

JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE
CITY OF LONG BEACH AND THE CITY OF LOS ANGELES
TO BE KNOWN AS
INTERMODAL CONTAINER TRANSFER FACILITY
JOINT POWERS AUTHORITY

THIS AGREEMENT, dated October 5, 1983, is between the CITY OF LONG BEACH, a municipal corporation, duly organized and existing under a freeholders' charter and the Constitution and laws of the State of California, hereinafter referred to as "Long Beach", and the CITY OF LOS ANGELES, a municipal corporation, duly organized and existing under a freeholders' charter and the Constitution and laws of the State of California, hereinafter referred to as "Los Angeles";

WHEREAS, Long Beach and Los Angeles, acting by and through their respective Boards of Harbor Commissioners, to more effectively operate their existing wharf and dock facilities, require the construction of container transfer facilities and other facilities related thereto; and

WHEREAS, Long Beach and Los Angeles are each empowered by law to acquire, construct, maintain, operate and lease such facilities; and

WHEREAS, Long Beach and Los Angeles are of the opinion that, within the area as shown and described on attached Exhibit "A", hereby made a part hereof, the property should be developed as a comprehensive Intermodal Container Transfer Facility and all necessary related facilities, which includes but is not limited to:

1. Accessory buildings (guard and gate house, repair

facilities, administration building, control tower, transfer building);

2. On site railroad tracks and related equipment;
3. Container transfer equipment;
4. Offsite roadway modifications (to improve vehicle access to the site);
5. Site paving, drainage, lighting, fencing and utility systems;
6. Any other properties, real or personal, functionally related and subordinated thereto.

All such facilities shall be collectively called the "ICTF"; and

WHEREAS, it is deemed advisable for the parties concerned to enter into an agreement which will ensure the financing, acquisition, construction and operation of the ICTF and related facilities.

NOW, THEREFORE, it is agreed as follows:

Section 1. PURPOSE.

This Agreement is made pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500, hereinafter called "Act") relating to the joint exercise of powers common to Long Beach and Los Angeles. Long Beach and Los Angeles each possess the powers referred to in the recitals hereof. The purpose of this Agreement is to exercise such powers by developing existing property and acquiring a site or sites for constructing, maintaining, operating and leasing of the ICTF and related facilities. Such purpose will be accomplished, and said

common powers exercised, in the manner hereinafter set forth.

Section 2. TERM.

A. The term of this Agreement shall be fifty (50) years from the date this Agreement becomes effective.

Section 3. AUTHORITY

A. Creation of Authority.

Pursuant to Section 6502 of the Act, there is hereby created a public entity separate and independent from the parties hereto, to be known as the "Intermodal Container Transfer Facility Joint Powers Authority" (hereinafter referred to as "Authority") and said Authority shall be a public entity separate and apart from Long Beach and Los Angeles.

B. Governing Board.

The Authority shall be administered by a governing board of five members, each serving in their individual capacities and shall be called the "Governing Board of the Intermodal Container Transfer Facility Joint Powers Authority" (hereinafter referred to as "Governing Board"). Two members are to be appointed by the Board of Harbor Commissioners of the City of Long Beach, and two members are to be appointed by the Board of Harbor Commissioners of the City of Los Angeles. Those four members shall select the fifth member, who shall be approved by the respective Boards of Harbor Commissioners. Each member shall serve the terms below specified, at the pleasure of the appointing authority, except that any removal from office of the fifth member shall be by both Boards. Each member of the Governing Board shall serve a five-year term, except that for the initial term one member appointed by the Board of Harbor Commissioners of

Long Beach shall serve a two-year term and the other member appointed by the Board of Harbor Commissioners of Long Beach shall serve a three-year term, and one member appointed by the Board of Harbor Commissioners of Los Angeles shall serve a one (1) year term and the other member appointed by the Board of Harbor Commissioners of Los Angeles shall serve a four-year term. The initial term of the members from Long Beach and Los Angeles shall be determined by lot during the first meeting following their appointment. Vacancies during a term and successors following expiration of the term of any member shall be filled in the same manner as the original appointments. Members shall receive \$50.00 per meeting as compensation.

C. Meetings of the Governing Board.

(1) Regular Meetings.

The Governing Board shall provide for its regular, adjourned regular and special meetings; provided, however, it shall hold at least one regular meeting in each year. The dates upon which, and the hour and place at which, any regular meeting shall be held shall be fixed by resolution and a copy of such resolution shall be filed with each party hereto.

(2) Ralph M. Brown Act.

All meetings of the Governing Board, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code).

(3) Minutes.

The Secretary of the Governing Board shall cause to be

kept minutes of the meetings, and any notices thereof, both regular, adjourned regular and special, and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Governing Board and to the Boards of Harbor Commissioners of Long Beach and Los Angeles.

(4) Quorum.

A majority of the Governing Board shall constitute a quorum for the transaction of business, and a majority of the Governing Board is required to take any action, except that less than a quorum may adjourn from time to time.

D. Officers.

The Governing Board shall elect one member the Chairman of said board for its first year of operation or portion thereof and thereafter as of each successive July 1st, said Governing Board shall elect a new Chairman. Said Governing Board shall also appoint a Secretary. The Treasurer of the Authority and the Auditor/Controller of the Authority shall be selected in accordance with Section 6505.5 and Section 6505.6 of the Government Code.

Section 4. POWERS.

Authority shall have the powers common to Long Beach and Los Angeles necessary to the development of the ICTF and related facilities, to wit: acquiring, constructing, reconstructing, rehabilitating, maintaining in whole or in part, and leasing or selling, in whole or in part, land, facilities and appurtenances necessary or convenient for the development and operation of an ICTF, including the acquisition of such land, facilities, or appurtenances by lease, contract, or purchase or

disposal of land by lease of any property of Authority; and to incur debts, liabilities or obligations required by the exercise of these powers which do not constitute debts, liabilities or obligations of Long Beach or Los Angeles, and to sue and be sued in its own name. Authority shall further have the power to operate or cause to be operated facilities which have been acquired or constructed in whole or in part by Authority together with the buildings and appurtenances necessary thereto. Said powers shall be exercised in the manner provided in said Act and, except as expressly set forth herein, subject only to such restrictions upon the manner of exercising such powers as are imposed upon the City of Los Angeles in the exercise of similar powers. Authority may also issue revenue bonds or other evidence of indebtedness, pursuant to Article 2, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6540, hereinafter called the "Bond Act") and any other applicable laws of the State of California, whether heretofore or hereafter enacted or amended.

Section 5. FISCAL YEAR.

The term "Fiscal Year" shall mean the Fiscal Year of the Authority as established from time to time by the Governing Board, being at the date of this Agreement the period from July 1 to and including the following June 30.

Section 6. DISPOSITION OF ASSETS.

At the end of the term hereof, upon the earlier termination of this Agreement, or at such other time as the parties mutually agree, all real property of Authority, including improvements which are not removed by operator of ICTF shall either, at

Los Angeles' sole discretion, be removed by Authority or all right, title and interest shall automatically vest in Los Angeles. Long Beach shall be compensated by Los Angeles for one-half of the fair market value of the improvements constructed by Authority and not removed by operator or Authority. All other property of Authority shall be divided equally between the parties. Such division shall be mutually agreed upon between Long Beach and Los Angeles at some time not more than nine (9) months and not less than three (3) months before the end of the term, upon earlier termination of this Agreement or at such time as the parties mutually agree. If the parties cannot dispose of the improvements or any other real or personal property as set forth above, the disposition shall be determined in the following manner.

If the division of assets has not been mutually agreed upon within the time prescribed above, either party shall give the other notice demanding an appraisal of the fair market value of the improvements. Three appraisers shall be appointed. One appraiser shall be appointed by Long Beach, one appraiser shall be appointed by Los Angeles and the third shall be appointed by the two appraisers so appointed. Within fifteen (15) days from the service of such notice, each party shall appoint an appraiser and notify the other party of such appointment. If either party shall not have notified the other in writing of the appointment of its appraiser, the presiding judge of the Superior Court of the State of California for the County of Los Angeles shall, upon the request of either party, appoint the appraiser for the other party so in default. If the two appraisers so chosen shall be unable to agree upon the third appraiser within ten (10) days

after the appointment of the second appraiser, the third appraiser shall be appointed by the presiding judge. Any vacancy shall be filled by the party who made the original appointment to the vacant place.

The appraisers shall file their opinions concerning the value of the improvements in writing with the parties within sixty (60) days after the appointment of the third appraiser. Such opinion shall take into consideration all of the factors and data relating to such value which may properly be considered in determining the fair value of the improvements under the laws of eminent domain in the State of California. In the event any appraiser fails to file his opinion within said sixty (60) days, a new appraiser shall be appointed in the manner prescribed above. Upon the filing of the three opinions, the parties shall properly set a date for, and on said date, hold a public hearing. At such hearing, said opinions and such other evidence of the fair market value of the improvements as may be presented by the parties or others shall be received and considered. Based upon such evidence, the value of the improvements and the division of the other property of the Authority shall be fixed by the appraisers. This appraisal shall then be used by the parties as the basis for disposition of assets.

Each party shall pay the costs and expenses of the appraiser appointed by it together with fifty percent (50%) of the costs and expenses of the third appraiser.

If for any reason the division of assets shall not be finally determined within the time period specified above, the matter may then be presented by either party to the courts for

a final determination through legal proceedings.

Section 7. DESIGN AND CONSTRUCTION.

The Boards of Long Beach and Los Angeles shall commence the development of a plan in such phases as they desire for construction of the ICTF. However, said plans for development must be in accordance with the certified EIR adopted on October 25, 1982 and titled "Final Environmental Impact Report for the Intermodal Container Transfer Facility" (State Clearinghouse No. 81100215) for site development of the ICTF area. Authority shall complete said plans and then provide for the construction of buildings and any ancillary structure or structures and site improvements shown on said plans.

The construction contract documents for the buildings and any ancillary structure or structures and site improvements shall be approved by Authority. Authority shall call for competitive bids to let construction contracts for ICTF. Authority shall award all construction contracts.

The construction contracts of Authority shall be administered on behalf of Authority by Los Angeles staff. Said staff shall follow existing procedures at Los Angeles Harbor Department in the administration of such contract or contracts, in the inspection and testing of materials and other job procedures. Pursuant to Section 4 hereof, all powers of Authority related to construction shall be exercised in the manner provided in this Agreement and subject only to such restrictions upon the manner of exercising such powers as are imposed by the Charter of the City of Los Angeles as it relates to the Los Angeles Harbor Department in the exercise of similar powers.

Authority shall reserve the right to make changes in the work in any construction contract or contracts. Said changes shall be made in the following manner:

1. By written modification of the construction contract or contracts ordered by Authority.
2. By written change order signed by the Authority or its designee.
3. Any change order issued by the Authority's designee for changes in the work shall be limited to the extent permitted by law, but in no event exceed \$100,000. Any change order exceeding \$100,000 must receive authorization from Authority.

Any trustee appointed pursuant to the resolution for the issuance of bonds of Authority shall administer disposition of the construction funds in accordance with the applicable procedures set forth in resolution providing for the issuance of bonds or notes, or other evidence of indebtedness of Authority. Such procedures shall provide, in substance, that such Trustee shall pay such amounts as are required to meet construction payments when authorized by Authority.

Section 8. REVENUE BONDS.

Authority may issue revenue bonds in accordance with the Bond Act or other available authority for the issuance of such bonds or other evidence of indebtedness (the "bonds") for the purpose of exercising its powers including refunding all or any part of the bonds issued and raising funds necessary to carry out its obligations under this Agreement. Said bonds may

be issued in one or more series to match construction phases or may be authorized in different amounts at different times.

The sale and issuance of such bonds by the Authority and any resolution authorizing such issuance shall be subject to the prior approval by resolution or ordinance of the Council of the City of Long Beach and the Council of the City of Los Angeles upon request by their respective Boards of Harbor Commissioners.

It is anticipated that such bonds will be payable from revenues generated from the ICTF, and for a term sufficient to pay the principal of and interest on the bonds, establish suitable reserve or other funds and pay all other expenses in connection therewith.

Section 9. CONTRIBUTIONS.

During the planning and organization of the Authority and subsequent to the formation of the Authority, Long Beach and Los Angeles have and will use public funds, personnel and equipment in furtherance of the objectives and purposes set forth in this Agreement. Pursuant to Government Code Sections 6504, 6512.1 and related provisions, the Authority is empowered after issuance of the bonds to reimburse Long Beach and Los Angeles for all payments, advances, use of personnel and equipment which were provided. Such costs for personnel shall include actual costs of all services performed by officers and employees of Long Beach and Los Angeles, including burden and overhead costs, computed in accordance with the standard overhead rate procedure provisions of the Ports of Long Beach and Los Angeles for all officers and employees performing such services.

Section 10. CONSULTANTS.

Any contracts of Long Beach and/or Los Angeles with bond counsel, financial consultant, engineers, architects, and other consultants and advisors working on the ICTF Project and/or its financing shall be binding on Authority. The fees and expenses of such bond counsel, financial consultants, engineers, architects and other consultants and advisors incurred by Long Beach and/or Los Angeles before or after issuance of the bonds shall be paid from the proceeds of such issue.

Section 11. PERSONNEL.

Authority shall request from Long Beach and/or Los Angeles the services of their personnel to serve Authority ex-officio as may be necessary to carry out this Agreement and shall have the power to employ professional and technical assistance for the performance of this Agreement provided that adequate sources of funds are assured therefor. The cost of such personnel used for the ICTF shall be reimbursed by Authority in accordance with Section 9.

Section 12. ACCOUNTS AND REPORTS.

To the extent not covered by the duties assigned to any trustee, the Treasurer of Authority shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any resolution of Authority securing its bonds. The books and records of Authority in the hands of the trustee or the Treasurer shall be open to inspection at all reasonable times by representatives of Long Beach and Los Angeles. The Authority shall cause to be prepared semi-annually a financial and operating report which shall be

submitted to Long Beach and Los Angeles at the addresses set forth in Section 14. The Authority, within 120 days after the close of each fiscal year, shall give a complete written report of all financial activities for such Fiscal Year to Long Beach and Los Angeles. The Auditor/Controller of Authority shall cause an annual independent audit of the accounts and records of the Authority to be made by a certified public accountant, all in accordance with and at the time or times required by law. Any trustee appointed under any resolution of issuance of the bonds of Authority shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said resolution. Said trustee may be given such duties in said resolution as may be desirable to carry out this Agreement.

Section 13. FUNDS.

Subject to the applicable provisions of any indenture or financing agreement, which may provide for a trustee to receive, have custody of, and disburse Authority funds, the Treasurer of Authority shall: (i) Have the custody of and disburse Authority funds pursuant to the accounting procedures developed under Section 12 hereof, and (ii) as nearly as possible in accordance with normal Long Beach and Los Angeles procedures, make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

Section 14. NOTICES

Notices hereunder shall be sufficient if delivered to:

/

/

- Long Beach - Executive Director
Long Beach Harbor Department
Post Office Box 570
Long Beach, CA 90801
- Los Angeles - Executive Director
Port of Los Angeles
Post Office Box 151
San Pedro, CA 90733
- Authority - Secretary - At such address as
Governing Board shall designate
for such purpose.

Section 15. MISCELLANEOUS.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

Whenever in this Agreement any consent or approval is required the same shall not be unreasonably withheld.

This Agreement is made in the State of California under the Constitution and laws of such State and is to be so construed.

Section 16. SEVERABILITY.

Should any part, term, portion or provision of this Agreement be by the courts decided to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to continue to constitute the agreement that the parties intended to enter into in the first instance.

Section 17. SUCCESSORS.

This Agreement shall be binding upon and shall inure

to the benefit of the successors of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

28 Sept, 1983

By James W. McLaughlin
Executive Director
Long Beach Harbor Department

Attest:

By Fran A. Montgomery
Executive Secretary

Approved as to form this 28 day of September

1983.

ROBERT W. PARKIN, City Attorney

By William A. [Signature]
Deputy

CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners

By [Signature]
Executive Director
Port of Los Angeles

Attest:

By [Signature]
Executive Secretary

Approved as to form this 29 day of September,

1983.

IRA REINER, City Attorney

By

[Handwritten Signature]

Deputy

WEE:pw
6/21/83
L-6