0 million, respectively. Construction of the Facility was completed in 1986. Construction funds were provided by the Venturer ports (\$5.4 million), Southern Pacific Transportation Company (\$36.2 million), and revenue bonds issued by the Authority on behalf of Southern Pacific Transportation Company (\$53.9 million). At June 30, 2020, 2019, and 2018, capital assets, net of accumulated depreciation, consisted of the following:

Summary of Capital Assets

	<u>FY 2020</u>	<u>FY 2019</u>	<u>FY 2018</u>
Property and equipment	\$ 5,401,520	\$ 5,401,520	\$ 5,401,520
Furniture and fixtures	10,650	10,650	10,650
Total capital assets	5,412,170	5,412,170	5,412,170
Less accumulated depreciation	<u>(3,649,402)</u>	<u>(3,541,372)</u>	<u>(3,433,342)</u>
Total capital assets, net	<u>\$ 1,762,768</u>	<u>\$ 1,870,798</u>	<u>\$ 1,978,828</u>

The Authority's interest in the Facility is the \$5.4 million in combined contributions from the Venturers. There had been no additions to capital assets since the Facility's construction was completed in 1986. Reductions in capital assets are from annual depreciation provisions for fiscal years 2020, 2019, and 2018.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Management's Discussion and Analysis (Continued)

June 30, 2020 and 2019

(Unaudited)

Factors that May Affect the Authority's Operations

Fluctuations in economic activity that drive the movement of cargo in and out of the San Pedro Bay ports along with cargo owners deciding how to transport their cargo both have the ability to affect the volume of operations through the Facility.

Since March 2020, the outbreak of the COVID-19 pandemic has affected the global supply chain resulting in an 8.8% decline in annual containers volume relative to the prior fiscal year. On the other hand, based on the historical trend, a reduction in the containers volume now could be followed by a subsequent surge in inbound cargo at a later time as inventories are depleted.

Request for Information

Questions about this report or requests for additional information should be addressed to the Executive Director, Intermodal Container Transfer Facility Joint Powers Authority, 415 W. Ocean Blvd., Long Beach, CA 90802.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Statements of Net Position

June 30, 2020 and 2019

	2020	2019
ASSETS		
Current assets		
Cash and cash equivalents (note 2)	\$ 11,163,583	\$ 10,015,619
Receivable from Tenant	350,654	491,821
Total current assets	11,514,237	10,507,440
Capital assets, less accumulated depreciation (note 5)	1,762,768	1,870,798
TOTAL ASSETS	13,277,005	12,378,238
 LIABILITIES AND NET POSITION		
Liabilities		
Accounts payable	70	6,024
Excess Tenant advances (note 4)	55,431	73,192
TOTAL LIABILITIES	55,501	79,216
 NET POSITION		
Net position (note 3)		
Investment in capital assets	1,762,768	1,870,798
Unrestricted	11,458,736	10,428,224
TOTAL NET POSITION	\$ 13,221,504	\$ 12,299,022

See accompanying notes to the basic financial statements.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Statements of Revenues, Expenses, and Changes in Net Position
For the Years ended June 30, 2020 and 2019

	2020	2019
OPERATING REVENUE		
Facility rental (note 1)	\$ 4,889,810	\$ 5,161,483
OPERATING EXPENSE		
Depreciation	108,030	108,030
Net operating income	4,781,780	5,053,453
NONOPERATING REVENUE (EXPENSES)		
Interest income	140,450	137,709
Settlement from Lehman Brothers	252	470
Distribution to Venturers (note 3)	(4,000,000)	(4,000,000)
Net nonoperating expenses	(3,859,298)	(3,861,821)
CHANGES IN NET POSITION	922,482	1,191,632
Net position, beginning of year	12,299,022	11,107,390
Net position, end of year	\$ 13,221,504	\$ 12,299,022

See accompanying notes to the basic financial statements.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Statements of Cash Flows
Years ended June 30, 2020 and 2019

	2020	2019
CASH FLOWS FROM OPERATING ACTIVITIES		
Collection of net revenues from Tenant	\$ 5,030,977	\$ 4,986,451
Payments for goods and services in excess of Tenant advances	(23,715)	(6,582)
Net cash provided by operating activities	5,007,262	4,979,869
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest received	140,450	137,709
Settlement received	252	470
Distributions paid to Venturers	(4,000,000)	(4,000,000)
Net cash used in investing activities	(3,859,298)	(3,861,821)
NET INCREASE IN CASH AND CASH EQUIVALENTS	1,147,964	1,118,048
Cash and cash equivalents, beginning of year	10,015,619	8,897,571
Cash and cash equivalents, end of year	\$ 11,163,583	\$ 10,015,619
 RECONCILIATION OF NET OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES		
Net operating income	\$ 4,781,780	\$ 5,053,453
Adjustments to reconcile net operating income to net cash provided by operating activities:		
Depreciation	108,030	108,030
Changes in:		
Receivable from Tenant	141,167	(175,032)
Accounts payable	(5,954)	4,836
Excess Tenant advances	(17,761)	(11,418)
Total adjustments to reconcile net operating income to net cash provided by operating activities	225,482	(73,584)
NET CASH PROVIDED BY OPERATING ACTIVITIES	\$ 5,007,262	\$ 4,979,869

See accompanying notes to the basic financial statements.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Notes to the Basic Financial Statements

June 30, 2020 and 2019

1. Organization and Summary of Significant Accounting Policies

A. Organization

The Intermodal Container Transfer Facility Joint Powers Authority (Authority) was formed in 1983 pursuant to an agreement between the Ports of Los Angeles and Long Beach, California (Venturers) for purposes of financing and constructing the Intermodal Container Transfer Facility (Facility) and leasing the Facility to Southern Pacific Transportation Company (subsequently, a wholly owned subsidiary of Union Pacific Corporation) (Tenant). The agreement has a term of 50 years. The Facility commenced operations on November 17, 1986.

The Authority's principal source of income is from Tenant lease payments. Scheduled lease payments are allocated from "Net Facility Revenues" arising from the Facility's operations. The term "Net Facility Revenues" is defined as revenues received (which are forwarded monthly by the Tenant to the bond trustee) less payments of principal, premiums, and interest on the bond indebtedness, reimbursements of operating expenses of the Authority (up to \$0.1 million a year as adjusted for inflation), payments of trustee fees, registrar, paying agent fees, and fees charged by any credit facility obtained in connection with the bonds paid by the Tenant. Net Facility Revenues are distributed by the bond trustee each November based upon revenues received for the fiscal period from November 1 to October 31. After all bonds cease to be outstanding, Net Facility Revenues is calculated as revenues received less reimbursements of operating expenses of the Authority. Net Facility Revenues are distributed by the Tenant each month in arrears fifteen days after the end of each month.

Net Facility Revenues are shared, in accordance with the lease, as follows:

<u>Date</u>	<u>Portion of net revenue accruing to the Authority</u>
Until contribution repayment date, determined to be May 1, 1992	In proportion to contributions made between the Tenant and the Authority, which are 88.09% and 11.91%, respectively
For the period from the repayment date until aggregate net revenues not paid to the Authority exceed by \$12,300,000 the aggregate amount paid to the Authority (Minimum Aggregate Return):	
From the repayment date until the second anniversary after repayment	25%
From the second to the fourth anniversary after repayment	30%
From the fourth to the sixth anniversary after repayment	35%
From the sixth anniversary until the Minimum Aggregate Return is met	45%
Remainder of lease term	50%

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Notes to the Basic Financial Statements

June 30, 2020 and 2019

(Continued)

The contribution repayment date is defined as the date at which Net Facility Revenues equaled the Tenant's contributions to the Facility. The Minimum Aggregate Return was met on or about June 1, 1994; accordingly, Net Facility Revenues are now shared equally.

B. Significant Accounting Policies

The Ports of Long Beach and Los Angeles, the two Venturers, provide administrative and financial services, respectively, at no cost to the Authority. At the beginning of each fiscal year, The Tenant advances funds to the Authority to cover the budgeted operating expenses for the year. Such advance is reimbursed to the Tenant in the Annual Distribution of Net Revenues to the Authority.

Method of Accounting – The Authority is accounted for as an enterprise fund, and as such, its basic financial statements are presented using the economic resources measurement focus and the accrual method of accounting. Under this method of accounting, revenues are recognized when earned and expenses are recorded when liabilities are incurred without regard to receipt or disbursement of cash. The measurement focus is on the determination of changes in net position, financial position, and cash flows. Operating revenues consist of facility rental revenues from the Authority's Tenant. Operating expenses consist of depreciation expense on the Authority's capital assets. All revenues and expenses not meeting these definitions are reported as nonoperating revenues and expenses.

The Authority uses the accrual method of accounting. Accordingly, uncollected facility revenues earned are included in the determination of receivables due from Tenant in the accompanying basic financial statements.

Capital Assets – Capital assets represent the Authority's initial contribution toward the development and construction of the Facility. No further contributions are required. All additional costs will be paid by the Tenant. Depreciation of the Facility is computed using the straight-line method over the estimated useful life of the asset. The estimated useful life of the Facility is 50 years.

Cash and Investments – In order to maximize investment return, the Authority invests its excess cash in the City of Long Beach's cash and investment pool that is used as a demand deposit account by participating units of the pool. Investment decisions are made by the City Treasurer of the City of Long Beach, California. The Authority's investments, including its equity in the City of Long Beach's cash and investment pool, are stated at fair value.

Interest income and realized gains and losses arising from the pooled cash and investments are apportioned to each participating unit of the pool on a pro rata basis based on average daily balances. The change in fair value of the pooled investments is also allocated to each participating unit based on average daily balances.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Notes to the Basic Financial Statements

June 30, 2020 and 2019

(Continued)

Statements of Cash Flows – For purposes of the statements of cash flows, the Authority considers investments with an initial maturity of three months or less, including its investments in the City of Long Beach’s cash and investment pool, to be cash equivalents.

Net Position – The Authority’s equity is reported as net position, which is classified into the following categories:

- *Investment in capital assets* – This category consists of capital assets, net of accumulated depreciation.
- *Restricted* – This category consists of restrictions placed on net position use through external constraints imposed by creditors (such as debt covenants), grantors, contributors, or law or regulations of other governments. Constraints may also be imposed by law or constitutional provisions or enabling legislation.
- *Unrestricted* – This category consists of net position that do not meet the definition of “restricted” or “investment in capital assets.”

When both restricted and unrestricted resources are available for use, it is the Authority’s policy to use unrestricted resources as needed and restricted resources for the purpose for which the restriction exists.

Use of Estimates – The preparation of the basic financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

New GASB Pronouncement

The Authority adopted GASB Statement No. 95, “Postponement of the Effective Dates of Certain Authoritative Guidance for the ended June 30, 2020.” This statement provides temporary relief to governments and other stakeholders in light of the COVID-19 pandemic by extending the effective dates of certain GASB pronouncements by at least one year and did not impact the Authority’s financial statements for fiscal year 2020.

The GASB has also issued several pronouncements that have effective dates that may impact future presentations as follows:

GASB Statement No. 87, “Leases.” Issued in June 2017, this statement increases the usefulness of a government’s financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on payment provisions of the contract. It also establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. The statement will be effective beginning fiscal year 2022. The impact on the financial statements is being evaluated.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Notes to the Basic Financial Statements

June 30, 2020 and 2019

(Continued)

GASB Statement No. 91, "Conduit Debt Obligations." Issued in May 2019, this statement provides a single method of reporting conduit debt obligations by issuers and eliminates diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. The statement will be effective beginning fiscal year 2023.

GASB Statement No. 92, "Omnibus 2020." Issued in January 2020, this statement for clarity and consistency by addressing practice issues identified from the implementation and application of certain GASB statements. The statement will be effective beginning fiscal year 2022.

GASB Statement No. 93, "Replacement of Interbank Offered Rates." Issued in March 2020, this statement is to address accounting and financial reporting implications that result from the replacement of an interbank offered rate (IBOR) such as the London Interbank Offered Rate (LIBOR). As a result of global reference rate reform, LIBOR is expected to cease to exist in its current form at the end of 2021. The statement will be effective beginning fiscal year 2022.

GASB Statement No. 94, "Public-Private and Public-Public Partnerships and Availability Payment Arrangements." Issued in March 2020, this statement is to improve financial reporting by establishing the definitions of public-private and public-public partnership arrangements (PPPs) and available payment arrangement (APAs) and providing uniform guidance on accounting and financial reporting for transactions that meet those definitions. The statement will be effective beginning fiscal year 2023.

GASB Statement No. 96, "Subscription-Based Information Technology Arrangements." Issued in June 2020, the statement provides guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for governments by (1) defining a SBITA, (2) establishing that a SBITA results in a right-to-use subscription asset-an intangible asset-and a corresponding subscription liability, (3) providing the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA, and (4) requiring note disclosures regarding a SBITA. The statement will be effective beginning fiscal year 2023.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Notes to the Basic Financial Statements

June 30, 2020 and 2019

(Continued)

2. Cash and Cash Equivalents

The Authority's cash and cash equivalents consisted of deposits with the City of Long Beach's Treasury, and deposits with an independent financial institution, all of which are presented in the accompanying basic financial statements at fair value. At June 30, 2020 and 2019, the cash and cash equivalents balances consisted of the following:

	2020	2019
Cash with financial institution	\$ 263,191	\$ 270,958
City of Long Beach's cash and investment pool	10,900,392	9,744,661
Total cash and cash equivalents	\$ 11,163,583	\$ 10,015,619

Authorized Investments

The Authority does not have its own investment policy but follows the City of Long Beach's investment policy. At June 30, 2020 and 2019, as permitted by the California Government Code Section 53635, a portion of the Authority's cash balance totaling \$10.9 million and \$9.7 million for fiscal years 2020 and 2019, respectively, was on deposit in the City of Long Beach's investment pool. The table below identifies the investment types that are authorized by the City of Long Beach's investment policy. The City of Long Beach's investment policy also requires the diversification of investment instruments in accordance with the guidelines of the California Government Code Section 53600 et seq. to avoid incurring unreasonable risks inherent in over investing in specific instruments, individual financial institutions, or maturities.

Type of Investments	Maximum Maturities	Maximum Concentration	Maximum Investment in One Issuer
Bonds issued by the City of Long Beach	5 years*	30%	None
U.S. Treasury Notes, Bonds, or Bills	5 years*	100%	None
Registered State Warrants or Treasury Notes or Bonds of the State of California	5 years*	30%	None
Local Agency Bonds	5 years*	30%	None
Federal Agency Securities	5 years*	None	None
Bankers' Acceptances	180 days	40%	30%
Commercial Paper	270 days	25%	5%
Negotiable Certificates of Deposit	5 years*	30%	10%
Time Certificates of Deposit	5 years*	100%	10%
Repurchase Agreements	90 days	100%	None
Reverse Repurchase Agreements	92 days	20%	None
Securities Lending Program	92 days	20%	None
Medium-term Notes	5 years*	30%	5%
Money Market Funds	N/A	20%	10%
Local Agency Investment Fund (LAIF)	N/A	None	**
Asset-backed Securities	5 years	20%	None
Mortgage-backed Securities	5 years	20%	None
Supranational Bonds	N/A	30%	5%

* Maximum maturity of five years unless a longer maturity is approved by the City Long Beach Council, either

** \$40 million per account

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Notes to the Basic Financial Statements

June 30, 2020 and 2019

(Continued)

Pooled Funds

The Authority's equity in the City of Long Beach's cash and investment pool does not consist of specifically identified cash deposits or securities. Such investments are stated at fair value. Investment in external investment pool is excluded from the disclosure about fair value hierarchy under GASB Statement No. 72, "*Fair Value Measurement and Application*".

A significant portion of the Authority's cash balance is deposited with the City of Long Beach's investment pool which can be withdrawn on demand and without penalty. The City of Long Beach's investment pool does not maintain a credit rating.

Additional information regarding the pool, including the investment portfolio and related interest rate, weighted average maturity of investments, custodial credit, credit, and concentration of credit risks, is presented in the City of Long Beach Comprehensive Annual Financial Report (CAFR). The report may be obtained by writing to the City of Long Beach, Department of Financial Management, 411 West Ocean Boulevard, 6th Floor, Long Beach, California, 90802 or the City of Long Beach's website <http://longbeach.gov/Finance/City-Budget-and-Finances/Accounting/CAFR/>.

Deposits

At June 30, 2020 and 2019, the Authority's carrying amount of cash were \$263.2 thousand and \$271.0 thousand, respectively. The bank balances were \$263.2 thousand and \$271.0 thousand at June 30, 2020 and 2019, respectively. At June 30, 2020 and 2019, there were no reconciling differences in the carrying amount of cash and bank balance. The bank balance is covered by federal depository insurance up to \$250,000. A portion of the bank balance of \$13.2 thousand and \$21.0 thousand were uninsured and uncollateralized at June 30, 2020 and 2019, respectively.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Notes to the Basic Financial Statements

June 30, 2020 and 2019

(Continued)

3. Net Position

Pursuant to the agreement creating the Authority, the Venturers were required to make a capital contribution of \$5.0 million each in 1983. In addition, the Port of Los Angeles contributed services and other direct costs amounting to approximately \$0.4 million in 1988. During fiscal years 2020 and 2019, \$4.0 million and \$4.0 million, respectively, were distributed in equal shares to the Venturers.

At June 30, 2020 and 2019, the changes in joint venture net position are as follows:

	Port of Los Angeles	Port of Long Beach	Total
Balance at June 30, 2018	\$ 5,733,014	\$ 5,374,376	\$ 11,107,390
Operating and nonoperating income	2,595,816	2,595,816	5,191,632
Distribution to Venturers	<u>(2,000,000)</u>	<u>(2,000,000)</u>	<u>(4,000,000)</u>
Balance at June 30, 2019	6,328,830	5,970,192	12,299,022
Operating and nonoperating income	2,461,241	2,461,241	4,922,482
Distribution to Venturers	<u>(2,000,000)</u>	<u>(2,000,000)</u>	<u>(4,000,000)</u>
Balance at June 30, 2020	<u>\$ 6,790,071</u>	<u>\$ 6,431,433</u>	<u>\$ 13,221,504</u>

4. Excess Tenant Advances

The Authority has received advances from the Tenant to cover its contractual administrative costs for the years ended June 30, 2020 and 2019. Advances have exceeded expenses by \$55.4 thousand and \$73.2 thousand in fiscal years 2020 and 2019, respectively, and have been recorded as liabilities due to the Tenant.

5. Capital Assets

At June 30, 2020 and 2019, capital assets consisted of the following:

	2020	2019
Authority's interest in Facility		
Property and equipment	\$ 5,401,520	\$ 5,401,520
Furniture and fixtures	<u>10,650</u>	<u>10,650</u>
Total capital assets	5,412,170	5,412,170
Less accumulated depreciation	<u>(3,649,402)</u>	<u>(3,541,372)</u>
Total capital assets, net	<u>\$ 1,762,768</u>	<u>\$ 1,870,798</u>

In fiscal years 2020 and 2019, there were no capital assets additions or retirements. The only changes were related to annual depreciation provisions. Depreciation expense was \$108.0 thousand for both years ended June 30, 2020 and 2019.

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Notes to the Basic Financial Statements

June 30, 2020 and 2019

(Continued)

6. Additional Street Improvements Contingency

Concurrent with the issuance of a conditional use permit and parcel map by the City of Carson for that portion of the Facility located in the City of Carson, the Authority, the Tenant, and the City of Carson entered into an agreement dated December 3, 1984, whereby the Authority and Tenant are required to make certain street improvements to certain Carson streets that adjoin the Facility. During fiscal year 1996, the City of Carson received grants for a number of these street improvements, partially reducing the obligation of the Authority for such improvements. The Authority's remaining share of construction obligations for the street improvements (including maintenance costs) is approximately \$2.3 million as of June 30, 2020. The project is currently pending environmental review. The Tenant made payments directly to the City of Carson for maintenance fees of \$118.3 thousand and \$119.2 thousand for fiscal years 2020 and 2019, respectively.

7. Impact of COVID-19 Pandemic

In March 2020, the World Health Organization declared the outbreak of the coronavirus (COVID-19) a global pandemic. On March 31, 2020, President Trump declared a national state of emergency. Measures taken by various governments to contain the virus have affected global and international economies, which has affected the Authority's container volumes and revenues. Although the Authority's operations have continued largely uninterrupted throughout the COVID-19 Pandemic (Pandemic) due to the essential nature of its core businesses, the Authority reported an 8.8% decline in annual containers volume relative to the prior fiscal due to impacts of the Pandemic on global shipping.



DATE: September 09, 2021

TO: Governing Board, Intermodal Container Transfer Facility Joint Powers Authority

FROM: Richard D. Cameron, Executive Director

SUBJECT: Net Facility Revenue Report for Annual Period Ending November 1, 2020

Macias, Gini & O'Connell LLP (MGO) has completed their review of Intermodal Container Transfer Facility Joint Powers Authority (ICTF JPA) net revenue for the year ended November 1, 2020. During the year, there were 339,232 gross container movements, generating \$10,176,960 in gross revenue. Gate fees collected at the Intermodal Container Transfer Facility (ICTF), less allowable deductions, resulted in net facility revenue of \$9,327,810 to be equally shared by the ICTF JPA and Union Pacific Railroad. Union Pacific transfers a 50% share of the facility's net revenues on an ongoing quarterly basis.

It is recommended that the Governing Board receive and file the net facility revenue report for the year ended November 1, 2020.

It is also recommended that the Board make the following finding:

"The Board finds the activity is an administrative activity that will not result in direct or indirect physical changes in the environment, and, as such, is not a "project" as defined by CEQA Guidelines section 15378."

Richard D. Cameron
Executive Director

**INTERMODAL CONTAINER TRANSFER
FACILITY JOINT POWERS AUTHORITY
Agreed-Upon Procedures with Respect to
Calculation of Net Facility Revenues
Year Ended November 1, 2020
(with Independent Accountant's Report on
Applying Agreed-Upon Procedures)**



Certified
Public
Accountants



Independent Accountant's Report on Applying Agreed-Upon Procedures

To the Board of Directors
Intermodal Container Transfer Facility Joint Powers Authority:

We have performed the procedures enumerated below, which were agreed to by management of the Intermodal Container Transfer Facility Joint Powers Authority (the Authority) (specified and responsible party) and Union Pacific Corporation (UPC), as successor to Southern Pacific Transportation Company (SPTC), solely to assist the Authority with respect to the determination of and evaluation of the reasonableness of Net Facility Revenues, as defined in the second amendment to the Sublease Agreement dated February 1, 1985 of the Intermodal Container Transfer Facility (the Facility), as reported by UPC for the year ended November 1, 2020. The Sublease Agreement, dated September 14, 1984 and subsequently amended, between the Authority and UPC, as successor in interest to SPTC (the Agreement), provides for certain rental payments, which are based on Net Facility Revenues generated by the operations of the Facility, to be made by UPC to the Authority. The Authority's management is responsible for the Exhibit, *Calculation of Net Facility Revenues Using Amounts Determined Based on the Agreed-Upon Procedures and Comparison to Net Facility Revenues Reported by UPC*. The sufficiency of these procedures is solely the responsibility of the Authority. Consequently, we make no representation regarding the sufficiency of the procedures enumerated below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are as follows:

1. We obtained the Monthly Statement of Operations prepared by UPC accounting personnel listing net revenues from the operations of the Facility, including amounts that had been billed and not yet collected, for the year ended November 1, 2020. We recalculated the arithmetical accuracy of the schedules received. We agreed the total net revenues for the year ended November 1, 2020 to the Net Facility Revenues on the accompanying Exhibit.

Finding: No exceptions were noted as a result of applying these procedures.

2. In conjunction with the calculation of Net Facility Revenues in the Exhibit, we performed the following procedures:
 - A. We obtained monthly reports on gross container movements from UPC for the year ended November 1, 2020. We totaled the monthly amounts from such reports and determined that 339,232 gross container movements had been reported at the Facility during the year ended November 1, 2020. We multiplied the number of reported containers moved by \$30 (the amount charged for each container transfer). From this calculation, we recalculated Total Facility Revenues generated of \$10,176,960 and agreed such amounts to the Total Facility Revenues generated, based on gross gate movements on the Exhibit for the year ended November 1, 2020.

Finding: No exceptions were noted as a result of applying these procedures.

- B. We reconciled the Total Facility Revenues generated, based on gross gate movements for the year ended November 1, 2020, as determined in procedure 2A above, to the sum of Facility Revenues collected by UPC per the Monthly Statement of Operations for container transfers generated by UPC accounting personnel for the year ended November 1, 2020.

Calculation of Net Facility Revenues is based on cash received; therefore, adjustments are required to reconcile the difference between gate charges generated and collected. The adjustment of \$738,000 represents the difference between Facility Revenues generated based on gross gate movements and Facility Revenues collected for the year ended November 1, 2020. We totaled the gross container movements for which gate charges were collected from the Monthly Statement of Operations prepared by UPC accounting personnel and determined that 314,632 gross container movements for which gate charges were collected at the Facility during the year ended November 1, 2020.

We multiplied the number of gross containers movements for which gate charges were collected by \$30 (the amount charged for each container transfer). From this calculation, we recalculated Facility Revenues collected by UPC of \$9,438,960. Such amounts agreed to the accompanying Exhibit.

Finding: No exceptions were noted as a result of applying these procedures.

- C. The Agreement allows for deduction of amounts paid to the Authority for reimbursement of its operating expenses during the year.

Finding: We noted no deduction of amounts paid to the Authority for reimbursement of its operating expenses for the year ended November 1, 2020.

- D. We agreed payments to the City of Carson for maintenance fees on the Exhibit aggregating \$111,150 for such fees for the year ended November 1, 2020, to checks and paid invoices.

Finding: No exceptions were noted as a result of applying these procedures.

- E. The Agreement also allows for deduction of amounts paid to the bond rating agencies such as Moody's Investors Services or Standard & Poor's for their analytical services.

Finding: We noted no deduction of amounts paid to the bond rating agencies for the year ended November 1, 2020.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not, conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively on the reported Net Facility Revenues for the year ended November 1, 2020. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Board of Directors and management of the Authority and UPC, and is not intended to be, and should not be, used by anyone other than these specified parties.

Macias Gini & O'Connell LLP

Los Angeles, California
February 25, 2021

**INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY**

Calculation of Net Facility Revenues Using Amounts Determined
Based on the Agreed-Upon Procedures and
Comparison to Net Facility Revenues Reported by UPC

Year Ended November 1, 2020

Facility revenue collected:

Total facility revenues generated, based on gross gate movements	\$ 10,176,960
Amounts not billed, adjustments to billing, and change in facility revenue receivable, net	<u>(738,000)</u>
Net Facility revenues collected by UPC	<u>9,438,960</u>

Less allowable deductions:

Payment to the City of Carson on behalf of the Authority for maintenance fees	<u>111,150</u>
Total allowable deductions	<u>111,150</u>
Net Facility Revenues using amounts determined based on the agreed-upon procedures	<u>\$ 9,327,810</u>



DATE: September 09, 2021

TO: Governing Board, Intermodal Container Transfer Facility Joint Powers Authority

FROM: Richard D. Cameron, Executive Director

SUBJECT: 2021-2022 Budget and Distribution of Funds

The proposed 2021-2022 budget of \$2.43 million for the Intermodal Container Transfer Facility Joint Powers Authority (ICTF JPA) is attached.

Operating expenses for items such as legal and consulting services, audit fees, meeting expenses, and miscellaneous expenses are reimbursable by Union Pacific Railroad Company (UP) up to \$100,000 annually. These budgeted expenses for 2020-2021 are estimated to total \$51,000 which will be requested from UP. UP also advances funds for the City of Carson maintenance costs, which totaled \$111,150 in fiscal 2020-2021 and are estimated to increase by 18% to \$131,163 in fiscal 2021-2022 based on the Producer Price Index for May 2021.

The \$2.25 million capital improvement item is included for the ICTF JPA's share of construction obligations under the City of Carson agreement. Carson is preparing to widen Sepulveda Boulevard between Alameda Street and the ICTF entrance. This project has been delayed but could be advertised for bidding in the current fiscal year.

The net revenue distribution from the tenant, UP, is received on a quarterly basis. The cash balance of the Joint Powers Authority at the end of fiscal 2020-2021 before any distribution to partners is estimated to be \$15.75 million. This exceeds the anticipated needs for fiscal 2021-2022.

A distribution of \$6 million to the two Ports would leave a balance of approximately \$9,757,126 million to be carried over to fiscal 2021-2022. This balance is deemed necessary in light of expected cash flow needs related to ICTF JPA operations.

It is recommended that the ICTF JPA Governing Board adopt 2021-2022 budget in the amount of \$2,432,163 and authorize distribution of \$6,000,000 to be shared equally (\$3,000,000 to each) by the Port of Long Beach and the Port of Los Angeles.



It is also recommended that the Board make the following finding: “The Board finds the activity is an administrative activity that will not result in direct or indirect physical changes in the environment, and, as such, is not a “project” as defined by CEQA Guidelines section 15378.”

Richard D. Cameron
Executive Director

	Estimated Actual June 30, 2021	Adopted 2020-2021	Proposed 2021- 2022
Beginning Cash Balance	11,163,583	\$11,045,879	\$9,757,126
Facility Revenue Received	4,498,646	4,000,000	4,000,000
UP reimbursement for EIR	8,008	48,000	30,000
Facility Maintenance Fee	111,150	111,145	131,163
Interest	94,898	75,000	75,000
UP Advance for admin expenses	20,648	20,100	21,000
	<u>\$15,896,933</u>	<u>\$15,300,124</u>	<u>\$14,014,289</u>
Less Expenditures			
Rating Agency Fee	-	-	-
City of Carson - Maintenance Fee	111,150	111,145	131,163
City of Carson - Capital Improvements	-	2,250,000	2,250,000
Environmental & Legal Services	8,008	48,000	30,000
Other Operating Expenses	20,649	20,100	21,000
Distribution to Partners	6,000,000	6,000,000	6,000,000
	<u>\$6,139,807</u>	<u>\$8,429,245</u>	<u>\$8,432,163</u>
Ending Cash Balance	\$9,757,126	\$6,870,879	\$5,582,126



DATE: September 09, 2021

TO: Governing Board, Intermodal Container Transfer Facility Joint Powers Authority

FROM: Richard D. Cameron, Executive Director

SUBJECT: Agreement with Moss Adams LLP for Audit Services

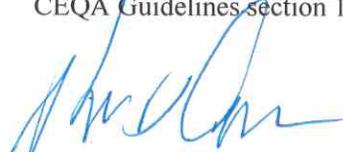
The proposed agreement with Moss Adams LLP is for professional auditing services to perform annual audits and related agreed upon procedures of financial statements of the Intermodal Container Transfer Facility (ICTF) JPA.

The Moss Adams LLP agreement is for a term of three years and not-to-exceed the amount of \$47,100.

Staff recommends that the ICTF JPA Board approve the agreement with Moss Adams LLP.

It is also recommended that the Board make the following finding:

“The Board finds the activity is an administrative activity that will not result in direct or indirect physical changes in the environment, and, as such, is not a “project” as defined by CEQA Guidelines section 15378.”



Richard D. Cameron
Executive Director

AGREEMENT NO.

AGREEMENT BETWEEN THE
INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY AND
MOSS ADAMS, LLP

THIS AGREEMENT ("Agreement") is made and entered into by and between the INTERMODAL CONTAINER TRANSFER FACILITY JOINT POWERS AUTHORITY, a Joint Powers Authority ("ICTF"), and MOSS ADAMS, LLP, a Washington Limited Liability Partnership, 10960 Wilshire Blvd, Suite 1100, Los Angeles, CA 90024 ("Consultant").

WHEREAS, ICTF is required to conduct annual independent financial audits and certain other agreed-upon procedures; and

WHEREAS, ICTF desires to retain the professional, expert and technical services of Consultant on a temporary or occasional basis to assist the ICTF in performing the financial audits of the ICTF; and

WHEREAS, Consultant possesses extensive experience in performing financial audits and by virtue of training and experience, is well qualified to provide such services to ICTF; and

WHEREAS, ICTF does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to ICTF, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit A ("Scope of Work").

B. Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between ICTF and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity.

C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee ("Executive Director"), who may request removal of any Consultant personnel providing services under the Scope of Work, and Consultant will remove such personnel identified by the Executive Director in accordance with each such request, whether performance is undertaken by Consultant or third parties with whom Consultant has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to ICTF and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon Executive Director's written request, Consultant shall supply ICTF with all agreements between it and its Subconsultants.

2. SERVICES TO BE PERFORMED BY ICTF

A. ICTF shall furnish Consultant, upon its request, all documents and papers in possession of ICTF which may lawfully be supplied to Consultant and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for ICTF and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article 11 (Termination) hereof.

C. Consultant shall provide Executive Director with reasonable advance written notice if it requires access to premises of ICTF or the offices of the Ports of Los Angeles or Long Beach (Ports), where some of the staff of the ICTF JPA are located. Subsequent access rights, if any, shall be granted to Consultant at the sole reasonable discretion of Executive Director, specifying conditions Consultant must satisfy in

connection with such access. Consultant acknowledges that such areas may be occupied or used by tenants or contractors of City and that access rights granted by Department to Consultant shall be consistent with any such occupancy or use.

3. EFFECTIVE DATE AND TERM OF AGREEMENT

A. The effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the ICTF Governing Board (Board).

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. Three (3) years have lapsed from the effective date of this Agreement;

or

2. The Board, in its sole discretion, may terminate and cancel all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

4. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the discretion of the ICTF JPA Board, which controls the setting of budgets and precludes the Executive Director from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The ICTF, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefor. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the

Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If, in any subsequent fiscal year, funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred for work associated with prior appropriated funds.

5. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, ICTF shall pay and reimburse Consultant at the rates set forth in Exhibit B.

B. The maximum payable under this Agreement, including reimbursable expenses (see Exhibit B), shall be Forty-seven Thousand, One Hundred Dollars (\$47,100).

C. Consultant shall submit invoices to ICTF monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Consultant and shall include the following certification:

“I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. _____ and that payment has not been received. I further certify that I have complied with the provisions of the City of Los Angeles Living Wage Ordinance.

”
(Consultant’s Signature)

D. Consultant must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article 8 of this Agreement. No invoice will be processed for payment by ICTF without this number shown thereon. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as

soon as, in the ordinary course of ICTF business, the same may be approved, audited and paid.

Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The ICTF may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

E. For payment and processing, all invoices should be mailed to the following address:

ICTF Joint Powers Authority
c/o Long Beach Harbor Department
Post Office Box 570
Long Beach, CA 90801
Attn: ICTF JPA Secretary

6. RECORDKEEPING AND AUDIT RIGHTS

A. Consultant shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by ICTF, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

B. During the term of this Agreement, ICTF may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to ICTF. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide ICTF at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by ICTF. ICTF's right shall also include inspection at

reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to ICTF, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Article 6 shall constitute a material breach of this Agreement and shall entitle ICTF to withhold any payment due under this Agreement until such breach is cured.

7. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of ICTF. Consultant shall not represent itself as an agent or employee of the ICTF and shall have no power to bind the ICTF in contract or otherwise.

8. BUSINESS TAX REGISTRATION CERTIFICATE

The ICTF JPA has adopted the rules and regulations of the City of Los Angeles' Office of Finance as it applies to Business Tax Registration Certificate. Thus, the City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. See <https://finance.lacity.org/how-register-btrc>.

9. INDEMNIFICATION

Except to the extent of the negligence or willful misconduct of the ICTF, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to defend, indemnify and hold harmless the ICTF and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the ICTF, including, but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Consultant or its subcontractors of any tier. Rights and remedies available to the ICTF under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the ICTF.

10. INSURANCE

A. In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article 9, Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

(1) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ICTF if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Where Consultant provides or dispenses alcoholic beverages, Host Liquor Liability coverage shall be provided as above. Where Consultant provides pyrotechnics, Pyrotechnics Liability shall be provided as above. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by the ICTF shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the Intermodal Container Transfer Facility Joint Powers Authority, its officers, agents and employees as Primary additional insureds.

(2) Automobile Liability Insurance

Automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ICTF if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees.

Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the Intermodal Container Transfer Facility Joint Powers Authority, its officers, agents and employees as Primary additional insureds.

(3) Workers' Compensation and Employer's Liability

Consultant shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Consultant shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the ICTF in any circumstance in which it is alleged that actions or omissions of the ICTF contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Consultant, and for all employees of any subcontractor or other vendor retained by Consultant.

(4) Professional Liability Insurance

Consultant is required to provide Professional Liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with the professional services to be provided under this Agreement. This insurance shall protect against claims arising from professional services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability.

Consultant certifies that it now has professional liability insurance in the amount of at least Five Million Dollars (\$5,000,000), which covers work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following the completed term of this Agreement.

Notice of occurrences of claims under the policy shall be made to the ICTF General Counsel's office with copies to the Executive Director.

B. Insurance Procured by Consultant on Behalf of ICTF

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article 9, and where Consultant is required to name the ICTF, its officers, agents and employees as Primary additional insureds on any insurance policy required by this Agreement, Consultant shall cause ICTF to be named as an additional insured on all policies it procures in connection with this Article 10. Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that ICTF, Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts and activities of the insured under Agreement No. ____, and under any amendments, modifications, extensions or renewals of said Agreement regardless of where such contractual obligations, operations, uses, occupations, acts and activities occur.

"The policy to which this endorsement is attached shall provide a 10-days notice of cancellation for nonpayment of premium, and a 30-days' notice of cancellation for any other reasons to the Risk Manager by Consultant.

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by ICTF is excess coverage;

"In the event of one of the named insured's incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of ICTF with copies to the ICTF's General Counsel."

C. Required Features of Coverages

Insurance procured by Consultant in connection with this Article 10 shall include the following features:

(1) Acceptable Evidence and Approval of Insurance

Consultant, Consultant's insurance broker or agent shall submit the appropriate proof of insurance on Consultant's behalf to ICTF.

Upon request by ICTF, Consultant shall furnish a copy of the binder of insurance and/or a full certified policy for any insurance policy required herein. This obligation is intended to, and shall, survive the expiration or earlier termination of this Agreement.

(2) Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to ICTF.

(3) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other reason, by written notice via registered mail and addressed to the ICTF Joint Powers Authority c/o Long Beach Harbor Department, Executive Director and General Counsel, P.O. Box 570, Long Beach, CA 90801.

(4) Modification of Coverage

Executive Director, at his or her sole reasonable discretion, based upon recommendation of independent insurance consultants to ICTF, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

(5) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, Consultant shall renew or extend such policy in accordance with the requirements of this Agreement and direct their insurance broker or agent to submit to the ICTF Executive Director, a renewal endorsement or renewal certificate or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect ICTF's interests. The cost of such insurance shall be deducted from the next payment due Consultant.

(6) Limits of Coverage

If Consultant maintains higher limits than the minimums required by this Agreement, ICTF requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to ICTF.

D. Right to Self-Insure

Upon written approval by the Executive Director, Consultant may self-insure if the following conditions are met:

1. Consultant has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Consultant must have a formal resolution of its board of directors authorizing self-insurance.
2. Consultant agrees to protect the ICTF, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
3. Consultant agrees to defend the ICTF, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Consultant agrees that any insurance carried by Department is excess of Consultant's self-insurance and will not contribute to it.

5. Consultant provides the name and address of its claims administrator.
6. Consultant submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
7. Consultant agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
8. Consultant has complied with all laws pertaining to self-insurance.

E. Accident Reports

Consultant shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

11. TERMINATION PROVISION

The Board, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the ICTF to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

12. PERSONAL SERVICE AGREEMENT

A. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the interests of the Department.

B. Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article 1. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on the ICTF to such Subconsultant(s) or give the Subconsultant(s) any rights against the ICTF.

13. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit C.

14. INTENTIONALLY OMITTED

15. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the ICTF and the Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of ICTF relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this

Agreement, City may immediately terminate this Agreement by giving written notice thereof.

During the term of this Agreement, Consultant shall inform the Department in writing when Consultant, or any of its Subconsultants, employs or hires in any capacity, and for any length of time, a person who has worked for the Department as a Commissioner, officer or employee. Said notice shall include the individual's name and current position and their prior position and years of employment with the Department. Written notice shall be provided by Consultant to the Department within thirty (30) days of the employment or hiring of the individual.

16. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

17. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

18. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify the ICTF and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by ICTF of any materials supplied by Consultant in the performance of this Agreement.

19. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing,

figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by ICTF as soon as they are developed, whether in draft or final form. ICTF has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that ICTF at all times owns rights provided for in this section free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for ICTF the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by ICTF, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the ICTF, its boards, officers, agents or employees, is not given in confidence. Accordingly, ICTF or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

B. If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, the ICTF shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by ICTF. Upon ICTF's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the City. It is expressly understood and agreed that, as between ICTF and Consultant, the referenced license shall arise for ICTF's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. ICTF may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by ICTF.

20. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by

Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel.

21. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the ICTF shall be addressed to ICTF Joint Powers Authority, c/o Port of Long Beach, P.O. Box 570, Long Beach, CA 90801, Attn: ICTF Executive Director, and notice to Consultant shall be addressed to it at the address set forth in the preamble above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

22. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Consultant declares that it has an authorized TIN which shall be provided to the Department prior to payment under this Agreement. No payments will be made under this Agreement without a valid TIN.

23. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The ICTF Joint Powers Authority has agreed to comply with the provisions of Los Angeles City Ordinance No. 185356 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the ICTF. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Consultant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the ICTF to terminate this Agreement and otherwise pursue legal remedies that may be available.

24. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

The Consultant and/or any Subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Consultant and/or Subconsultant's employees.

The Consultant and/or Subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Consultant and/or Subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Consultant or Subconsultant will maintain such compliance throughout the term of this Agreement.

25. EQUAL BENEFITS POLICY

The ICTF Joint Powers Authority has agreed to comply with the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Consultant shall comply with the policy wherever applicable. Violation of this policy shall entitle the ICTF to terminate any Agreement with Consultant and pursue any and all other legal remedies that may be available. See Exhibit D.

26. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

The Consultant, Subconsultants, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Consultant is required to provide and update certain information to the City as specified by law. Any Consultant subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subconsultant expected to receive at least \$100,000 for performance under this Agreement:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on ICTF Agreement No. _____. Pursuant to City

Charter Section 470(c)(12), subconsultant and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subconsultant is required to provide to Consultant names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12-month time period. Subconsultant's information must be provided to Consultant within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

Consultant, Subconsultants, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the ICTF to terminate this Agreement and pursue any and all legal remedies that may be available.

27. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Consultant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

28. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS**

INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.

29. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

30. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

31. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

32. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, the ICTF Joint Powers Authority Agreement and Bylaws.

33. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

34. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

35. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

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(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

THE INTERMODAL CONTAINER
TRANSFER FACILITY JOINT POWERS
AUTHORITY, a Joint Powers Authority

Dated: _____, 2021

By: _____
RICHARD CAMERON
Executive Director

Attest: _____
ELENA FLORES
Board Secretary

MOSS ADAMS LLP
a Washington Limited Liability
Partnership

Dated: August 27, 2021

By: 

Olga Darlington, Partner
(Print/type name and title)

Attest: 

Kristi Moore, Executive Assistant
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY
_____, 2021
JANNA B. SIDLEY, ICTF General Counsel

By: _____
JOY M. CROSE, ICTF Counsel

EXHIBIT A - SCOPE OF WORK

The selected firm will conduct an audit of the financial statements of the Intermodal Container Transfer Facility Joint Powers Authority (ICTF). The audit will be conducted in accordance with auditing standards generally accepted in the United States of America, with the objective of expressing an opinion as to whether the presentation of the financial statements, taken as a whole, conforms to accounting principles generally accepted in the United States of America.

In conducting the audit, the selected firm will perform tests of the accounting records and other procedures, to provide a reasonable basis for its opinion on the financial statements. The firm will assess the accounting principles used and significant estimates made by management, and evaluate the overall financial statement presentation.

Specifically, the selected firm will be required to do the following:

- (1) Perform an audit of financial statements and the related notes of the ICTF as of and for the fiscal years ended on June 30. The firm will issue a written audit report upon concluding the audit of the financial statements.
- (2) Conduct Agreed-Upon Procedures and issue an independent accountant's written report on the ICTF's Calculation of Net Facility Revenues .
- (3) The selected firm will be expected to present to the ICTF's Board of Directors the audit report and the independent accountant's report on applying Agreed-Upon Procedures, as necessary, and answer any potential questions that board members may have pertaining to the said reports.

EXHIBIT B - COMPENSATION

Hourly Rate

Staff Level	FY 2020-21 Audits	FY 2021-22 Audits	FY 2022-23 Audits
Partners	\$285	\$295	\$300
Senior Managers	\$255	\$260	\$270
Managers	\$225	\$240	\$250
Seniors	\$200	\$210	\$220
Staff	\$175	\$185	\$195

Total Payment Amounts by Service – (\$47,100 for FY's 2020-21, 2021-22, & 2022-23)

Total All-Inclusive Maximum Price

We estimate our professional fees will not exceed the following:

Service Description	2021	2022	2023
Financial statement audit for Intermodal Container Transfer Facility Joint Powers Authority (ICTF)	\$12,400	\$12,800	\$13,200
Agreed Upon Procedures on ICTF's calculation of Net Facility Revenues	\$2,800	\$2,900	\$3,000
Attendance at ICTF's Board of Director's meetings, including: <ul style="list-style-type: none">• Presentation of audit results• Communication of internal control issues		Included	
Total Project Cost	\$15,200	\$15,700	\$16,200

EXHIBIT C - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction and construction Contract with, or on behalf of, the City of Los Angeles for which the consideration is \$25,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such Contract:

A. During the performance of a City Contract, the Contractor certifies and represents that the Contractor and each Subcontractor hereunder will adhere to an Affirmative Action Program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

1. This section applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. The Contractor shall post a copy of Paragraph A., hereof, in conspicuous places at its place of business available to employees and applicants for employment.

B. The Contractor shall, in all solicitations or advertisements for employees placed, by or on behalf of, the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

C. At the request of the Awarding Authority or the DAA, the Contractor shall certify on an electronic or hard copy form to be supplied, that the Contractor has not discriminated in the performance of City Contracts against any employee or applicant for employment on the basis or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

D. The Contractor shall permit access to, and may be required to provide certified copies of, all of its records pertaining to employment and to its employment practices by the Awarding Authority or the DAA for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City Contracts and, upon request, to provide evidence that it has or will comply therewith.

E. The failure of any Contractor to comply with the Affirmative Action Program provisions of City Contracts may be deemed to be a material breach of a City Contract. The failure shall only be established upon a finding to that effect by the Awarding Authority, on the basis of its own investigation or that of the DAA. No finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the Contractor.

F. Upon a finding duly made that the Contractor has breached the Affirmative Action Program provisions of a City Contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the Awarding Authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the Contractor is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such determination, the Contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the Contractor has been guilty of a willful violation of the California Fair Employment and Housing

Act, or the Affirmative Action Program provisions of a City Contract, there may be deducted from the amount payable to the Contractor by the City of Los Angeles under the contract, a penalty of ten dollars for each person for each calendar day on which the person was discriminated against in violation of the provisions of a City Contract.

H. Notwithstanding any other provisions of a City Contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

I. The Public Works Board of Commissioners shall promulgate rules and regulations through the DAA and provide to the Awarding Authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an Awarding Authority of the City to accomplish this contract compliance program.

J. Nothing contained in City Contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. By affixing its signature to a Contract that is subject to this article, the Contractor shall agree to adhere to the provisions in this article for the duration of the Contract. The Awarding Authority may also require Contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Program.

1. The Contractor certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the Contractor's field of work. The Contractor shall:

(a) Recruit and make efforts to obtain employees through:

(i) Advertising employment opportunities in minority and other community news media or other publications.

(ii) Notifying minority, women and other community organizations of employment opportunities.

(iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.

(iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.

(v) Promoting after school and vacation employment opportunities for minority, women and other youth.

(vi) Validating all job specifications, selection requirements, tests, etc.

(vii) Maintaining a file of the names and addresses of each worker referred to the Contractor and what action was taken concerning the worker.

(viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the Contractor has a collective bargaining agreement, has failed to refer a minority, woman or other worker.

(b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.

(c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.

(d) Secure cooperation or compliance from the labor referral agency to the Contractor's contractual Affirmative Action Program obligations.

(e) Establish a person at the management level of the Contractor to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the Contractor's Equal Employment and Affirmative Action Program policies.

(f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.

(g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Contracts. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the Contractor may become involved in fulfilling any of its Contracts.

(h) Document its good faith efforts to correct any deficiencies when problems are experienced by the Contractor in complying with its obligations pursuant to this article. The Contractor shall state:

- (i) What steps were taken, how and on what date.
- (ii) To whom those efforts were directed.
- (iii) The responses received, from whom and when.
- (iv) What other steps were taken or will be taken to comply and when.
- (v) Why the Contractor has been or will be unable to comply.

2. Every contract of \$25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Awarding Authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of Contractors, Subcontractors and suppliers of all racial and ethnic groups; provided, however, that any contract subject to this ordinance shall require the Contractor, Subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the Contractor's, Subcontractor's or supplier's geographical area for such work;
6. The entry of qualified women, minority and all other journeymen into the industry; and
7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

M. Any adjustments which may be made in the Contractor's work force to achieve the requirements of the City's Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

N. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by Contractors engaged in the performance of City Contracts.

O. All Contractors subject to the provisions of this article shall include a similar provision in all subcontracts awarded for work to be performed under the Contract with the City and shall impose the same obligations including, but not limited to, filing and reporting obligations, on the Subcontractors as are applicable to the Contractor. Failure of the Contractor to comply with this requirement or to obtain the

compliance of its Subcontractors with all such obligations shall subject the Contractor to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the Contractor's Contract with the City.

EXHIBIT D – EQUAL BENEFITS ORDINANCE

Sec. 10.8.2.1. Equal Benefits Ordinance.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

(c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits;
or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) Mandatory Contract Provisions Pertaining to Equal Benefits. Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.