

MEMORANDUM OF UNDERSTANDING
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

GAFFEY STREET POOL
(HISTORICALLY CALLED THE HEY ROOKIE POOL)
RESTORATION PROJECT

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THE HARBOR DEPARTMENT OF THE CITY OF LOS ANGELES AND
THE DEPARTMENT OF RECREATION AND PARKS OF LOS ANGELES
FOR THE HEY ROOKIE POOL RESTORATION 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 Hey Rookie Pool Restoration Project ("Project") by the Fort MacArthur Museum Association ("Applicant"), and the subsequent recommendation of this Project to the Board of Harbor Commissioners by the Port Community Advisory Committee; and

WHEREAS, in early 2009, the Fort MacArthur Museum Association applied for Aesthetic Mitigation Funds from the Port of Los Angeles for the purpose of renovating 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 Hey Rookie Pool Restoration Project ("Project") by the Fort MacArthur Museum Association; and

WHEREAS, in May of 2009, the funding was granted to the Fort MacArthur Museum Association; and

WHEREAS, Hey Rookie 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 Fort MacArthur Museum Association; and

WHEREAS, the Grantee has received additional grant funds from the State of California for such restoration projects.

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 and subcontractors 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 attached hereto as Exhibit "A", including but not limited to land survey, design completion and approval, construction, and maintenance.

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

II. SERVICES TO BE PERFORMED BY DEPARTMENT

A. 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 and/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.

B. 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 five 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. Five (5) 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 Six Million Nine Hundred Sixty-Six Thousand Twelve Dollars (\$6,966,012).

C. Department agrees to pay and RAP agrees to accept in full satisfaction thereof a grant of up to Six Million Nine Hundred Sixty-Six Thousand Twelve Dollars (\$6,966,012).for implementation of the Project. Disbursements to RAP shall be made as follows:

1. \$1,300,000 disbursement within 90 days of MOU execution. This will cover pre-design, design, and other direct costs.
2. \$3,060,000 (approximately 50% of construction costs) disbursement during Bid and Award phase.
3. \$2,606,012 (approximately 50% of construction costs) upon 25% of construction completion.
4. RAP is responsible for Design, Project Management, and Construction Management, staffing and maintenance for the project.
5. Revisions are permitted to the disbursement schedule 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 3) 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 Executive Director 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 requests for disbursements 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 request for disbursement shall include RAP's Department Number, Fund Number, and Revenue Source Code Number.

I. All Grantee requests for disbursements shall be approved by the Harbor Department's Director of Environmental Management or designee prior to payment. All Grantee request for disbursements 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 request for disbursement. 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:

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

City of Los Angeles
Department of Recreation and Parks
221 N. Figueroa Street, Los Angeles, 90012
Telephone: (213) 202-2655
Fax: (213) 202-2611
ATTN: Michael Shull, Planning Director

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: _____, 2011

By _____
Executive Director

Attest _____
Board Secretary

APPROVED AS TO FORM AND LEGALITY

_____, 2011

CARMEN A. TRUTANICH, City Attorney
THOMAS A. RUSSELL, General Counsel

By _____
CHRISTOPHER B. BOBO, Assistant

CBB:jpr
09/22/11
Attachments

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

Dated: _____, 2011

By _____
President

By _____
Board Secretary

APPROVED AS TO FORM AND LEGALITY

_____, 2011

CARMEN A. TRUTANICH, City Attorney

By _____
MARIA BRIMSEY, Deputy

Account #	_____	W.O. #	_____
Ctr/Div #	_____	Job Fac. #	_____
Proj/Prog #	_____		
Budget FY:		Amount:	
		\$	
TOTAL:			

For Acct/Budget Div. Use Only:

Verified by: _____

Verified Funds Available: _____

Date Approved: _____

EXHIBIT A

GAFFEY STREET POOL (HEY ROOKIE POOL)

PROJECT SCOPE

The Gaffey Street Pool (historically known as the Hey Rookie Pool) located at 3351 Gaffey Street, San Pedro, CA 90731 will be renovated while retaining much of its historical context. Every effort will be made to maintain and reconstruct the pool to its 1940's original design working closely with responsible agencies to ensure consistency with current health, safety, and building codes. The pool renovation will include:

- Replacement of all tile floor walls and gutters using the same size and types of tile
- Modifications to the pool slope and depths to meet current code requirements
- Minor modifications will be made to pool gutter to meet current codes, but the overall look will remain similar to the 1940's layout
- Complete mechanical systems which include pumps, filtration systems, heating systems, and chemical systems will be replaced
- Deck concrete will be replaced as necessary
- Modification will be made to the upper concrete areas to accommodate access, seating, and patron flow from the above areas to the pool and pool deck area
- All underground pool plumbing and above ground mechanical plumbing will be completely replaced
- Electrical service, pool grounding, panel breakers, and equipment connections will be replaced
- Interior fittings, grates, and hand rails, will be replaced with items custom designed to resemble 1940's products
- Accessibility will include handicap parking stalls, a disabled lift, and stair access on the north side of the pool deck. An accessible restroom will be installed
- Addition of exhibit panels and a historic plaque that gives patrons the story of the pool's historical significance

GAFFEY STREET POOL (HEY ROOKIE POOL)

DISBURSEMENT SCHEDULE

The maximum amount payable under this MOU to RAP shall be \$6,966,012 for the design, construction, and commissioning of the Gaffey Street Pool (historically known as the Hey Rookie Pool) located at 3351 Gaffey Street, San Pedro, CA 90731.

The Department agrees to pay and RAP agrees to accept in full satisfaction thereof a grant of up to \$6,966,012 for implementation of the project. Disbursements to RAP shall be made as follows:

1. \$1,300,000 disbursement upon execution of agreement. This will cover pre-design, design, and other direct costs.
2. \$3,060,000 (50% of construction costs) disbursement during Bid and Award phase.
3. \$2,606,012 disbursement upon 25% of construction completion.

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

BUREAU OF ENGINEERING PROJECT BUDGET SUMMARY



A	PROJECT TITLE:	Gaffey Pool & Bathhouse		
B	WORK ORDER NUMBER:	TBD		
C	PROJECT SCOPE:	Renovate existing 50'x100' Pool and Equipment Room, New Pool Decks, Equipment, and Landscaping. Construct new Bathhouse, New Driveway, and Disabled Access parking spaces. Other Bathhouse options will be explored, ie: Renovate existing Llatrine building & build ADA ramp, Renovate existing latrine & build new ADA bathhouse etc.		
D	CLIENT DEPARTMENT:	Recreation and Parks, Department of ▼		
E	BOE CONTACT:	Bill Lee		
F	TYPE OF ESTIMATE:	<input type="checkbox"/> Class "A" +5% to -10%	<input type="checkbox"/> Class "B" +20% to -15%	<input checked="" type="checkbox"/> Class "C" +30% to -20%
G	PROJECT COST ESTIMATE:			
	ACTIVITIES	PROJECT BUDGET VALUES	PROJECT BUDGET TEMPLATE %	COSTS
1	LAND			
	1.01 Environmental Reviews (Phase I/II)	\$ -		
	1.02 Appraisal/Escrow/Title	\$ -		
	1.03 Acquisition	\$ -		
	1.04 Relocations and Related Costs	\$ -		
	1.05 Land Cost Total			\$ -
2	PRE-DESIGN OWNER COSTS			
	2.01 Real Estate	\$ -	0.0%	
	2.02 Environmental	\$ 61,200	1.0%	
	2.03 Survey	\$ 55,080	0.9%	
	2.04 Geotechnical	\$ 79,560	1.3%	See Note [1]
	2.05 Hazmat Survey	\$ 6,120	0.1%	
	2.06 Entitlement	\$ -	0.0%	See Note [2]
	2.07 Pre-Design Owner Cost Total			\$ 201,960
3	CONSTRUCTION			
	3.01 Site Preparation, Clearing, Demolition	\$ -		
	3.02 Hazmat Abatement	\$ -		
	3.03 Utility Connections	\$ -		
	3.04 Site Improvements/Construction	\$ -		
	3.05 Off-Site Permit(s) for Right-of-Way/Street Work	\$ -		
	3.06 Communication - ITA	\$ -		
	3.07 Furniture, Fixture & Equipment	\$ -		
	3.08 Construction Cost Subtotal			\$ 5,100,000
	3.09 Sustainability Cost	\$ -	0.0%	See Note [3]
	3.10 Design Contingency	\$ 255,000	5.0%	See Note [4]
	3.11 Construction Contingency	\$ 765,000	15.0%	
	3.12 Construction Cost Total			\$ 6,120,000
4	BOE COSTS - DESIGN PHASE			
	4.01 Project Management	\$ 91,800	1.5%	
	4.02 Project Engineering	\$ 30,600	0.5%	
	4.03 Architectural	\$ 306,000	5.0%	
	4.04 Structural	\$ 122,400	2.0%	
	4.05 Mechanical	\$ 79,560	1.3%	
	4.06 Electrical	\$ 79,560	1.3%	
	4.07 Landscaping	\$ 61,200	1.0%	See Note [5]
	4.08 Bid & Award	\$ 30,600	0.5%	
	4.09 Estimating	\$ 12,240	0.2%	
	4.10 BOE Cost Total - Design		13.3%	\$ 779,602

BUREAU OF ENGINEERING PROJECT BUDGET SUMMARY



5	BOE COSTS - CONSTRUCTION PHASE					
5.01	Project Management	\$ 91,800	1.5%			
5.02	Construction Management	\$ 260,100	4.25%			
5.03	Construction Administration/As-Builts	\$ 18,360	0.3%			
5.04	Structural	\$ -	0.0%			
5.05	Geotechnical	\$ 30,600	0.5%			
5.06	Survey	\$ 12,240	0.2%			
5.07	BOE Cost Total - Construction		6.8%	\$ 413,100		
6	TOTAL BOE COSTS			20.1%	\$ 1,192,702	
7	CONSULTANT COSTS					
7.01	(Firm Name)	\$ -				
7.02	(Firm Name)	\$ -				
7.03	Constructability Review/Cost Estimating (Independent)	\$ -	0.0%			
7.04	LEED Commissioning (Independent)	\$ -	0.0%			
7.05	Consultant Cost Total			\$ -		
8	INSPECTION					
8.01	BCA Inspection	\$ 255,000	5.0%			
8.02	Material Testing	\$ 51,000	1.0%			
8.03	BCA Cost Total		6.0%	\$ 306,000		
9	OTHER DIRECT COST					
9.01	Public Art Work	\$ 51,000	1.0%			
9.02	Plan Check; Permits	\$ 76,500	1.5%			
9.03	Printing; Reproduction	\$ 15,300	0.3%			
9.04	Bid Advertising	\$ 2,550	0.1%			Note [6]
9.05	Building Commissioning	\$ 2,040	0.040%			Note [7]
9.06	Other Direct Cost Total		2.9%	\$ 145,350		
10	PROJECT TOTAL COST BEFORE ESCALATION			\$ 7,966,012		
11	CONSTRUCTION COST ESCALATION					
11.01	Projected Construction Cost Escalation	\$ -	0.0%			Note [8]
11.02	Projected Escalation Total			\$ -		
12	PROJECT TOTAL COST			\$ 7,966,012		
13	STAFF COSTS ABSORBED BY DEPARTMENTS			\$ -		
14	FINAL PROJECT COST			\$ 7,966,012		
15	FUNDING SOURCES					
15.01	Harbor Department Funds	\$ 6,966,012				Note [9]
15.02	Prop K	\$ 1,000,000				Note [9]
15.03	Total Funding Available			\$ 7,966,012		
16	FUNDING SURPLUS / SHORTFALL			\$ -		
	Prepared by: Bill Lee					Date: 9/8/11
	Reviewed by: Bill Lee					Date: 9/8/11
	Approved by:					Date:

BUREAU OF ENGINEERING PROJECT BUDGET SUMMARY



General Notes	
1.	The Project Budget Template Percentage values shown are based on a construction cost of \$2,000,000.
2.	All Project Budget Template Percentage values serve as guidelines only. The values shall be reviewed and adjusted if necessary on a project-by-project basis, based on each project's specifics, time and location.
3.	One of the 5 sets of Project Budget Template % values will be automatically loaded when a construction cost is entered. (construction cost <\$100K; \$100K-\$250K; \$250K-\$500K; \$500K-\$2M; >\$2M).
4.	This Project Budget Summary does not include any facility maintenance cost.
Key Notes	
Note [1]:	Minimum geotechnical engineering cost is \$5,000 regardless of construction cost.
Note [2]:	Cost to complete project entitlement with City Planning, including all necessary Master Land Use Application, Conditional Use Permit, Variances, etc.
Note [3]:	Cost reflects the new City Ordinance requiring LEED Silver certified, to take effect July 1, 2009 if passed.
Note [4]:	Design Contingency is a potential additional construction cost associated with designer's errors and omissions, and/or conflicts in the construction documents.
Note [5]:	Minimum landscape architecture design cost is \$5,000 regardless of construction cost.
Note [6]:	Applies only to RAP projects and any large projects that require nation-wide bid advertising.
Note [7]:	For additional testings prior to building occupancy as required by client department and/or GSD not covered in the Construction Documents.
Note [8]:	Per year cost escalation, project to mid point of construction, escalation applies to construction cost only.
Note [9]:	Provide fund information such as Fund/Dept/Acct numbers, funding expiration date (if applicable), Council File number (if applicable).

EXHIBIT B - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

EXHIBIT B - AFFIRMATIVE ACTION PROGRAM PROVISIONS

- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it

EXHIBIT B - AFFIRMATIVE ACTION PROGRAM PROVISIONS

registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;

EXHIBIT B - AFFIRMATIVE ACTION PROGRAM PROVISIONS

4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

EXHIBIT C – SMALL BUSINESS ENTERPRISE PROGRAM

The City of Los Angeles Harbor Department is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the Harbor Department in a manner that reflects the diversity of the City of Los Angeles. The Harbor Department's Small Business Enterprise (SBE) Program was created to provide additional opportunities for small businesses to participate in professional service and construction contracts. An overall Department goal of 25% SBE participation, including 5% Very Small Business Enterprise (VSBE) participation, has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work.

It is the policy of the Harbor Department to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, VSBEs, women-owned business enterprises (WBEs), and minority-owned business enterprises (MBEs). The SBE Program allows the Harbor Department to target small business participation, including MBEs and WBEs, more effectively. It is the intent of the Harbor Department to make it easier for small businesses to participate in contracts by providing education and assistance on how to do business with the City, and ensuring that payments to small businesses are processed in a timely manner.

The Harbor Department defines a SBE as an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121. Go to www.sba.gov for more information. The Harbor Department defines a VSBE based on the State of California's Micro-business definition which is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses. **Based on the work to be performed, it has been determined that the percentage of small business participation will be __%, including __% VSBE participation.** The North American Industry Classification System (NAICS) Code for the Scope of Services under the Agreement is _____. This NAICS Code is the industry code that corresponds to at least 51% of the scope of services and will be used to determine the size standard for SBE participation of the Prime Consultant. The maximum SBE size standard for this NAICS Code is \$_ million.

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs. The Consultant shall not substitute an SBE firm without obtaining prior approval of the City. A request for substitution must be based upon demonstrated good cause. If substitution is permitted, Consultant shall endeavor to make an in-kind substitution for the substituted SBE.

In the event of Consultant's noncompliance during the performance of the Agreement, Consultant shall be considered in material breach of contract. In addition to any other remedy available to City under this Agreement or by operation of law, the City may withhold invoice payments to Consultant until noncompliance is corrected, and assess the costs of City's audit of books and records of Consultant and its subconsultants. In the event the Consultant falsifies or misrepresents information contained in any form or other willful noncompliance as determined by City, City may disqualify the Consultant from participation in City contracts for a period of up to five (5) years.

Consultant shall complete, sign, notarize (where applicable) and submit as part of the executed agreement the attached Affidavit and Contractor Description Form. The Contractor Description Form, when signed, will signify the Consultant's intent to comply with the SBE requirement. Prior to contract award, the Harbor Department will verify the status of all SBEs. In addition, prior to being awarded a contract with the Harbor Department, all contractors and subcontractors must be registered on the City's Contracts Management and Opportunities Database, the Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

AFFIDAVIT OF COMPANY STATUS

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on **the attached Contractor Description Form** is true and correct and include all material information necessary to identify and explain the operations of

Name of Firm

as well as the ownership thereof. Further, the undersigned agrees to provide either through the prime consultant or, directly to the Harbor Department, complete and accurate information regarding ownership in the named firm, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents in association with this agreement."

Please indicate the ownership of your company: SBE VSBE MBE WBE OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
- A Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE or WBE.

Signature _____
Printed Name _____

Title _____
Date Signed _____

NOTARY

On this _____ day of _____, 20____, before me appeared _____ to me personally known, who being duly sworn, did execute the

Name

foregoing affidavit, and did state that he/she was properly authorized by _____

Name of Firm

to execute the affidavit and did so as his or her free act and deed.

SEAL

Notary Public _____

Commission Expires _____

Contractor Description Form

PRIME CONTRACTOR

Contract #: _____ Award Date: _____ Contract Term: _____

Contract Title: _____

Business Name: _____ Award Total: \$ _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE OBE (Please check all that apply)

Primary NAICS Code: _____

Address: _____

City/State/Zip: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____

Services to be provided: _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE OBE (Please check all that apply)

Primary NAICS Code: _____

Address: _____

City/State/Zip: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____

Services to be provided: _____

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Contractor Description Form

SUBCONTRACTOR

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Contact Person/Title: _____

Email address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____

Services to be provided: _____

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Address: _____

City/State/Zip: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email address: _____