

AGREEMENT NO.

AGREEMENT BETWEEN  
THE INTERMODAL CONTAINER TRANSPORT FACILITY JOINT POWERS  
AUTHORITY AND THE SOHAGI LAW GROUP, PLC

THIS AGREEMENT is made and entered into by and between the INTERMODAL CONTAINER TRANSFER FACILITY, a Joint Powers Authority ("ICTF"), acting by and through its Executive Director ("Executive Director"), and THE SOHAGI LAW GROUP, a Professional Law Corporation, whose address is 11999 San Vicente Boulevard, Suite 150, Los Angeles, California 90049-5136 ("Outside Counsel" or "Consultant").

WHEREAS, the Governing Board of ICTF has approved the use of Outside Counsel to provide environmental legal services regarding compliance with the California Environmental Quality Act, the Clean Air Act and other environmental matters as required for the ICTF Modernization Project; and

WHEREAS, Outside Counsel indicates that it has the expertise and competence to perform the professional legal services sought by ICTF; and

WHEREAS, ICTF has selected Outside Counsel to provide assistance in such matters. Outside Counsel is willing to provide such assistance and represents to ICTF that it is able to do so without a conflict of interest; and

WHEREAS, the professional services to be performed by Outside Counsel are of an expert and technical nature and are temporary and occasional in character

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY OUTSIDE COUNSEL

Outside Counsel's Lead Counsel for this Agreement shall be Helene Smookler. Outside Counsel's Lead Counsel shall have full authority to act for Outside Counsel on all daily operating matters under this Agreement and shall serve as designated Lead Counsel for all matters performed pursuant to this Agreement.

Outside Counsel hereby agrees to render to ICTF, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character and as may be required and requested from time to time in writing by the Executive Director or his or her designee. These services include but are not limited to:

Outside Counsel shall provide ICTF with the necessary representation by qualified staff at the least costly billing category. Partners and associates shall be

admitted to practice before all the courts of the state of California. The attorneys authorized to work on specific tasks under this Agreement are:

Margaret M. Sohagi, Principal  
Nicole H. Gordon, Principal/Partner  
Helene V. Smookler, Of Counsel I  
Albert I. Herson, Of Counsel I  
Philip A. Seymour, Of Counsel I  
Thomas Jacobson, Of Counsel II  
Ann C.H. Lynch, Of Counsel II  
Alison L. Krumbein, Of Counsel II  
Robert T. Sohagi, Associate I

Outside Counsel shall serve as a liaison with the South Coast Air Quality Management District ("SCAQMD"), which is acting as consultant to prepare the environmental impact report ("EIR") for the Union Pacific's ICTF Modernization Project ("Project"). Outside Counsel is retained to assist ICTF in providing legal services with respect to reviewing the EIR for the Project. Outside Counsel's legal representation shall include, but is not limited to:

- (1) All settlement negotiations and pretrial proceedings;
- (2) Appearance at all law and motion hearings, discovery proceedings, hearings regarding orders to show cause, writs, trials and when applicable, administrative hearings and meetings;
- (3) All due diligence, legal research, preparation for hearings, and review of all documents and evidentiary materials;
- (4) Investigative, secretarial, and clerical support services necessary to perform the legal representation in a professional manner;
- (5) Outside Counsel shall meet with ICTF's Supervising Attorney, as Supervising Attorney requires;
- (6) Outside Counsel shall obtain written approval from ICTF's Supervising Attorney before retaining any consultant or expert witness to assist with any assigned case;
- (7) Outside Counsel shall consult with ICTF's Supervising Attorney on significant issues and on trial and tactical decisions;
- (8) Outside Counsel shall assist ICTF's Supervising Attorney in settlement evaluations and negotiations, and shall obtain ICTF's Supervising Attorney's authority before making any settlement proposals on ICTF's behalf to the Court or any party;

- (9) Outside Counsel shall immediately notify ICTF's Supervising Attorney, in writing when a judgment, verdict or other award is rendered;
- (10) Upon ICTF's Supervising Attorney's request, Outside Counsel shall provide copies of all court rulings and all pleadings filed with the court or other administrative body, including those submitted by other parties;
- (11) Outside Counsel shall maintain all supporting documentation to substantiate all entries included in its billings;
- (12) Outside Counsel shall, at the discretion of ICTF's Supervising Attorney, provide the services required to accomplish the work required under this Agreement;
- (13) On pleadings, the Supervising Attorney of ICTF must be Associate Counsel of Record. All pleadings shall include as Associate Counsel:

Thomas A. Russell, General Counsel  
ICTF Joint Powers Authority  
Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, CA 90731

Outside Counsel shall at all times work under the direction of the ICTF's Supervising Attorney. The ICTF shall rely on the competence, expertise and experience of Outside Counsel. At all times, Outside Counsel shall provide professional legal advice and services at the highest level expected of nationally-recognized law firms providing such services. This is a non-exclusive agreement to provide legal services to the ICTF and, at the Executive Director's discretion, the ICTF may augment the services with another law firm or law firms or select to terminate Outside Counsel's services in a manner consistent with this Agreement.

## II. SERVICES TO BE PERFORMED BY ICTF

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

B. The Executive Director hereby appoints Thomas A. Russell, General Counsel of ICTF, as his designee as the contract administrator for ICTF. The ICTF General Counsel shall serve as the ICTF's Supervising Attorney. ICTF's Supervising Attorney shall have full authority to act for ICTF on all daily operational matters under this Agreement and shall review and approve Outside Counsel's reports, whether written or verbal, and shall also decide 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 Outside Counsel 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 X (Termination) hereof.

### III. TERM OF AGREEMENT

The term of this Agreement shall be a period of one (1) year, beginning on September 3, 2011 and shall continue until September 2, 2012, unless terminated earlier under the provisions of this Agreement.

### IV. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, ICTF shall pay Outside Counsel for the services performed by Outside Counsel which are reasonably necessary. The maximum payable under this Agreement, including reimbursable expenses, shall be One Hundred and Fifty Thousand Dollars (\$150,000).

B. The fees for such services shall be based upon the time expended to render the required services, with fractions thereof being stated to the tenth of an hour, and shall be computed at a rate not to exceed:

Principal/Partner:	\$370 per hour
Of Counsel I:	\$370 per hour
Of Counsel II:	\$345 per hour
Associate I:	\$270 per hour
Associate II:	\$245 per hour
Associate III:	\$220 per hour
Law Clerk:	\$195 per hour
Paralegal:	\$145 per hour

The ICTF will not pay for more than one attorney doing any particular task unless ICTF's Supervising Attorney has given its prior written approval. The ICTF will not pay for two or more attorneys attending the same deposition or court appearance. The ICTF will pay for the time recorded by more than one attorney for in-office conferences, but only if the conference is an occasional and necessary strategy meeting related to some significant legal event or proceeding.

The ICTF will not pay for duplicative time charges by two or more attorneys, e.g., for legal research, reviewing documents, drafting documents, except as approved in writing by ICTF's Supervising Attorney. The ICTF shall not pay for "training" or "apprenticeship" time. The ICTF will not pay for the involvement of attorneys who work on the case irregularly or sporadically, unless a particular attorney has a special expertise that substantially advances the prosecution/defense of the case.

C. Absent the express prior written approval of the ICTF's Supervising Attorney, the ICTF will not pay for any extraordinary expenses incurred in any legal matter. The Executive Director must approve in writing any item of expense that exceeds Five Thousand Dollars (\$5,000). The ICTF's Supervising Attorney must approve in writing any item of expense that exceeds One Thousand Dollars (\$1,000). Such expenses include, but are not limited to, expert witnesses, consultant services, investigative services, computer litigation support services, videotaping of depositions, temporary office help, travel expenses, meals as well as other expenses. The ICTF will not pay for business class or first class airfare or luxury hotels. ICTF shall reimburse Outside Counsel for the actual out-of-pocket expenses, enumerated below, but without any additional costs for having advanced the funds.

1. Reimbursable ordinary expenses shall include, but are not limited to:

a) Transcript fees;

b) Messenger service - where appropriate, documents should be transmitted via email or facsimile/telecopier;

c) Facsimile/Telecopier (FAX) transmission - Outside Counsel shall not bill the ICTF for any expense related to facsimile charges beyond Outside Counsel's actual net costs for long distance telephone charges actually and reasonably incurred by Outside Counsel for the sending of facsimiles. Outside Counsel shall indicate in its billing statements the number of pages transmitted via facsimile together with the related cost of each charge. Outside Counsel shall attach the appropriate receipts, invoices or proof of any expenditure for your charges for facsimiles.

d) In-house document reproduction. Outside Counsel may charge up to \$0.10 cents per page for photocopies. The billing statement shall contain the total number of copies made.

2. Reimbursable extraordinary expenses shall include charges of which Outside Counsel has obtained prior written approval from ICTF's Supervising Attorney. Such expenses shall include, but are not limited to:

a) Consultants, Expert Witnesses and Investigative Services;

b) Computer Assisted Legal Research ("CALR") - The ICTF's decision to retain a particular firm is based in part on the firm's expertise and knowledge. The ICTF therefore assumes familiarity with the basic substantive law at issue in the matter for which the firm was retained; any except to this general expectation should be discussed fully at the time of

retention. In conducting legal research the law firm is expected to utilize all appropriate sources reasonably available, including previously prepared briefs and memoranda. Should Outside Counsel determine that it is necessary to incur CALR charges in order to satisfy the terms of this Agreement, Outside Counsel shall obtain ICTF's Supervising Attorney's prior written approval to charge for such expenses. No charges for CALR shall be paid by the ICTF without its prior written approval of such a charge.

c) Outside Counsel shall describe in detail in its billings any travel expenses incurred by Outside Counsel. Only coach fare will be reimbursed for travel. Lodging is reimbursed up to a maximum of \$165.50 plus taxes if a receipt is submitted for a single occupancy hotel accommodation. All travel expenses outside the Counties of Los Angeles, San Bernardino, Orange, Riverside, Imperial, Kern, Ventura and Santa Barbara shall be subject to ICTF prior written approval from the ICTF's Supervising Attorney. ICTF retains the right to audit travel expenses.

3. Non-reimbursable expenses shall include, but are not limited to:

a) Staff time or overtime for performing secretarial, clerical, or word processing functions;

b) Charges for time spent complying with ICTF audits or billing inquiries;

c) Charges for work performed which the ICTF had not authorized. Such work shall be a gratuitous effort by Outside Counsel; and

d) Expenses that are considered to be part of general law firm overhead, including but not limited to, administrative time, secretarial time, calendaring, setting up files, indexing, word processing, air conditioning, equipment rental, office supplies, meals, snacks, beverages, seminars, books or association dues, etc.

D. Outside Counsel shall submit invoices in quadruplicate 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 Outside Counsel.

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

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

ICTF Joint Powers Authority  
Attn: Thomas Russell, General Counsel  
Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, CA 90731

G. ICTF shall pay Outside Counsel based on Outside Counsel's submission of monthly invoices consistent with the provisions of this Agreement. Even though ICTF makes payment pursuant to invoices, ICTF shall have the right to demand reimbursement any time ICTF determines that previously paid costs and expenses were not properly billed by Outside Counsel. Outside Counsel shall promptly reimburse ICTF for such costs and expenses previously paid by ICTF.

H. For at least three years after completion of services under this Agreement or termination of this Agreement, Outside Counsel and any third party retained by Outside Counsel to assist in the performance of this Agreement, shall maintain backup documentation to support all entries included in the monthly billing statement. Such backup documentation shall be maintained in an auditable format and in accordance with generally accepted accounting principles. ICTF, at its sole discretion, may, at any time up to three years beyond the completion of services or termination of this Agreement, audit Outside Counsel and any third party retained by Outside Counsel to assist in the performance of this Agreement. Outside Counsel and any such third parties shall promptly and fully cooperate with the audit, including affording ICTF and/or its auditors access to records and files maintained by Outside Counsel and the third party.

## VII. INDEPENDENT CONTRACTOR

Outside Counsel, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of ICTF. Outside Counsel 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.

## VIII. INDEMNIFICATION AND INSURANCE

### A. Indemnification for General Liability

Except for the sole negligence or willful misconduct of the ICTF, or any of its boards, officers, agents, employees, assigns and successors in interest (collectively, the "Indemnitees"), Outside Counsel 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 (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 Outside Counsel'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 Outside Counsel 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 Cities of Long Beach and Los Angeles.

**B. Workers' Compensation and Employer's Liability**

Outside Counsel 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 Outside Counsel 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. Outside Counsel 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 Outside Counsel, and for all employees of any subcontractor or other vendor retained by Outside Counsel.

**C. Indemnity for Professional Liability**

Except for the sole negligence or willful misconduct of the Indemnitees (as defined in Section VIII.A, above), Outside Counsel 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 (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the Indemnitees, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, which may be sustained or suffered by or secured against the Indemnitees by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any act, omission, or negligence of Outside Counsel, its boards, officers, agents, employees or subconsultants.

**D. Professional Liability Insurance**

Outside Counsel 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.



Outside Counsel 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 Supervising Attorney's office with copies to the ICTF Executive Director.

G. Carrier Requirements

All insurance which Outside Counsel 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.

H. Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the ICTF Executive Director and the ICTF Supervising Attorney have each been given thirty (30) days' prior written notice by registered mail addressed to ICTF Executive Director at ICTF Joint Powers Authority, c/o Port of Long Beach, 925 Harbor Plaza, Long Beach, CA 90802 and to ICTF Supervising Attorney at ICTF General Counsel, c/o Port of Los Angeles, 425 S. Palos Verdes Street, San Pedro, California 90731.

I. Modification of Coverage

Executive Director, at his or her 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 Outside Counsel.

J. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Outside Counsel shall furnish to Executive Director 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 Outside Counsel 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 will be deducted from the next payment due Outside Counsel.

K. Right to Self-Insure

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

1. Outside Counsel has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Outside Counsel must have a formal resolution of its board of directors authorizing self-insurance.
2. Outside Counsel 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. Outside Counsel agrees to defend the ICTF, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Outside Counsel agrees that any insurance carried by ICTF is excess of Outside Counsel's self-insurance and will not contribute to it.
5. Outside Counsel provides the name and address of its claims administrator.
6. Outside Counsel 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. Outside Counsel agrees to inform ICTF in writing immediately of any change in its status or policy which would materially affect the protection afforded ICTF by this self-insurance.
8. Outside Counsel has complied with all laws pertaining to self-insurance.

L. Accident Reports

Outside Counsel 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 ICTF

premises, or elsewhere within the Cities of Long Beach or Los Angeles if Outside Counsel'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 Outside Counsel, its officers or managing agents.

#### X. 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 Outside Counsel ten (10) days' advance, written notice of the ICTF'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.

#### XI. PERSONAL SERVICE CONTRACT

A. During the term hereof, Outside Counsel 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.

B. Outside Counsel 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 Outside Counsel may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article I. All Subconsultants whom Outside Counsel utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Outside Counsel 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.

#### XII. AFFIRMATIVE ACTION

The Outside Counsel, 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 A.

#### XIV. 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 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 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 may immediately terminate this Agreement by giving written notice thereof.

#### XV. COMPLIANCE WITH APPLICABLE LAWS

Outside Counsel 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.

#### XVI. 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.

#### XVII. TRADEMARKS, COPYRIGHTS, AND PATENTS

Outside Counsel 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 Outside Counsel in the performance of this Agreement.

#### XVIII. 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. Outside Counsel 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. Outside Counsel 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 Outside Counsel 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 Outside Counsel'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 Outside Counsel, 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 Outside Counsel, 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, Outside Counsel, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the ICTF. It is expressly understood and agreed that, as between ICTF and Outside Counsel, 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.

#### XIX. 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 Outside Counsel relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Outside Counsel 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, Outside Counsel is required to safeguard such information from access by unauthorized personnel.

#### XX. 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 Executive Director of ICTF Joint Powers Authority, c/o Port of Long Beach, 925 Harbor Plaza, Long Beach, California 90802, and notice to Outside Counsel 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.

#### XXI. 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. Outside Counsel declares that its authorized TIN is 20-5793439. No payments will be made under this Agreement without a valid TIN.

#### XXIII. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

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

The Outside Counsel 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 Outside Counsel 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 Outside Counsel or Subconsultant will maintain such compliance throughout the term of this Agreement.

#### XXV. 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. Outside Counsel agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

#### XXVII. 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.**

#### XXVIII. 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.

#### XXIX. 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.

#### XXX. 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.

#### XXXI. 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.

**XXXII. 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.

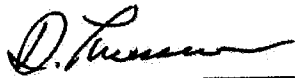
**XXXIII. EXHIBITS; ARTICLES**

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.

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

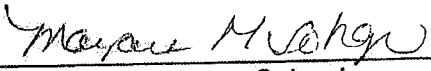
THE INTERMODAL CONTAINER  
TRANSFER FACILITY JOINT POWERS  
AUTHORITY, a Joint Powers Authority

Dated: 9/1/11


By   
Douglas Thiessen,  
Executive Director

THE SOHAGI LAW GROUP, PLC

Dated: 8/31/11

By   
Margaret Moore Sohagi  
Principal

APPROVED AS TO FORM AND LEGALITY  
8/31/11, 2011

By   
THOMAS A. RUSSELL  
ICTF General Counsel

Rev. 06/13/11



**EXHIBIT A**  
**AFFIRMATIVE ACTION PROGRAM 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.

**EXHIBIT A**  
**AFFIRMATIVE ACTION PROGRAM PROVISIONS**

- 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.

**EXHIBIT A**  
**AFFIRMATIVE ACTION PROGRAM PROVISIONS**

- 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;

**EXHIBIT A**  
**AFFIRMATIVE ACTION PROGRAM PROVISIONS**

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

**EXHIBIT A**  
**AFFIRMATIVE ACTION PROGRAM PROVISIONS**

imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.