

BOND ASSISTANCE PROGRAM LOS ANGELES

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

AND

HARBOR DEPARTMENT

AND

LOS ANGELES WORLD AIRPORTS

AND

DEPARTMENT OF WATER AND POWER

March, 2013

BOND ASSISTANCE PROGRAM LOS ANGELES

MEMORANDUM OF UNDERSTANDING

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THIS MEMORANDUM OF UNDERSTANDING (MOU), is made and entered into by and between the CITY OF LOS ANGELES (CITY), OFFICE OF THE CITY ADMINISTRATIVE OFFICER, RISK MANAGEMENT (representing Non-proprietary Departments) hereinafter called RISK MANAGEMENT, and the Harbor Department and LOS ANGELES WORLD AIRPORTS and DEPARTMENT OF WATER AND POWER hereinafter collectively called DEPARTMENTS and individually called DEPARTMENT. Each DEPARTMENT joining this MOU will be responsible for its own activities as defined in this MOU.

RECITALS:

- A. CITY requires contractors to obtain bid, payment, and performance bonds when working on CITY projects.
- B. It has come to the attention of CITY that some Small, Local contractors are unable to compete for CITY work due to their difficulty obtaining the required surety bonds.
- C. RISK MANAGEMENT and DEPARTMENTS possess certain requisite knowledge and resources to coordinate and assist in the administration of the CITY's Bond Assistance Program Los Angeles (PROGRAM).
- D. Merriwether and Williams Insurance Services (BROKER) competed in a Request for Proposal process and was selected by the CITY to be the Broker on the PROGRAM. CITY has entered into a contract with Merriwether & Williams Insurance Services for Broker services.
- E. Pursuant to the Mayor's Policy Memorandum dated May 5, 2006 in which the Mayor stated his intention to expand the PROGRAM Citywide and encouraged all PROPRIETARY DEPARTMENTS to participate in the PROGRAM.

Now, therefore, the parties do agree as follows:

1.0 CAO RISK MANAGEMENT

RISK MANAGEMENT will:

- 1.1 Coordinate citywide PROGRAM between BROKER and DEPARTMENTS.
- 1.2 Develop PROGRAM components and specifications.
- 1.3 Work with BROKER in designing and creating PROGRAM forms, instructional documents, procedures manuals and other written documents as necessary.

- 1.4 Check monthly invoices for accuracy. Validate dollar amounts, services provided, third party fees, etc. Distribute to appropriate contracting DEPARTMENT.
- 1.5 Execute BROKER Request for Proposal. Provide support for any Contract disputes.
- 1.6 Review monthly progress reports.
- 1.7 Establish PROGRAM cost controls to maintain Guarantee Fund balance and assist departments in maintaining BROKER Contract amount.
- 1.8 Review program on a continual basis looking for ways to improve program such as shared cost structure, streamlined processes for efficiency and cost reduction and expansion of program for economies of scale saving.
- 1.9 Maintain Fund balance and monitor payment of fees and costs. To avoid costly bank penalties, there is currently \$300,000 of General Fund monies available to immediately pay bank for any PROGRAM member default. It is the contracting DEPARTMENT's responsibility to reimburse the Guarantee Fund, within 30 days, for the default amount. Guarantee Fund was established through Ordinance No. 177249.
- 1.10 Establish Line of Credit with authority to enter into Letters of Credit. Monitor balance to ensure PROGRAM does not overdraw.
- 1.11 Assist in settlement of PROGRAM member defaults.
- 1.12 Conduct periodic internal review to verify DEPARTMENT compliance with MOU terms and conditions.
- 1.13 Attend meetings with DEPARTMENT and BROKER as needed.
- 1.14 Provide timely and accurate information to BROKER when needed to administer PROGRAM.
- 1.15 Assist in negotiating sufficient levels for bond placement, i.e. underwriting information, Third Party Funds Administrator (TPFA), Irrevocable Letter of Credit (City Guarantee).
- 1.16 Respond to questions/complaints from City, contractors, BROKER, TPFA, etc.
- 1.17 Allocate PROGRAM costs to DEPARTMENT. Provide, prior to each fiscal year, the annual PROGRAM cost allocation percentages to DEPARTMENTS.
- 1.18 Determine PROGRAM member eligibility (through discussion with BROKER).

- 1.19 Review TPFA contract and Surety qualifications.
- 1.20 Provide additional services as deemed necessary.

2.0 DEPARTMENT

DEPARTMENT will:

- 2.1 Administer PROGRAM for DEPARTMENT contracting activities, if appropriate.
- 2.2 Review and pay monthly invoices directly to BROKER.
- 2.3 Maintain ongoing database of DEPARTMENT contracting activities.
- 2.4 Work with BROKER and TPFA in maintaining funds control.
- 2.5 Provide timely and accurate PROGRAM information to RISK MANAGEMENT when requested.
- 2.6 Review BROKER prepared monthly progress report for DEPARTMENT.
- 2.7 Attend meetings with CITY, BROKER, TPFA, etc.
- 2.8 Provide PROGRAM training to DEPARTMENT staff.
- 2.9 Monitor DEPARTMENT contracting activities.
- 2.10 Work with RISK MANAGEMENT and BROKER in reviewing underwriting information, TPFA.
- 2.11 Review and approve Irrevocable Letter of Credit requests (City Guarantee).
- 2.12 Coordinate with BROKER attendance at pre-bid meetings.
- 2.13 Review PROGRAM language to be included in various City documents, and Departmental contracts.
- 2.14 Determine PROGRAM member eligibility (through discussions with RISK MANAGEMENT).
- 2.16 Define account(s) from where PROGRAM member defaults would be paid. Establish method for reimbursing Guarantee Fund for DEPARTMENT PROGRAM member defaults, up to \$250,000.
- 2.17 Work with RISK MANAGEMENT and BROKER in negotiating sufficient levels for bond placement.

- 2.18 Participate in selection interview process for BROKER. The broker selection panel will consist of one representative from each DEPARTMENT and two representatives from the Office of the City Administrative Officer.
- 2.19 Administer departmental contract and approvals.
- 2.20 Act as lead and work with Risk Management on avoiding any potential PROGRAM member defaults.
- 2.21 Provide additional services as deemed necessary.

3.0 PROGRAM COMPONENTS:

- 3.1 Available only to contractors and subcontractors looking to bid on CITY contracts.
- 3.2 Financial guarantees will not exceed \$250,000 per project.
- 3.3 In an effort to avoid costly banking penalties, RISK MANAGEMENT has established a PROGRAM Guarantee Fund (LAAC 5.168.6, adopted by Mayor/Council on 12/21/05) with General Fund monies to immediately reimburse the bank for any draw (letter of credit) against the line of credit (the City currently has a \$4,000,000 line of credit). There is currently \$300,000 in the fund. The DEPARTMENT will be required to reimburse the Guarantee Fund, within 30 days of the drawdown, for any PROGRAM member defaults that occur within their DEPARTMENT's contracting activities.
- 3.4 The first \$500 cost for financial statement preparation will be the responsibility of the PROGRAM member. The remaining amount will be provided by the City (typically the total cost for financial statement preparation is around \$3,000 to \$3,500). The CITY will provide this service one time only. Any additional preparation of financial statements will be the sole responsibility and cost of the PROGRAM member.
- 3.5 BROKER invoicing will be monthly and will only reflect actual services rendered.
- 3.6 PROGRAM components may only be changed with the written approval of all parties to this agreement.
- 3.7 By July 1st of each year, Risk Management will provide DEPARTMENTS the allocated percentages used to calculate the indirect PROGRAM costs for the next fiscal year. This allocation percentage will be based upon each DEPARTMENT's prior fiscal years actual capital construction costs, not including equipment/installation and land only contracts, as a percentage of the total amount of capital construction costs in the PROGRAM.

3.8 Prior to successfully joining the PROGRAM, DEPARTMENTS must complete the following:

1. Establish and/or identify account(s) to cover the costs for monthly BROKER invoices (amounts based on annual contract limits) and any future PROGRAM member defaults within that DEPARTMENTS construction program (amount may need to be increased based upon higher levels of outstanding letters of credit).
2. Assign a Department staff member and a designee (in case of absence of the primary authority) to authorize letters of credit or other financial guarantee documents in an expeditious manner.
3. Sign and date the BAP LA MOU and Contract (if necessary).
4. Assign staff to assist RISK MANAGEMENT in coordinating Citywide PROGRAM.
5. Receive Board approval of PROGRAM including the use of Letters of Credit or other forms of financial guarantees as collateral guarantees to sureties.

4.0 INDEMNIFICATION

4.1 Each party to this agreement agrees to indemnify and hold harmless all other parties to this agreement for all causes of actions, claims, charges or other demands of any nature, arising from the acts or omissions of the indemnifying party in regard to each party's responsibility under this MOU.

5.0 TERMINATION

5.1 This agreement may be canceled by any member of this MOU with or without cause on thirty (30) days' written notice and payment in full of all proportioned PROGRAM fees, costs and expenses. Said notice, on the CITY'S behalf, will be given by the City Administrative Officer or the Director of Risk Management as designee.

6.0 TERM OF MEMORANDUM OR UNDERSTANDING

6.1 The term of this MOU shall be coterminus with the Broker/Administrator contract.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Memorandum of Understanding on the 1st day of March, 2013 to be effective immediately.

City of Los Angeles

By: _____
Miguel A. Santana
City Administrative Officer

Date: _____

Office of the City Clerk

By: _____

Date: _____

APPROVED AS TO FORM

Carmen A. Trutanich
City Attorney

By: _____
Edward J. Jordan
Deputy City Attorney

Date: _____

Harbor Department

By: _____
Geraldine Knatz
Executive Director

Date: _____

Los Angeles World Airports

By: _____

Gina Marie Lindsey
Executive Director

Date: _____

**DEPARTMENT OF WATER AND POWER OF
THE CITY OF LOS ANGELES
BY
BOARD OF WATER AND POWER COMMISSIONERS
OF THE CITY OF LOS ANGELES**

By _____
Ronald O. Nichols
General Manager

and _____
Secretary

GLOSSARY OF TERMS

1. **BROKER** – The person or company who works on behalf of the City to assist small, MBE/WBE/OBE contractors in obtaining the CITY's required surety bonding. Must have a Broker's license to be a Broker.
2. **Surety bonds** – The financial instrument, required by the CITY to bid on CITY projects, that is written for a specific amount and for a specific project. The dollar amount of the bond is the amount which the surety is willing to front in case a PROGRAM member defaults on the CITY project.
 - a. **Bid Bond** – A guarantee that, if awarded, the contractor will enter into a contract under the same terms and conditions as bid.
 - b. **Performance Bond** – A bond that binds a surety company to complete a construction contract if the contractor defaults.
 - c. **Payment Bond** - Guarantees that subcontractors of the prime contractor will be paid for labor and materials.
3. **Surety** – The bond company that provides the bond on a specific project.
4. **PROGRAM Member** – The contractor or subcontractor who uses the CITY'S Bond Assistance Program to establish or increase their bonding capacity.
5. **Third Party Funds Administrator** – Manages progress payments from the City to a PROGRAM prime contractor or the City's prime contractor payments to a PROGRAM subcontractor, ensuring all subcontractors and material suppliers are appropriately paid.
6. **Irrevocable Letter of Credit** – The instrument that is used by a surety to drawdown from the Letter of Credit as a form of City guarantee.
7. **Line of Credit** – A pool of money provided by a financial institution by which all parties to this agreement can use for financial guarantees.
8. **Underwriting data** – Data gathered by the BROKER and Surety to help make a determination on whether to provide a bond. Usually requires bank statements, tax statements, company financials, application data, etc.
9. **Drawdown** – A withdrawal from the Line of Credit which reduces the pool of available monies for future financial guarantees.
10. **Financial Guarantees** – An amount of money stated in dollars, that the CITY is willing to guarantee to the Surety in case of a default by a PROGRAM member against the bond.

11. Indirect Costs – Those costs of the PROGRAM that are not directly chargeable to a Department or project and are shared by each member of this MOU. These costs are typically all costs that occur prior to successfully bonding a contractor for a specific bid or contract. These costs would include PROGRAM outreach and administration, member consultation and technical assistance, financial statement preparation and review, review of application data, tax statements and company financials, and post award contract monitoring. It includes time spent working with PROGRAM broker, surety and CPA partners. It also includes costs to maintain the PROGRAM's line of credit.
12. Direct Costs – Once a PROGRAM member identifies a City contract that they want to bid on, those subsequent 3rd party costs directly associated with securing the required bonds are considered direct costs. Unlike indirect costs, these costs are not shared by all MOU members but are charged directly to the contracting Department. These costs typically include letter of credit fees for financial guarantees and TPFAs fees. These costs are only incurred if the contractor is the successful low bidder.
13. PROGRAM member default – A PROGRAM member default occurs when a surety is obligated to payment under the bond following a PROGRAM contractor performance or payment.