



E-11

DATE: December 10, 2014

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

FROM: Douglas A. Thiessen, Executive Director

SUBJECT: First Amendment to Contract with Cambridge Systematics

The proposed amendment to the contract with Cambridge Systematics is for environmental consultant services which will include coordination of the involved parties for the EIR and administrative matters.

The ICTF JPA has entered into a one-year, \$150,000 contract with Cambridge Systematics for environmental consultant support services related to the EIR and administrative matters and a contract extension from one year to three years. The proposed contract amendment will continue these services during the rest of the EIR preparation activities.

It is recommended that the Governing Board approve the execution of the proposed contract amendment with Cambridge Systematics extending the contract from one year to three years.

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

“The Board finds the activity is 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.”

Douglas A. Thiessen  
Executive Director

AGREEMENT NO. \_\_\_\_\_

AGREEMENT BETWEEN THE  
INTERMODAL CONTAINER TRANSFER FACILITY JOINT POWERS AUTHORITY  
AND CAMBRIDGE SYSTEMATICS, INC.

THIS AGREEMENT is made and entered into by and between the INTERMODAL CONTAINER TRANSFER FACILITY JOINT POWERS AUTHORITY ("ICTF JPA"), acting by and through its Executive Director and CAMBRIDGE SYSTEMATICS, INC., a Massachusetts corporation, whose address is 445 S. Figueroa Street, Suite 2600, Los Angeles, California 90071 ("Consultant").

WHEREAS, ICTF has received and accepted an application from Union Pacific Railroad ("UP") for a proposed modernization project ("Project") for an existing railyard on property leased by the ICTF from the City of Los Angeles and subleased to UP ("ICTF Facility"); and

WHEREAS, ICTF is the lead agency preparing an Environmental Impact Report ("EIR") pursuant to the California Environmental Quality Act, California Public Resources Code §21000, et seq. ("CEQA") to assess the proposed Project prior to consideration of Project approval; and

WHEREAS, ICTF requires professional, scientific, expert or technical services of a temporary or occasional basis to assist the ICTF in preparing the EIR for the proposed Project for the ICTF's independent review and consideration, including without limitation, project management; and

WHEREAS, Consultant is an organization that provides services, including, but not limited to those services required by the ICTF and, by virtue of training and experience, is well-qualified to provide such services to the ICTF; and

WHEREAS, because of the temporary nature of the services and the unavailability of ICTF JPA staff to perform the required services, it is in the best interest of the ICTF JPA to employ Consultant, as an independent contractor to perform such services;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to ICTF JPA, 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") and as may be required and requested from time to time in writing by the Executive Director or his or her designee.

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 JPA 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 ICTF JPA, 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. Consultant's staff responsible for performing this Agreement, Jolene Hayes ("Project Manager"), shall not be changed without Executive Director's written approval. Executive Director may, for any reason in his or her sole reasonable discretion, require Consultant to substitute a new Project Manager. If ICTF requests such a substitution, the substitute Project Manager shall expend whatever time and costs necessary to become familiar with the Project and any portions of the Scope of Work already performed at Consultant's sole cost and expense.

E. The Scope of Work shall be performed by Jolene Hayes or other approved personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee, 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 JPA 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 JPA with all agreements between it and its Subconsultants.

## II. SERVICES TO BE PERFORMED BY ICTF JPA

A. ICTF JPA shall furnish Consultant, upon its request, all documents and papers in possession of ICTF JPA 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 JPA 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 IX (Termination) hereof.

### III. EFFECTIVE DATE AND TERM OF AGREEMENT

The term of this Agreement shall be a period of one (1) year, commencing on September 29, 2014, and terminating on September 28, 2015, unless terminated earlier under the provisions of this Agreement.

### IV. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter and the Long Beach City Charter which, among other things, precludes the ICTF JPA from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The ICTF JPA, in awarding this Agreement, 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 ICTF JPA is under no legal obligation to do so.

The ICTF JPA, 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 ICTF JPA does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the ICTF JPA.

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 ICTF JPA 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 ICTF JPA 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.

### V. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, ICTF JPA 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 One Hundred Fifty Thousand Dollars (\$150,000).

C. Consultant shall submit invoices in quadruplicate to ICTF JPA 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 VII of this Agreement. No invoice will be processed for payment by ICTF JPA 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 JPA 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 JPA 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:

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

#### VI. 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 JPA. Consultant shall not represent itself as an agent or employee of the ICTF JPA and shall have no power to bind the ICTF JPA in contract or otherwise.

## VII. 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.

## VIII. INDEMNIFICATION AND INSURANCE

### A. Indemnification

Except for the sole negligence or willful misconduct of the ICTF JPA, or any of its boards, officers, agents, employees, assigns and successors in interest (collectively, the "Indemnitees"), Consultant undertakes and agrees to defend, indemnify and hold harmless the Indemnitees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation (including all actual litigation costs incurred by the ICTF JPA, 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 JPA 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 Cities of Long Beach and Los Angeles.

### B. General Liability Insurance

Consultant shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the ICTF JPA, 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 JPA 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. 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 JPA 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. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the ICTF JPA, its officers, agents and employees as Primary additional insureds, a 10-days' notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

C. Automobile Liability Insurance

Consultant shall procure and maintain at its expense and keep in force at all times during the term of this Agreement, 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 the ICTF JPA 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. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the ICTF JPA, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

D. 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 JPA in any circumstance in which it is alleged that actions or omissions of the ICTF JPA 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.

E. 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 One Million Dollars (\$1,000,000), 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 acceptance of the completed project by Board.

Each policy shall include a 10-days notice of cancellation for nonpayment of premium, and a 30-days' notice of cancellation for any other reasons.

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

F. 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 JPA.

G. Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the ICTF General Counsel have each been given ten days notice of cancellation for nonpayment of premium and thirty (30) days' prior written notice for any other reasons, by mail addressed to ICTF Executive Director at ICTF Joint Powers Authority, c/o Port of Long Beach, Post Office Box 570, Long Beach, CA 90801 and to ICTF General Counsel at ICTF General Counsel, c/o Port of Los Angeles, 425 S. Palos Verdes Street, San Pedro, California 90731.

H. Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to ICTF JPA, 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.

I. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Consultant shall furnish a renewal endorsement or renewal certificate showing that the policy has been renewed or extended 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 JPA's interests. The cost of such insurance will be deducted from the next payment due Consultant.

J. 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 JPA, 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 JPA, 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 ICTF JPA 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 a Financial Statement or Balance Sheet prior to Executive Director's consideration of approval of self-insurance and annually thereafter evidence of financial capacity to cover the self-insurance.

7. Consultant agrees to inform ICTF JPA in writing immediately of any change in its status or policy which would materially affect the protection afforded ICTF JPA by this self-insurance.

8. Consultant has complied with all laws pertaining to self-insurance.

K. 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 (\$500.00) to property, occurring upon the premises, or elsewhere within the Cities of Long Beach or 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.

#### IX. TERMINATION PROVISION

The Executive Director, in his or her 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 ICTF JPA's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the ICTF JPA to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

#### X. PERSONAL SERVICE CONTRACT

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 ICTF JPA.

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 I. 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 JPA to such Subconsultant(s) or give the Subconsultant(s) any rights against the ICTF JPA.

#### XI. 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"

#### XII. 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 JPA and the City of Los Angeles. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of ICTF JPA 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, ICTF JPA may immediately terminate this Agreement by giving written notice thereof.

### XIII. 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.

### XIV. 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.

### XV. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify the ICTF JPA 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 JPA of any materials supplied by Consultant in the performance of this Agreement.

### XVI. 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 JPA as soon as they are developed, whether in draft or final form. ICTF JPA 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 JPA 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 JPA 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 JPA, 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 JPA, its boards, officers, agents or employees, is not given in confidence. Accordingly, ICTF JPA 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 JPA 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 JPA. Upon ICTF JPA'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 ICTF JPA. It is expressly understood and agreed that, as between ICTF JPA and Consultant, the referenced license shall arise for ICTF JPA's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. ICTF JPA 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 JPA.

C. The Consultant may not disclose to any party without ICTF JPA's permission any information developed pursuant to this Agreement. The ICTF JPA will, however, have the right to disclose the information as it determines appropriate considering the nature of the information, its use and the laws applicable to the ICTF JPA.

## XVII. 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.

The parties agree that documentation and information will not be deemed confidential information, and Consultant will have no obligation with respect to any such information, where such documentation and information (i) was in the public domain prior to the effective date of this Agreement or subsequently came into the public domain other than as a result of disclosure by Consultant, (ii) is independently developed by Consultant, (iii) is approved for release by written authorization of ICTF JPA (iv) is disclosed to Consultant from a source other than ICTF JPA without similar restriction and without breach of this Agreement, (v) is furnished to a third party by ICTF JPA without a similar restriction on the third party's rights, or (vi) is required to be disclosed by a judicial or administrative law, regulation or proceeding.

#### XVIII. 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 JPA shall be addressed to the ICTF JPA Executive Director, c/o Port of Long Beach, Post Office Box 570, Long Beach, CA 90801 and notice to Consultant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

#### XIX. 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 its authorized TIN is \_\_\_\_\_. No payments will be made under this Agreement without a valid TIN.

#### XX. 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.

**XXI. 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 JPA to terminate this Agreement and pursue any and all legal remedies that may be available.

**XXII. 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.

### XXIII. 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.**

### XXIV. 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.

### XXV. 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.

### XXVI. 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.

**XXVII. 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 applicable to the ICTF JPA.

**XXVIII. 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.

**XXIX. 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.

**XXX. 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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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: 11/7/14

By:   
Douglas Thiessen,  
Executive Director

CAMBRIDGE SYSTEMATICS, INC.,  
a Massachusetts corporation

Dated: 10/6/14

By:   
JAMES S. BROWN, EXECUTIVE VICE PRESIDENT  
Print Name and Title

Attest:   
Paul Sorensen, Senior Software  
(Print/type name and title) Project Manager

APPROVED AS TO FORM AND LEGALITY  
October 14, 2014

By:   
JANNA B. SIDLEY  
ICTF General Counsel

## EXHIBIT A – SCOPE OF WORK

### Scope of Services Overview

Consultant shall provide Project Management and support services to the ICTF to support and manage the preparation of the ICTF Expansion and Modernization Project Environmental Impact Report (ICTF EIR). Consultant services shall include, under the direction of the JPA staff:

- Manage coordination between the ICTF JPA staff, the ports of Long Beach and Los Angeles, Union Pacific Railroad, and ENVIRON INTERNATIONAL CORPORATION, the consultant preparing the ICTF EIR (Environ), peer review consultant ASCENT, and other consultants to the JPA.
- Lead and oversee regular project meetings as necessary for the preparation of the EIR.
- Provide direction to Environ on the EIR preparation, consistent with JPA policies and pursuant to JPA staff direction.
- Monitor and advance progress toward timely completion of project milestones and overall project schedule.
- Review the ICTF EIR for completeness.
- Identify and raise issues to JPA staff that require resolution by the ICTF JPA.
- Coordinate administrative matters with E2 Managetech, another consultant to the JPA, consistent with its role for ICTF JPA administration.

### Schedule and Budget Requirements

The ICTF has set for this Agreement a maximum not-to-exceed Project budget of \$150,000 (inclusive of all labor and expense charges). A project delivery approach will be discussed and established by the ICTF Executive Director or JPA CEQA Team Lead (Rick Cameron) for the delivery of the required scope of services. This negotiated approach will include a project delivery schedule and a project delivery budget consistent with the restrictions as provided above for a not-to-exceed authorized maximum compensation of \$150,000. Labor & expense charges will be invoiced to the ICTF JPA monthly on a time and material basis (see attached Exhibit B).

**EXHIBIT B – COMPENSATION RATES  
AND REIMBURSEABLE EXPENSES**

Work will be performed on a time and materials (cost reimbursable) basis. Costs for services provided under this Agreement including labor and direct expenses will not exceed One Hundred Fifty Thousand Dollars (\$150,000.00). The parties estimate approximately 8 to 12 hours per week for these services.

The approved individual performing these services and hourly billing rate is:

<u>Name</u>	<u>Title</u>	<u>Hourly Rate</u>
<b>Jolene Hayes</b>	<b>Project Manager</b>	<b>\$ 238.38</b>

Other Consultant staff providing services and their hourly rates shall be approved by the ICTF Executive Director in writing in advance.

OTHER PROJECT CHARGES

Subconsultant/Subcontractors

The cost of services rendered by subconsultants/subcontractors that have been pre-approved by the ICTF will be charged at actual cost.

Travel and Subsistence (Meals, Lodging and Airfare)

The cost of travel will be at actual cost; subsistence will be charged in accordance with the City of Los Angeles travel policy per diem.

Vehicles and Mileage

Company vehicle (not listed in the rate schedule) mileage will be charged at the current Federal Travel Regulation (FTR) mileage allowance for vehicles equal to or less than 1 ton and at 55 cents per mile for vehicles greater than 1 ton.

Reproduction

All outside reproduction materials and supplies will be charged at cost.

Any other direct costs, not specifically identified herein shall be reimbursed at cost.

## **EXHIBIT C – AFFIRMATIVE ACTION PROVISIONS**

### **Sec. 10.8.4 Affirmative Action Program Provisions.**

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 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 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, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
  - 1. This provision 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 will, 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, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
  
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, 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, religion, ancestry, national origin, 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 Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action

- Program provisions of City contracts, and on their or either of their 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 contract. Such 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 Board of Public Works, Office of Contract Compliance. No such 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, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such 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 (\$10.00) for each person for each calendar day on which such 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 Office of Contract Compliance 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. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award 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 Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
  2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or 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.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. 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 or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like 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.