

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT ("Agreement") is entered into as of July 19, 2016 by and among the CITY OF MANHATTAN BEACH, a municipal corporation ("City"), OCEANOGRAPHIC TEACHING STATIONS, INC., a California non-profit corporation ("OTS"), and THE HARRISON GREENBERG MEMORIAL FOUNDATION, a California corporation ("Foundation"). Collectively, City, OTS, and Foundation are referred to herein as the "Parties."

RECITALS

A. The State of California owns the Manhattan State Beach Pier. Pursuant to an operating agreement with the State of California dated August 1, 1988 (the "Operating Agreement"), City has management responsibility for the pier, including a structure situated at the west end of the pier described in Exhibit B-4 of the Operating Agreement and popularly referred to as the "Roundhouse".

B. City has entered into an agreement with OTS dated September 6, 2005 (the "OTS Agreement"), pursuant to which OTS operates an aquarium in the Roundhouse. The aquarium is open to the general public and offers classes on marine science, both at the Roundhouse and through an outreach program.

C. Foundation has offered to raise and contribute sufficient funds (the "Foundation Grant") to fund a major renovation of the Roundhouse Aquarium (the "Renovation Project"). To date, Foundation has pledged \$1,250,000 towards the Renovation Project, and will undertake additional fundraising efforts to meet the total project cost, currently estimated at between \$1,600,000 and \$2,500,000, all subject to the terms and conditions of this Agreement.

D. City has offered to provide \$150,000 in funding towards the construction of the Renovation Project and \$100,000 of in-kind services, such as staff time for permitting, plan check, and inspection of the Renovation Project.

E. Section 7 of the Operating Agreement authorizes City, with the approval of the State of California, to undertake projects to improve the property which is the subject of the Operating Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

1. **GRANT CONDITIONS.**

(a) City agrees that it shall:

(i) Use Foundation Grant funds solely to support the Renovation Project. Any income derived from the temporary investment of Foundation Grant funds shall be used for the Renovation Project and for no other purpose;

(ii) Maintain a systematic record on a fund-accounting basis of the disbursement of funds and expenditures incurred under the terms of this Agreement and make substantiating documents available to Foundation upon request; and

(iii) Without limiting City's obligations pursuant to Paragraph (i) above, not use any of the Foundation Grant (A) to intervene in any election; to support or oppose any political party or candidate for public office; or to engage in any lobbying or voter registration; (B) to make any grant to any other organization or to any individual; or (C) to undertake any activity for any purpose other than one that is made for exclusively public purposes as defined in Section 170(c)(1) of the Internal Revenue Code of 1986 as amended.

(b) Notwithstanding anything to the contrary herein, the granting of any portion of the Foundation Grant is contingent upon compliance by City with the terms and conditions of this Agreement, as determined by Foundation in its reasonable discretion.

(c) If City intends to terminate or modify the Renovation Project, or take action that is inconsistent with the terms and conditions of this Agreement, City will immediately notify Foundation, and Foundation shall determine at its sole discretion whether to cancel the Foundation Grant. In that event, Foundation may terminate this Agreement in accordance with Section 11, any remaining Foundation Grant funds designated for the Renovation Project shall be returned to Foundation in accordance with paragraphs (b) and (c) of Section 11, and no further Foundation Grant amounts shall be due or owing.

2. ENGAGEMENT OF PROFESSIONAL FIRMS AND CONTRACTORS. All professional firms, and all contractors and subcontractors, will be engaged by City in accordance with the terms and conditions of this Agreement.

(a) The Parties agree that it is necessary to contract with one or more design firms to complete the design of the Renovation Project, and that the services of such other professional firms as engineering, CEQA/permitting, and marine specialists (collectively, "Professional Firms") will be needed. The Parties further agree that the Renovation Project will benefit from the expertise of a Project Manager with the requisite experience to oversee development and construction of the Renovation Project. The services of the Project Manager will be provided as needed, and the Project Manager shall be compensated in accordance with a specified budget. The Project Manager shall meet on a regular basis, and in any event not less than once a month, with a coordination committee, consisting of one or more representatives of City, Foundation and OTS. City will be responsible for (i) engaging and selecting the Project Manager and other Professional Firms with input from OTS and Foundation and (ii) issuing all Request-for-Proposals ("RFPs"). City shall obtain the consent of Foundation and OTS prior to issuance of RFPs for any design firms, which consent shall not be unreasonably withheld.

(b) City will be responsible for issuing the Invitation for Bids for the general contractor and will award the contract to the contractor selected in compliance with applicable state law, with input from OTS and Foundation.

(c) All Parties acknowledge that OTS has unique experience and expertise in acquiring and operating exhibit tanks, life-support systems, exhibit lighting and related equipment

(collectively, "Marine Equipment"). Accordingly, OTS and the Foundation shall participate in the preparation of any RFPs for Marine Specialists. Upon receipt of the proposals, City shall provide the proposals to OTS and the Foundation for their review and input. In the event that the City receives a written objection to a Marine Specialist from OTS or the Foundation within five days of City's delivery of the proposals to OTS and the Foundation, City will remove that Marine Specialist from consideration. For purposes hereof, "Marine Specialist" shall mean an individual or firm who specializes in the design, fabrication or installation of Marine Equipment.

3. DEPOSIT OF FUNDS PRIOR TO CONSTRUCTION.

(a) City will coordinate the procurement of a Project Manager. Prior to City entering into a contract with the Project Manager, Foundation shall deposit the "First Deposit" with City. The First Deposit shall be in an amount that the Parties agree is sufficient to pay the cost of the Project Manager through completion of design and permitting of the Renovation Project, including a 10% contingency amount. City shall have no obligation to contract with the Project Manager until Foundation has made the First Deposit.

(b) Prior to City entering into a contract with firms for design and other necessary professional services, Foundation shall deposit the Second Deposit with City. The Second Deposit shall be in an amount that the Parties agree is sufficient to pay the cost of the professional services through completion of design of the Renovation Project, including a 20% contingency amount. City shall have no obligation to contract with those professional firms until Foundation has made the Second Deposit.

(c) Prior to City entering into a contract with the general contractor, Foundation shall deposit the Third Deposit with City. The Third Deposit shall be in an amount that the Parties agree is sufficient to pay the cost of the Project Manager through the completion of construction, including a 20% contingency amount. City shall have no obligation to enter into the construction contract until Foundation has made the Third Deposit. Notwithstanding anything to the contrary herein, the Third Deposit is contingent upon Foundation's receipt, comment and approval of the Schematic Design drawings for the Renovation Project.

(d) Foundation Grant funds shall be deemed trust funds impressed with an obligation to be expended by City solely for the Renovation Project. City shall establish a separate fund for the Renovation Project, which is separate from the general funds of City (the "Roundhouse Fund"), and shall deposit all Foundation Grant funds and funds from other sources for the Renovation Project into the Roundhouse Fund. All interest accruing to monies in the Roundhouse Fund shall remain in the Roundhouse Fund.

(e) City shall have authority to use the monies in the Roundhouse Fund to pay the costs of the Project Manager, design firm(s), planning and environmental firms, construction contractor, and related expenses. Within fifteen (15) days after each month-end, City shall provide OTS and Foundation a monthly report detailing expenditures from the Roundhouse Fund during the prior month, and identifying any anticipated shortfall. In addition, City shall, upon reasonable request, provide Foundation and/or OTS copies of statements of work, invoices and other Renovation Project related documents.

4. DEPOSIT OF FUNDS FOR CONSTRUCTION.

(a) Once a final design and final cost estimates have been approved by Foundation, OTS and City, and all necessary governmental and regulatory approvals have been obtained, Foundation will fund the balance of the funds estimated to be necessary to complete construction of the Renovation Project, including a 20% contingency amount and the expenses authorized by Paragraph (d) hereunder (the "Renovation Grant"), provided that the total funds needed for this deposit shall not exceed the fund balance available of the Foundation Grant. City, with input from Foundation and OTS, will determine if the amount of the Foundation Grant plus other third party funds available to City are sufficient to complete the Renovation Project. City shall have no obligation to issue the invitation for bids for the construction contract for the Renovation Project until Foundation has deposited the Renovation Grant with City.

(b) Once bids for the construction work have been received, if the total of the amount of the selected bid, plus a 20% contingency amount and the estimated total of the expenses authorized by paragraph (e) hereunder, exceeds the amount of the Renovation Grant deposited by Foundation pursuant to paragraph (a) of this Section 4, Foundation will, in its sole and absolute discretion, have the option to either (i) fund the balance of the funds necessary to complete construction of the Renovation Project (the "Funding Shortage" together with the Renovation Grant, collectively, the "Renovation Grants") or (ii) terminate this Agreement in accordance with Section 11. If Foundation terminates this Agreement, any remaining Foundation Grant funds designated for the Renovation Project shall be returned to Foundation in accordance with paragraph (b) of Section 11, and no further Foundation Grant amounts shall be due or owing. If Foundation funds the full amount of the Renovation Grants, City will fund its portion of the construction costs up to a maximum amount of \$150,000 ("City Grant"). City shall have no obligation to enter into a contract with the general contractor to complete construction of the Renovation Project and deposit the City Grant until Foundation has deposited the full amount of the Renovation Grants.

(c) Once bids for the construction work have been received, if the total of the amount of the selected bid, plus a 20% contingency amount and the estimated total of the expenses authorized by Paragraph (e) hereunder, does not exceed the amount of the Renovation Grant deposited by Foundation pursuant to paragraph (a) of this Section 4, or if Foundation agrees to cover any Funding Shortage as provided in paragraph (b) of this Section 4, then the Parties shall promptly agree upon a final budget for the Renovation Project (the "Final Budget"). Any material variance from the total amount of the Final Budget must be approved in writing by Foundation, City and OTS. City shall have no obligation to enter into a contract with the general contractor to complete construction of the Renovation Project and deposit the City Grant, and demolition or other physical alteration of the current Roundhouse shall not begin, until all Parties have agreed on the Final Budget.

(d) The Renovation Grants, as well as the City Grant, shall be deposited into the Roundhouse Fund.

(e) Funds from the Renovation Grants may only be used to pay for construction of the Renovation Project and for such ancillary purposes as are agreed upon by the Parties in writing. The Parties hereby agree that funds from the Roundhouse Account shall be used to pay

for arrangements to preserve the animal specimens currently housed at the Roundhouse and temporary facilities to enable the Roundhouse to continue operations during the construction period, and consulting on the Renovation Project by OTS staff (to the extent such consulting is requested by City or the Project Manager), all in accordance with the Final Budget.

5. PROJECT DESIGN. The final architectural drawings shall be prepared by the selected design firms, under the supervision of City. The final architectural drawings shall be based on the preliminary Conceptual Design attached hereto as Exhibit A and incorporated herein by this reference. City shall have the right of approval of the design of the Renovation Project, with input and approval from OTS and Foundation. All Parties agree that the materials to be used in the Renovation Project shall be environmentally compatible with the mission and operation of an aquarium and shall not be toxic to marine life.

6. APPROVALS. City will be responsible for obtaining all necessary approvals for the Renovation Project from the California Department of Parks and Recreation, the California Coastal Commission and any other agencies from whom approvals may be required. City shall be responsible for compliance with the California Environmental Quality Act.

7. NO CREDITOR RIGHTS. No third party or any of City's creditors or any trustee shall have any right or claim in the Foundation Grant or the proceeds of any part thereof by any purported assignment or transfer at any time. No other party may rely upon the terms and conditions of the Foundation Grant. City recognizes that the Foundation Grant is being made solely for the purposes herein set forth and with the understanding that accomplishment of the Foundation Grant's purposes must be performed by City or under its direction.

8. INDEMNIFICATION. City shall indemnify, hold harmless and defend Foundation and OTS from and against any and all liability, loss, damage, expense and cost of every nature and causes of action arising out of or in connection with this Agreement or the Renovation Project, except for claims arising from the negligence or willful misconduct of Foundation or OTS, respectively.

9. NO AGENCY. Nothing herein shall be considered to create an agency, partnership or joint venture relationship between or among any of the Parties to this Agreement.

10. NO PERSONAL BENEFIT. The Foundation Grant shall be used solely for the Renovation Project and no City official, employee, consultant or agent may obtain any personal benefit as a result of the Foundation Grant.

11. TERMINATION.

(a) Any Party may terminate this Agreement upon fifteen (15) days' written notice to the other Parties, prior to agreement on the Final Budget pursuant to paragraph (c) of Section 4. After agreement on the Final Budget, this Agreement may be terminated only upon mutual consent of all Parties.

(b) If this Agreement is terminated prior to award of the construction contract, the remaining balance in the Roundhouse Fund after all contracted professional services have been

paid shall be returned to Foundation within ten (10) days and no further Foundation Grant amounts shall be due or owing.

(c) If this Agreement is terminated after award of the construction contract, the remaining balance in the Roundhouse Fund after (i) all contracted professional services have been paid, (ii) the general contractor has been paid, including payment to properly restore the site to pre-existing condition or to an alternate condition agreed upon by the Parties, and (iii) return of the City Grant to City, shall be returned to Foundation within ten (10) days and no further Foundation Grant amounts shall be due or owing.

12. MISCELLANEOUS. Foundation's obligations hereunder are conditioned on the execution of this Agreement by the Parties. Nothing in this Agreement shall be deemed to grant to City or OTS any right related to any of the trademarks, trade name or goodwill of Foundation or any of its affiliates. This Agreement and its rights and obligations may not be assigned by City or OTS to any third party. This Agreement may not be modified except in a writing signed by the Party against who enforcement is sought. This Agreement is the entire agreement of the Parties on the subject hereof and supersedes all other agreements, understandings, communications, etc., whether written or oral.

13. ACKNOWLEDGMENTS. The Parties hereby acknowledge and agree that:

(a) No construction may begin until animals housed at the existing Roundhouse Aquarium have been temporarily relocated to other facilities, which will allow for continued operations and will accommodate the teaching curriculum;

(b) OTS will be responsible for the operations and maintenance of the Roundhouse Aquarium after construction completion to a standard acceptable to City;

(c) The improvements to the Roundhouse resulting from the Renovation Project shall be the property of the State of California; and

(d) There will be no signage on the exterior of the Roundhouse, other than signage approved by City. There will be no exterior commercial advertising.

(e) A memorial (generally consistent with the preliminary specifications set forth in Exhibit B attached) recognizing the contributions of Foundation, subject to comment and approval by Foundation, shall remain displayed in the Roundhouse so long as the Roundhouse Aquarium remains in operation.

14. NOTICES.

(a) All notices and demands shall be given in writing by certified or registered mail, postage prepaid, and return receipt requested, by personal delivery or by overnight courier. Notices shall be considered given upon the earlier of (a) personal delivery; (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested; or (c) one business day following deposit with an overnight courier. Notices shall be addressed as provided below for the respective party; provided that if any party gives

notice in writing of a change of name or address, notices to such party shall thereafter be given as demanded in that notice:

City: City of Manhattan Beach
1200 Highland Avenue
Manhattan Beach, California 90622
Attention: Mark Danaj, City Manager
Telephone: (310) 802-5053
E-mail Address: mdanaj@citymb.info

OTS: Oceanographic Teaching Stations, Inc.
P.O. Box 1
Manhattan Beach, California 90267
Attention: President

Email Address: _____

With a copy to:

Hillel T. Cohn
Morrison & Foerster LLP
707 Wilshire Boulevard
Los Angeles, California 90017
Email Address: hcohn@mofo.com

Foundation: The Harrison Greenberg Memorial Foundation

_____, California _____

Attention: _____

Telephone: (____) _____

Email Address: _____

15. COUNTERPARTS. This Agreement may be executed in any number of counterparts by the Parties hereto. Each of such counterparts shall be deemed to be an original and all such counterparts shall constitute but one and the same instrument.

16. ATTORNEYS' FEES. If any dispute arises between the Parties hereto regarding the interpretation or the enforcement of this Agreement, the prevailing party or parties shall recover from the losing party or parties all reasonable expenses, attorneys' fees and court costs incurred by the prevailing party or parties.

17. GOVERNING LAW. This Agreement shall be construed in accordance with the laws of the State of California. Foundation has signed this Agreement in Manhattan Beach; all Parties have obligations hereunder to perform in Manhattan Beach, and all Parties consent to venue and personal jurisdiction in the County of Los Angeles, State of California.

18. WAIVER. Except as otherwise provided in this Agreement, no waiver on the part of any party of any right it may have shall be implied from any failure to take action. To be

effective, any such waiver must be in writing and signed by the party to be charged with the waiver. One waiver shall not be interpreted as a waiver of the obligations to comply with the applicable or related provisions in the future.

19. EXHIBITS. All exhibits described in this Agreement which are attached hereto are incorporated herein by this reference.

20. HEADINGS. The headings of the paragraphs of this Agreement are for the convenience of reference only and are not and shall not be used to define or limit the terms hereof.

21. SEVERABILITY. In case of or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein unless the effect thereof would materially alter the benefits or burdens hereof the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Cooperation Agreement as of the day and year first above written.

CITY OF MANHATTAN BEACH (City),
a California municipal corporation

Oceanographic Teaching Stations, Inc. (OTS), a
California non-profit corporation

By: _____
Mark Danaj, City Manager

By: _____
Name:
Title:

ATTEST:

The Harrison Greenberg Memorial Foundation
(Foundation), a California corporation

By: _____
Liza Tamura, City Clerk

By: _____
Name:
Title:

APPROVED AS TO FORM:

By: Quinn M. Barrow
Quinn M. Barrow, City Attorney

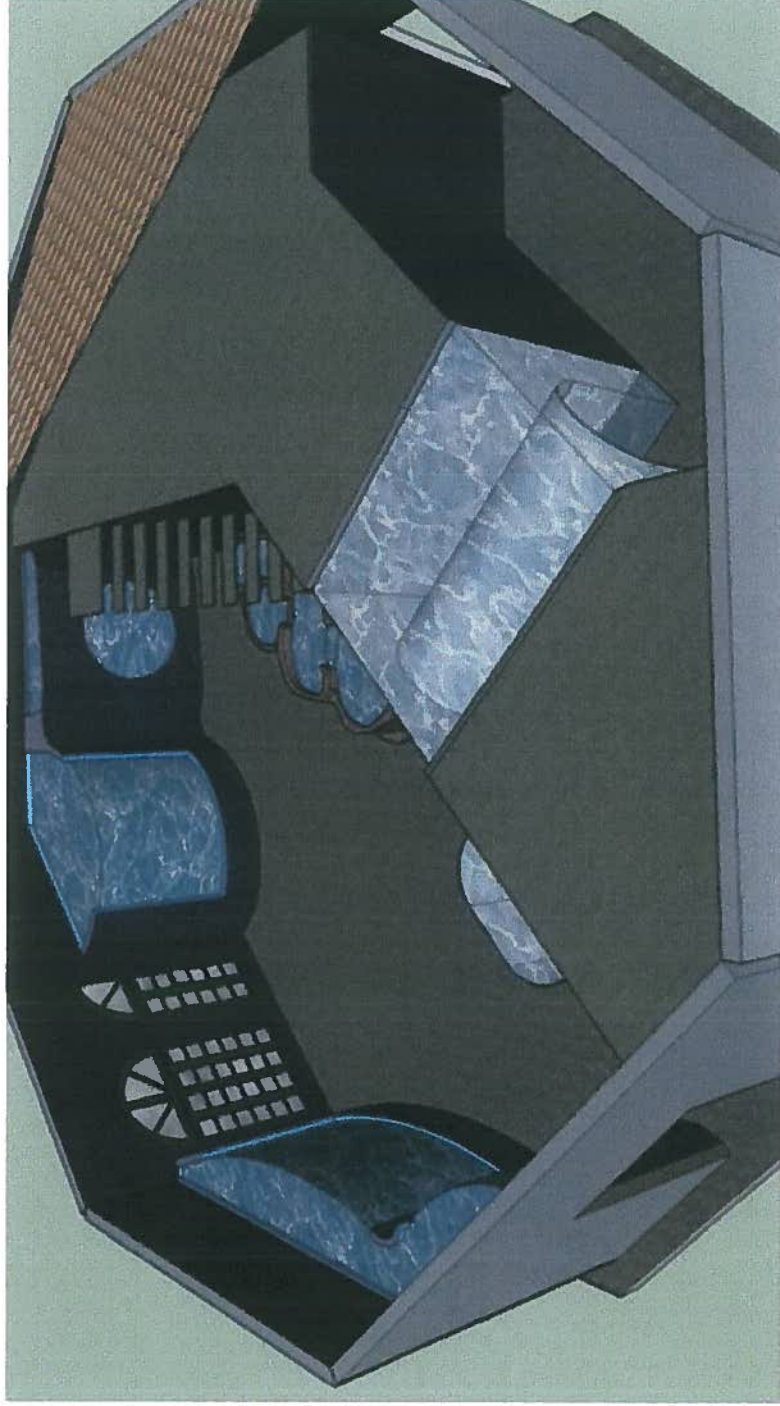
EXHIBIT A

CONCEPTUAL DESIGN

Conceptual Design



Conceptual Design



Conceptual Design



EXHIBIT B

PRELIMINARY SPECIFICATIONS FOR :MEMORIAL PLAQUE



- Memorial Plaque shall:
 - Resemble a manhole cover similar to the photo above
 - Shall not exceed 36 inches in diameter
 - Set flush with the finished floor
 - Writing to include something similar to: "Round House Beautification Project in loving memory of Harrison Greenberg"