

HARBOR COMSN. OFFICIAL COPY

Harbor Department
Agreement 1274
City of Los Angeles

*Approved
June 2, 1983
[Signature]*

1
2 JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE
3 CITY OF LONG BEACH AND THE CITY OF LOS ANGELES
4 TO BE KNOWN AS
5 INTERMODAL CONTAINER TRANSFER FACILITY
6 JOINT POWERS AUTHORITY

7 THIS AGREEMENT, dated _____, 1983, is
8 between the CITY OF LONG BEACH, a municipal corporation, duly
9 organized and existing under a freeholders' charter and the
10 Constitution and laws of the State of California, hereinafter
11 referred to as "Long Beach", and the CITY OF LOS ANGELES, a
12 municipal corporation, duly organized and existing under a free-
13 holders' charter and the Constitution and laws of the State
14 of California, hereinafter referred to as "Los Angeles";

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

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

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

1. Accessory buildings (guard and gate house, repair

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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

1 common powers exercised, in the manner hereinafter set forth.

2 Section 2. TERM.

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

5 Section 3. AUTHORITY

6 A. Creation of Authority.

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

13 B. Governing Board.

14 The Authority shall be administered by a governing
15 board of five members, each serving in their individual capa-
16 cities and shall be called the "Governing Board of the Intermodal
17 Container Transfer Facility Joint Powers Authority" (hereinafter
18 referred to as "Governing Board"). Two members are to be appointed
19 by the Board of Harbor Commissioners of the City of Long Beach,
20 and two members are to be appointed by the Board of Harbor Commis-
21 sioners of the City of Los Angeles. Those four members shall
22 select the fifth member, who shall be approved by the respective
23 Boards of Harbor Commissioners. Each member shall serve the
24 terms below specified, at the pleasure of the appointing author-
25 ity, except that any removal from office of the fifth member
26 shall be by both Boards. Each member of the Governing Board
27 shall serve a five-year term, except that for the initial term
28 one member appointed by the Board of Harbor Commissioners of

1 Long Beach shall serve a two-year term and the other member
2 appointed by the Board of Harbor Commissioners of Long Beach
3 shall serve a three-year term, and one member appointed by the
4 Board of Harbor Commissioners of Los Angeles shall serve a one (1)
5 year term and the other member appointed by the Board of Harbor
6 Commissioners of Los Angeles shall serve a four-year term. The
7 initial term of the members from Long Beach and Los Angeles shall
8 be determined by lot during the first meeting following their
9 appointment. Vacancies during a term and successors following
10 expiration of the term of any member shall be filled in the same
11 manner as the original appointments. Members shall receive
12 \$50.00 per meeting as compensation.

13 C. Meetings of the Governing Board.

14 (1) Regular Meetings.

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

21 (2) Ralph M. Brown Act.

22 All meetings of the Governing Board, including without
23 limitation, regular, adjourned regular and special meetings,
24 shall be called, noticed, held and conducted in accordance with
25 the provisions of the Ralph M. Brown Act (commencing with Section
26 54950 of the Government Code).

27 (3) Minutes.

28 The Secretary of the Governing Board shall cause to be

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

6 (4) Quorum.

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

11 D. Officers.

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

20 Section 4. POWERS.

21 Authority shall have the powers common to Long Beach
22 and Los Angeles necessary to the development of the ICTF and
23 related facilities, to wit: acquiring, constructing, recon-
24 structing, rehabilitating, maintaining in whole or in part,
25 and leasing or selling, in whole or in part, land, facilities
26 and appurtenances necessary or convenient for the development
27 and operation of an ICTF, including the acquisition of such land,
28 facilities, or appurtenances by lease, contract, or purchase or

1 disposal of land by lease of any property of Authority; and to
2 incur debts, liabilities or obligations required by the exercise
3 of these powers which do not constitute debts, liabilities or
4 obligations of Long Beach or Los Angeles, and to sue and be sued
5 in its own name. Authority shall further have the power to
6 operate facilities which have been acquired or constructed in
7 whole or in part by Authority together with the buildings and
8 appurtenances necessary thereto. Said powers shall be exercised
9 in the manner provided in said Act and, except as expressly set
10 forth herein, subject only to such restrictions upon the manner
11 of exercising such powers as are imposed upon the City of Los
12 Angeles in the exercise of similar powers. Authority may also
13 issue revenue bonds, pursuant to Article 2, Chapter 5, Division
14 7, Title 1 of the Government Code of the State of California
15 (commencing with Section 6540, hereinafter called the "Bond
16 Act") and any other applicable laws of the State of California,
17 whether heretofore or hereafter enacted or amended.

18 Section 5. FISCAL YEAR.

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

23 Section 6. DISPOSITION OF ASSETS.

24 At the end of the term hereof, upon the earlier termin-
25 ation of this Agreement, or at such other time as the parties
26 mutually agree, all real property of Authority, including improve-
27 ments which are not removed by operator of ICTF shall either, at
28 Los Angeles' sole discretion, be removed by Authority or all

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

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

1 shall be appointed by the presiding judge. Any vacancy shall be
2 filled by the party who made the original appointment to the
3 vacant place.

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

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

25 If for any reason the division of assets shall not be
26 finally determined within the time period specified above, the
27 matter may then be presented by either party to the courts for
28 a final determination through legal proceedings.

1 Section 7. DESIGN AND CONSTRUCTION.

2 The Boards of Long Beach and Los Angeles shall commence
3 the development of a plan in such phases as they desire for
4 construction of the ICTF. However, said plans for development
5 must be in accordance with the certified EIR for site development
6 of the ICTF area. Authority shall complete said plans and then
7 provide for the construction of buildings and any ancillary
8 structure or structures and site improvements shown on said
9 plans.

10 The construction contract documents for the buildings
11 and any ancillary structure or structures and site improvements
12 shall be approved by Authority. Authority shall call for
13 competitive bids to let construction contracts for ICTF. Author-
14 ity shall award all construction contracts.

15 The construction contracts of Authority shall be admin-
16 istered on behalf of Authority by Los Angeles staff. Said staff
17 shall follow an agreed procedure in the administration of such
18 contract or contracts, in the inspection and testing of materials
19 and other job procedures. Pursuant to Section 4 hereof, all
20 powers of Authority related to construction shall be exercised
21 in the manner provided in this Agreement and subject only to
22 such restrictions upon the manner of exercising such powers as
23 are imposed by the Charter of the City of Los Angeles as it
24 relates to the Los Angeles Harbor Department in the exercise of
25 similar powers.

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

1 1. By written modification of the construction
2 contract or contracts ordered by Authority.

3 2. By written change order signed by the Authori
4 or its designee.

5 3. Any change order issued by the Authority's
6 designee for changes in the work shall be limited
7 to the extent permitted by law, but in no event exceed
8 \$100,000. Any change order exceeding \$100,000 must
9 receive authorization from Authority.

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

19 Section 8. REVENUE BONDS.

20 Authority may issue revenue bonds in accordance with
21 the Bond Act or other available authority for the issuance of
22 such bonds or other evidence of indebtedness (the "bonds") for
23 the purpose of exercising its powers and raising funds necessary
24 to carry out its obligations under this Agreement. Said bonds
25 may be issued in one or more series to match construction
26 phases or may be authorized in different amounts at different
27 times.

28 The sale and issuance of such bonds by the Authority

1 and any resolution authorizing such issuance shall be subject to
2 the prior approval by resolution or ordinance of the Council of
3 the City of Long Beach and the Council of the City of Los Angeles
4 upon request by their respective Boards of Harbor Commissioners.

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

10 Section 9. CONTRIBUTIONS.

11 During the planning and organization of the Authority
12 and subsequent to the formation of the Authority, Long Beach
13 and Los Angeles have and will use public funds, personnel and
14 equipment in furtherance of the objectives and purposes set forth
15 in this Agreement. Pursuant to Government Code Sections 6504,
16 6512.1 and related provisions, the Authority is empowered after
17 issuance of the bonds to reimburse Long Beach and Los Angeles
18 for all payments, advances, use of personnel and equipment which
19 were provided. Such costs for personnel shall include actual
20 costs of all services performed by officers and employees of
21 Long Beach and Los Angeles, including burden and overhead costs,
22 computed in accordance with the standard overhead rate procedure
23 provisions of the Ports of Long Beach and Los Angeles for all
24 officers and employees performing such services.

25 Section 10. CONSULTANTS.

26 Any contracts of Long Beach and/or Los Angeles with
27 bond counsel, financial consultant, engineers, architects, and
28 other consultants and advisors working on the ICTF Project and/or

1 its financing shall be binding on Authority. The fees and expense
2 of such bond counsel, financial consultants, engineers, architects
3 and other consultants and advisors incurred by Long Beach and/or
4 Los Angeles before or after issuance of the bonds shall be paid
5 from the proceeds of such issue.

6 Section 11. PERSONNEL.

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

15 Section 12. ACCOUNTS AND REPORTS.

16 To the extent not covered by the duties assigned to any
17 trustee, the Treasurer of Authority shall establish and maintain
18 such funds and accounts as may be required by good accounting
19 practice or by any provision of any resolution of Authority
20 securing its bonds. All interest earnings are to accrue to the
21 benefit of the Authority. The books and records of Authority
22 in the hands of the trustee or the Treasurer shall be open to
23 inspection at all reasonable times by representatives of Long
24 Beach and Los Angeles. The Authority shall cause to be prepared
25 semi-annually a financial and operating report which shall be
26 submitted to Long Beach and Los Angeles at the addresses set
27 forth in Section 14. The Authority, within 120 days after the
28 close of each fiscal year, shall give a complete written report

1 of all financial activities for such Fiscal Year to Long Beach
2 and Los Angeles. The Auditor/Controller of Authority shall
3 cause an annual independent audit of the accounts and records of
4 the Authority to be made by a certified public accountant, all
5 in accordance with and at the time or times required by law.
6 Any trustee appointed under any resolution of issuance of the
7 bonds of Authority shall establish suitable funds, furnish
8 financial reports and provide suitable accounting procedures
9 to carry out the provisions of said resolution. Said trustee
10 may be given such duties in said resolution as may be desirable
11 to carry out this Agreement.

12 Section 13. FUNDS.

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

22 Section 14. NOTICES

23 Notices hereunder shall be sufficient if delivered to:

24 Long Beach - Executive Director
25 Long Beach Harbor Department
26 Post Office Box 570
Long Beach, CA 90801

27 Los Angeles - Executive Director
28 Port of Los Angeles
Post Office Box 151
San Pedro, CA 90733

1 Authority - Secretary - At such address as
2 Governing Board shall designate
3 for such purpose.

4 Section 15. MISCELLANEOUS.

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

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

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

12 Section 16. SEVERABILITY.

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

22 Section 17. SUCCESSORS.

23 This Agreement shall be binding upon and shall inure
24 to the benefit of the successors of the parties.

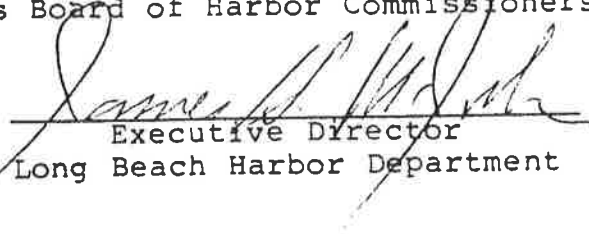
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26 IN WITNESS WHEREOF, the parties hereto have caused
27 this Agreement to be executed and attested by their proper
28 officers thereunto duly authorized, and their official seals to

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 
Executive Director
Long Beach Harbor Department

Attest:

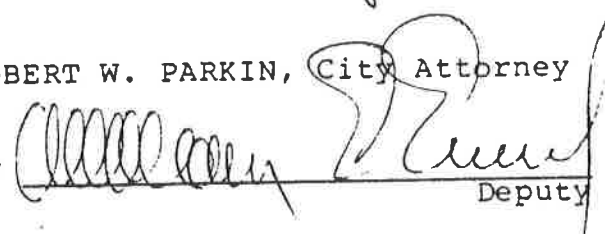
By 
Executive Secretary

Approved as to form this

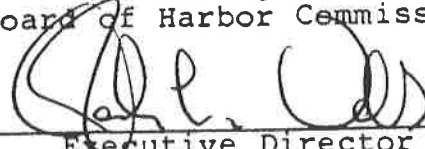
28 day of September

1983.


ROBERT W. PARKIN, City Attorney

By 
Deputy

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

By 
Executive Director
Port of Los Angeles

Attest:

By 
Executive Secretary

Approved as to form this 29 day of September,

1983.

IRA REINER, City Attorney

By  Deputy

WEE:pw
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