

APPROVED

REPORT OF GENERAL MANAGER

FEB 07 2007

NO. 07-28

DATE January 17, 2007

BOARD OF RECREATION  
and PARK COMMISSIONERS

C.D. 1

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: MACARTHUR PARK – CONSIDERATION OF INITIAL STUDY /NEGATIVE DECLARATION; AGREEMENT WITH THE FRIENDS OF THE LEVITT PAVILION AT MACARTHUR PARK FOR DESIGN SERVICES AND BAND SHELL IMPROVEMENTS, OPERATION OF AN ANNUAL SUMMER CONCERT SERIES, AND NAMING THE BAND SHELL

J. Combs	_____	J. Kolb	_____
H. Fujita	_____	F. Mok	_____
S. Huntley	_____	K. Regan	_____
B. Jensen	_____	M. Shull	_____

  
General Manager

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ Withdrawn \_\_\_\_\_

RECOMMENDATION:

That the Board:

1. Review and consider the Initial Study/Negative Declaration (IS/ND), finding that all potentially significant environmental effects of the project have been properly disclosed and evaluated in compliance with the California Environmental Quality Act (CEQA) and the State and City CEQA Guidelines, and that the IS/ND reflects the Department of Recreation and Parks' (Department) independent judgment and analysis;
2. Recommend that the City Council review, consider and adopt the IS/ND, with Council making the same findings as the Board, and that Department staff file a Notice of Determination with the Los Angeles City Clerk and the Los Angeles County Clerk within five (5) days of Council's adoption;
3. Approve the proposed MacArthur Park band shell renovation project, pursuant to the plans and specifications on file in the Board Office, authorizing the Department and Bureau of Engineering (BOE) to work with The Friends of the Levitt Pavilion at MacArthur Park (TFLP) to implement the proposed band shell improvements, with an estimated cost of \$1,700,000;

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4. Approve the proposed Construction and Operating Agreement (COA) with TFLP, substantially in the form on file in the Board Office, specifying the terms and conditions associated with the following:
  - a) The construction of the proposed band shell improvements;
  - b) The Department's acceptance of a gift from the TFLP, consisting of band shell capital improvements and design services, collectively valued at a minimum of \$250,000; and,
  - c) The TFLP's funding (\$100,000 annually for the first 5 years, for a total of \$500,000), production, and operation of an annual summer concert series of family oriented live music in the renovated MacArthur Park band shell, commencing upon completion of the proposed band shell improvements, and continuing each summer thereafter for a period of up to fifty years, pursuant to the terms and conditions of the proposed COA;subject to the appropriation of \$500,000 by the Community Redevelopment Agency of Los Angeles and \$700,000 by the City Council for the proposed Band Shell improvements; and in the event said appropriations should not occur, that the COA contain a funding clause specifying that the City only be bound to providing band shell improvements up to the value of the City's appropriated funding;
5. Approve the naming of the renovated MacArthur Park Band Shell to be The Levitt Pavilion for the Performing Arts at the MacArthur Park Band Shell;
6. Authorize the Department:
  - a) To acknowledge that the Community Redevelopment Agency (CRA) has been requested to contribute \$500,000 to the project, to be used to fund a portion of the proposed band shell area improvements; and,
  - b) To negotiate and enter into a Cooperation Agreement with the CRA, specifying the terms and conditions associated with the Department's acceptance and use of the CRA funding, subject to the future review and approval of the negotiated Cooperation Agreement by this Board;
7. Authorize the Department to remove existing seating from and perform landscape improvements within the area surrounding the Band Shell;

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8. Direct the Board Secretary to transmit the COA to the Mayor, in accordance with Executive Directive No. 3, and to the City Attorney for review and approval as to form; and,
9. Authorize the Board President and Secretary to execute the COA upon receipt of the necessary approvals.

### SUMMARY:

On September 20, 2006, the Board of Recreation and Park Commissioners (Board) conceptually approved the proposed renovation project (Report No. 06-279) for proposed improvements to the MacArthur Park band shell (Band Shell), located at 2230 W. 6<sup>th</sup> Street, in the First Council District. With the understanding that final approval(s) by the Board would subsequently be required, the Board conceptually approved and authorized respectively: (1) the proposed gift from TFLP consisting of design services and capital improvements valued up to \$250,000; (2) the Department and Bureau of Engineering to work with TFLP to prepare design plans and specifications, pursuant to City standards, procedures, and requirements; (3) the Department's removal of existing seating and the installation of landscape improvements within the area surrounding the Band Shell; and, (4) the Department to work with the City Attorney to negotiate and prepare an agreement, specifying the terms and conditions associated with the construction of TFLP's proposed improvements to the Band Shell and the production of an annual summer concert series to be provided by the TFLP free of charge to the public for a period of up to fifty (50) years. Since adoption of Report No. 06-279, a Negative Declaration/Initial Study (ND/IS) has been prepared and circulated for comment, and a draft COA has been negotiated by staff with legal counsel from the City Attorney. Pursuant to the Board's prior approval of Report No. 06-279, the Department now requests the Board's consideration in granting final approval and authorization for this project.

### Construction and Operations Agreement:

The City Attorney, Department, and representatives of TFLP have prepared the negotiated COA presently on file in the Board Office. The proposed COA specifies the terms and conditions: (a) for the Department's acceptance of the TFLP gift; (b) under which the construction of the Band Shell improvements will be implemented; and (c) under which TFLP will fund, produce, and operate the proposed annual summer concert series for a term of fifty (50) years. Attached hereto as Exhibit-A is a summary of the more significant terms, conditions, and assigned responsibilities included in the proposed COA.

### Scope of Work, Plans, and Specifications:

Representatives of the Mortimer Levitt Foundation and TFLP have been working closely with the Department and BOE to determine the appropriate scope of work for optimizing the amount of

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funding and resources available to the project. The project scope of improvements is attached hereto as Exhibit-B, and the related plans and specifications which are on file in the Board Office, have been reviewed and approved by the Bureau of Engineering and Department.

With a budget of \$1,700,000, the Band Shell renovation project includes structural and aesthetic improvements to the exterior and interior of the Band Shell building, ADA accessibility components, and landscape improvements. The improvements to be provided and/or funded by TFLP will consist primarily of work performed to the interior of the Band Shell structure. However, TFLP will also fund and install a free standing, open-air sound control pad pursuant to the specifications described below and depicted on the attached site plan (Exhibit-C).

In addition to serving as the location for a portable sound mixer board and lighting control console, the stand-alone feature (Sound Pad) will also be the location of signage containing the Band shell name, language explaining the Band Shell's history, and acknowledging donor names. The Sound Pad will be located directly in front of the Band Shell at the end of one of the walkways, as illustrated on Exhibit-C. The size of the Sound Pad will be eight (8) feet wide (measured north to south) and five (5) feet deep (measured east to west). The height of the Sound Pad at its highest point will be forty-two (42) inches. It will be constructed via a reinforced concrete pad, sloped 2% maximum to drain, enclosed by a low, reinforced concrete-masonry-unit wall with stucco finish. The top of the wall will curve and will be composed of three facets whose orientation in plan will echo that of the rear walls of the Band Shell. The wall facet facing the stage will carry plaques with the principal signage and donor information. The two wing walls on either side will carry plaques with interpretive information about the history of the current band shell and its predecessors in the Park. Emerging from the slab behind the center of the wall will be weatherized, lockable, GFI outlets for electrical and telecommunications signal wiring to control stage lighting and sound.

The exterior work to the grounds adjacent to the Band Shell and around the Sound Pad will be performed by City forces (Recreation and Parks, General Services, and the Bureau of Engineering). A conceptual design plan for the proposed Band Shell Area is attached hereto as Exhibit-C.

TFLP will be responsible for the construction of TFLP improvements at its own cost and expense and that all labor and material must be paid for by TFLP, such that TFLP's improvements shall be free and clear of any and all liens and no such liens may be attached to any improvements installed by TFLP or its subcontractors. TFLP understands and agrees that it shall pay the standard City construction, permit, and inspection fees related to the construction and/or installation of the TFLP improvements. TFLP further agrees to the payments of other fees pursuant to Sec.7.5.3, should the City have any out of pocket costs related to each event held at the Band Shell.

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### Project Funding:

The estimated total cost of the overall project, including TFLP and City improvements to the Band Shell and adjacent area, is estimated to be approximately \$1,700,000. TFLP has committed to provide design services for the project and funding of a minimum of up to \$250,000 for those design services and interior Band Shell improvements. Should TFLP improvements amount to less than the \$250,000 committed to the project, TFLP agrees that the difference between the cost of TFLP improvements and the \$250,000 shall be reserved in the TFLP account to be used towards the cost of future events, maintenance, or other Band Shell improvements, subject to the mutual agreement of the Department and TFLP.

The following funding sources have been identified to complete the project:

A)	The Friends of the Levitt Pavilion at MacArthur Park: (Through a donation from the Mortimer Levitt Foundation)	\$250,000
B)	Community Redevelopment Agency of Los Angeles: (Through a proposed Cooperation Agreement between the CRA and Department)	\$500,000
C)	Proposition 40 Per Capita Funds: (Provided through State Bond Measure)	\$250,000
D)	Funds to be appropriated by the City Council: (Through support from Council District One)	\$700,000
	Total:	\$1,700,000

### Community Redevelopment Agency Cooperation Agreement:

Upon approval of the project by the Board and the City Council, the CRA staff will recommend to the CRA Board of Commissioners that \$500,000 be contributed towards a portion of the total cost of the proposed project. In order for the CRA to provide the funds under the authority of the CRA Board of Commissioners, a Cooperation Agreement (CA) must be executed between the Department and CRA. Once prepared, the CA will be presented to this Board for review and approval prior to execution. Should the CRA or City Council funds not be appropriated, a funding clause shall be added to the COA which would limit the City's commitment to providing Band Shell improvements only up to the amount of the funding appropriated by the City for the project. However, it is expected this will not be necessary because project funding is anticipated as stated in this report.

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### Summer Concert Series:

As an additional gift from TFLP, TFLP has agreed to provide and produce a family oriented concert series, free of charge to the public each summer during the term of the COA. The proposed COA Initial Term will be from the date of execution until December 31, 2011, unless earlier terminated in accordance with proposed COA provisions, and then automatically extended for up to nine additional five year terms for a total term of fifty (50) years; subject to TFLP remaining in compliance with the terms and conditions of the proposed COA.

Following the completion of the proposed Band Shell renovations, the proposed concert series is anticipated to begin as early as July 8, 2007 and continue through September 14, 2007, or as mutually agreed thereafter, with a subsequent concert series each year thereafter during June 20<sup>th</sup> through September 15<sup>th</sup>, throughout the proposed COA term. The commencement of the initial concert series shall be contingent upon the City's completion of its proposed improvements. Any concert or event dates subsequent to September 14, 2007 shall be subject to mutual agreement between TFLP and the City.

TFLP agrees and covenants to annually sponsor the summer events at its sole cost and expense and to document that no less than \$100,000 is provided by the Mortimer Levitt Foundation and expended per year on the summer events for each of the first five years of the Agreement. TFLP agrees to use its reasonable best efforts to sponsor thirty (30) summer events in the first year of the Initial Term. TFLP shall sponsor no fewer than fifty summer events in each subsequent year of the Initial Term (during Additional Terms). Should fewer than thirty (30) summer events be sponsored in the first year of the Initial Term, TFLP agrees that it shall dedicate the remaining budgeted amount for capital improvements or programming at the Band Shell, to be jointly agreed upon by the Department and TFLP, and which shall be constructed or provided during the second year of the Initial Term.

TFLP understands and agrees that any and all moneys generated from TFLP events at the Band Shell, whether by donation, sponsorship, concession (subject to Department approval), grant, or by any other manner, shall be used solely to fund and support concert productions at the Band Shell, Band Shell repair and maintenance, and/or additional improvements to the Band Shell. The TFLP Events and specified fundraising levels are Performance Milestones under the proposed COA. Failure to meet Performance Milestones is a material breach of the COA.

As consideration of TFLP's gift, the Band Shell shall be named "The Levitt Pavilion for the Performing Arts at MacArthur Park."

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### Maintenance:

All regular maintenance of the Band Shell area, including, without limitation, pathways, permanent public lighting, Band Shell benches, daily trash removal and gardening, but excluding post-event clean-up for both concert and up to two (2) annual fundraising events to be held by TFLP, will be the responsibility of the Department under its regular park maintenance duties. TFLP shall be responsible for the maintenance of sound equipment, removable stage lighting, other production and event-related items and material, and TFLP's personal equipment and property; and will be responsible for the restoration of the Band Shell area to its pre-event condition after every TFLP event, as set forth in the proposed COA. Department staff will be present at each concert. The Department's direct costs associated with staff's presence will be reimbursed to the City by TFLP.

### The Friends of the Levitt Pavilion at MacArthur Park:

TFLP is a non-profit organization currently comprised of founding directors who have accomplished a similar project for the City of Pasadena, but which organization will soon be comprised of local business and community leaders dedicated to enriching communities by providing free public access to the performing arts at the Band Shell. TFLP understands that securing a non-profit 501(c)(3) determination from the Internal Revenue Service under the Internal Revenue Code of 1986, within the first year of the proposed COA Term, is a specified Performance Milestone under the proposed COA. As a condition of the COA, TFLP's performance of their responsibilities to produce the Summer Concert series will be subsidized by the Mortimer Levitt Foundation which will provide TFLP with \$100,000 per year for the first five (5) years.

At the restored MacArthur Park Band Shell, concert attendees will be able to come together to enjoy outstanding, professional concerts five nights per week during the summer months to share the universal language of music. Although TFLP has completed several successful projects in several major cities throughout the United States, one of the most successful is located in the neighboring City of Pasadena - The Levitt Pavilion for the Performing Arts at Memorial Park. TFLP is in its fourth year of providing concerts in Pasadena. The renovated venue at Memorial Park in Pasadena has proven to be a great asset to the City of Pasadena, by enhancing the park's atmosphere, reducing illegal activity and providing a comfortable place for the public to enjoy the performing arts. The Pasadena venue is widely supported by local businesses, community groups, schools, and citizens. It is anticipated that the proposed MacArthur Park Band Shell improvement project will have similar beneficial results.

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### Environmental:

In accordance with the requirements of the California Environmental Quality Act (CEQA), an Initial Study/Negative Declaration (IS/ND) was prepared, which determined that all potentially significant environmental effects would be less than significant. The IS/ND was circulated to all interested parties and responsible agencies for a 20-day review period from November 23 to December 13, 2006. Three comment letters were received during this period that raised environmental concerns about project-related aesthetics, noise, traffic and site drainage. Responses to these comments along with annotated copies of the comment letters have been incorporated into the final ND, copies of which have been provided to the Board for its review and consideration. It was determined that the project, as proposed, will not individually or cumulatively have an adverse effect on wildlife resources or their habitats as defined by Fish and Game Code 711.2. Since the completion of the Final IS/ND, the proposed project design has been modified to leave the existing asphalt pathways in their original configuration and not replace them with the new walkway shown in Figure 7 of the Final IS/ND. In addition, the "sound control pad" as described above is a new project element that is proposed to be placed northeast of the band shell at the end of an existing pathway. Both of these design changes have been reviewed by the Department environmental staff, and were determined not to result in any additional significant environmental effects. Therefore, no additional CEQA documentation is required for the recommended adoption of the IS/ND.

Staff has discussed the proposed project with the Assistant General Manager of Operations East, Superintendent of the Metro Region, and the Office of Councilmember Ed Reyes of the First Council District, and each supports the project and concurs with staff's recommendations.

### FISCAL IMPACT STATEMENT:

This project will not have any fiscal impact on the Department, as the costs of the proposed Band Shell interior improvements and summer concert series programming will be funded entirely through the gift from TFLP; and the City's contribution to the project, consisting of the exterior structural and landscape improvements which will be funded by funds anticipated from the CRA and funds appropriated by the City Council for MacArthur Park improvements from sources other than the City's General Fund..

Security and maintenance during the proposed concert series performances will be funded through TFLP's payment of the Department's direct costs for labor for such events; however, the daily or regular maintenance of the improved facility will be funded as part of the regular MacArthur Park annual maintenance budget.

Prepared by Joel Alvarez, Management Analyst II, of the Department's Real Estate and Asset Management Section.

EXCERPT FROM THE MINUTES OF THE SPECIAL MEETING  
BOARD OF RECREATION AND PARK COMMISSIONERS  
FEBRUARY 7, 2007

GENERAL MANAGER'S REPORT:

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MACARTHUR PARK - CONSIDERATION OF INITIAL STUDY/NEGATIVE  
DECLARATION; AGREEMENT WITH THE FRIENDS OF THE LEVITT  
PAVILION AT MACARTHUR PARK FOR DESIGN SERVICES AND BAND  
SHELL IMPROVEMENTS, OPERATION OF AN ANNUAL SUMMER  
CONCERT SERIES, AND NAMING OF THE BAND SHELL

The Sr. Assistant City Attorney clarified a parenthetical phrase in Recommendation No. 4c of the report to include a phrase describing the Levitt Foundation's gift to The Friends of the Levitt Pavilion at MacArthur Park (TFLP) follows:

TFLP's funding of the production and operation of the Annual Summer Concert Series for the term of the Agreement, which could be as long as 50 years, would include this amount, which is a gift from the Levitt Foundation. Therefore, that would not be total funding for the term of the agreement, it would be a guaranteed amount of a gift from the Levitt Foundation and that would be included in TFLP's funding for the summer concert series.

Motion

It was moved by Vice-President Luévano, seconded by Commissioner Casillas that Report No. 07-28 be approved as amended. There being no objections, the Motion was unanimously approved.

## **EXHIBIT-A**

### **Mac Arthur Park Band Shell Renovation Project**

#### **Summary of Construction and Operations Agreement**

The following is a summary of certain provisions contained in the proposed Construction and Operations Agreement (COA) between the City of Los Angeles and The Friends of the Levitt Pavilion at Mac Arthur Park. This summary should not be interpreted in any way as being the complete scope of the agreement and in the case of any inconsistency, the language of the agreement will take precedence over this summary.

#### **Agreement Summary:**

- A) At its sole expense, The Friends of the Levitt Pavilion at Mac Arthur Park (TFLP) will provide, as a gift to the City, up to \$250,000.00 in Band Shell improvements, consisting of in-kind design services and structural renovations to the interior of the band shell;
- B) Through the Department of Recreation and Parks (Department), the City of Los Angeles will provide exterior improvements to the grounds surrounding the Band Shell, consisting primarily of the removal of existing seating, installation of new landscaping, and installation of new irrigation;
- C) Upon completion of Band Shell improvements, TFLP will fund and produce at their sole expense, a summer series of daily, evening concerts at the Band Shell, which will run continuously each week (Wednesday through Sunday), from June through August. The initial concert series is anticipated to commence as early as July 8, 2007, and continuing through September 14, 2007, with any subsequent events being subject to the mutual agreement of TFLP and the Department;
- D) The Term of the Agreement is fifty (50) years, which is divided into an Initial Term of five (5) years and nine (9) Additional Terms each consisting also of five (5) years;
- E) TFLP shall obtain 501(c)(3) non-profit status under the Internal Revenue Service;
- F) TFLP shall be responsible for the interior structural Band Shell improvements at their sole cost and expense;
- G) City shall be responsible for repairing the Band Shell Glu-Lam Beam, removal of exterior seating, and the installation of irrigation and landscaping within the grounds surrounding the Band Shell;
- H) TFLP will be responsible for post-event clean-up at its own expense;
- I) TFLP will pay the cost of services provided by City in connection with the summer concert events, but will not pay other permit fees that would normally be required for similar events;

- J) City shall be responsible for the daily maintenance of the Band Shell area when not in use by TFLP;
- K) TFLP revenues generated through any and all Band Shell activities shall be used solely to fund Band Shell events, maintenance, repair, and/or additional improvements;
- L) The Band Shell shall be named; The Levitt Pavilion for the Performing Arts at the MacArthur Park Band Shell;
- M) TFLP shall be authorized to produce concert and fund raising events during specified times at the Band Shell, subject to the approval of the Department, as specified in the Construction and Operations Agreement between the City and TFLP;
- N) TFLP shall notify , in writing, all property owners within 300 feet of the Band Shell, of all upcoming scheduled events at least fifteen (15) days prior to the first event;
- O) City shall provide a site monitor, public safety officer and two maintenance employees for each event, at TFLP's expense;

## **EXHIBIT-B**

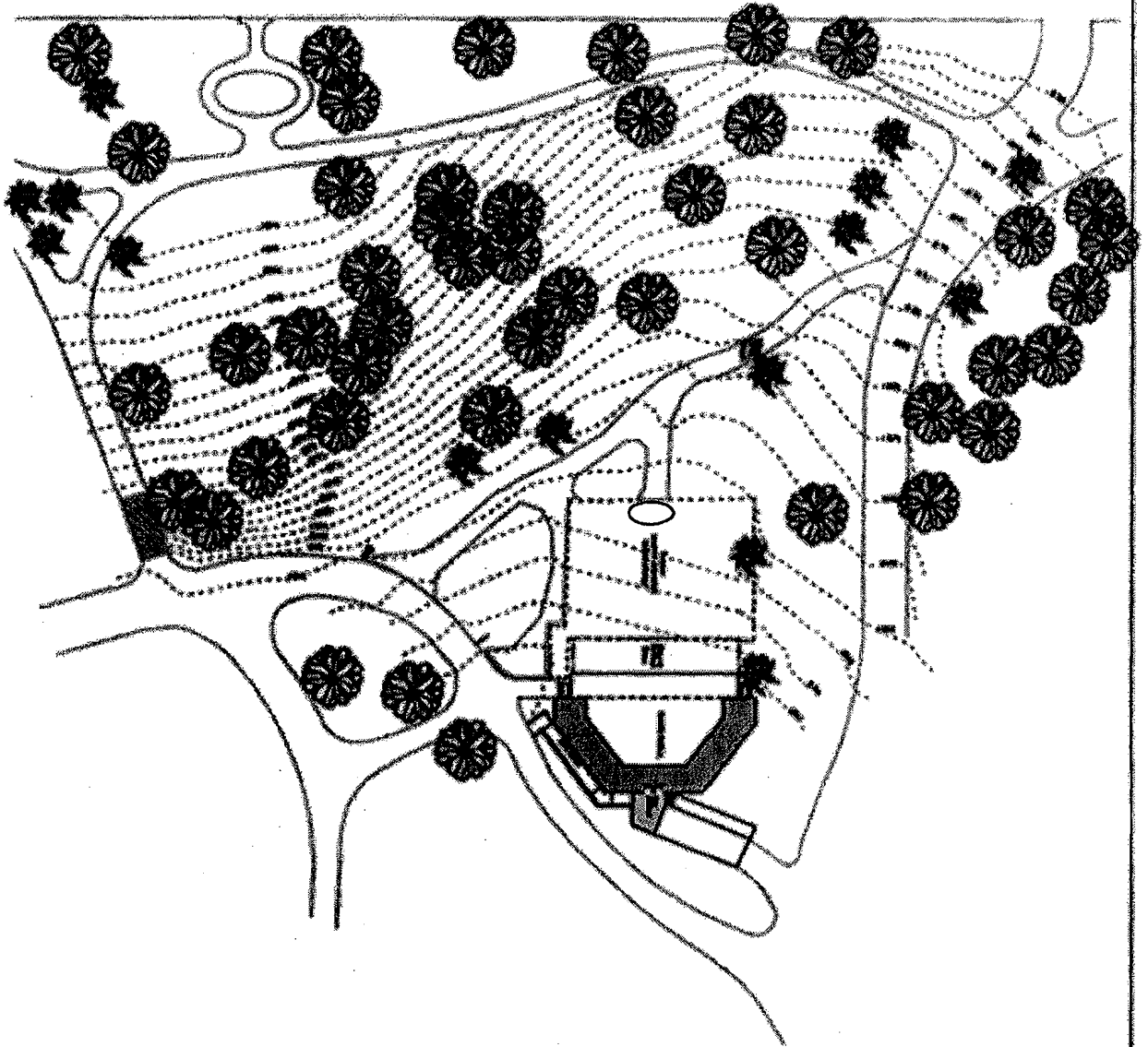
### **Mac Arthur Park Band Shell Renovation Project**

#### **Scope of Work**

1. Renovation of the Band Shell Building, including new ADA accessible bathrooms, interior, mechanical, electrical, and plumbing upgrades.
2. Renovations of the Glu-Lam beam and sub-floor replacements.
3. A concrete ADA ramp with handrails to be installed along the south side of the Band Shell, allowing for disabled access to the stage from the rear of the facility.
4. The scope of work will impact approximately 8,500 square feet of lawn and paving, and the concrete extension of the existing stage.
5. The existing stage extension will be demolished along with the paved area in front of the stage. The benches will be removed and will be replaced with lawn.
6. The existing walkway and adjacent concrete paving which currently cuts across the lawn in front of the bowl will remain. The proposed band shell area design will maintain the existing ADA conforming access-way through the park.
7. All areas not paved will require irrigation modification and reinstallation of the lawn.
8. An allowance is included in the estimate to handle standard site conditions issues during construction ie: contaminated soil, over-saturated soil, uncertified fill, hazardous material mitigation, environmental issues, historical issues, major replacement and relocation of the existing utilities, etc. Additional funds would be needed should conditions be discovered to be extraordinary and beyond the allowance costs.
9. The project estimate includes costs for construction escalation, estimated at 10% per year for one year.

EXHIBIT C

PROPOSED BAND SHELL AREA DESIGN



CONCEPTUAL DESIGN PLAN



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

L-1

MACARTHUR PARK BAND SHELL LANDSCAPE  
1204 WEST 6TH STREET, LOS ANGELES, CA 90057

Fig.



ENGINEER

