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DATE: November 29, 2011

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

FROM: Douglas A. Thiessen, Executive Director

SUBJECT: Withdrawal of South Coast AQMD from EIR Preparation

In 2008 the Intermodal Container Transfer Facility Joint Powers Authority (ICTF JPA) entered into a Memorandum of Agreement (MOA) with the South Coast Air Quality Management District (AQMD) for EIR preparation specific to the proposed modernization of the ICTF. A copy of the MOA is attached for your convenience. Withdrawal upon notice is contemplated in Paragraph 9 of the MOA.

The AQMD and the ICTF JPA staff have mutually agreed that it is in their respective best interests to withdraw from the MOA. A copy of a signed letter to that effect is attached.

It is recommended that the Governing Board ratify the withdrawal of the ICTF JPA from the MOA for EIR preparation as provided in the attached letter.

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



Barry R. Wallerstein  
Executive Officer  
South Coast Air Quality  
Management District  
21865 Copley Drive  
Diamond Bar, CA 91765

Douglas A. Thiessen  
Executive Director  
ICTF Joint Powers Authority  
c/o Port of Long Beach  
925 Harbor Plaza  
Long Beach, CA 90802

**Re: *Letter Agreement Withdrawing from the Memorandum of Agreement Between The Intermodal Container Facility Joint Powers Authority And The South Coast Air Quality Management District For The Preparation Of An Environmental Impact Report Specific To The Modernization Of The Intermodal Container Transfer Facility***

The parties to this Letter Agreement are the South Coast Air Quality Management District (“District”) and the Intermodal Container Facility Joint Powers Authority (“ICTF”). The Letter Agreement is made with reference to a memorandum of agreement between the parties dated May 16, 2008, titled “*Memorandum of Agreement Between The Intermodal Container Facility Joint Powers Authority And The South Coast Air Quality Management District For The Preparation Of An Environmental Impact Report Specific To The Modernization Of The Intermodal Container Transfer Facility*” (the “Memorandum of Agreement”).

The Parties agree that it is in their mutual best interest to withdraw from the Memorandum of Agreement. Accordingly, the Parties agree that the Memorandum of Agreement will remain in effect up to and including November 15, 2011, and that after that date both parties mutually withdraw from the Memorandum of Agreement with no further rights and obligations thereunder, except for two provisions which shall remain in effect as described below.

The Parties wish to retain certain rights and obligations created by the following numbered paragraphs of the Memorandum of Agreement:

- Paragraph 10—Confidentiality and Work Product
- Paragraph 11—Retention of Authority.

Except for the provisions of Paragraphs 10 and 11 and the terms of this Letter Agreement, the Parties agree all other rights and obligations created by the Memorandum of Agreement shall terminate effective November 15, 2011. Pursuant to Paragraph 10, the District shall return all copies of all work product prepared in accordance with the Memorandum of Agreement and

any communications, studies, data, maps or other related materials, in any format ("Confidential Materials"), to the ICTF on or before November 18, 2011. If the District believes it is required by law to disclose any Confidential Materials to any third party pursuant to the Public Records Act or otherwise, District shall not release any such Confidential Materials without giving the ICTF notice of the request and the opportunity to apply for a protective order if necessary.

The District shall provide written notice to all subcontractors used by the District to perform work under the Memorandum of Agreement of the dissolution of the Memorandum of Agreement by November 15, 2022. The notice shall terminate all of the District's subcontracts concerning the ICTF effective 30 days after the subcontractors receipt of the notice. The notice shall include instructions to all subcontractors to contact Chris Cannon on behalf of the ICTF regarding the transition of all work product related to the ICTF. If requested, the District agrees to use its best efforts to assign to the ICTF its rights under subcontracts that the District entered into in order to satisfy its obligations under the Memorandum of Agreement.

The Parties agree that no later than December 30, 2011, the District shall submit a final invoice to the ICTF for services performed by the District or its subcontractors required under the District's obligations under the Memorandum of Agreement. The final invoice shall be on a "time and materials" basis for the District's services and any subconsultant services necessary to adequately prepare the draft EIR, and shall also include any amounts retained by ICTF from past-invoiced amounts pursuant to the last sentence of numbered paragraph 8 of the Memorandum of Agreement, which is titled "*Cost of Services*." The ICTF agrees to diligently process the final invoice for payment as soon as reasonably practicable using their normal review and approval protocols.

The date of this Letter Agreement is the date of full execution.

So agreed.

Dated: 11/10/2011

Dated: 11/15/11

Barry R. Wallerstein / by KRW

Barry R. Wallerstein, Executive Officer  
South Coast Air Quality  
Management District

D. Thiessen

Douglas A. Thiessen, Executive Director  
ICTF Joint Powers Authority