

DATE: June 23, 2008

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

FROM: Sam A. Joublat, Executive Director

SUBJECT: **Intermodal Container Transfer Facility Modernization Project
Reimbursable Work Order – Union Pacific Railroad**

Summary


Union Pacific Railroad Company (UP) filed an Application for Development Project for the ICTF modernization project. UP and the ICTF JPA have agreed that UP will reimburse reasonable expenses, up to \$4,000,000, for preparation of an Environmental Impact Report (EIR) and related activities pursuant to the California Environmental Quality Act (CEQA). The amendments as designated in Exhibit 1 to the Reimbursable Work Order (RWO) (attached) provide additional terms applicable to the RWO provided by the ICTF JPA. These additional terms and the RWO contain the entire agreement of the JPA and UP regarding reimbursement for preparation of the EIR and related activities and may only be amended by a written document executed by the JPA and UP.

Recommendation

It is recommended that the ICTF JPA Governing Board authorize the Executive Director to execute the RWO and amendment as negotiated between the ICTF JPA staff and UP staff for UP to reimburse the JPA costs associated with the preparation of the EIR and related expenses in an amount not to exceed \$4 million.

Discussion

The RWO is an agreement by Union Pacific to reimburse the JPA for up to \$4,000,000 for expenses related to the Application for Development Project, which may include: interagency technical consultation, project assessment preparation, NOP/initial Study, public scoping meetings, preparation of draft EIR, publication of draft EIR, draft EIR public meeting, preparation of final EIR, publication of final EIR, ICTF JPA Board consideration of final EIR, public hearing, and other incidental expenses. The parties shall meet and confer on the general nature of the work to be performed and agree upon whether it is covered by the RWO before significant work elements are commenced.



Sam A. Joublat
Executive Director



Intermodal Container Transfer Facility Joint Powers Authority

Intermodal Container Transfer Facility Joint Powers Authority

REIMBURSABLE WORK ORDER

RWO# : _____

DATE: _____

PROJECT TITLE: Intermodal Container Transfer Facility (ICTF) Modernization

WORK REQUESTED: Union Pacific Railroad (UP) has submitted an application to modernize the ICTF facility. The Joint Powers Authority (JPA) will incur expenses related to this application which may include, but not limited to, project management, environmental consulting, legal consulting, other services, material, etc. All these expenses will be reimbursed to the JPA by UP and will not be considered ICTF facility expenses for the purpose of calculating ICTF net revenue.

BILL:

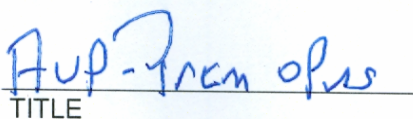
CHARGEABLE DETAIL

PROJECT DESCRIPTIONS	ESTIMATED COSTS	ACCOUNT CHARGEABLE		
		PROJECT NO.	DETAIL	INDEX CODE
1. All JPA costs associated with application to modernize ICTF facility.	\$4,000,000			

This Reimbursable Work Order is a contract for the performance of work by the ICTF-JPA and for the payment of invoices for the materials furnished and the services provided. The undersigned represents that he/she has the authority to make a legally binding contract on behalf of his/her employer without further corporate or other action. Upon presentation of an ICTF-JPA invoice or invoices for the materials furnished and services provided, the undersigned shall pay or shall cause the invoice or invoices to be promptly paid. In the event the invoice or invoices remain unpaid thirty (30) days after presentation, the amount due shall bear interest at the maximum rate allowed by law until paid. The phrase "maximum rate allowed by Law shall mean the interest rate prevailing on the 25th day of the month preceding the due date of the invoice or invoices established by the Federal Reserve Bank of San Francisco on advances to member banks under the provisions of the Federal Reserve Act as now in effect or hereafter amended plus five percent (5%).

WORK AUTHORIZED BY:


SIGNATURE


TITLE


ORGANIZATION

NAME TYPED _____

Amendments to Reimbursable Work Order

Union Pacific Railroad Company ("Union Pacific") filed an Application for Development Project Approval (the "Application") for the ICTF Modernization Project on December 26, 2007. Union Pacific and the ICTF Joint Powers Authority ("JPA") have agreed that Union Pacific will reimburse reasonable expenses, up to \$4,000,000 (four million dollars), for preparation of an Environmental Impact Report ("EIR") and related activities set out further in numbered paragraph 7, pursuant to the California Environmental Quality Act ("CEQA"). These amendments to the Reimbursable Work Order provide additional terms applicable to the RWO provided by the ICTF JPA (collectively, the "Agreement"). These additional terms and the RWO contain the entire agreement of the JPA and Union Pacific regarding reimbursement for preparation of the EIR and related activities and may only be amended by a written document executed by the JPA and Union Pacific.

The additional terms are:

1. Invoices shall be submitted by the 20th of each month for the preceding month's work.
2. Invoices shall be in sufficient detail, including a description of the work performed, the person performing the work, the time spent and the cost of that time. Union Pacific shall have the right to audit the invoices.
3. In the event Union Pacific disputes an invoice, it shall notify the JPA of that dispute within 20 days of receiving the disputed invoice. The parties shall meet and confer in an effort to resolve any such dispute. No interest shall accrue on disputed invoices while such dispute is pending.
4. Except as provided herein, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement may be commenced until the matter has been submitted to mediation and the mediation terminated. The mediation shall be held in Los Angeles, California, before a mediator selected through JAMS, at 707 Wilshire Blvd., 46th Floor, Los Angeles, CA 90017. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. In the event the parties are unable to agree on a mediator, JAMS will provide the names of five potential mediators. Starting with the party that initiated the mediation, each party shall alternatively strike a name from the list and the remaining name shall serve as mediator. The mediation shall be treated as confidential and subject to California Evidence Code Sections 1119-1128.
5. Except for an action to obtain equitable relief to maintain the status quo, neither party may commence a civil action with respect to the matters submitted to mediation until the mediator has issued a written statement concluding the dispute cannot be resolved through mediation and is therefore terminated. Such written statement shall not be unreasonably withheld. In the event the mediator issues such a statement, either party

may commence a civil action after giving the other party ten days written notice of its intent to do so. The provisions of this clause may be enforced by any California court of competent jurisdiction, including by specific performance, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees as provided by California law. All limitations periods shall be tolled during the pendency of the mediation.

6. Union Pacific shall have the right to terminate the RWO upon 10 days written notice to the JPA. Upon receiving such notice, the JPA shall immediately advise all of its contractors performing work pursuant to the RWO to cease work. Work products paid for or reimbursed by Union Pacific shall be the sole property of Union Pacific and shall be provided to Union Pacific upon request, subject to the California Public Records Act, which requires disclosure of certain public documents. Union Pacific shall have no obligation to make any further payments pursuant the RWO for work performed or expenses incurred on or after the tenth day following receipt of the notice of termination by the JPA.
7. The following address shall serve as the location to which notice of termination to the JPA shall be sent:

Thomas Russell, Esq.
General Counsel
Intermodal Container Transfer Facility Joint Powers Authority
425 S. Palos Verdes Street
San Pedro, CA 90731

8. The following address shall serve as the location to which invoices or notice to Union Pacific Railroad shall be sent:

Barry D. Michaels
Assistant Vice President
Premium Operations
Union Pacific Railroad Company
1400 Douglas St., Mail Stop 1160
Omaha, NE 68179

Copy to:

Diane Evans
Premium Operations
Union Pacific Railroad Company
1400 Douglas St., Mail Stop 1160
Omaha, NE 68179

9. The RWO is an agreement by Union Pacific to reimburse the JPA for up to \$4,000,000 (four million dollars) for expenses related to this Application, which may include, Interagency Technical Consultation; Project Assessment Preparation; NOP/Initial Study; Public Scoping Meetings; Preparation of Draft EIR, Publication of Draft EIR, Draft EIR

Public Meeting, Preparation of Final EIR, Publication of Final EIR, ICTF JPA Board consideration of Final EIR, and Public Hearing. The parties shall meet and confer on the general nature of the work to be performed and agree upon whether it is covered by the RWO before significant work elements are commenced.

10. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
11. If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect. The RWO shall be subject to the laws of the State of California.
12. The second sentence of the RWO "Work Requested" shall be amended to state, "The Joint Powers Authority (JPA) will incur expenses related to this Application, which may include, but are not limited to, project management, environmental consulting, legal consulting, other services, material, etc."

When the Agreement is signed by the parties in the space set forth below, it shall become an amendment to the RWO.

On behalf of Union Pacific Railroad Company, the undersigned agrees to the terms set forth above, which shall be treated as Exhibit 1 to the Reimbursable Work Order

DATE: 6-21-08

By: 

Barry D. Michaels

Title: Assistant Vice President
Premium Operations

On behalf of the ICTF Joint Powers Authority, the undersigned agrees to the terms set forth above, which shall be treated as an amendment to the attached Reimbursable Work Order.

DATE: _____

By: _____

Title: _____