

MEMORANDUM NO. _____

MEMORANDUM OF UNDERSTANDING BETWEEN
THE HARBOR DEPARTMENT OF THE CITY OF LOS ANGELES

AND

THE DEPARTMENT OF RECREATION AND PARKS
OF THE CITY OF LOS ANGELES

FOR THE

PLAZA PARK IMPROVEMENT PROJECT

MEMORANDUM OF UNDERSTANDING BETWEEN
THE HARBOR DEPARTMENT OF THE CITY OF LOS ANGELES AND
THE DEPARTMENT OF RECREATION AND PARKS OF LOS ANGELES
FOR THE PLAZA PARK IMPROVEMENT PROJECT

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into by and between THE HARBOR DEPARTMENT OF THE CITY OF LOS ANGELES, acting by and through its Board of Harbor Commissioners (“Department” or “Grantor”) and THE DEPARTMENT OF RECREATION AND PARKS OF THE CITY OF LOS ANGELES, (“RAP” or “Grantee”).

WHEREAS, in 2003, the Department created a five-year, \$25 million Community Aesthetic Mitigation Program for the communities of San Pedro and Wilmington (“Mitigation Program”) as a result of the China Shipping Settlement Agreement between the City of Los Angeles and the Natural Resources Defense Council, which was approved in March 2003 and later amended in June 2004 (“Amended Stipulated Judgment”); and

WHEREAS, the Mitigation Program mandates that the aesthetic mitigation funds be expended only for open space and park improvements; landscape and beautification projects; or for educational, arts and athletic facilities that reduce the negative impacts resulting from Port of Los Angeles (“Port”) operations in San Pedro and Wilmington; and

WHEREAS, in 2003, the Department solicited improvement projects for the Communities of San Pedro and Wilmington to be funded by the Mitigation Program, which resulted in the submission of the Plaza Park Improvement Project (“Project”) by the Beautification Committee of the San Pedro Chamber of Commerce (“Applicant”), and the subsequent recommendation of this Project to the Board of Harbor Commissioners by the Port Community Advisory Committee; and

WHEREAS, in December 2008, the Board of Harbor Commissioners approved the China Shipping Container Terminal Project Final Environmental Impact Report and the improvement of Plaza Park as a mitigation measure in the document as a place where the public can enjoy views of the Port and of the Vincent Thomas Bridge;

WHEREAS, in December 2008, the Board of Harbor Commissioners approved funding of the Project in an amount not-to-exceed \$5,000,000 of Mitigation Program funds and authorized the Executive Director or designee to negotiate this MOU; and

WHEREAS, Plaza Park is under the jurisdiction of RAP; therefore, RAP will be the responsible agency for Project contracting and construction oversight and will provide Project updates to the Beautification Committee of the San Pedro Chamber of Commerce and the Department.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY RAP

A. RAP will coordinate in good faith with the Harbor Department to establish an implementation approach, project completion schedule, and disbursement schedule which must be approved by the Executive Directors of both departments.

B. RAP shall complete the design and construction of the Project. RAP shall engage contractors, including a qualified landscape architect and other subcontractors, preferably with waterfront and coastal trail experience, as necessary to complete design and construction of the Project. RAP and its contractors shall: (i) provide Department with certain professional, technical and expert services to implement the Project as set forth in concept in Exhibit "A" which may be required and requested by the Department Executive Director or designee; and (ii) be responsible for oversight of all Project work including but not limited to land survey, design completion and approval, construction, and maintenance.

C. RAP shall complete and approve the design and implement Project as closely as possible to the project design attached hereto as Exhibit "A". The attached design is provided as reference and concept as it includes the Applicant's requested components for the park improvement, which is the basis for the allocated funding. In addition to the attached design, RAP must include the following elements in the final design: a system of safe, attractive pedestrian paths and stairways, including signs, arrows, and other design elements that direct visitors up to the park to view the Port. Improvements should include new walkways and railings; a Harbor overview seating area; a Port and bridge overlook area with interpretive signage, including signage for the California Coastal Trail and improved view corridors; and upgraded landscaping and lighting, and other improvements as necessary to make the park a safe and attractive place from which the Port and bridge views could be appreciated. Any interpretive signage related to the Port and the California Coastal Trail shall be subject to approval by the Executive Director or designee. Significant proposed changes in the project scope shall be submitted to the Department and the Chair of the Beautification Committee of the San Pedro Chamber of Commerce for information.

D. During contractor selection, project design and construction, a designee from RAP with responsibility for the project and from Department shall attend a monthly meeting with the Beautification Committee of the San Pedro Chamber of Commerce to update the Project status for the community.

E. Upon Project completion, RAP shall be solely responsible for all maintenance of the property, including all maintenance costs, to which the Department shall not contribute.

II. SERVICES TO BE PERFORMED BY DEPARTMENT

A. Harbor Department will coordinate in good faith with the Harbor Department to establish an implementation approach, project completion schedule, and

disbursement schedule which must be approved by the Executive Directors of both departments.

B. The sole purpose of this MOU is to coordinate an implementation approach and to establish a mechanism through which the Mitigation Program funds will be disbursed by Department to RAP. The Department shall have no responsibility or obligations with respect to RAP's in-kind or management services, funding or administration related to selection of design completion or construction services. The plans describing the Project to be funded by Department are attached as Exhibit "A" for reference and concept. Final design will require Chief Harbor Engineer approval prior to implementation. RAP shall also provide plans to the Applicant at the same time as they are submitted to the Department.

C. The Port Executive Director or designee is designated as the Department's contract administrator who shall decide any and all questions on: (i) the quality or acceptability of the services performed and the manner of performance hereunder, (ii) the interpretation of instructions to RAP, (iii) what constitutes acceptable performance of this MOU, and (iv) the amount of compensation due. Notwithstanding the preceding, the termination of this MOU shall be governed by the provisions of Article III and/or Article IV.

III. EFFECTIVE DATE AND TERM OF MOU

A. Subject to the provisions of Section 245 of the Los Angeles City Charter, the effective date of this MOU shall be its date of execution by all parties hereto. The term of this MOU shall not exceed two years from the date it becomes effective, unless earlier terminated as provided in this MOU.

B. This MOU shall be in full force and effect commencing from the date of its execution by all parties (the "Effective Date") and continue until the earlier of the following occurs:

1. Completion of the Project as described herein.
2. Three years have passed since the Effective Date.

IV. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This MOU is subject to the provisions of the Los Angeles City Charter, Section 320 which, among other things, precludes the Department from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated.

In approving this MOU, the Board of Harbor Commissioners is expected to appropriate sufficient funds to meet the estimated expenditure of funds for the Project

through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the MOU. However, the Board of Harbor Commissioners is under no legal obligation to do so.

The Department, its boards, officers, and employees are not bound by the terms of this MOU or obligated to make payment hereunder in any fiscal year in which the Board does not appropriate funds therefore. Accordingly, subject to the payment provisions of Article V, Grantee (and its contractor) is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the MOU by the Board of Harbor Commissioners.

Although Grantee is not obligated to perform any work under this MOU in any fiscal year (July 1-June 30) in which no appropriation has been made, Grantee agrees to resume performance of the work required by this MOU on the same terms and conditions within thirty (30) days after the end of the fiscal year if an appropriation is approved by the Board of Harbor Commissioners for that work within that thirty (30) days period. Grantee is responsible for maintaining all insurance and bonds during this thirty (30) days period until the appropriation is made; however, such extension of time is not compensable.

Subject to the preceding paragraph, if in any subsequent fiscal year funds are not appropriated by the Board of Harbor Commissioners for the work required hereunder, this MOU shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred, nor relieve Grantor from its payment obligations of Article V.

V. COMPENSATION AND PAYMENT

A. As compensation for RAP's satisfactory performance of the services required by this MOU, the Department shall pay and reimburse RAP at the rates set forth in the disbursement schedule in Article V, Section (C) below.

B. The maximum payable under this MOU to RAP, including reimbursable expenses, shall be Five Million Dollars (\$5,000,000).

C. Department agrees to pay and RAP agrees to accept in full satisfaction thereof a grant of up to Five Million Dollars (\$5,000,000) for implementation of the Project. Disbursements to RAP shall be made as follows:

1. \$890,000 disbursement upon agreement of Project Scope of Work and Project Schedule. This will cover "soft costs" as survey, geotech, CEQA, Project Management, Construction Management and Administration, design, Permits, Inspection, Consultants, etc.;
2. \$ \$2,055,000 (50% of construction costs) disbursement during Bid and Award phase.;

3. \$2,055,000 (50% of construction costs) upon \$25% of construction completion.
4. RAP is responsible for Design, Project Management, and Construction Management for the project.
5. The project may need to be implemented in phases in order to accommodate the various Master Plans impacting the area. The compensation and disbursements, as a result, may need to be revised. The revisions are permitted only if agreed to and authorized in writing by both General Managers/Executive Directors of the Harbor Department and the Department of Recreation and Parks.
6. In the case that the final Project statement shows that total Project disbursements (disbursements 1 through 6) have exceeded total Project expenses and that a surplus balance exists for the project, the Grantee shall return the balance of granted but unexpended funds to the Grantor within sixty (60) days of a written request by the Chief Harbor Engineer or designee.

D. Any additional costs related to the Project are the sole responsibility of Grantee.

E. Any time during the term of this MOU, the Department has the right to audit Grantee's books and records related to the Project, subject to thirty (30) days advance written notice.

F. Grantee shall provide annually and at the end of the grant, a report to the Board of Harbor Commissioners including a detailed account of expenditures and a Project status report.

G. Grantee shall submit invoices in quadruplicate to the Department as scheduled in Article V, Section (C) following the effective date of this MOU for services performed during the preceding period. Each such invoice shall be signed by the Grantee and shall include the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of MOU No. _____ and that payment has not been received.

(Grantee's Signature)

H. Each invoice shall include the following: RAP's Department Number, Fund Number, and Revenue Source Code Number.

I. All Grantee invoices shall be approved by the Harbor Department's Director of Environmental Management or designee prior to payment. All Grantee

invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of Department business, the same may be approved, audited and paid.

J. Grantee shall submit appropriate supporting documents with each invoice. Such documents may include Project updates, photos, and provider invoices. The Department may require, and Grantee shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this MOU.

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

Accounts Payable Section
Harbor Department, City of Los Angeles
PO Box 191
San Pedro, CA 90733-0191

VI. CONTRACTING REQUIREMENTS

The Department requires that RAP use the following contracting requirements for any contractor it hires to construct or otherwise implement the Project:

A. Mutual Hold Harmless Agreement for Public Entities for Post Construction Period

As the Project will be completed by Grantee's contractor, Grantee shall cause its contractor to provide a minimum one year warranty against any defects or workmanship of the improvements, including maintenance. After the warranty period has expired ("Post Warranty Period"), Grantee shall maintain the improvements constructed. Therefore, pursuant to California Government Code Section 895.4, the parties hereto agree to indemnify and hold the other harmless during the Post Warranty Period from all liability for damage, actual or alleged, to person or property arising out of or resulting from the indemnifying party's acts or omissions in the performance of this MOU, including without limitation, Grantee's maintenance of the improvements.

In the event of third party loss caused by negligence, 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 or judicially determined. In this regard, the provisions of California Civil Code Section 2778 regarding interpretation of indemnity agreements are hereby incorporated.

B. Grantee Indemnity for General Liability

Except for the gross negligence or willful misconduct of City, Grantee undertakes and agrees to defend, indemnify and hold harmless the Grantor and any of its board members, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of actions, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of

any nature whatsoever, for death or injury to any person, including Grantee's contractor's and subcontractor's officers, employees and agents, for damage or destruction of any property of either party hereto or of third parties, and/or for any other loss or injury arising in any manner by reason of the negligent acts, errors or omissions, or willful misconduct arising from the performance of this MOU by said contractor or its subcontractors of any tier.

C. Accident Reports

Grantee shall report in writing to the 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) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Grantee's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available: (i) the name and address of the persons involved, (ii) a general statement as to the nature and extent of injury or damage, (iii) the date and hour of occurrence, (iv) the names and addresses of known witnesses, and (v) such other information as may be known to Grantee, its officers or managing agents.

VII. TERMINATION PROVISION

If either party to this MOU fails to perform any of the provisions of this MOU, the non-breaching party may give written notice of such default. If the party in default fails to cure the default within a reasonable time specified by the non-breaching party in the written notice, then the non-breaching party may terminate this MOU by providing written notice of termination to the other party. If the MOU is to be terminated, the reasonable and allowable costs incurred pursuant to this MOU up to the date of termination shall be paid prior to termination of the MOU.

VIII. AFFIRMATIVE ACTION

Grantee, during the performance of this MOU, 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 MOU. All subcontracts awarded by the Grantee shall contain a like nondiscrimination provision. See Exhibit "B".

IX. SMALL BUSINESS DEVELOPMENT PROGRAM

It is the policy of the Department to provide Small Business Enterprises (SBE) and Minority-Owned, Women-Owned and all Other Business Enterprises ("MBE/WBE/OBE") an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Grantee shall assist the Department in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves

and attempt to ensure that all available business enterprises, including SBEs, MBEs, WBEs, and OBEs, have equal participation opportunity which might be presented under this MOU. See Exhibit "C".

NOTE: Prior to being awarded a contract, Grantee's contractor and all subcontractors must be registered with the Department's Contracts Management Database, e-*DiversityXchange*.

X. CONFLICT OF INTEREST

It is hereby understood and agreed that the Parties hereto 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 and Department. The Parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of either Party relating to this MOU. Notwithstanding any other provision of this MOU, it is further understood and agreed that if such financial interest does exist at the inception of this MOU either Party may immediately terminate this MOU by giving written notice thereof.

XI. COMPLIANCE WITH APPLICABLE LAWS

Grantee 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 the Harbor Department's Executive Director.

XII. GOVERNING LAW

This MOU 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.

XIII. NOTICES AND COMMUNICATIONS

The following persons will serve as points of contact for official notices and major issues for the undersigned Parties:

Director of Environmental Management
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731
Telephone: (310) 732-3497
Fax: (310) 547-4643

The Department of Recreation and Parks
Michael A. Shull,
221 N. Figueroa Street, Los Angeles, 90012
Telephone: (213) 202-2655

Fax: (213) 202-2611

XIV. STATE TIDELANDS GRANTS

This MOU is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this MOU 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. Grantee agrees that any interpretation of this MOU and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

XV. INTEGRATION

This MOU constitutes the entire MOU between the Parties hereto with respect to the subject matter set forth herein, and supersedes any and all prior MOUs or contracts on this subject matter between them, either oral or written. This MOU may not be amended, waived, or extended, in whole or in part, except in writing signed by the Parties hereto.

XVI. SEVERABILITY

Should any part of this MOU be found to be invalid, the remainder of this MOU is to continue in full force and effect.

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

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

Dated: _____, 2010

By _____
Executive Director

Attest _____
Secretary

APPROVED AS TO FORM
_____, 2010
CARMEN A. TRUTANICH, City Attorney

By _____
CHRISTOPHER B. BOBO, Assistant

CBB:jpr
04/07/10
Attachments

THE RECREATION AND PARKS DEPARTMENT OF THE CITY OF LOS ANGELES, acting by and through its Board of Recreation and Park Commissioners

Dated: _____, 2010

By _____
President

By _____
Secretary

APPROVED AS TO FORM
_____, 2010
CARMEN A. TRUTANICH, City Attorney

By _____
MARK L. BROWN, Senior Assistant

Account #	21952	W.O. #	_____
Ctr/Div #	7000	Job Fac. #	119-57
Proj/Prog #	000		
Budget			
FY:		Amount:	
	2010/11		\$890,000
	2011/12		\$2,055,000
	2012/13		\$2,055,000
	TOTAL		\$5,000,000
For Acct/Budget Div. Use Only:			
Verified by: _____			
Verified Funds Available: _____			
Date Approved: _____			