

HARBOR DEPARTMENT
AGREEMENT 1956
CITY OF LOS ANGELES

MEMORANDUM OF UNDERSTANDING
FOR SERVICES RENDERED BY THE CITY OF LOS ANGELES
TO THE HARBOR DEPARTMENT IN SUPPORT OF THE
TIDELANDS TRUST

Table of Contents

ARTICLE 1.	DEFINITIONS	4
ARTICLE 2.	SERVICES TO BE PROVIDED	6
A.	Routine City Services	6
B.	Convention Center and Recreation and Parks Department Services .	6
C.	Standards of Service	6
D.	Change of Service Level	7
E.	Alternative Service Provider	8
F.	Recreation and Parks Agreements and Permits Superseded	9
ARTICLE 3.	SERVICES PREVIOUSLY RENDERED FOR WHICH ADDITIONAL COMPENSATION IS OWED	10
ARTICLE 4.	TERM OF AGREEMENT	10
A.	Effective Date	10
B.	Renegotiation	10
ARTICLE 5.	INVOICE CYCLE	11
A.	Submittal of Annual Invoice	11
B.	Adjustment of Estimated Prior Year Costs	11
C.	Quarterly Payments	12
D.	Disputed Invoice	12
ARTICLE 6.	PAYMENT CALCULATION	13
A.	Annual Payments - Base Year	13
B.	Annual Payments - Subsequent to the Base Year	14
C.	Overhead Central Service Rates	14
ARTICLE 7.	RECORDS AND ACCOUNTS	14
A.	Audit and Review of Records	14
B.	Advance Identification of Records and Documents	15
ARTICLE 8.	INCOME FROM RECREATION AND PARKS CONCESSIONS AND ADMISSIONS	16
ARTICLE 9.	EQUIPMENT, ALTERATIONS AND CAPITAL IMPROVEMENTS .	16
ARTICLE 10.	RULES AND REGULATIONS	17
ARTICLE 11.	ALTERNATIVE DISPUTE RESOLUTION	17

ARTICLE 12.	SERVICES NOT COVERED BY THIS MEMORANDUM	18
ARTICLE 13.	NOTICES	19
ARTICLE 14.	INDEMNITY	20
ARTICLE 15.	FIRE SERVICE STUDY	21
ARTICLE 16.	CONVENTION CENTER COST CALCULATION METHODOLOGY	21
ARTICLE 17.	FUTURE STUDIES	22
ARTICLE 18.	MISCELLANEOUS	22
A.	Entire Agreement	22
B.	Headings	22
C.	Third Parties	23

- EXHIBIT A - ROUTINE CITY SERVICES
- EXHIBIT B - ADDITIONAL ROUTINE CITY SERVICES
- EXHIBIT C - HISTORICAL AMOUNTS OWED
- EXHIBIT D - SCHEDULE OF PAYMENTS
- EXHIBIT E - MAPS/BOUNDARY DESCRIPTIONS
- EXHIBIT F - SUMMARY OF PAYMENTS

MEMORANDUM OF UNDERSTANDING
FOR SERVICES RENDERED BY THE CITY OF LOS ANGELES TO THE HARBOR
DEPARTMENT IN SUPPORT OF THE TIDELANDS TRUST

This Memorandum of Understanding is entered into by and among the Harbor Department of the City of Los Angeles, a proprietary department of the City of Los Angeles (the "Department"), acting by and through its Board of Harbor Commissioners (the "Board") and the City of Los Angeles, a municipal corporation duly organized and existing pursuant to its Charter and the Constitution and laws of the State of California (the "City"), acting by and through the City Council;

WHEREAS, the City acquired all of the right, title and interests of the State of California (the "State") to certain tidelands and submerged lands located within its boundaries through a series of grants from the State of California, commencing in 1911, (collectively, the "Granted Lands"); and

WHEREAS, the Granted Lands are subject to a public trust imposing certain restrictions on their use and the use of the revenues derived from these lands which public trust is hereinafter referred to as the "Trust"; and

WHEREAS, the fundamental purpose of the Trust is to protect and preserve the tidelands and submerged lands of the State for the benefit of all of the citizens of the State and to that end restrict the use of the granted lands to purposes in connection with or for the promotion and accommodation of commerce, navigation and fishery (individually and collectively, the "Trust Purposes"); and

WHEREAS, with respect to the Granted Lands and the revenues derived therefrom, the Trust confers the status of "trustee" on the City; and

WHEREAS, applicable law imposes a fiduciary responsibility to the Trust beneficiaries on a trustee and requires, among other things, that a trustee administer the trust property in accordance with the Trust and solely in the interests of the Trust beneficiaries; and

WHEREAS, the Charter of the City (the "Charter") has designated a portion of the Granted Lands as the "Harbor District" under the day to day management, supervision, administration and control of the Board; and

WHEREAS, the Charter requires that all money received or collected from or arising out of the operation of the Harbor and Harbor District lands be credited to the Harbor Revenue Fund and that none of the money in the Harbor Revenue Fund shall be appropriated or used for any purpose except as specified in Section 145 of the Charter; and

WHEREAS, under State law, property purchased with trust assets becomes trust property and is subject to the provisions of the Trust; and

WHEREAS, the Board administers the Trust on a day to day basis for the City and may contract for services necessary to preserve and maintain the Trust and may authorize payments from the Harbor Revenue Fund which are fair and reasonable and which are determined to be beneficial to, and consistent with the Trust Purposes; and

WHEREAS, the Department is obligated to reimburse the City for the reasonable cost of services it requires from the City to maintain and further the Trust Purposes and may elect to utilize or operate other City services or facilities which further the Trust Purposes and can lawfully directly incur the cost of or reimburse the City for the reasonable cost of such facilities or services which are deemed to further the Trust Purposes; and

WHEREAS, the City, the Department and the California State Lands Commission entered into an agreement designated as Harbor Department Agreement No. 1106 approved by the City Council and executed by the Mayor on June 30, 1977 (the "1977 Agreement") compromising and settling several claims and disputes between the Department and the City and reiterating the rights and responsibilities of each to charge and pay for the properties used and services provided each to the other; and

WHEREAS, the 1977 Agreement did not directly address the manner or method of the rendering of future services by the City to the Department nor the method or methods of the calculation of the future costs therefor; and

WHEREAS, in 1993 the City undertook a study (hereinafter referred to as the "Nexus Study") to determine whether it was properly recovering the costs of services provided and facilities used to further the Trust Purposes, which Nexus Study was conducted by two law firms and the office of the City Attorney having expertise in Tidelands Trust issues (i.e. O'Melveny & Myers LLP and Orrick Herrington & Sutcliffe) who in turn utilized the services of two independent consulting firms (Ernst & Young LLP and David M. Griffith and Associates) in order to provide (i) a calculation of the true costs of such services since the 1977 Agreement, inclusive and (ii) the appropriate methodology for determining the ongoing costs of such services; and

WHEREAS, the Nexus Study was presented, considered by the Board at a public hearing and following deliberation and the adoption of findings thereon, was approved by the Board pursuant to Board Resolution No. 5510, adopted August 23, 1995 expressing the Board's intent to reimburse the City General Fund for all services identified in the Nexus Study provided to the Department to carry out the purposes of the Trust, including those services provided following the 1977 Agreement, for which full reimbursement had not yet been made; and

WHEREAS, Board Resolution No. 5510 further directed the Executive Director of the Department to negotiate a Memorandum of Understanding relative to repayment of sums owed for prior services, and payments for future services to be provided in support of the Trust; and

WHEREAS, the parties desire a stable, predictable basis for determining the cost of ongoing City services provided to the Department; and,

WHEREAS, the City recognizes the competitive nature of the port business and desires to provide services to the Department that are cost-effective, efficient and necessary in order to insure its competitive position with other ports; and,

WHEREAS, the parties to this Memorandum of Understanding (this "Memorandum") have determined that the services contemplated by this Agreement further the purposes of commerce, navigation and fishery, and are consistent with the responsibilities of the trustee under the Trust;

NOW, THEREFORE, the parties hereto mutually agree as follows:

ARTICLE 1. DEFINITIONS

"Additional Routine City Services" means the incremental increase in Recreation and Parks services and the Convention Center services commencing upon the effective date of this Memorandum.

"Annual Invoice" means the document containing the estimated annual amount owed for services provided to the Department in accordance with this Memorandum as detailed by EXHIBITS A and B attached hereto and incorporated by reference herein plus the increment of historical costs owed, if any, plus or minus the billing adjustment, if any, to reconcile prior estimates with actual costs.

"Authorized Representative" means, with respect to the Department, the Executive Director or his or her duly authorized designees, with respect to other City departments, bureaus or offices, the General Manager, Director or officer or his or her duly authorized designees, and with respect to the City, the City Administrative Officer or his or her duly authorized designees.

"Base Year" means fiscal year 1994-95.

"Billing Adjustment" means the additional amount owed by, or credit due to, the Department after the close of a fiscal year to reconcile the Department's prior year payments to the City to actual costs.

"Change in Service Level" means a change in a departmental program that alters the nature or level of a service described in EXHIBIT A or B.

"Cost Allocation Plan (CAP)" means the City's federally-audited and approved method of allocating costs for purposes of federal reimbursement and grants. The CAP is prepared in accordance with Federal Administrative Regulations (FAR) under OMB Circular A-87, approved annually by the City's Federal Cognizant Agency--the Department of Labor (DOL); and as Audited annually by external auditors retained by the City of Los Angeles.

"Cost of City Services" means, collectively, the cost of all goods and services provided pursuant to this Memorandum by the City, through its various departments, bureaus, officers and employees, both direct and indirect, which are to be reimbursed to the City by the Department.

"General Fund" means the source of funds for general municipal services as established pursuant to Section 380 of the Charter.

"Historical Amounts Owed" means sums not already reimbursed by the Department for services rendered since the 1977 Agreement as identified in the Nexus Study.

"Interim Amendment" means changes in the nature, level or cost of services set forth in EXHIBIT A or EXHIBIT B as herein defined that may be made according to the procedures set forth in Article 2.D of this Memorandum.

"Routine City Services" means those City services set forth in EXHIBIT A hereto.

ARTICLE 2. SERVICES TO BE PROVIDED

- A. Routine City Services: Commencing in the Base Year, the City agrees to provide Routine City Services on an annual basis, as set forth in Exhibit A and as such Exhibit or this Memorandum may be amended from time to time.
- B. Convention Center and Recreation and Parks Department Services: The City further agrees to (i) provide, operate, maintain and preserve certain tidelands-related park and recreation facilities and (ii) to promote Trust Purposes at and through the Los Angeles Convention Center, each as set forth in EXHIBIT B, and as such Exhibit or this Memorandum may be amended from time to time.
- C. Standards of Service: It is recognized by the parties hereto that the trust principles applicable to the Granted Lands require the trustee to pay only the reasonable value of the services necessary to further the Trust Purposes and as a consequence thereof, the Trust cannot pay for unnecessary or unsatisfactory services. The City and its departments wish to provide quality services that meet the needs of the Department and the Trust and at least, a quality of service as provided by other service providers similarly situated. It shall be the responsibility of the Department, through its Authorized Representative, to promptly communicate to the Authorized Representative of each City department, bureau or office providing services pursuant to this Memorandum when any service provided by the City is deemed to be less than satisfactory. Each of the departments, bureaus or offices shall make a good faith effort to

resolve any differences consistent with the principles set forth in this Memorandum. When the Authorized Representative of the Department finds that informal measures fail to produce the desired service, a written communication shall be sent to the service-providing department and a copy of the written communication shall be forwarded to the City Administrative Officer. If the applicable department is not able to improve its service to the satisfaction of the Department the parties shall use the process set forth in Article 11 hereof for addressing such disputes regarding the level and/or quality of that service.

- D. Change of Service Level: The parties recognize that from time to time there may be changes in departmental programs, priorities, plans and cost calculation methodologies that could alter the nature, level or cost of the services described in EXHIBITS A and B. Other than for a change in the cost of a specific item in accordance with Article 6 hereof, all increases and decreases in the cost of services described in EXHIBITS A and B shall be solely authorized by the Department by written amendment to this Memorandum, except that the Authorized Representative of the City and the Department may enter into an Interim Amendment of either EXHIBIT A or EXHIBIT B, or both, provided that (i) the proposed change amounts to no more than 5% in any one fiscal year and 10% for the term of this Memorandum; (ii) any Interim Amendment does not extend into the period to be covered by any subsequent five-year term of this Memorandum as provided in Article 4.B hereof; (iii) the Interim Amendment does not alter the amounts of agreed upon service provided up to and including the effective date of this Memorandum and; (iv) the City Administrative Officer and the Mayor are informed and are given an opportunity to participate in the negotiation of the Interim

Amendment, and the Chief Legislative Analyst is notified of the proposed change which has been submitted to the Mayor pursuant to Executive Directive for consideration as the Interim Amendment. Changes in overhead costs, normal salary increases and budget adjustments for inflation of expense, equipment and special accounts when approved by the Mayor and Council shall not be subject to the 5% or 10% limitations described in this paragraph.

- E. Alternative Service Provider. To the extent permitted by the Charter, the Department may consider reasonable alternatives to the procurement of City services covered by this Memorandum. The City shall use reasonable efforts to accommodate alternatives proposed by the Department that are in the best interests of the Trust, taking into account the obligations of the City as Trustee and, where practicable, those accommodations shall be defined in writing according to the procedures set forth in Article 2.D of this Memorandum.

If the Board desires to consider an alternative service provider for any service covered by this Memorandum, the Board shall communicate its consideration in writing to both the head of the department that is the source of the service and to the Mayor, Council President, Chairperson of the Commerce, Energy and Natural Resources Committee (CENR) City Administrative Officer and the Chief Legislative Analyst, together with an explanation of the reasons therefor and the proposed plan of implementation. Such written communication shall be received no later than six months prior to the date required by the Charter for the Mayor to submit the subsequent year's budget to the Council. The City Administrative Officer will assist the Department and servicing department to resolve any dispute or implement any proposed alternative service to the extent possible

within the Charter, and any other pertinent laws, rules, agreements and restrictions and will keep the Mayor, Council President, Chairperson of the CENR Committee and Chief Legislative Analyst informed.

F. Recreation and Parks Agreements and Permits Superseded: Upon the effective date of this Memorandum, the provisions of the following agreements and permits between the Department and the Department of Recreation and Parks to the extent inconsistent herewith are hereby superseded by the provisions of this Memorandum:

- *Permit and Harbor Department Operating Agreement No. 1516, dated November 14, 1989.* Subject: Maintenance and operation of inner Cabrillo Beach lifeguard service at inner Cabrillo Beach, public boat launch ramp, operation and maintenance of inner Cabrillo Beach parking lot, restrooms and other facilities.
- *Harbor Department Permit No. 384, dated February 2, 1979.* Subject: 30-year permit for use of Harbor Department land to build, operate and maintain Cabrillo Marine Museum and to landscape and maintain Cabrillo Marina.
- *Harbor Department Permit No. 336, dated January 12, 1977.* Subject: Operation of the Los Angeles Maritime Museum on Harbor Department property.
- *Department Permit No. 147 dated June 27, 1969.* Subject: Construction operation and maintenance of a fishing pier on Harbor Department property.
- *Department Lease No. 330 dated July 7, 1978.* Subject: Maintenance of John G. Gibson Park, Berth 85, San Pedro.

- F. To the extent any moneys are due and owing pursuant to such agreements and permits as of the effective date of this Memorandum, such amounts shall be paid within 30 days of such effective date.

ARTICLE 3. SERVICES PREVIOUSLY RENDERED FOR WHICH ADDITIONAL COMPENSATION IS OWED

Based upon the Nexus Study, the Board recognizes that the Department has received certain City services, and full payment for such services has not yet been made to the City. Resolution No. 5510 affirms the Board's intent to reimburse the City for said services, which are identified in EXHIBIT C attached hereto and incorporated by reference herein. Repayment of EXHIBIT C amounts shall be made in accordance with the Schedule of Payments as set forth in EXHIBIT D attached hereto and incorporated by reference herein.

ARTICLE 4. TERM OF AGREEMENT

A. Effective Date:

The effective date of this Memorandum shall be the later of the date of approval of this Memorandum by the City Council and the Board and shall expire 10 years from such date unless otherwise extended by the parties hereto.

B. Renegotiation:

Five years from the effective date of this Memorandum, and every five years thereafter, this Memorandum shall be re-negotiated by the parties to take into account any changed circumstances such as a prior Change in Service Level; or any other current or proposed increase or decrease in a program level; or a savings from increased efficiency; or a new program or activity; or a change to capital program requirements. Negotiation shall begin no later than one year prior to the expiration date of this Memorandum. If no new agreement is reached prior to expiration of this Memorandum, the existing

Memorandum shall continue in effect until such time as a new agreement is reached.

ARTICLE 5. INVOICE CYCLE

A. Submittal of Annual Invoice

During the first quarter of each fiscal year, the City shall submit to the Department an Annual Invoice listing the estimated total fiscal year cost in detail, together with the Fund, Revenue Source Code, and Department for the services described in EXHIBITS A and B, and, the amounts owing for such fiscal year under EXHIBIT D together with any billing adjustments resulting from differences between advance payments, estimated amounts paid, final actual costs and any credits for possessory interest property taxes paid by tenants of the Department and the City's share of tax revenues generated within the Harbor District.

The City Administrative Officer is hereby designated as the responsible party for the City in preparing and submitting the Annual Invoice to the Department.

B. Adjustment of Estimated Prior Year Costs

The parties recognize that the Annual Invoice reflects the best estimate of actual City costs for a given year, and that the actual costs will be determined in the course of a three-year billing cycle. The parties acknowledge that most City costs are not known until after a fiscal year has ended, and certain other costs involving the Cost Allocation Plan are not known until the second year following the year in which service is rendered. Accordingly, each Annual Invoice will contain a line item titled "Adjustment of Estimated Prior Year Costs" to reflect any necessary credit or additional amount owed to

reconcile the prior invoices and payments based on either more refined cost estimates or final actual costs.

C. Quarterly Payments

Each fiscal year, the Department shall make quarterly payments on the amount reflected in the Annual Invoice, with the first such payment to be made no later than the last day of the second quarter. The total amount of quarterly payments during the first two quarters of each fiscal year shall equal at least one-half of the total amount of the City's Annual Invoice. Final payment shall be due and payable before the end of the fiscal year for which service is invoiced.

Annual Invoices submitted by the City shall be subject to the approval of the Authorized Representative of the Department, and shall be paid in the ordinary course of City business.

D. Disputed Invoice

1. *Basis for Dispute:* The Department reserves the right to audit, dispute or challenge any cost contained in the Annual Invoice.

It shall be the responsibility of the Department to bring to the attention of the City within 90 days of receipt of the final cost any disputed item. In the event that the Department disputes or questions the costs of any item in the invoice, it may withhold payment for the amount of that item in dispute, and shall pay the balance of the invoice according to the routine payment schedule.

2. *Notice of Dispute:* The Department shall immediately provide in writing a statement listing the item(s) in dispute, the basis for

the dispute, and any other information that it deems pertinent to the matter. One copy of the written statement of the Department is to be forwarded to the department whose service is in question. A duplicate copy of the statement shall be forwarded to the City Administrative Officer and Chief Legislative Analyst.

3. *Resolution of Dispute:* Any dispute regarding the Annual Invoice shall be brought to the attention of the Mayor and the Council and be resolved in accordance with the procedures set forth in Article 11 herein.

ARTICLE 6. PAYMENT CALCULATION

A. Annual Payments - Base Year.

Base Year Payment: For the Base Year, the Department agrees to pay and the City agrees to accept in full satisfaction thereof the cost of Routine City Services.

Retroactive Adjustment: The parties recognize that this Memorandum is entered into subsequent to the Base Year, and that some or all of the payments called for under this Memorandum may already have been made. Any payments made as of the effective date of this Memorandum for the Base Year will offset any additional amount, if any, still due, and any payments in excess of the agreed upon amounts shall be credited against the cost of City services for the 1995-96 fiscal year or if fully paid, the ensuing fiscal year or years.

- B. Annual Payments - Subsequent to the Base Year: For years following the Base Year, the Annual Invoice will reflect each of the following:

Item	Description
EXHIBIT A	The cost calculations for services described in EXHIBIT A, updated as appropriate by the affected Departments for changes according to Article 2.D. hereof.
EXHIBIT B	Upon the effective date of this Memorandum, the cost calculations for services provided by the Recreation and Parks Department and the Los Angeles Convention Center.
EXHIBIT C	Historical Amounts Owed.
EXHIBIT D	The schedule of payments for Historical Amounts Owed
BILLING ADJUSTMENT	Additional amounts owed or credit due based on the reconciliation of the prior year payments to the actual cost.

The methodology to be undertaken with respect to EXHIBITS A and B shall be calculated and presented in accordance with the annual instructions to all City Departments for calculating "Fees for Special Services Annual Review" prepared by the City Administrative Officer.

- C. Overhead Central Service Rates. For years following the Base Year, the parties agree to use the uniform schedule of indirect cost rates and allocations contained in the Cost Allocation Plan. Where the Cost Allocation Plan is not available, the City and the Department will mutually agree to an alternative overhead cost standard.

ARTICLE 7. RECORDS AND ACCOUNTS

- A. Audit and Review of Records. Both parties acknowledge that the City as Trustee of the Trust is required to provide proper accounting of Trust revenues and expenditures. Accordingly, during the term of this

Memorandum, all books, accounts and other records relating to the services provided by this Memorandum of Understanding (whether performed by the City or a third party), shall be subject to examination and audit by the Executive Director or his or her duly authorized designees.

- B. Advance Identification of Records and Documents. An objective of both parties is the auditable accuracy of costs and other data related to this Memorandum. To this end, the parties agree to designate in advance those records or other documents that shall be sufficient for such examination or audit. To the extent that invoice costs are based on the Cost Allocation Plan, no other documentation shall be required. In the event the Department requires documentation that is not readily available, both parties agree to use their best efforts to develop a satisfactory document standard. To the extent that significant costs are incurred by the City to develop and produce additional documentation or develop new cost accounting systems, those costs shall be passed through to the Department provided they are used solely for the purposes of this Memorandum. To the extent they are developed and used for other than Trust purposes, the parties shall provide for a proper allocation of such costs.

Records related to services provided under this Memorandum shall be retained in a manner consistent with the City Records Retention Plan, Los Angeles Administrative Code Division 12, Sections 12.1 et seq., but for a period of not less than five years.

Upon request of the Department or its Authorized Representative, the City shall provide the exact location of all records and the name and telephone number of the custodian of these records. All records shall

be made available for inspection upon 30 days prior written notice of a request to inspect in order to verify all revenues and expenses associated with the services rendered pursuant to this Memorandum.

ARTICLE 8. INCOME FROM RECREATION AND PARKS CONCESSIONS AND ADMISSIONS

Both parties hereto agree that during the term of this Memorandum, the Recreation and Parks Department shall receive all income from concessions, admissions, facility rentals, filming fees, picnic fees, donations, vehicle parking fees, boat rentals, jet ski rentals, the conduct of various water-oriented classes that may be of benefit to the general public and other income generated from the operation of the facilities included under this Memorandum. Such income shall be expended by the Recreation and Parks Department for operation and maintenance of properties and facilities described in EXHIBIT B. Any such income deposited in the General Fund shall be credited against payments owed according to EXHIBIT B.

Establishment of fees, rates, tolls and charges applicable to the Granted Lands shall require the concurrence of the Executive Director of the Department. Any rules and rates of general application which the Executive Director determines to be appropriate shall be implemented in accordance with the procedures set forth in Section 139(h) of the Charter.

ARTICLE 9. EQUIPMENT, ALTERATIONS AND CAPITAL IMPROVEMENTS

To further the purposes of the Trust, it is the intent of the parties to preserve, maintain and, when necessary, make, upgrade or replace equipment, capital improvements and other assets that are necessary for such maintenance and preservation. During the term of this Memorandum, the City may seek funds from the Department for the acquisition, construction, alteration, modification, preservation, upgrade or replacement of equipment, existing facilities, other

capital improvements or assets under the control of the City departments and related to the provision of services to the Trust under EXHIBIT A or EXHIBIT B of this Memorandum. The City, prior to undertaking such work, shall obtain the concurrence of the Department in writing, stating the costs to be incurred and the necessity for making the improvement. The Department further agrees to respond within 60 days to any request seeking financing of alterations or capital improvements.

The parties agree to negotiate in good faith to insure that the equipment and capital improvements, as defined in the "Departmental Manual for the Budget System of the City of Los Angeles," which relate to EXHIBIT A and EXHIBIT B are preserved, maintained and, when necessary, upgraded or replaced. The parties further agree to consider all possible alternatives for insuring the ongoing satisfactory condition of any assets necessary to provide the services listed in EXHIBITS A and B. The City further agrees to use those special funds appropriated or customarily used for a particular capital improvement before seeking financial support from the Department.

ARTICLE 10. RULES AND REGULATIONS

During the term of this Memorandum, the City agrees to conduct all of its operating and maintenance activities in the areas of, and for the benefit of, the Trust in accordance with all applicable laws, ordinances, rules and regulations set forth by the Board, the City and County of Los Angeles, the State of California and the federal government.

ARTICLE 11. ALTERNATIVE DISPUTE RESOLUTION

A. If a dispute arises between the parties relating to this Memorandum, the parties agree to promptly notify the Mayor, CAO and CLA, and to the fullest extent permitted by law, to use the following procedure to resolve the dispute:

- (i) A meeting shall be held promptly between the parties, attended by Authorized Representatives regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute;
- (ii) If, within 30 days after that meeting, the parties have not succeeded in negotiating a resolution of the dispute or made mutually acceptable progress to do so, they hereby agree to submit the dispute to non-binding mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association and to bear equally the costs of the mediation;
- (iii) The parties will jointly appoint a single mutually acceptable mediator, who meets the principles of neutrality, seeking assistance in this regard from the American Arbitration Association if they are unable to agree upon this appointment within 15 days from the conclusion of the negotiation period;
- (iv) The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of 30 days; and
- (v) within 30 days the parties shall notify the Board of Harbor Commissioners, Mayor, CAO and CLA of the outcome of the mediation process.

ARTICLE 12. SERVICES NOT COVERED BY THIS MEMORANDUM.

The Department may also be obligated to pay for certain City services and costs not covered by this Memorandum. These City services and costs include but are not limited to the following:

- Work that is requested by the Department for which there is an established City fee schedule;
- Services requiring a City permit for which there is an established fee schedule;
- Capital improvement projects which are jointly financed by the City and the Department under separate agreement;

- Other services for which there is a separate agreement unrelated to EXHIBITS A and B.
- Service involving special funds when not covered in EXHIBITS A and B.
- Costs associated with the Department's own employees (e.g. wages, benefits, retirement system costs, and workers' compensation benefits)

ARTICLE 13. NOTICES

The designated representatives for receipt of correspondence related to this agreement are as follows:

Mayor

Attn: Chief of Staff

200 North Spring Street, Room 305 City Hall

Los Angeles, California 90012

President, Los Angeles City Council

200 North Spring Street, Room M-30 City Hall

Los Angeles, California 90012

Chairperson

Commerce, Energy and Natural Resources Committee

200 North Spring Street, Room 239 City Hall

Los Angeles, California 90012

Executive Director

Harbor Department

425 South Palos Verdes Street

San Pedro, California 90731

General Manager
Recreation and Parks Department
200 North Main Street, Room 1330 City Hall East
Los Angeles, California 90012

City Administrative Officer
200 North Main Street, Room 300 City Hall East
Los Angeles, California 90012

General Manager
Los Angeles Convention Center
1201 South Figueroa Street
Los Angeles, California 90015

Chief Engineer and General Manager
Los Angeles City Fire Department
200 North Main Street, Room 1000 City Hall East
Los Angeles, California 90012

ARTICLE 14. INDEMNITY

Pursuant to the provisions of Section 895 of the California Government Code, each of the parties agrees to indemnify the other from liability for third party claims for injury or death to persons or damage to property which arises out of the indemnifying party's acts or omissions in the performance of this Memorandum. In the event of third-party loss caused by the negligence or wrongful act or omission of both parties, each party shall bear financial responsibility in proportion to its percentage of fault as may be mutually agreed between them or as determined by a court of law.

ARTICLE 15. FIRE SERVICE STUDY

The parties agree to jointly finance and support an outside study to benchmark Fire Department services that are provided to the Department with those of other ports providing similar services. The goal is to maintain effective fire protection in the Harbor District while at the same time achieving economies and efficiencies that support the Department's ability to compete effectively with other ports. Such study shall be submitted to the City, the Fire Department and the Department no later than 18 months from the effective date of this Memorandum. Study findings shall be used for planning purposes and to determine whether reasonable economies and efficiencies can be achieved in the cost of fire service.

The City agrees to evaluate the findings of this study in connection with the subsequent year's budget deliberation. To the extent that future budgets reflect economies in Special Fire Services provided to the Department under EXHIBIT A, the City agrees to pass those economies directly on to the Department through its calculation of Annual Ongoing Costs. Any such change shall be made in accordance with the procedures in Article 2.D of this Memorandum.

The parties agree that this Memorandum shall have no effect upon the 1985 Fire Protection Master Plan.

ARTICLE 16. CONVENTION CENTER COST CALCULATION METHODOLOGY

In determining the Convention Center costs allocable to the Department for purposes of computing the Annual Ongoing Costs set forth in EXHIBIT B, the parties agree to use the methodology described in the Ernst & Young Study, although both parties may mutually agree in writing to a different cost calculation methodology or formula after the Base Year.

The City further agrees to retain for a period of five years the summary documentation about Convention Center bookings and other pertinent information that is to serve as the basis for computing the Annual Ongoing Cost to the Department.

Unless a cost calculation methodology different from that of the Ernst & Young Study above has been agreed to in writing before the parties renegotiate this Memorandum, the City agrees to have an independent outside audit firm recompute the amount of compensation owed by the Department for Convention Center costs using the methodology described in the above-referenced Ernst & Young Study.

ARTICLE 17. FUTURE STUDIES

At least once every 5 years the City and the Department shall jointly fund and cause an independent study to be conducted to determine if the services provided under this Memorandum are full, complete, accurate and consistent with applicable trust principles.

ARTICLE 18. MISCELLANEOUS

- A. Entire Agreement. This Memorandum and the EXHIBITS hereto, together with any other agreements referred to herein, contain the entire understanding of the parties hereto with respect to the subject matter. This Memorandum supersedes all prior agreements and understandings, oral and written with respect to this subject matter to the extent they are inconsistent herewith.

- B. Headings. The Article and Section headings contained in this Memorandum are for reference purposes only and shall not in any way affect the meaning or interpretation of the Memorandum.

- C. Third Parties. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person other than the parties hereto and their successors or permitted assigns any rights or remedies under or by reason of this Memorandum.

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

THE HARBOR DEPARTMENT OF THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Date: 6-4, 1997

By *Damon Elzaee*
For Executive Director

Attest: *Rica Viola*
Secretary

THE CITY OF LOS ANGELES, by

Date: JUN 19, 1997

By *[Signature]*
Mayor

Attest: _____

JAMES K. HAHN, City Attorney

By *[Signature]*
Winston Tyler, Sr. Assistant

Budget - FY 19 96/97
Acct. 57040, Ctr. 0900 Proj. 100
Funds Available, Date 5-12-97
[Signature]

\$ 20000000.00

**Exhibit A
Routine City Services**

	Item	Total 1994-95 Base Year Cost
1	<u>Indirect Allocation of Central Service Costs</u> - Controller's Cost Allocation Plan (CAP 19)(Note 1)	\$1,222,548
2	<u>Non-CAP Central Services:</u> - City Administrative Officer (Non-CAP - Proprietary Analysis Group only) - City Attorney (Non-CAP - Harbor Branch only) - Fire Department (Harbor District)(Note 2) - Treasurer (Non-CAP - Custody & Disbursement)	\$117,533 1,139,428 13,732,780 23,894
	Total Exhibit A - Base Year Cost	16,236,183

Note 1: See CAP 19 attached to Exhibit A for Detail

Note 2: See Allocation of Fire Service Costs to Department by Fire Station and Apparatus attached to Exhibit A for Detail

CAP 19 CENTRAL SERVICE COSTS ALLOCATED TO HARBOR DEPARTMENT

This schedule is based on 1994-95 actual costs as presented in the CAP 19 Stepdown Report, adjusted as noted. It is suitable for:

1. Final reconciliation for actual 1994-95 costs compared to previous billings for 1994-95;
2. Update for 1995-96 cost estimate, compared to previous 1995-96 pre bill; and
3. Preliminary estimate for 1996-97 "Pre Bill"

A Central Service Cost Categories	B CAP 18 Previous Year Allocation data * Based on 1993-94 Actual Costs	C	D CAP 19 Most Recent Allocation data * Based on 1994-95 Actual Costs	E	F Difference: D - E
General City Purposes	15,206		16,146		940
Insurance	501		247		(254)
Liability Claims	<i>Paid Directly</i>		<i>Paid Directly</i>		
CAO	25,245		19,343		(5,902)
<i>Employee Relations</i>	22,673		19,343		
<i>Management Audit</i>	2,572		0		
City Atty. Civil Liability/Work Comp	29,303		31,241		1,938
City Clerk, Council & Publ. Svcs.	7,361		8,371		1,010
City Ethics Commission	46,690		17,707		(28,983)
Controller	375,554		283,499		(92,055)
<i>Controller Accounts Payable</i>	<i>Paid Directly</i>		<i>Paid Directly</i>		
<i>Controller Budget & Gen. Acctg.</i>	39,422		38,758		
<i>Controller FMIS</i>	204,515		147,938		
<i>Controller Audit</i>	18,139		587		
<i>Controller Payroll/Fiscal Systems</i>	109,907		92,685		
<i>Controller Workers' Comp.</i>	3,571		3,531		
Council, City Admin.	158,674		82,506		(76,168)
Employee Relations Board	7,691		6,432		(1,259)
Environmental Affairs **	0 **		36,610 **		36,610
General Services	1,994		488		(1,506)
<i>Materials Magement</i>	1,994		458		
Information Services	0		0		0
Mayor, Dept. Liaison	40,184		23,024		(17,160)
Personnel	429,187		437,138		7,950
<i>Personnel, Supt. Svcs.</i>	343,751		342,906		
<i>Personnel, Worker's Comp. (staff only)***</i>	85,436 ***		94,232 ***		
Engineering, General Engineering	5,337		3,718		(1,619)
Treasurer ****	66,195 ****		238,676 ****		172,481
<i>Custody and Disbursement</i>	66,195		238,676		
<i>Cash Mgt/Investmt/Deferred Comp****</i>	<i>na Not in the CAP****</i>		<i>na Not in the CAP****</i>		
CERS Administration Overheads	39,607		17,402		(22,205)
TOTALS	1,248,729		1,222,548		(26,182)

* The above allocations have been adjusted by subtracting items known to have been paid directly by Harbor. Further adjustments may be necessary if other items were directly paid by Harbor without the knowledge of Controller CAP staff.

** CAP 19 included allocations of Environmental Affairs to Harbor, even though Harbor Department was directly billed. As of the CAP 19 cut-off date, Harbor had still not paid the Environmental Affairs bill. Therefore, the allocation was appropriate. If, after completion of CAP 19, Harbor did pay for Environmental Affairs, the payment from Harbor pursuant to this schedule should exclude the Environmental Affairs amount listed above, subject to proof of prior payment.

*** PERSONNEL WORKERS' COMPENSATION: This represents Personnel Dept STAFF only. To subtract the Safety staff imbedded in this cost center, the following calculation is performed:
CAP 19 Workers' Comp/Safety \$107,535 less Safety 13,303 = \$94,232.

**** Treasurer Cash Management/Investment and Deferred Compensation is a "direct cost objective" in the CAP and not included in allocations to any department. It should be billed separately.

10-31

Emergency Fire Department Services
Percent of Total Cost

<u>Fire Station</u>	<u>DMG Pct</u>
Station 38 124 East "I" Street, Wilmington	
Engine 38	3.0%
Lt Force 38	11.5%
RA 38	18.3%
Station 40 330 Ferry Street, Terminal Island	
Engine 40	65.0%
Station 48 1601 South Grand Avenue, San Pedro	
Engine 48	6.0%
Lt Force 48	12.5%
Haz Mat 48	
Station 49 400 Yacht Street, Berth 194, Wilmington	
Boat 3	100.0%
Boat 4	100.0%
Engine 49	16.0%
Station 111 954 South Seaside Avenue, Berth 260, Terminal Island	
Boat 1	100.0%
Station 112 550 Sampson Way, San Pedro	
Boat 2	100.0%
Engine 112	8.0%
RA 112	13.6%
Station 85 1331 West 253rd Street, Harbor City	
Engine 85	0.5%
Lt Force 85	4.0%
RA 85	5.3%
Station 101 1414 25th Street, San Pedro	
Engine 101	2.5%
Station 110 2945 Miner Street, Berth 44A, San Pedro	
Boat 5	100.0%

Note: Percentages based on methodology of David M. Griffith and Associates

Exhibit B
Additional Routine City Services
Effective Upon Effective Date of Memorandum

	Item	Subtotal	Total
1	Convention Center Base Year Cost		\$1,700,808
2	Recreation and Parks		
	- Maintenance and Operation of Cabrillo Marine Aquarium	\$1,098,079	
	- Provision of Cabrillo Beach Lifeguard (Inner Beach)	456,729	
	- Maintenance of Cabrillo Marina & surrounding Property and Maintenance of Cabrillo Beach and Parking Lot (Inner Beach)	376,658	
	- Maintenance of Cabrillo Beach Pier	57,101	
	- Operation of Pier Parking Lot	333,013	
	- Operation of Maritime Museum	495,131	
	- Maintenance of John Gibson Park (100%)	58,178	
	- Maintenance of Point Fermin Park/Light House and Wilder Addition (100%)	234,053	
	- Maintenance and operation of Banning Museum (100%)	357,113	
	- Maintenance and operation of Drum Barracks (25%) (NOTE)	34,710	
	- Citywide Recreation & Parks Construction (8%)	239,168	
	- Pacific Region Construction (8%)	396,278	
	- Pacific Region Rangers (25%)	275,599	
	Subtotal - Recreation and Parks - First Year		<u>\$4,411,810</u>
3	Less Offsetting Revenue:		
	- Parking lot receipts	(\$549,000)	
	- Current Harbor Payment for Recreation and Parks service	<u>0</u>	
	Subtotal-Offsetting Revenue - First Year		<u>(\$549,000)</u>
	Total Net Recreation and Parks - First Year Cost		\$3,862,810
4	Less Harbor Department Fair Market Rental Value Credit For Harbor property used by the City.		(460,278)
5	TOTAL OTHER ROUTINE CITY SERVICES - FIRST YEAR		\$5,103,340

Note 1: In the event the City returns the responsibility for operating the Civil War Drum Barracks to the State of California, the Department shall have no further financial responsibility for operating and maintaining that State museum and historic property unless separately agreed to elsewhere.

Note 2: If Cabrillo Marina is sold to a private operator, the Department shall have no further financial responsibility for maintenance of the Marina property.

Exhibit C
Historical Amounts Owed

Item	Amount Owed	Basis
Overhead Costs	\$ 6,898,800	Ernst & Young, page 30
CIP Costs, Various Projects	1,117,580	Ernst & Young, page 31
Street Maintenance Costs	830,000	Ernst & Young, page 30
Recreation and Parks	4,909,000	Ernst & Young, page 30
Fire Service	53,109,000	David M. Griffith, page 3
Total	\$66,864,380	

Notes:

- (i) David M. Griffith and Associates Study dated December 15, 1994.
- (ii) Ernst & Young Study dated January 1995.

Exhibit D
Schedule of Payments

Fiscal Year	Payment
1994-95	\$14,329,908
1995-96	15,542,751
1996-97	11,153,108
1997-98	14,153,245
1998-99	5,453,245
1999-00	6,053,245
2000-01	178,878
Total Historical Amounts	\$66,864,380

EXHIBIT E

Maps and/or Legal Descriptions of Premises involved in Agreement

<u>Recreation and Parks Agreement/Permit Nos.</u>	<u>Harbor Engineer Drawing No.</u>
Agreement 1516	2-2332
Permit 384	5-4710-1
Permit 336	45365
Permit 147	5-3803
Permit 330	1-1741

Exhibit F
Summary of Payments

Fiscal Year	Exhibit A	Exhibit B	Exhibit C/D	Total Payment
1994-95	\$16,236,183	\$0	\$14,329,908	\$30,566,091
1995-96	15,872,729	0	15,542,751	31,415,480
1996-97	15,787,052	5,103,340	11,153,108	32,043,500