

APPROVED

AUG 11 2010

REPORT OF GENERAL MANAGER

NO. 10-203

DATE August 11, 2010

BOARD OF RECREATION  
and PARK COMMISSIONERS

C.D. 9

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: ROSS SNYDER RECREATION CENTER – PARKING LOT AND BASKETBALL COURT (W.O. #E170941F) – RELEASE OF MONEY WITHHELD UNDER CONTRACT NO. 3268

R. Adams	_____	F. Mok	_____
H. Fujita	_____	K. Regan	_____
S. Huntley	_____	*M. Shull	<u><i>[Signature]</i></u>
V. Israel	_____		

*[Signature]*  
General Manager

Approved *[Signature]*

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATION:

That the Board

1. Approve the forfeiture of \$35,056.46 on the Ross Snyder Recreation Center - Parking Lot and Basketball Court (W.O. #E170941F) project for wage restitution, penalties and unpaid training funds;
2. Authorize the Chief Accounting Employee to transfer funds in the amount of \$7,675 to Revenue Source 4331 – Penalties and Forfeitures for Fund 100 Department 76 of the City’s General Fund.
3. Authorize the Chief Accounting Employee to prepare a payment in the amount of \$210.20 payable to the California Apprenticeship Council, and forward the payment to the Bureau of Contract Administration, Office of Contract Compliance for processing to the State of California, Department of Industrial Relations; and
4. Authorize the Chief Accounting Employee to prepare a payment in the amount of \$27,171.26 payable to the State of California, and forward the payment to the Bureau of Contract Administration, Office of Contract Compliance for processing to the California Labor Commission.

REPORT OF GENERAL MANAGER

PG. 2

NO. 10-203

SUMMARY:

The Office of Contract Compliance has determined that the prime contractor on the Ross Snyder Recreation Center - Parking Lot and Basketball Court (W.O. #E170941F), Tobo Construction, Inc. (Tobo), failed to comply with the labor compliance requirements of the contract. Based on the evaluation of the inspector logs, certified payroll records, worker complaints, worker interviews, and other pertinent payroll documents, it has been determined that Tobo failed to pay the correct prevailing wage rate and under-reported the number of workers employed on the project.

On June 24, 2009, a source document review (SDR) of Tobo's payroll documents was conducted at their place of business. During the review, Tobo failed to provide all the pertinent payroll records requested. In the ensuing investigation, the Office of Contract Compliance also received worker complaints and worker interviews alleging an underpayment of wages and unreported workers on the jobsite. Based on the evaluation of the certified payroll records, inspector logs, and the rest of the payroll documents, it has been determined that Tobo failed to pay the prevailing wage rate and under reported the number of workers on the project. On September 10, 2009, a letter (Attachment A) was sent to Tobo Construction, Inc., summarizing the details and calculations of a wage restitution assessed against their company for failing to pay the specified prevailing wage rates. On May 27, 2010, the City of Los Angeles and Tobo Construction, Inc., reached an agreement (Attachment B) wherein Tobo agreed to allow the City to permanently withhold the revised sum of \$35,056.46 in order to resolve the labor compliance issues on this project.

The total amount of wage restitution, State penalties, and unpaid training fund contributions to be forfeited from the final retention is \$35,056.46 as detailed below:

<u>CONTRACTOR</u>	<u>ALLOCATION</u>	<u>AMOUNT</u>
Tobo Construction Co., Inc.	Wage restitution	\$27,171.26
	State penalties	\$7,675.00
	Unpaid training funds	\$210.20
TOTAL		\$35,056.46

FISCAL IMPACT STATEMENT:

The sum of \$7,675 will be deposited into Revenue Account 4331 - Penalties and Forfeitures for Fund 100, Department 76 of the City's General Fund. Payments will be made out of funds already appropriated for this project. There is no fiscal impact to the Department's General Fund, as funds for this project have already been appropriated for this purpose.

This report was prepared by LaTonya D. Dean, Commission Executive Assistant.

CITY OF LOS ANGELES

CALIFORNIA



ANTONIO R. VILLARAIGOSA  
MAYOR

BOARD OF PUBLIC WORKS  
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COMMISSIONER

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EXECUTIVE OFFICER

ATTACHMENT A

JOHN L. REAMER, JR.  
Inspector of Public Works  
and  
Director

Bureau of  
CONTRACT ADMINISTRATION  
Office of Contract Compliance  
1149 South Broadway, Suite 300  
Los Angeles, CA 90015

(213) 847-1922  
<http://bca.lacity.org>

CERTIFIED MAIL

Tobo Construction, Inc.  
Attention: Misa Tang  
500 Shatto Place, Suite 320  
Los Angeles, CA 90020

September 10, 2009  
OCC File No.: K09-001  
Contract No.: C3268

Dear Ms Tang:

**ROSS SNYDER RECREATION CENTER**

**W.O. E170941F**

This letter is to inform you that your company, Tobo Construction, Inc., has failed to pay the specified prevailing wage rates to workers employed in the execution of the above contract. The certified payroll records, inspector logs, and pertinent payroll documents submitted to our office, substantiate an underpayment of wages.

Please be advised that Sections 1774 and 1815 of the California Labor Code specify that prevailing wage must be paid at all times for public work contracts.

**Section 1774:**

The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

**Section 1815:**

(in part) work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1½ times the basic rate of pay.

Any contractor found to be in violation of underpayment will be penalized according to Sections 1775 and 1813 of the California Labor Code:

September 10, 2009

Section 1775:

The contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her.

Section 1813:

The contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty five dollars (\$25) for each workman employed in the execution of the contract or by any subcontractor for each calendar day during which the workman is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article.

A portion of your retention payment may be withheld until this matter is satisfactorily resolved. Section 1727 of the California Labor Code specifies the withholding of forfeited sums:

Section 1727:

Before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts which have been forfeited pursuant to any stipulation in a contract for public work, etc.

For your convenience, the Summary of Wage Restitution and Penalty Log reflects the total wage restitution and city penalties. Please refer to the summary for instructions on preparing the checks. The Wage Restitution and Penalty Log which details the dates and workers for which required rates were not paid is also enclosed. Please prepare wage restitution checks payable to the workers based on the gross amounts specified. We request that the checks be received in our office within ten days of receipt of this letter.

Please mail the checks promptly to the following address:

Office of Contract Compliance  
Attention: Jose Abad (K09-001)  
1149 South Broadway, Suite 300  
Los Angeles, CA 90015

September 10, 2009

If you have any questions, please contact Jose Abad by telephone at (213) 847-2673 or by email at jose.abad@lacity.org.

Sincerely,

HANNAH CHOI, Program Manager

By

  
JOSE RAMIREZ, Labor Compliance Officer  
Labor Compliance Section

/Attachments  
cc: chrono/lile

**REVISED SUMMARY OF ASSESSED WAGE RESTITUTION AND PENALTY LOG**

OCC FILE NO.: K09-001

August 21, 2009

WO NUMBER: E170941F

PROJECT: Ross Snyder Recreation Center

CONTRACTOR: Tobo Construction, Inc.

Workers Name Social Security No.	Restitution Required	1775 Penalties	1813 Penalties	*Training Fund Contributions
Acosta, Robert XXX-XX-3760	\$238.62	\$50.00	\$0.00	\$0.00
Bucio, Gerardo XXX-XX-2222	\$318.16	\$50.00	\$0.00	\$0.00
Campos, Jaime XXX-XX-8587	\$2,942.98	\$600.00	\$0.00	\$0.00
Campos, Juan XXX-XX-7733	\$1,511.26	\$250.00	\$0.00	\$0.00
Cho, David XXX-XX-6482	\$159.08	\$50.00	\$0.00	\$0.00
Corneja, Fernando XXX-XX-3011	\$1,764.37	\$250.00	\$125.00	\$0.00
Durazo, Francisco XXX-XX-3903	\$159.08	\$50.00	\$0.00	\$0.00
Godínez, Rolando XXX-XX-7090	\$636.32	\$200.00	\$0.00	\$0.00
Guirao, Freddy XXX-XX-1678	\$1,272.64	\$200.00	\$0.00	\$0.00
Gutierrez, Jose XXX-XX-XXXX	\$1,590.80	\$250.00	\$0.00	\$0.00
Kim, Kyung XXX-XX-4510	\$238.62	\$50.00	\$0.00	\$0.00
Mares, Jose XXX-XX-7971	\$1,408.16	\$200.00	\$0.00	\$0.00
Pena, Fredy XXX-XX-3154	\$556.78	\$150.00	\$0.00	\$0.00
Ramirez, Emilio XXX-XX-XXXX	\$159.08	\$50.00	\$0.00	\$0.00
Rubalcava, Juan XXX-XX-4955	\$636.32	\$100.00	\$0.00	\$0.00
Serrano, Miguel XXX-XX-1143	\$835.17	\$150.00	\$0.00	\$0.00
Solorzano, Rafael XXX-XX-3205	\$159.08	\$50.00	\$0.00	\$0.00
Torres, Jose XXX-XX-8768	\$1,113.56	\$200.00	\$0.00	\$0.00
Valenzuela, Vicente XXX-XX-7979	\$397.70	\$100.00	\$0.00	\$0.00
Vallardes, Lorena XXX-XX-5566	\$861.65	\$200.00	\$100.00	\$0.00
Doe 1, John XXX-XX-XXXX	\$8,749.40	\$1,550.00	\$0.00	\$140.80
Doe 2, John XXX-XX-XXXX	\$2,823.67	\$500.00	\$0.00	\$45.44
Doe 3, John XXX-XX-XXXX	\$1,749.88	\$300.00	\$0.00	\$28.16
Doe 4, John XXX-XX-XXXX	\$954.48	\$150.00	\$0.00	\$15.36
Doe 5, John XXX-XX-XXXX	\$318.16	\$50.00	\$0.00	\$5.12
<b>TOTALS</b>	<b>\$31,555.02</b>	<b>\$5,750.00</b>	<b>\$225.00</b>	<b>\$234.88</b>

**DIRECTIONS**

1. Issue one check, made payable to the State of California, based on the gross amount listed in the "Restitution Required" column.
2. Issue one check payable to the City of Los Angeles for the sum of \$5,975.00
3. Issue one check payable to the California Apprenticeship Council for the sum of \$234.88
4. Mail all checks promptly to the following address:

Office of Contract Compliance  
 Attention: Jose Abad                      K09-001  
 1149 S. Broadway Ave., Suite 300  
 Los Angeles, CA 90015

Note: the sum of the "Total" line of \$37,764.90 will be released from your final retention payment upon receipt of restitution and penalty checks.

**ATTACHMENT B**

**SETTLEMENT AGREEMENT**

This Agreement is entered into by and between the Parties identified hereinbelow as of May 27, 2010.

**DEFINITION OF TERMS**

**A. Parties**

The Parties to this Agreement are as follows:

1. Tobo Construction, Inc.; and
2. The City of Los Angeles, acting by and through its Office of Contract Compliance.

**B. The Dispute**

The Dispute refers to the audit ("Ross Snyder Recreation Center Audit") prepared by the City of Los Angeles Office of Contract Compliance (hereinafter the "City") relating to Tobo Construction, Inc.'s ("Tobo") work at the Ross Snyder Recreation Center (hereinafter "Project"), City contract no. E170941F, identified as Office of Contract Compliance ("OCC") file number K09-001, and dated May 5, 2010 (including those previous versions of the Ross Snyder Recreation Center Audit preceding the May 5, 2010 version). The Dispute arises out of a disagreement between the Parties relating to Tobo's alleged failure to remit prevailing wages to its employees that performed

work at the Project.

RECITALS

A. The City alleges, pursuant to OCC file no. K09-001, that Tobo failed to remit prevailing wages as defined by California labor code to its employees working at the Project. Tobo disputes the City's allegations.

B. This Settlement Agreement is not intended as an admission of liability. The Parties have entered into this Settlement Agreement to resolve various claims relating to OCC file no. K09-001 that have been asserted, and each Party hereto expressly denies the validity of every claim which has been asserted against it.

C. The Parties have agreed orally to settle this Dispute without the necessity of trial and this written Settlement Agreement is the embodiment of that agreement between the Parties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereto agree as follows:

1. Releases. The City of Los Angeles acting by and through OCC regarding OCC file no. K09-001, on behalf of itself and except as otherwise expressly provided in this Agreement, hereby forever releases, discharges and acquits Tobo

and its principals, insurance companies, subcontractors, bonding companies, sureties, agents, directors, officers, shareholders, employees, attorneys, and other representatives from any and all claims, costs and obligations of every kind, known and unknown, matured and unmatured, now existing or arising in the future, of any kind or nature whatsoever, including but not limited to, any and all claims, demands, debts, actions, actions for abuse of process, actions for malicious prosecution, causes of action, liabilities, costs and obligations, arising out of or in any way relating to the Dispute involving the payment of prevailing wages on OCC File No. K09-001.

2. Limitation on Releases. The releases contained within this Agreement are not intended by the Parties to apply to claims for breach of the terms of this Agreement.

3. Civil Code Section 1542 Waiver.

It is further understood and agreed that the releases contained herein extend to all claims of every nature and kind whatsoever, known and unknown relating to OCC File No. K09-001, and there is expressly hereby released with regard to such claims all rights under California Civil Code Section 1542 which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect

to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

To the extent that it applies to a special release, the City of Los Angeles, acting by and through OCC regarding OCC file no. K09-001, hereby waives any and all rights it may have under Section 1542 as it presently reads or as it shall hereinafter be amended. In connection with this waiver, the City of Los Angeles, acting by and through OCC regarding OCC file no. K09-001, acknowledges that it is aware that it may hereafter discover claims presently unknown or unsuspected or facts in addition to or different from those they now know or believe to be true with respect to the claims released herein regarding OCC File No. K09-001. Nevertheless, it intends through this Agreement to release fully, finally, and forever, in the manner described herein, all claims released herein regarding OCC File No. K09-001. Accordingly, the release shall remain in effect as a full and complete release of the claims released notwithstanding the discovery or existence of any such additional facts or different claims relating thereto.

4. Acts In Furtherance of Settlement.

a. Tobo agrees to remit \$27,171.26 for wage restitution relating to the Ross Snyder Recreation Center Audit.

Attached hereto as Exhibit "A" is a breakdown of how those wages are to be allocated to the workers identified on the Ross Snyder Recreation Center Audit.

b. Tobo agrees to remit the amount of \$7,400.00 to the City for penalties associated with California Labor Code section 1775.

c. Tobo agrees to remit the amount of \$275.00 to the City for penalties associated with California Labor Code section 1813.

d. Tobo agrees to remit the amount of \$210.20 to the City for Training Fund Contributions. The City will be responsible for ensuring that the proper union receives the funds.

e. Tobo will remit those payments identified in subsections (a)-(d) by allowing the City to permanently withhold these sums from Tobo's contract balance relating to the Project. The City will then be responsible for forwarding payment to the workers.

f. Tobo will remit the amount of \$283.68 directly

to the Painters Trust Funds for fringe benefit contributions relating to that work performed by Fernando Corneja.

g. In exchange for those payments contemplated above, the City, acting by and through OCC regarding OCC file no. K09-001, agrees that it will not seek a judgment or any further monies relating to the Ross Snyder Recreation Center Audit regarding OCC file no. K09-001 and will withdraw its notice to withhold.

5. Successors and Assigns.

The Parties hereto further agree that this Agreement shall be binding upon their successors, predecessors, assigns, heirs, executors, administrators, spouses, associates, partners, officers, directors, principals, shareholders, servants, agents, attorneys, employees, insurance companies, bonding companies, sureties and affiliates.

6. Choice of Law.

If any action is commenced to enforce or interpret any of the provisions of this Agreement, the Parties hereby agree that this Agreement shall be interpreted, enforced and governed by the laws of the State of California. Each Party hereto agrees that any action to enforce this Agreement, or any rights

hereinafter, must be brought in a court or administrative body having its situs within the County of Los Angeles, State of California, and no other court. Pursuant to Evidence Code section 1123(b), this settlement agreement is enforceable, binding and admissible in a court of law.

7. Advice of Counsel.

The Parties acknowledge that they have been represented by counsel of their choice in the negotiations leading up to the execution of this Agreement and that they have read this Agreement and have had it fully explained to them by their counsel.

8. Construction.

Each Party has cooperated in the drafting and preparation of this Agreement. In interpreting this Agreement, any uncertain or ambiguous provision shall not be construed against any Party solely on the basis that that Party selected the uncertain or ambiguous language.

9. Authority.

The Parties represent and warrant they have the authority to execute a release of any such claims and that they have not heretofore assigned, transferred, sold, conveyed,

hypothecated or otherwise disposed of any claim or demand relating to any matter covered by this Agreement to any person, corporation, or entity. Additionally, the Parties hereto, and each of them, represent and warrant that they have authority to execute this Agreement. In the event that any Party breaches any of the representations or warranties contained in this Paragraph, such Party agrees to indemnify each other Party from any and all claims, demands, loss, damage, liability and expense, including costs of suit resulting from such breach.

10. Good Faith; Other Actions.

Each Party expressly covenants to deal with the other Parties in good faith in the performance of this Agreement. The Parties further agree and authorize their respective attorneys to execute any and all documents and to undertake any and all actions reasonably necessary to effectuate the terms of this Agreement.

11. Integration.

This Agreement contains the entire agreement of the Parties hereto with respect to the subject matter herein contained. There are no restrictions, promises, warranties, covenants, undertakings or representations other than those expressly set forth herein, and each Party hereby expressly

acknowledges that he, she or it has not relied upon any restrictions, promises, warranties, covenants, undertakings or representations whatsoever by any Party hereto, nor any agent or attorney of any other Party hereto, other than those expressly contained herein. This Agreement may be amended only by written instrument executed by all of the Parties hereto.

12. Counterparts.

This Agreement may be executed in counterparts and shall be effective when such counterparts have been executed by all Parties hereto, as if such Parties had all executed one original. A facsimile signature will be deemed to be equally as valid as an original signature.

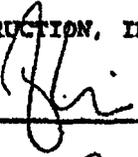
13. Jurisdiction

The Department of Industrial Relations shall maintain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement pursuant to Code of Civil Procedure section 664.6.

(SIGNATURES ON PAGE 10)

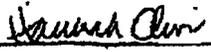
signature page for that Settlement regarding Ross Snyder  
Recreation Project, City contract no. E170941P, OCC file number  
K09-001

TOBO CONSTRUCTION, INC.

By: 

Its: Corp. Secretary

CITY OF LOS ANGELES

By: 

Its: Contract Compliance Program Manager