

**APPROVED**  
MAY 20 2009

REPORT OF GENERAL MANAGER

NO. 09-117

DATE May 20, 2009

**BOARD OF RECREATION  
and PARK COMMISSIONERS**

C.D. 2 and 12

**BOARD OF RECREATION AND PARK COMMISSIONERS**

**SUBJECT: RESCISSION OF AWARDS TO CONTRACTORS FOR PROPOSITION K PROJECTS AND AUTHORIZATION TO THE GENERAL MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF RECREATION AND PARKS, THE DEPARTMENT OF GENERAL SERVICES, AND THE BUREAU OF ENGINEERING FOR PROPOSITION K WORK AS NEEDED TO OBLIGATE FUNDS BEFORE JUNE 30, 2009**

R. Adams	_____	J. Kolb	_____
H. Fujita	_____	F. Mok	_____
S. Huntley	_____	K. Regan	_____
V. Israel	_____	*M. Shull	<u>MS</u>

*Victor Israel*  
General Manager

Approved ~~\_\_\_\_\_~~  
*as amended*

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATION:

That the Board:

1. Authorize the General Manager to rescind the award of any construction contract awarded during the remainder of this fiscal year, funded in whole or in part by Proposition K, if the contractor has not executed a written contract with the City, and provided the required payment and performance bonds and proof of adequate insurance coverage, within ten days of the contract and bond forms being delivered to the contractor, but in no event later than June 26, 2009; and,
2. After rescission of any such award, authorize the General Manager to execute a Memorandum of Understanding (MOU) by June 30, 2009, for the construction of that project with the Department of General Services (GSD) for construction services and with the Bureau of Engineering (BOE) for construction management, substantially in the form on file in the Board Office in each case to incorporate the scope of the project from the contract for which the award has been rescinded, subject to the approval of the City Attorney as to form.

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SUMMARY:

Proposition K is a City of Los Angeles approved proposition which assesses owners of residential properties \$25,000,000 per year for thirty years to be spent on park improvement projects. One significant condition of this funding requires that money for project construction identified in a particular fiscal year must be obligated by way of an executed contract, prior to the end of the fiscal year. The current fiscal year ends June 30, 2009. If all of the funds are not obligated prior to June 30, 2009, the assessment must be reduced by the amount not obligated, and these funds will be forever lost to the City for any purpose.

In June 2009, the Board of Recreation and Park Commissioners will vote to award ~~two (2)~~<sup>three (3)</sup> Proposition K funded construction projects to the lowest responsible and responsive bidder. Per the bid document, the General Contractor will be required to provide the Department with payment and performance bonds, proof of insurance and appropriate licensing, and to execute the contract between the City and the General Contractor for the work within ten (10) days of receipt of the contract and bond forms from the Board Secretary.

If the General Contractor(s) awarded any of the ~~two (2)~~<sup>three (3)</sup> Proposition K projects are unable to obtain and provide the City with the necessary payment and performance bonds, and insurance and to execute the contract, within the ten (10) days allotted for this effort, there would be insufficient time for another Board meeting to be held to rescind the award and award the contract to another entity.

As a result, the Department believes that a contingency plan is necessary in the unlikely event that any of the General Contractors are unable to timely execute their respective Contract Agreements. The proposed contingency plan consists of authorizing the General Manager to execute a MOU between RAP, BOE and GSD, which would formally obligate the funds and transfer construction of the project to GSD, whose construction division has successfully completed many projects of varying scope for RAP and is authorized to do so by Los Angeles Administrative Code Section 22.535(a)(5).

A sample MOU is provided as Attachment A and a list of the Proposition K Projects, which remain unexecuted, is provided in Attachment B.

FISCAL IMPACT STATEMENT:

There is no anticipated fiscal impact to the Department's budget by transferring as many as ~~two (2)~~<sup>three (3)</sup> Proposition K contracts from private contractors to GSD as it is anticipated that GSD could perform the contracts for the amount bid.

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This report was prepared by Cathie Santo Domingo, Project Manager, Recreational and Cultural Facilities Program, Bureau of Engineering, and reviewed by Neil Drucker, Program Manager, Recreational and Cultural Facilities Program, Bureau of Engineering; Deborah Weintraub, Chief Deputy City Engineer, Bureau of Engineering; and Michael A. Shull, Superintendent of Planning and Development, Department of Recreation and Parks.

**ATTACHMENT A**

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF RECREATION AND PARKS

THE DEPARTMENT OF GENERAL SERVICES

AND

THE BUREAU OF ENGINEERING  
OF THE DEPARTMENT OF PUBLIC WORKS  
OF THE CITY OF LOS ANGELES

FOR THE CONSTRUCTION  
OF THE

FACILITY NAME

FACILITY ADDRESS

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## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made and entered into by and between the Department of Recreation and Parks, hereinafter referred to as RAP, Construction Forces of the Department of General Services, hereinafter referred to as GSD, and the Bureau of Engineering of the Department of Public Works, hereinafter referred to as BOE.

### WITNESSETH

WHEREAS, on November 5, 1996, the voters of Los Angeles approved Proposition K: The Los Angeles for Kids Program, which included improvements for <Facility>; and

WHEREAS, awarding the rehabilitation and construction services of the facility enhancements at <Facility>, to GSD, is in the best interest of the City as the City could not execute a contract timely for this project when publicly bid; and

WHEREAS, GSD has successfully completed numerous rehabilitation/addition/new construction projects; and

WHEREAS, BOE will provide construction management services for the GSD for the facility enhancements at <Facility>; and

WHEREAS, RAP, GSD, and BOE wish to memorialize their understanding in an MOU regarding the terms and conditions of the services to be provided.

NOW, THEREFORE, RAP, GSD, and BOE agree to enter into and abide by the terms and conditions of this MOU.

### ARTICLE I – THE MOU

#### A. PURPOSE OF THE MOU

To establish the responsibility of GSD to provide construction services for the <Facility> located at <Facility Address>.

To establish the responsibility of BOE to provide construction management services and coordinate with GSD and RAP.

To memorialize how BOE will pay GSD for construction services of the <Facility> Project

B. TERM OF THE MOU

This MOU will commence upon execution by the authorized representatives of RAP, GSD, and BOE, and will expire twenty-four (24) months thereafter unless extended by written amendment per Article VIII.A.

C. REPRESENTATIVE OF THE PARTIES OF THIS MOU

The representatives of the respective parties are authorized to administer this MOU and to whom formal notices, demands, requests and communications shall be given are as follows:

1. For RAP:

Jon Kirk Mukri, General Manager  
Department of Recreation and Parks

Attn: Michael A. Shull, Superintendent  
221 North Figueroa Street, Suite 100  
Los Angeles, CA 90012

2. For BOE:

Gary Lee Moore, P.E., City Engineer  
Bureau of Engineering  
Department of Public Works

Attn.: Neil Drucker, Bureau of Engineering, Program Manager  
200 North Spring Street, Suite 2305 CH  
Los Angeles, CA 90012

3. For GSD:

Tony Royster, General Manager  
Department of General Services

Attn.: Nick Pendorf, Director of Construction  
Construction Forces  
111 E. 1<sup>st</sup> Street, 6<sup>th</sup> Floor CHS  
Los Angeles, CA 90012

## ARTICLE II – SERVICES TO BE PERFORMED BY RAP

- A. Consider and approve the Construction documents and specifications before construction commences.
- B. Provide GSD unrestricted access to the project site through mutually agreed upon working hours and working days.
- C. Respond to GSD's Request(s) for Information when owner review and approval is required. Such responses shall be forwarded to BOE for processing.
- D. Review all applicable Shop Drawings and Submittals and approve within seven (7) working days when owner approval is required. Comments shall be forwarded to BOE for processing.
- E. Notify BOE in writing of any owner requested changes to the construction documents and if such changes are outside the current scope of work, RAP shall provide adequate funding for such changes.

## ARTICLE III – SERVICES TO BE PERFORMED BY BOE

- A. Obtain full construction budget appropriation to GSD through actions by the L.A. for Kids Steering Committee and City Council prior to the start of construction.
- B. Review and authorize GSD expenditures, submitted on a quarterly basis, for labor, equipment and material costs incurred by GSD.
- C. Provide a complete permitted set of construction documents and specifications as approved by RAP.
- D. Provide overall Project Management and Construction Management activities, which shall include expenditures vs. budget review, schedule review and weekly meetings with GSD to review budget, design and construction issues.
- E. Respond and approve all of GSD's Request(s) for Information in a timely manner.
- F. Review and approve all mutually agreed upon Change Orders that fall within the budgeted 15% contingency amount, subject to RAP Commission approval, if required.
- G. Approve and process all GSD invoices for all authorized completed work.
- H. Review and approve all submittals and service contracts forwarded by GSD, including shop drawings and product data and samples, for this project in a timely manner.



- I. Advise RAP of any changes that may change the intended function or overall design characteristics of the project.
- J. Participate and prepare the final acceptance inspections of the project in conjunction with RAP. Once all noted items have been corrected, transmit final status report to RAP.
- K. After the end of construction, BOE and RAP shall review and approve "Operational and Maintenance" manuals provided by GSD prior to forwarding the information to RAP.

#### ARTICLE IV – SERVICES TO BE PERFORMED BY GSD

- A. Upon receipt of final plans from BOE, GSD shall conduct a Class "A" estimate to determine final costs of the project. If necessary, adjustments shall be made to the construction costs per Article VIII.A.2.
- B. GSD shall perform all required work to improve the site per the final construction documents and Specifications in compliance with applicable Federal, State and City codes and regulations. For this project, GSD will only be performing the renovations necessary to bring the restroom and parking into compliance with ADA standards as shown in the final construction documents.
- C. GSD shall coordinate with BOE to establish a construction schedule. The schedule shall be subject to the approval of BOE.
- D. GSD shall immediately notify BOE in writing of issues or barriers that impede or delay the completion of the work, including changes to cost estimates and to the construction schedule.
- E. GSD shall immediately notify BOE of the need for modifications by way of a change order. All change orders are subject to the approval of BOE.
- F. GSD shall provide a monthly report, to the BOE within fourteen (14) days of the end of each month, covering all expenditures on the project during construction. The report shall include all costs for labor, equipment and materials incurred through that period.

#### ARTICLE V – RECORD DRAWINGS

- A. After completion of construction, GSD shall revise and correct the final Construction Documents indicating all changes made during construction based on the construction records including, but not limited to, change orders, plan

clarification/corrections and addenda. Each drawing sheet shall be prominently marked "AS-BUILT". These drawings shall be reviewed and approved by BOE.

- B. When the "AS-BUILT" drawings are approved, GSD shall deliver two (2) copies of the Record Drawings to BOE to be forwarded to RAP for its use.
- C. In addition to the Record Drawings above, BOE will deliver to RAP, one (1) updated electronic file and one (1) updated set of Mylar drawings or as required per designer's contract.

ARTICLE VI – TIME PERIODS

- A. It is understood and agreed in this MOU that time is of the essence. The construction phases will be completed within \_\_\_ calendar days from the issuance by BOE to GSD of a Notice-To-Proceed.
- B. The time during which GSD is delayed in its work by BOE or any other agency, whose approval is required, shall be added to the time period for completion. Delays due to unforeseen circumstances, which are not the fault or negligence of GSD, shall also be added to time period for completion.

ARTICLE VII – PAYMENT

A. COMPENSATION

- 1. Upon approval of City Council and Mayor, BOE shall authorize the expenditure of an amount not to exceed \$\_\_\_\_\_ for the complete and satisfactory performance of the terms of this MOU. These funds are available in the following accounts:

Funding Sources	Appropriation	Fund/Dept./Acct. No.	Available balance
Prop. K - YR 7	\$		\$

- 2. The construction cost may be adjusted as necessary upon the completion of the Class "A" estimate. BOE shall approve a cost and/or scope adjustment after authorization from the Proposition K – LA for Kids Steering Committee, and subject to approval of an Amendment to the MOU by RAP Commission per Article VIII.A.
- 3. GSD shall be responsible for all expenditures in excess of the approved budget unless this MOU has been amended prior to expending the funds through an action of the L.A. for Kids Steering Committee and RAP Commission.

B. METHOD AND TIME OF PAYMENT

1. Upon execution of this MOU, BOE shall coordinate with the appropriate City Departments to arrange the appropriation of \$\_\_\_\_\_ into GSD salary and material accounts for construction services.
2. Scheduled payment reimbursements for GSD's services shall be made, on a quarterly basis. GSD shall provide a quarterly report detailing the expenses incurred for that quarter. The amount of the quarterly payment will be based on the number of staff hours and purchase orders directly chargeable to the project supported by timesheet records and the current hourly rate and verification of the purchase orders and if requested, GSD shall provide copies to BOE.

ARTICLE VIII – MODIFICATIONS

- A. Except as otherwise provided herein, this MOU may be altered, modified or amended only in writing, and executed by the parties hereto.
- B. Modifications or extra work requested during the construction phase shall be documented by a Change Order. The Change Order shall contain a description of the scope change or extra work, any additional costs approved by BOE and any time extensions approved by BOE. Change Orders exceeding \$25,000 shall require approval by RAP Commission prior to commencement of the work covered by the change order.
- C. This MOU contains the full and complete agreement between RAP, BOE and GSD. No verbal agreement or conversation with any officer or employee of the parties shall affect or modify any of the terms and conditions of the MOU.

IN WITNESS WHEREOF, RAP, GSD, and BOE have caused this MOU to be executed by their duly authorized representatives.

For: Department of Recreation and Parks

\_\_\_\_\_  
Jon Kirk Mukri, General Manager

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2009

For: Bureau of Engineering, Department of Public Works

\_\_\_\_\_  
Gary Lee Moore, P.E., City Engineer

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2009

For: Department of General Services

\_\_\_\_\_  
Tony Royster, General Manager

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2009

For: Office of the City Attorney

\_\_\_\_\_  
Sr. Assistant/Deputy City Attorney

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2009

## ATTACHMENT B

<u>Project Name</u>	<u>Work Order No.</u>
1 Mason Park – Irrigation Improvements	E170452F
2 Van Nuys Sherman Oaks – Outdoor Field Improvements	E170269F
3. Hansen Dam Phase II - Ranger Station	E170405F