

REPORT OF GENERAL MANAGER

NO. 03-94

DATE March 20, 2003

C.D. 04

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: **CONDITIONAL APPROVAL OF AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF THE WALL LAS MEMORIAS MONUMENT AT LINCOLN PARK**

J. Combs _____
A. Corrales _____
J. Duggan _____
J. Kolb _____

H. Fujita _____
*B. Lukehart BEL
L. Barth _____



General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board:

1. Conditionally approve the proposed Agreement, on file in the Board Office, between the Department and The Wall Las Memorias (Agency) for the construction and maintenance of The Wall Las Memorias Memorial (Memorial) at Lincoln Park subject to meeting requirements in recommendation No. 4;
2. Approve the four proposed artwork pieces, approved by the Cultural Affairs Commission and attached herein, to be made part of said Memorial;
3. Direct the Board Secretary to transmit the agreement to the Mayor for review and approval in accordance with Executive Directive No. 16, and concurrently to the City Attorney for review as to form, and upon the Mayor's and City Attorney's review and approval, forward to the City Council for approval; and,
4. Authorize the Board President and Secretary to execute the agreement upon receipt of the required approvals and completion of the following requirements to the satisfaction of the General Manager:
 - The Agency must be found in compliance with the City's mandated contract compliance process.
 - The Agency demonstrating, through a minimum of three (3) responsive and responsible bids that construction the project can be completed with the available Grant funding.

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- The Agency submitting documentation from the Grant provider, verifying that project funding is available for the construction and maintenance of the Memorial at an equivalent or greater amount than the selected bid.
- The Agency establishes a Security Deposit Account under the sole control and ownership of the Department.
- Security Deposit Account has an initial deposit of \$36,000.

SUMMARY:

On November 20, 2002, the Board approved (Report 02-400) a conceptual plan for the development, construction, and maintenance of the Memorial at Lincoln Park, and thereby authorized the General Manager to negotiate and develop an agreement with the Agency.

Under the proposed Agreement, the Agency will assume full responsibility for funding and construction of the Monument, to be completed by December 31, 2003. The construction and artwork will be funded through a California Arts Council Grant (Grant) and other sources as necessary to fully fund the project. A component of the Agreement is right of entry permission to perform construction after Department approval of final plans and verification of adequate project funding. Once construction is completed, all improvements will become property of the City of Los Angeles. For the subsequent ten years, the Agency, at its sole cost and expense, will also maintain and monitor the Memorial, including but not limited to grounds maintenance, repair, cleaning, custodial services, security, and utilities.

The Grant timeline has stringent deadlines; the Memorial must be constructed and funding spent by June 30, 2003. However, the Agency must meet certain conditions and have an executed Agreement for use of the premises prior to commencing construction. The Agency's minimal construction expertise, along with the pressure of the Grant timeline requirements, have been challenges in this negotiation process. The Agency has struggled to meet mutually set deadlines for submittal of documentation pertaining to City contract requirements and requisites, and sometimes the Agency has made commitments on which they subsequently had second thoughts. At this time, there are several issues that are pending resolution concerning the need to complete contract documentation, assess accurate project costs, secure adequate funding availability, and establish an endowment fund for maintenance.

The project's construction cost has not been adequately determined. The Department's Planning and Construction Division estimates the project cost to be \$375,000, with \$37,500 in contingencies, a projected budget total of \$412,500. The Agency submitted a rough estimate of \$359,064 excluding contingencies, area restoration, insurance and bonds, and costs associated with work changes/additions required by the Department. Under either cost estimate, adequate

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project funding has not been established. In order to accommodate its estimated construction cost of \$359,064, on February 13, 2003, the Agency requested the California Arts Council to reprogram the construction line item budget in the Grant from \$344,000 to \$385,000. The Agency is currently waiting reprogramming approval from the California Arts Council. There is also a disparity in the estimated yearly maintenance cost for the project. The Agency's maintenance estimate is \$9,350 per year; the Department's maintenance estimate is \$25,000 per year.

The Agency's original proposal included establishing an Endowment Fund for the maintenance of the Memorial. The Department was receptive to the proposal, taking into consideration that in the event the Agency could no longer fulfill their maintenance responsibility, the endowment fund could be utilized as interim funding, until permanent funding was identified and/or the Memorial removed. The Agency agreed to establish a \$150,000 fund. However, recently the Agency determined that it could not raise the \$150,000. To accommodate the Agency, the terms of the endowment fund were renegotiated as follows: the Agency will make an initial deposit of \$36,000 before or at the execution of the Agreement; a second deposit will be made in the amount of \$36,000 by December 31, 2003, and final deposit of \$78,000 will be made by December 31, 2004, for a total of \$150,000. Failure to deposit funds on this schedule or to maintain the full level of funding would be a default of the agreement, leading to removal of the Memorial. It should be noted that the Agency has only identified \$5,000 available funding for this purpose to date. Furthermore, to ensure that funds are available in the event of maintenance responsibility default in the part of the Agency, the Department, on the advice of the City Attorney, requested control of the Endowment Fund. The Agency does not agree and wants full control over the Endowment Fund. There has been discussion about a security deposit in lieu of the Endowment Fund, but such an option has not been settled.

It is essential that adequate project costs and funding be established prior to constructing the Memorial because there are no existing or future City funding sources available for the construction or maintenance of this project. The Department cannot assume funding responsibility for construction or maintenance of this project. Consequently, the City could be exposed to claims should the Agency fail to complete the construction project.

On February 20, 2003, the Cultural Affairs Commission approved four art pieces and two alternates. The Memorial will display a total of six art panels, therefore, the Department recommends the Board approve the four artwork pieces and request the Agency to return with two additional works of art for Board and Cultural Affairs Commission approval.

The aforementioned issues associated with this project do not provide adequate project stability. However, conditional approval of the Agreement will provide the Agency additional time in which to complete the City's standard contract process and to meet all remaining requirements,

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while the Agreement is processed through the approval steps. If approved by the Mayor and ultimately the City Council, final execution of the Agreement will be contingent on the Agency meeting each requirement below, explicitly to the satisfaction of the General Manger. Failure to fulfill any of the requirements disallows execution of the Agreement.

A. Agreement Negotiations

- Agency must agree to comply with all City of Los Angeles' standard contract provisions and must have satisfactorily completed and submitted all required compliance documents.

B. Project Construction

- Based on a minimum of three (3) responsive and responsible bids, the Agency must demonstrate that construction of the project can be completed with the available Grant funding.
- Project cost, as reflected on the selected bid must not exceed the available funding.
- The Agency must submit for Department review and approval, copies of the bids received, a complete project cost breakdown (based on the selected bid), and project timeline.

C. Funding

- The Agency must provide documentation from the Grant provider verifying that adequate funding is available to complete the project, according to the selected bid.

D. Security Deposit Account

- A Security Deposit Account (Account) must be established and approved by the City Attorney.
- The total amount to be deposited in the Account by the Agency by December 31, 2004, shall be \$150,000.00, pursuant to the following schedule of deposits:
 - Initial Deposit:** On or before execution of this Agreement, Agency shall make an initial deposit of a minimum of \$36,000.00 to the Account.
 - Second Deposit:** On or before December 31, 2003, Agency shall make a second deposit of a minimum of \$36,000.00 to the Account.
 - Final Deposit:** On or before December 31, 2004, Agency shall make a final deposit to the Account in the amount necessary to bring the total amount deposited by Agency to \$150,000.00. Should Agency's first two deposits pursuant to this schedule be the minimum amounts prescribed herein, then the final deposit shall be \$78,000.00.
- Said account shall be under the sole control and ownership of the Department.

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In accordance with the requirements of the California Environmental Quality Act (CEQA), a Mitigated Negative Declaration (MND) and a Mitigation Monitoring and Reporting Program was prepared and adopted by the Board on November 20, 2002.

Report prepared by: Blanca Gomez-Revelles, Management Analyst II, Real Estate and Asset Management Section.