

**APPROVED**  
NOV 20 2013  
BOARD OF RECREATION  
& PARK COMMISSIONERS

REPORT OF GENERAL MANAGER

NO. 13-299

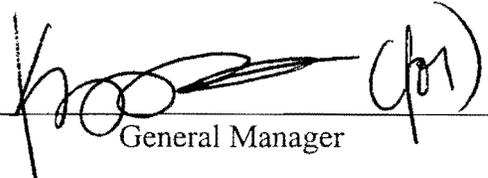
DATE November 20, 2013

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: 109TH STREET RECREATION CENTER – POOL AND BATHHOUSE REPLACEMENT – RE-BID (PRJ1501P) (W.O. #E1906494) PROJECT – SUBCONTRACTOR SUBSTITUTION PROTEST HEARING RELATIVE TO ENCORRE SERVICES, INC.

|           |       |             |               |
|-----------|-------|-------------|---------------|
| R. Adams  | _____ | K. Regan    | _____         |
| H. Fujita | _____ | *M. Shull   | <u>no for</u> |
| V. Israel | _____ | N. Williams | _____         |

  
General Manager

Approved *with substitute motion*

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATION:

That the Board hold a hearing to determine whether to allow a substitution as requested, pursuant to Los Angeles Administrative Code Section 10.14.3, inasmuch as a letter of objection was received.

SUMMARY:

The Department of Recreation and Parks (Department) is in receipt of a request (Attachment 1) from Simgel Company, Inc. (Simgel), prime contractor for the 109<sup>th</sup> Street Recreation Center - Pool and Bathhouse Replacement – Re-Bid (PRJ1501P) (W.O. #E1906494) project, Contract No. 3462, to substitute the subcontractor, Encorre Services, Inc. (Encorre). Encorre was bid-listed for concrete work, block masonry, and structural steel work for this project. The substitution request is being made because Encorre 1. Refuses to meet the bond requirements of the prime contractor; 2. Refuses to execute a written contract, and 3. Disputes the terms of the subcontract to respect to scope of work and labor requirements.

Pursuant to Section 10.14.3 of the Los Angeles Administrative Code, Encorre has been notified of the substitution request (Attachment 2). Encorre rejects the proposed subcontract offered them by the Prime Contractor, Simgel.

## REPORT OF GENERAL MANAGER

PG. 2                      NO. 13-299

Encorre claims that Simgel is requiring that Encorre obtain a bond, become a Union Signatory, and perform additional work that was not part of their original bid proposal (Attachment 5). The Department has received a timely written objection to the substitution (Attachment 3) via certified mail on October 9, 2013. Pursuant to Section 10.14.3, "the determination of the awarding authority shall be final."

The objection letter dated October 4, 2013, from Encorre, maintains that Simgel's demand for bonding, increased scope of work, and mandatory union affiliation is beyond the scope of their original bid proposal (Attachment 7). The subcontractor contests this substitution.

Issues to be considered by the Board during the hearing will include: Interpretation of Los Angeles Administrative Code Section 10.14 et seq. (10.14.3(a), 10.14.3(c), 10.14.3(d), and 10.14.4) (Attachment 4), determining if changes exist between the bid proposal (Attachment 6) and the proposed subcontract (the bond requirement and the scope of work), and the requirement to affiliate with a specific labor union as a condition of work.

### FISCAL IMPACT STATEMENT:

There is no anticipated fiscal impact to the Department's General Fund.

This Report was prepared by Marc Wright, Principal Construction Inspector, Department of Public Works, Bureau of Contract Administration.

SUBSTITUTE MOTION  
BOARD OF RECREATION AND PARK COMMISSIONERS  
NOVEMBER 20, 2013

13-299

109<sup>TH</sup> STREET RECREATION CENTER – POOL AND BATHHOUSE REPLACEMENT – RE-BID (PRJ1501P) (W.O. #E1906494) PROJECT – SUBCONTRACTOR SUBSTITUTION PROTEST HEARING RELATIVE TO ENCORRE SERVICES, INC.

Neil Drucker, Project Manager III, Public Works, Bureau of Engineering and Marc Wright, Principal Construction Inspector, Public Works Contract Administration presented details on the substitution request made by Simgel Company, Inc. and the objection to the substitution request submitted by Encorre Services, Inc. relative to the 109<sup>th</sup> Street Recreation Center – Pool and Bathhouse Replacement – Re-Bid (PRJ#1501P) (W.O. #E1906494) Project.

Representatives of Simgel Company, Inc. and Encorre Services, Inc. addressed the Board concerning their issues with the substitution request.

The Board further discussed the information presented in the hearing in detail. Public comment was invited on the item; however no request for public comment was received.

President Sanders moved that the report and the request of substitution of Encorre Services, Inc. made by Simgel Company, Inc. be approved. The motion was seconded by Commissioner Werner. There being no objections, the Substitute Motion was unanimously approved.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

12800 CENTER COURT DRIVE SOUTH, SUITE 300  
CERRITOS, CALIFORNIA 90703-9364  
(562) 653-3200 - (714) 826-5480

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(559) 223-6700  
FAX (559) 225-3416  
IRVINE  
(949) 453-4260  
FAX (949) 453-4262  
PLEASANTON  
(925) 227-9200  
FAX (925) 227-9202

RIVERSIDE  
(951) 683-1122  
FAX (951) 683-1144  
SACRAMENTO  
(916) 923-1200  
FAX (916) 923-1222  
SAN DIEGO  
(858) 485-9526  
FAX (858) 485-9412

OUR FILE NUMBER:  
008832.00000  
11532506.1

September 12, 2013

VIA E-MAIL AND NORCO OVERNITE EXPRESS

John Reamer, Inspector of Public Works  
Contract Administration  
1149 S. Broadway, Suite 300  
Los Angeles, CA 90015

Re: **Owner:** The City of Los Angeles, Department of Recreation and Parks  
**Project:** 109th Street Pool and Bathhouse; W.O.#E 1906494  
**Subject:** Subcontractor Substitution Request —Encorre Services, Inc.

Dear Mr. Reamer:

This firm represents Simgel Co. Inc. ("Simgel") in the above referenced matter.

Simgel requests the City's consent to substitute the Original Listed Subcontractor Encorre Services, Inc. ("Encorre") pursuant to Public Contract Code Sections 4107(a)(4), 4107(a)(3), and 4107(a)(7) and any other applicable sections.

Section 4107(a)(4) and 4108 — Encorre failed to provide a Performance Bond as required and specified in Simgel's request for bid.

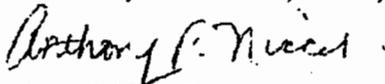
Section 4107(a)(3) and (7) — Encorre is refusing to enter into and sign a subcontract based on its bid and/or refusing to perform under a subcontract based on its bid. Encorre submitted a bid to Simgel for a certain scope of work. After Simgel was awarded the contract from the City, Encorre then attempted to exclude significant portions of the work it bid. Further, Encorre was informed of and shown the contract it would have to sign based on the standard contract of the Associated General Contractors before it submitted its bid. Encorre is now refusing the terms of the contract.

Simgel intends to and is duly licensed to self-perform the scope of this work. Please be advised that time is of the essence with regard to this substitution request.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Anthony P. Miccoli

cc: Simgel Co. Inc.



# SIMGEL CO. INC.

General Building Contractor  
State License #638371

September 24, 2013

John L. Reamer, Jr.  
Inspector of Public Works  
1149 S. Broadway, Suite 300  
Los Angeles, CA 90015

Attn: Walter Bradley, Assistant Director  
Bureau of Contract Administrator

Dear Sir,

We are requesting for approval of SUBCONTRACTOR SUBSTITUTION.

Below are the following information,

1. Project Name: 109<sup>th</sup> Street Pool and Bathhouse Replacement
2. Project Work Order Number: W.O.E1906494
3. Original Subcontractor's Name: Encore Services, Inc.
4. Original Subcontractor's Business Address: 1111 North Brand Blvd. Suite 405, Glendale, CA 91202-3023
5. Original Subcontractor's Business Phone Number: 818-265-9789
6. Original Subcontractor's Status: Other Business Enterprise (none of the following MBE, DBE, WBE, DVB)
7. Letter of Withdrawal from Original Contractor: See Attached
8. Letter of Explanation from Prime Contractor stating reason for request: See Attached
9. Substitute Subcontractor's Name: Simgel Co. Inc.
10. Substitute Subcontractor's Business Address: 2035 Westwood Blvd. Suite 212, Los Angeles, CA 90025
11. Substitute Subcontractor's Phone Number: 310-475-7663
12. Substitute Subcontractor's State of California Contractor License: 638371
13. Substitute Subcontractor's Status: OBE
14. Substitute Subcontractor's City of Los Angeles Business Tax Receipt Certificate Number: 841165-92
15. Dollar Amount of work to be performed by Substitute Subcontractor: \$765,000.00
16. Description of work to be performed by Substitute Subcontractor: Concrete work, Block Masonry, Structural steel work
17. Proof of Good Faith Effort by Prime Contractor: See Attached
18. Letter of Assent binding the subcontractor to each and every provision of the Project Labor Agreement (Required for PLA projects): N/A

For your consideration.

Emanuel Sasoones  
President  
Simgel Company Inc.

2035 Westwood Blvd., • Suite 212 • Los Angeles, CA 90025  
Tel: (310) 475-7663 • Fax: (310) 475-3831



# **SIMGEL CO. INC.**

**General Building Contractor  
State License #638371**

September 24, 2013

John L. Reamer, Jr.  
Inspector of Public Works  
1149 S. Broadway, Suite 300  
Los Angeles, CA 90015

Attn: Walter Bradley, Assistant Director  
Bureau of Contract Administrator

Dear Sir,

We are requesting for approval of APPROVAL OF SUBCONTRACTORS.

Below are the following information,

1. Project Name: 109<sup>th</sup> Street Pool and Bathhouse Replacement
2. Project Work Order Number: W.O.E1906494
3. Subcontractor's Name: Simgel Co. Inc.
4. Subcontractor's Business Address: 2035 Westwood Blvd. Suite 212, Los Angeles, CA 90025
5. Subcontractor's Business Phone Number: 310-475-7663
6. Subcontractor's Status: Other Business Enterprise (none of the following MBE, DBE, WBE, DVB)
7. Subcontractor's State of California Contractor License: 638371
8. Subcontractor's City of Los Angeles Business Tax Receipt Certificate Number: 841165-92
9. Dollar Amount of work to be performed by Substitute Subcontractor: \$765,000.00
10. Description of work to be performed by Substitute Subcontractor: Concrete work, Block Masonry, Structural steel work.
11. Letter of Assent binding the subcontractor to each and every provision of the Project Labor Agreement (Required for PLA projects): N/A

For your consideration.

Emanuel Sasoon  
President  
Simgel Company Inc.

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2035 Westwood Blvd., • Suite 212 • Los Angeles, CA 90025  
Tel: (310) 475-7663 • Fax: (310) 475-3831

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EXECUTIVE OFFICER

CITY OF LOS ANGELES  
CALIFORNIA



ERIC GARCETTI  
MAYOR

ATTACHMENT 2

JOHN L. REAMER, JR.  
Inspector of Public Works  
and  
Director  
BUREAU OF  
CONTRACT ADMINISTRATION

1149 S. BROADWAY, SUITE 300  
LOS ANGELES, CA 90015  
(213) 847-1922

<http://bca.lacity.org>

**CERTIFIED MAIL**

Encorre Services, Inc.  
1111 North Brand Boulevard, Suite 405  
Glendale, CA 91202-3071

Gentlemen:

**109TH ST. RECREATION CENTER – POOL & BATHHOUSE REPL. W.O. E1906494**

In a letter received by this office dated September 24, 2013, **Simgel Company, Inc.**, the prime contractor on the above referenced project, requested approval to substitute your company as the concrete, masonry, structural steel, metal deck, and steel fence subcontractor for this project. According to **Simgel Company, Inc.** your company has failed to provide a Performance Bond and this substitution is necessary to prevent further delays to the project.

You have five (5) working days to file a written objection to this substitution with this office. If no such objection is filed, the substitution will be recommended for approval to the Board of Public Works.

If you have any questions please contact Mr. Marc Wright at (213) 847-2408.

Sincerely,

JOHN L. REAMER, JR.  
Inspector of Public Works

By

WALTER BRADLEY, Assistant Director  
Bureau of Contract Administration

ltr  
s, MS 625-15

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U.S. Postal Service™  
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**OFFICIAL USE**

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| Postage  | \$ |
| Certified Fee                                  |    |
| Return Receipt Fee (Endorsement Required)      |    |
| Restricted Delivery Fee (Endorsement Required) |    |
| Total Postage & Fees                           | \$ |

Postmark Here  
10/1

Sent To  
ENCORRE SVCS. INC.  
Street, Apt. No., or PO Box No. 1111 N. Brand Bl # 405  
City, State, ZIP+4 Glendale CA 91202

PS Form 3800, August 2009  
See Reverse for Instructions



VIA CERTIFIED MAIL

October 4, 2013

City of Los Angeles  
Bureau of Contract Administration  
1149 Broadway, Suite 300  
Los Angeles, CA 90015

Attn: Mr. John L. Reamer, Jr.

Re: 109<sup>th</sup> St. Recreation Center-Pool & Bathhouse Repl. / W.O. E1906494  
Objection to Substitution

Dear Mr. Reamer:

As we have been continuously communicating this matter to Mr. Sasoones of Simgel Company, Inc. (Simgel), we are objecting the substitution request by Simgel. As you may be aware, we have been listed by all three low bidders in this bid because of our competitive prices and our good record of work and communications with general contractors.

Mr. Sasoones' claim for bond has no basis since our proposal provided to all general contractors clearly excludes any bonding, and Simgel was aware of it (please see Page 2 of our proposal, Exhibit A attached - Standard Exclusions). Also, the contract sent to us by Simgel (please see Exhibit B attached) has a clause for us to sign an agreement with the Cement Masons Union. This is not required per bid requirements and it is unacceptable.

Simgel simply missed the site concrete work in its bid as we were told by Mr. Sasoones and we were approached next day of the bid to add the site concrete work to our scope of the work without any additional cost to Simgel. We clearly would not be able to do so. Mr. Sasoones then requested us to withdraw our bid so that he can self-perform all the concrete work.

We have attached our proposal to this letter (please see Exhibit A) for your review of our scope of work. It is the same proposal we provided to all three low bidders that listed us on the bid. It is very clear that our proposal did not include site concrete work since second bidder (AMG Associates) put the site concrete work in its bid to be self-performed, and the third bidder (Morillo Construction) listed Moreno Engineering for the site work.

We are hereby requesting from the City of Los Angeles to deny the substitution of the subcontractor requested by Simgel. As a local certified SBA subcontractor, we are very excited to perform this work as our part of contribution to our community.

Thank you for your attention to this matter. Please contact us at (818) 265-9789 if you have any questions.

Very truly yours,

Vahan Hovnanian  
President

Attachments: Exhibits A and B (9 pages)

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## BID PROPOSAL

Proposal Date: 6/11/13 (3 pages +1 suppl.)  
Expiration Date: 6/11/13 (Bid Date 6/11/13)

Bid To: GENERAL CONTRACTORS

Project / Job: **109<sup>th</sup> Street Recreation Center Project / Pool and Bath house replacement**  
**City of Los Angeles**

Applicable Bid Documents: Bid set  
Addendum Noted:

QUESTIONS CALL ANDRE AT (818)378-8865

PLEASE REFER TO THE ATTACHED SUPPLEMENTAL SCOPE OF WORK CHECKLIST FOR DETAILS.

### Scope of Work:

We propose to furnish the following work items in accordance with the bid documents noted hereon, and in accordance with the terms and conditions of this proposal:

(Please call for separating any item. Our bid is as lump sum of total items). TOTAL BID = 589,000

1. BUILDING FOUNDATION AND SLAB AS FOLLOWS : \$189,000
  - Construction of building concrete foundation.
  - Construction of building concrete slab.
  - Our work includes, furnish and install rebar, set form and pour concrete.
  - Our work includes vapor barrier ( visqueen) and sand for slab underlayment.
  - Construction of cast -in- place concrete bench by others.
  
2. STRUCTURAL STEEL WORK AS FOLLOWS : \$159,000
  - All building post and beam structural steel framing.
  - All mechanical roof curb and opening reinforcement (HVAC and ducting).
  - All Canopy framing and roof steel framing.
  - All steel framing for Pyramid canopy.  
(All required HDG. is included)
  - All structural steel embeds. (installed by CMU contractor)
  - Welding for A706 rebars to posts in CMU wall (Rebars to be provided by others)
  
3. BUILDING CMU WALLS AS FOLLOWS: \$199,000
  - All 12-inch and 8-inch CMU proposed walls including rebar per plans.
  - All A706 re-bars to be welded to steel posts as part of item No.2
  - Angelus block three types per plans.
  - Scaffolding included.
  - Solid grout and rebars included.
  
4. METAL DECKING: \$42,000
  - Furnish and install all metal decking (Verco) for the building per plans.

Exhibit A - 3 pages

**Scope of work is as follows:**

- a) *Furnish Anchor Bolts and templates for Steel Columns and posts.*
- b) *Furnish, erect and install all building steel columns, beams and bracings as shown on structural plans complete in place. (All structural steel components are shop primed)*
- c) *Including all field erection equipment (cranes, fork-lifts, man-lifts) and Shop Drawings included.*

**OPTIONAL ITEM: Steel Fence, Gates (gate #1, #2, #3 and #4) ,Sump pit railing and Ramp railing: 242,000**

- **Furnish and install all site steel fence and gates. (Footing, set post and HDG. Included)**
- **Furnish and install sump pit railing.**
- **Furnish and install ramp railings.**
- **All paint work by others.**

**Includes:**

- General Liability Insurance and WC insurance.
- One year warranty per contract.
- Certified Payroll for prevailing wages.

**Standard Exclusions:**

Cost of any additional Special endorsement certificate required by the contractor – ~~Bonding~~ and Permit Costs

**Special Exclusions:**

- Construction survey, verification and certification of the horizontal and vertical elevations.
- Special Inspection or Laboratory welds testing cost (UT, MT, ...).
- Any light gauge, cold formed metal framing and metal stud work.
- All wood framing work by others.
- All Simpson products to be provided by G.C.
- Aluminum, sheet metal, and Stainless Steel work.
- All Weldable rebars (A706) to be provided by others.(unless Encorre Performs CMU work).
- Any Anti-graffiti or water repellent coating on CMU by others.

**Terms & Conditions of Agreement**

Acceptance of this proposal by Contractor shall be acceptance of all terms and conditions recited herein, which shall supersede any conflicting term in any other contract document. Any of the Contractor's terms and conditions in addition or different from this proposal are objected to and shall have no effect. Contractor's agreement herewith shall be evidenced by Contractor's signature hereon or by permitting subcontractor to commence work for project.

1. Subcontractor shall be paid monthly progress payments on or before the 15<sup>th</sup> of each month for the value of work completed plus the amount of materials and equipment suitably stored on or off-site. Final payment shall be due 30 days after the work described in the proposal is substantially completed. No provision of this agreement shall serve to void the subcontractor's entitlement to payment for properly performed work or suitably stored materials or to require the subcontractor to continue performance if timely payments are not made to subcontractor for suitably performed work or stored materials or to void Subcontractor's right to file a lien or claim on its behalf in the event that any payment to Subcontractor is not timely made.

2. The contractor will withhold no more retention from the Subcontractor than is being withheld by the Owner from the Contractor with respect to the Subcontractor' work.

3. All sums not paid when due shall bear an interest rate of 1% per month or the maximum legal rate permitted by law whichever is less, and all costs of collection, including the attorney's fee, shall be paid by the contractor.

4. No back charge or claim of the contractor for services shall be valid except by an agreement in writing by the Subcontractor before the work is executed, except in the case of the Subcontractor's failure to meet any requirement of the subcontract agreement. In such event, the Contractor shall notify the Subcontractor of such default, in writing, and allow the Subcontractor reasonable time to correct any deficiency before incurring any cost chargeable to the Subcontractor.

5. Contractor is to prepare all work areas so as to be acceptable for Subcontractor work under the Subcontract. Subcontractor will not be called upon to start work until sufficient areas are ready to insure continued work. The Contractor shall furnish all temporary site facilities including suitable storage space and temporary electrical and water at no cost to Subcontractor.

6. Subcontractor shall be given a reasonable time in which to make delivery of materials and/or labor to commence and complete the performance of the contract. Subcontractor shall not be responsible for delays or defaults where occasioned by causes of any kind and extent beyond its control, including but not limited to: delays caused by the owner, General contractor, architect and/or engineers, delays in transportation, shortage of raw materials, civil disorders, labor difficulties, vendor allocations, fires, floods, accidents and act of God. Subcontractor shall be entitled to equitable adjustment in the subcontract amount for additional costs due to unanticipated project delays or accelerations caused by others whose acts are not the subcontractor's responsibility and to time extensions for unavoidable delays. The contractor shall make no demand for liquidated damages for delays in excess of the amount specified in the subcontract agreement and no liquidated damages may be assessed against Subcontractor for more than the amount paid by the Contractor for unexcused delays to the extent actually caused by Subcontractor.

7. The Subcontractor's materials and work are guaranteed by the Subcontractor for a period of ONE YEAR from the date of substantial completion or use by the Contractor or the Contractor's customer, whichever is earlier. This warranty is in lieu of all other warranties, express or implied, including any warranties of merchantability or fitness for a particular purpose. The exclusive remedy shall be that Subcontractor will replace or repair any part of its work, which is found to be defective. Subcontractor shall not be responsible for damage or defect caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation or normal wear, tear and usage.

8. Work called for herein is to be performed during Subcontractor regular working hours. All work performed outside of such hours shall be charged for at rates or amounts agreed upon by the parties at the time overtime is authorized.

9. Contractor shall, if the owner does not, purchase and maintain all risk insurance upon full value of the entire work and/or materials delivered to the jobsite, which shall include the interest of Subcontractor.

10. The Subcontractor shall indemnify and hold harmless the Contractor, Owner, Architect, or others from damages only to the extent such damages were caused by any negligent act or omission of the Subcontractor or anyone for whose acts the Subcontractor is Liable.

11. The subcontractor form used between the Subcontractor and the Contractor will be AIA Standard Form Subcontract Document A401. Where there is a conflict between provisions of either the AIA Standard Form, or the contract documents between the Owner and Contractor and this proposal, then this proposal shall govern.

12. Subcontractor's scope of work is per this bid proposal and will be made part of any contract.

13. Access to work area, security of the site as well as necessary field fabrication area to be provided by the prime contractor with no charge to the subcontractor. Power for site erection to be provided by the prime contractor.

14. Any phasing of the work by the Contractor not included in the bid documents at the time of the bid that affect our work will be subject to additional cost and remobilization costs.

15. The contractor to provide sufficient advance notice and a schedule to the subcontractor upon the contract execution in order to allow enough fabrication time for the material. A mutual time agreement is necessary to allow fabricate of all components after shop drawings approval.

Contractor Acceptance: \_\_\_\_\_ Company Name: \_\_\_\_\_

Title / Signature: \_\_\_\_\_ Date: \_\_\_\_\_

SHORT FORM STANDARD SUBCONTRACT

This Agreement is made this 22 day of August, 2013, between Simgel Co. Inc (Contractor) and Encorre Services, Inc (Subcontractor).

The work described in Section I below shall be performed in accordance with the prime contract between Contractor and City of Los Angeles Department of Recreation & Park (Owner) and in accordance with all plans, specifications and other contract documents attached to or incorporated into the prime contract for the project known as:

109th Street Pool and Bathhouse (1431 110th St., Los Angeles)

The Construction Lender (if applicable) is: None

SECTION 1. SCOPE. Subcontractor agrees to furnish all labor, materials, equipment and other facilities required to complete the following work:

- Division 3 Concrete Section 03100, 03200, 03260, 03300, 03301, 03345
Division 4 Masonry Section 04220 Concrete Masonry Block
Division 5 Metal Section 05120, 05310, 054000, 05500 (Including all structural work & metal decking, and steel fence, gates, and all hand rails)

SECTION 2. PRICE AND PAYMENT. Contractor agrees to pay Subcontractor for the strict performance of his work the sum of:

Seven Hundred Sixty Five Thousand even (\$ 765,000.00 ) or as set out in Section 15 below, subject to adjustments for changes in the work as may be directed in writing by Contractor.

Payment shall be made in monthly progress payments of per progress minus percent ( 10 %) of labor and material which have been incorporated into the work of improvement; progress payments to Subcontractor shall be made only with sums received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment. Final payment of the balance owed to Subcontractor shall be due fourteen days after receipt by Contractor of final payment from Owner for Subcontractor's work. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, and material, and agrees to furnish same from its subcontractors, suppliers and/or materialmen in form satisfactory to Contractor, prior to receipt of any payment. Contractor may, at its option, make any payment or portion thereof by joint check payable to Subcontractor and any of its subcontractors, suppliers and/or materialmen.

If owner or other responsible party delays in making any payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than

Associated General Contractors of California, Inc. 2005 Form AGCC - 04 Revised 1/06

Exhibit B - 6 pages

the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanics' lien remedies.

If the Subcontractor asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including but not limited to claims for failure to pay, an extension of time, delay damages, or extra work, Contractor will present the Subcontractor's claim to the Owner or other responsible party. The Subcontractor shall cooperate fully with the Contractor in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse the Contractor for all expense, including legal expense, incurred by Contractor which arise out of Contractor's submission of Subcontractor's claim to Owner or other responsible party. Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such a claim.

**SECTION 3. ENTIRE AGREEMENT.** This Agreement represents the entire agreement between Contractor and the Subcontractor and supersedes any prior written or oral representations. Subcontractor, its subcontractors, suppliers and/or materialmen are bound by the prime contract and any contract documents incorporated therein insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement.

**SECTION 4. TIME.** Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information in a form acceptable to Contractor and shall conform to Contractor's progress schedules, including any changes made by Contractor in the scheduling of work. Subcontractor shall coordinate its work with that of all other contractors, subcontractors, suppliers and/or materialmen so as not to delay or damage their performance.

**SECTION 5. DELAY.** Should Subcontractor delay Contractor, any other Subcontractor, or anyone else on the Project, Subcontractor will indemnify Contractor and hold Contractor harmless for any damages, claims, demands, liens, stop notices, lawsuits, attorneys' fees, and other costs or liabilities imposed on Contractor connected with said delay by Subcontractor.

**SECTION 6. CHANGES IN WORK.** Subcontractor shall make no changes in the work covered by this Agreement without written direction from the Contractor. Subcontractor shall not be compensated for any change which is made without such written direction. No changes in the work covered by this Agreement shall exonerate any surety or any bond given in connection with this Agreement.

**SECTION 7. CLAIMS.** If any dispute shall arise between Contractor and Subcontractor regarding performance of the work, or any alleged change in the work, Subcontractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation for the work prior to commencement of the disputed work. Subcontractor's failure to give written notice prior to commencement constitutes an agreement by Subcontractor that it will receive no extra compensation for the disputed work.

**SECTION 8. INSPECTION AND PROTECTION OF WORK.** Subcontractor shall make the work accessible at all reasonable times for inspection by the Contractor. Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Subcontractor's work and give prompt notice of any defect therein: Subcontractor assumes full responsibility to protect the work done hereunder until final acceptance by the Architect, Owner and Contractor.

**SECTION 9. LABOR RELATIONS.** Subcontractor shall maintain labor relations policies in conformity with the directions of the Contractor and shall be bound to and comply with all of the terms and conditions, including trust fund contributions, required by those labor agreements applicable to work performed under this Agreement to which the Contractor is bound. The specific agreements to which the Contractor is bound are listed in Section 16.

**SECTION 10. TERMINATION,** (i) Should Subcontractor fail to rectify any contractual deficiencies, including failure to pay its creditors, failure to adhere to Contractor's schedule, or failure to properly carry out the work, within three (3) working days from receipt of Contractor's written notice, Contractor shall have the right to take whatever steps it deems necessary to correct said deficiencies and charge the cost thereof to Subcontractor, who shall be liable for the full cost of Contractor's corrective action, including overhead, profit and actual attorneys' fees. (ii) Contractor may at any time and for any reason terminate Subcontractor's services hereunder at Contractor's convenience. In the event of termination for convenience, Subcontractor shall recover only the portion of the contract price corresponding to the work actually completed to the date of termination, measured in approved units of work or percentage of completion. Subcontractor shall not be entitled to any claim or lien against Contractor, Owner or anyone else for any additional compensation or damages in the event of such termination.

**SECTION 11. INDEMNIFICATION.** To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Owner and Contractor and their agents and employees from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Subcontractor's operations performed under this Agreement and caused or alleged to be caused, in whole or in part, by any act or omission of Subcontractor or anyone employed directly or indirectly by Subcontractor. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force. The indemnity shall apply regardless of any active and/or passive negligent act or omission of Owner or Contractor, or their agents or employees, but Subcontractor shall not be obligated to indemnify any party for claims arising from the sole negligence or willful misconduct of Owner or Contractor or their agents or employees, or arising solely by the designs provided by such parties. To the extent that Civil Code Section 2782(c) limits the indemnity obligation of the subcontractor, either to the Owner or the Contractor, the indemnity obligations hereunder are limited to the same extent. The indemnity set forth in this Section shall not be limited by insurance requirements or by any other provision of this Agreement.

**SECTION 12. INSURANCE.** Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, with carriers acceptable to Contractor, and in amounts acceptable to Contractor and as required by the prime contract, including the following coverages:

12.1 Casually Insurance

- a. Workers' Compensation and Employer's Liability insurance;
- b. Commercial General Liability insurance (ISO Form CG 00 01) covering all operations; and,
- c. Automobile Liability insurance, including coverage for all owned, hired and non-owned automobiles.

All insurance coverages shall be in amounts and for durations acceptable to Contractor and as required by the prime contract. Independent of the obligation Subcontractor has to defend and indemnify Owner and Contractor as set forth in Section 11. Subcontractor shall name Contractor and Owner as additional insured under the General Liability policy using ISO Form CG 20 10 or similar form as approved in writing by Contractor. Subcontractor shall provide certificates of insurance to Contractor prior to commencement of the work. The certificates of insurance shall provide that there will be no cancellation nor reduction of coverage without thirty (30) days prior written notice to Contractor. The certificate shall reflect all limiting or exclusionary endorsements amending the required ISO Form CG 00 01. The use of such limiting or exclusionary endorsements will be subject to the approval of Contractor. Receipt by Contractor of any certificate of insurance or additional insured endorsement which does not comply with any provisions of this Section 12 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement.

## 12.2 Property Insurance

All work covered by this Agreement done at the site, or in preparing or delivering materials or equipment to the site, shall be at the sole risk of Subcontractor until the completed work is accepted by Contractor.

12.2.1 Waiver of Subrogation. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

12.2.2 Builder's Risk. "All risk" Builder's Risk insurance (excluding the hazards of earthquake and flood) is normally purchased by Owner and such insurance provides property insurance coverage for both Contractor and Subcontractor including loss or damage to Subcontractor's work. It is the responsibility of Subcontractor to ensure his work is protected by such Builder's Risk insurance prior to the execution of this subcontract. If Builder's Risk coverage is not provided, Subcontractor shall obtain such coverage at his own expense. Subcontractor is also responsible for any deductible amounts incorporated into any properly insurance policies.

**SECTION 13. DISPUTE RESOLUTION.** Any dispute resolution procedure in the prime contract shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, those which have been waived by the making or acceptance of final payment, and questions regarding the licensure of the subcontractor. Subject to compliance with all applicable laws, including but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to the Owner under such procedure and, subject to the other provisions of this Agreement, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled. For disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, the parties hereto shall submit any and all disputes arising under or relating to the terms and conditions of the Subcontract to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. No demand in arbitration shall be made after the date when the institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations. In any dispute resolution between the parties, the prevailing party shall be entitled, in addition to any other relief granted, to recover its costs of participation, including attorneys' and experts' fees. An award rendered by an arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

**SECTION 14. WARRANTY.** Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Agreement will be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this section 14 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. If the Contract Documents and the work includes original construction of individual dwelling units to be sold, Subcontractor warrants that its work will comply in all respects with the standards of construction set forth in Title 7 of the California Civil Code, §§895 et seq.

**SECTION 15. SPECIAL PROVISIONS. (Inclusions & Exclusions):**

Please look at Page 6 of this contract. Note: The Contract includes Addendum 1

- \* The subcontractor is required to submit a bond for their scope of work from a rated company approved by the City of Los Angeles.
- \* The scope of work includes all concrete, masonry, structural steel per Drawings 1 through 176 for this project.
- \*Included: Rebar saddles and all embedded items and all paint primer for all metal work
- \*Subcontractor to accommodate installation of embedded electric work boxes, conduits, plumbing items
- \*Door frame installation
- \*To protect embedded utility lines (conduits or electrical boxes) during grouting of walls
- \*Clean up and removal of debris of their scope of work
- \*Scaffolding

**SECTION 16. LABOR AGREEMENTS.** The Contractor is signatory to the following labor agreements covering work on this project:

~~Southern California Counties Cement Mason And per Article V, Section 503 the Subcontractor is required to sign a labor agreement with this Union.~~



Contractors are required by law to be licensed and regulated by the Contractors State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California, 95826.

Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

CONTRACTOR :

SUBCONTRACTOR :

By \_\_\_\_\_ By \_\_\_\_\_

(NAME)

(NAME)

(ADDRESS)

(ADDRESS)

(CONTRACTOR'S LICENSE NO.)

(CONTRACTOR'S LICENSE NO.)

**NOTE: This document has important legal consequences. Consultation with an attorney prior to execution of this document is encouraged. Some construction prime contracts may require the use of specialized provisions not included in this form.**

## APPENDIX TO THE CONTRACT WITH SUBCONTRACTOR

It is hereby understood and agreed that the following items are included in the contract and honored as part of the contract between the Contractor and the Subcontractor listed on page 1.

1. Subcontractor warrants that it has obtained or will obtain certificate of insurance with limits of liability equal to or greater than limits required by the Specification book prior to commencement of any work performed by the subcontractor.
2. Subcontractor warrants that his insurance policies are valid to start the work and will remain valid by the end of the contract.
3. Subcontractor warrants that he has obtained or will obtain hold harmless agreements from his indemnifying against all losses from the work performed for the Contractor.
4. Subcontractor warrants that he has confirmed or will confirm to list the Owner and Contractor named as additional insured on his insurance policies including but not limited to : General Liability and Auto insurance policy(ies).
5. Subcontractor is responsible to protect their scope of work performed until the Owner has taken possession of the project. Subcontractor is responsible for the safety and protection of their work, material and final work against any theft and/or vandalism.
6. Subcontractor is required to receive authorization before commencing work for any change of scope of work. Subcontractor is not entitled to get paid for any unauthorized work.
7. Subcontractor is responsible to provide their own temporary facilities including but not limited to storage, water and power.
8. Subcontractor is responsible to pull any needed permit for their scope of work and all related fees to the permit.
9. Subcontractor is responsible to perform surveying and layout for their scope of work.
10. This contract will be valid to proceed after it has been signed. All prior discussions and negotiations are considered null and void. All signatures on the contract shall be notarized.

In the event the subcontractor fails or failed to comply with the above conditions whose work directly or indirectly gives rise to a claim, coverage for such claim will be voided under Contractor's policy. The subcontractor agrees that the contractor need not to demonstrate any prejudice in order to enforce these conditions .

Sec. 10.14. Provisions Pertaining to Listing of Subcontractors.

1. **Definitions.** For the purposes of this section the definitions of “**contractor**” and “**subcontractor**” contained in Section 10.8.1 of this article shall be applicable.

2. **Listing of Subcontractors.** Each officer, department, board or commission awarding contracts for the construction of any public work or improvement within the City of Los Angeles shall provide in the bid documents prepared for such work or improvement that every person making a bid or offering to perform the work shall state therein:

(a) The name and address of each subcontractor who will perform work or labor or render service to the bidder in or about the construction of the work or improvement in an amount in excess of one-half of one percent (1/2%) of the prime contractor's total bid or \$10,000.00, whichever is greater.

(b) That portion of the work which will be done by each subcontractor.

The prime contractor shall list only the subcontractor for each such portion as is defined by the prime contractor in its bid. Failure of prime contractor to specify a subcontractor for any portion of the work shall constitute agreement by said contractor that it is fully qualified to perform that work and shall perform with its own forces.

3. **Substitution.** No prime contractor whose bid is accepted may substitute any person as subcontractor in place of the subcontractor listed in the original bid or offer except in the following instances:

(a) When the subcontractor listed in the bid after a reasonable opportunity to do so fails or refuses to execute a written contract when such contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of such subcontractor's written bid, is presented to it by the prime contractor.

(b) When the listed subcontractor becomes bankrupt or insolvent.

(c) When the listed subcontractor fails or refuses to perform its subcontract.

(d) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Subsection 4 of this section.

(e) When the contractor demonstrates to the satisfaction of the awarding authority that the subcontractor was listed by inadvertent clerical error.

(f) When the awarding authority determines that work being performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or the listed subcontractor is substantially delaying or disrupting the progress of the work.

(g) When the listed subcontractor fails to submit an Affirmative Action Plan acceptable to the awarding authority.

The prime contractor, as a condition of asserting a claim of inadvertent clerical error in a listing of a subcontractor, shall within two working days after the time of the prime bid opening by the

awarding authority given written notice to the awarding authority and copies of such notice to both the subcontractor it claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening. Any listed subcontractor who has been notified by the prime contractor in accordance with the provisions of this section as to an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error.

In all other cases, the prime contractor must make a request in writing to the awarding authority for the substitution of subcontractors, giving reasons therefor. The awarding authority shall mail a written notice to the listed subcontractor giving reasons for the proposed substitution. The listed subcontractor shall have five working days from the date of such notice within which to file with the awarding authority written objections to the substitution.

Failure to file written objections pursuant to the provisions of this section within the times specified herein shall constitute a waiver of objection to the substitution by the listed subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed subcontractor that an inadvertent clerical error was made.

If written objections are filed, the awarding authority shall give five days' notice to the prime contractor and to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution. The determination by the awarding authority shall be final.

**4. Subcontractor's Performance Bonds.** In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to such prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of such subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be performed and performed under such subcontract, the prime contractor may reject such bid and make a substitution of another subcontractor subject to the provisions of Subsection 3 of this section. Such bond or bonds may be required at the expense of the subcontractor only if the prime contractor in its written or published request for sub-bids (1) specifies that the expense of such bond or bonds shall be borne by the subcontractor and (2) clearly specifies the amount and requirements of such bond or bonds.

**5. Assignment.** No contractor shall permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed on the original bid without the consent of the awarding authority or its duly authorized officer.

**6. Penalties.** A contractor violating any provisions of this section shall be deemed in violation of the contract and the City may at its discretion:

(a) Cancel the contract.

(b) Assess the contractor a penalty of not more than 10% of the amount of the subcontract involved.

In any proceeding under this section the prime contractor shall be entitled to a public hearing and to five days' notice of the time and place thereof.



# **SIMGEL CO. INC.**

**General Building Contractor  
State License #638371**

C  
ATTACHMENT 5

August 26, 2013

Encore Services Inc.  
1111 North Brand Blvd. Suite 405  
Glendale, CA 91202-3023

RE: 109<sup>th</sup> St. Pool and Bathhouse Replacement

Attn: Andre

Dear Sir,

Please see attached copies of the SHORT FORM STANDARD SUBCONTRACT.

Please sign and submit the following:

- W9
- Liability Insurance (Simgel Co. Inc. and City of Los Angeles added to the Insurance)
- Auto Liability Insurance
- Workers Comp. Insurance

Sincerely,

Emanuel Sasoon  
President  
Simgel Co. Inc.

## SHORT FORM STANDARD SUBCONTRACT

This Agreement is made this 26 day of August, 2013 between

SIMGEL COMPANY INC. (Contractor) and

ENCORE SERVICES, INC. (Subcontractor).

The work described in Section 1 below shall be performed in accordance with the prime contract between Contractor and CITY OF LOS ANGELES, DEPT. OF PARKS & RECREATION (Owner) and in accordance with all plans, specifications and other contract documents attached to or incorporated into the prime contract for the project known as:

### 109<sup>TH</sup> ST. POOL AND BATHHOUSE REPLACEMENT

The Construction Lender (if applicable) is: N/A

**SECTION 1. SCOPE.** Subcontractor agrees to furnish all labor, materials, equipment and other facilities required to complete the following work:

DIV. 3 CONCRETE SECTION 03100, 03200, 03260, 03300, 03345(SHEETS 1 TO 176 & ADDENDUM 1)

DIV. 4 MASONRY SECTION 04220, CONCRETE MASONRY BLOCK(SHEETS 1 TO 176 & ADDENDUM 1)

DIV. 5 METAL SECTION 05120, 05310, 05400, 05500 (INCLUDING ALL STRUCTURAL WORK & METAL DECKING (SHEETS 1 TO 176 & ADDENDUM 1)

**SECTION 2. PRICE AND PAYMENT.** Contractor agrees to pay Subcontractor for the strict performance of his work the sum of:

SEVEN HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$ 765,000.00 )

or as set out in Section 15 below, subject to adjustments for changes in the work as may be directed in writing by Contractor

Payment shall be made in monthly progress payments of PER WORK PROGRESS(MINUS 10% RETENTION ) of labor and material which have been incorporated into the work of improvement; progress payments to Subcontractor shall be made only with sums received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment. Final payment of the balance owed to Subcontractor shall be due fourteen days after receipt by Contractor of final payment from Owner for Subcontractor's work. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, and material, and agrees to furnish same from its subcontractors, suppliers and/or material men in form satisfactory to Contractor, prior to receipt of any payment. Contractor may, at its option, make any payment or portion thereof by joint check payable to Subcontractor and any of its subcontractors, suppliers and/or material men.

If owner or other responsible party delays in making any payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than

the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanics' lien remedies.

If the Subcontractor asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including but not limited to claims for failure to pay, an extension of time, delay damages, or extra work, Contractor will present the Subcontractor's claim to the Owner or other responsible party. The Subcontractor shall cooperate fully with the Contractor in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse the Contractor for all expense, including legal expense, incurred by Contractor which arise out of Contractor's submission of Subcontractor's claim to Owner or other responsible party. Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such a claim.

**SECTION 3. ENTIRE AGREEMENT.** This Agreement represents the entire agreement between Contractor and the Subcontractor and supersedes any prior written or oral representations. Subcontractor, its subcontractors, suppliers and/or material men are bound by the prime contract and any contract documents incorporated therein insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement.

**SECTION 4. TIME.** Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information in a form acceptable to Contractor and shall conform to Contractor's progress schedules, including any changes made by Contractor in the scheduling of work. Subcontractor shall coordinate its work with that of all other contractors, subcontractors, suppliers and/or material men so as not to delay or damage their performance.

**SECTION 5. DELAY.** Should Subcontractor delay Contractor, any other Subcontractor, or anyone else on the Project, Subcontractor will indemnify Contractor and hold Contractor harmless for any damages, claims, demands, liens, stop notices, lawsuits, attorneys' fees, and other costs or liabilities imposed on Contractor connected with said delay by Subcontractor.

**SECTION 6. CHANGES IN WORK.** Subcontractor shall make no changes in the work covered by this Agreement without written direction from the Contractor. Subcontractor shall not be compensated for any change which is made without such written direction. No changes in the work covered by this Agreement shall exonerate any surety or any bond given in connection with this Agreement.

**SECTION 7. CLAIMS.** If any dispute shall arise between Contractor and Subcontractor regarding performance of the work, or any alleged change in the work, Subcontractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation for the work prior to commencement of the disputed work. Subcontractor's failure to give written notice prior to commencement constitutes an agreement by Subcontractor that it will receive no extra compensation for the disputed work.

**SECTION 8. INSPECTION AND PROTECTION OF WORK.** Subcontractor shall make the work accessible at all reasonable times for inspection by the Contractor. Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Subcontractor's work and give prompt notice of any defect therein. Subcontractor assumes full responsibility to protect the work done hereunder until final acceptance by the Architect, Owner and Contractor.

**SECTION 9. LABOR RELATIONS.** Subcontractor shall maintain labor relations policies in conformity with the directions of the Contractor and shall be bound to and comply with all of the terms and conditions, including trust fund contributions, required by those labor agreements applicable to work performed under this Agreement to which the Contractor is bound. The specific agreements to which the Contractor is bound are listed in Section 16.

**SECTION 10. TERMINATION.** (i) Should Subcontractor fail to rectify any contractual deficiencies, including failure to pay its creditors, failure to adhere to Contractor's schedule, or failure to properly carry out the work, within three (3) working days from receipt of Contractor's written notice, Contractor shall have the right to take whatever steps it deems necessary to correct said deficiencies and charge the cost thereof to Subcontractor, who shall be liable for the full cost of Contractor's corrective action, including overhead, profit and actual attorneys' fees. (ii) Contractor may at any time and for any reason terminate Subcontractor's services hereunder at Contractor's convenience. In the event of termination for convenience, Subcontractor shall recover only the portion of the contract price corresponding to the work actually completed to the date of termination, measured in approved units of work or percentage of completion. Subcontractor shall not be entitled to any claim or lien against Contractor, Owner or anyone else for any additional compensation or damages in the event of such termination.

**SECTION 11. INDEMNIFICATION.** To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Owner and Contractor and their agents and employees from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Subcontractor's operations performed under this Agreement and caused or alleged to be caused, in whole or in part, by any act or omission of Subcontractor or anyone employed directly or indirectly by Subcontractor. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force. The indemnity shall apply regardless of any active and/or passive negligent act or omission of Owner or Contractor, or their agents or employees, but Subcontractor shall not be obligated to indemnify any party for claims arising from the sole negligence or willful misconduct of Owner or Contractor or their agents or employees, or arising solely by the designs provided by such parties. To the extent that Civil Code Section 2782(c) limits the indemnity obligation of the subcontractor, either to the Owner or the Contractor, the indemnity obligations hereunder are limited to the same extent. The indemnity set forth in this Section shall not be limited by insurance requirements or by any other provision of this Agreement.

**SECTION 12. INSURANCE.** Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, with carriers acceptable to Contractor, and in amounts acceptable to Contractor and as required by the prime contract, including the following coverages:

12.1 Casually Insurance

- a. Workers' Compensation and Employer's Liability insurance;
- b. Commercial General Liability insurance (ISO Form CG 00 01) covering all operations; and
- c. Automobile Liability insurance, including coverage for all owned, hired and non-owned automobiles.

All insurance coverages shall be in amounts and for durations acceptable to Contractor and as required by the prime contract. Independent of the obligation Subcontractor has to defend and indemnify Owner and Contractor as set forth in Section 11, Subcontractor shall name Contractor and Owner as additional insured under the General Liability policy using ISO Form CG 20 10 or similar form as approved in writing by Contractor. Subcontractor shall provide certificates of insurance to Contractor prior to commencement of the work. The certificates of insurance shall provide that there will be no cancellation nor reduction of coverage without thirty (30) days prior written notice to Contractor. The certificate shall reflect all limiting or exclusionary endorsements amending the required ISO Form CG 00 01. The use of such limiting or exclusionary endorsements will be subject to the approval of Contractor. Receipt by Contractor of any certificate of insurance or additional insured endorsement which does not comply with any provisions of this Section 12 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement.

## 12.2 Property Insurance

All work covered by this Agreement done at the site, or in preparing or delivering materials or equipment to the site, shall be at the sole risk of Subcontractor until the completed work is accepted by Contractor.

12.2.1 Waiver of Subrogation. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

12.2.2 Builder's Risk. "All risk" Builder's Risk insurance (excluding the hazards of earthquake and flood) is normally purchased by Owner and such insurance provides property insurance coverage for both Contractor and Subcontractor including loss or damage to Subcontractor's work. It is the responsibility of Subcontractor to ensure his work is protected by such Builder's Risk insurance prior to the execution of this subcontract. If Builder's Risk coverage is not provided, Subcontractor shall obtain such coverage at his own expense. Subcontractor is also responsible for any deductible amounts incorporated into any property insurance policies.

**SECTION 13. DISPUTE RESOLUTION.** Any dispute resolution procedure in the prime contract shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, those which have been waived by the making or acceptance of final payment, and questions regarding the licensure of the subcontractor. Subject to compliance with all applicable laws, including but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to the Owner under such procedure and, subject to the other provisions of this Agreement, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled. For disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, the parties hereto shall submit any and all disputes arising under or relating to the terms and conditions of the Subcontract to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. No demand in arbitration shall be made after the date when the institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations. In any dispute resolution between the parties, the prevailing party shall be entitled, in addition to any other relief granted, to recover its costs of participation, including attorneys' and experts' fees. An award rendered by an arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

**SECTION 14. WARRANTY.** Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Agreement will be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this section 14 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. If the Contract Documents and the work includes original construction of individual dwelling units to be sold, Subcontractor warrants that its work will comply in all respects with the standards of construction set forth in Title 7 of the California Civil Code, §§895 et seq.

**SECTION 15. SPECIAL PROVISIONS.** (Including unit pricing, if applicable)

THE CONTRACT INCLUDES ADDENDUM I  
THE SUB-CONTRACTOR IS REQUIRED TO SUBMIT BOND FOR HIS SCOPE OF WORK FROM A  
RATED COMPANY APPROVED BY THE CITY OF LOS ANGELES  
THE SCOPE OF WORK IS INCLUDING ALL CONCRETE, MASONRY, STRUCTURAL STEEL PER  
DRAWINGS 1 TO 176 FOR THE PROJECTS

**SECTION 16. LABOR AGREEMENTS.** The Contractor is signatory to the following labor agreements covering work on this project:

SOUTHERN CALIFORNIA COUNTIES CEMENT MASON AND PER ARTICLE V SECTION 503 THE  
SUBCONTRACTOR IS REQUIRED TO SIGN A LABOR AGREEMENT WITH THIS UNION

Contractors are required by law to be licensed and regulated by the Contractors State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California, 95826.

Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

CONTRACTOR: SIMGEL COMPANY INC.

SUBCONTRACTOR: ENCORE SERVICES, INC.

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| <p><b>By</b> _____</p> <p><b>EMANUEL SASOONES</b></p> <p>(NAME)<br/>2035 WESTWOOD<br/>BLVD. STE. 212<br/>LOS ANGELES, CA 90025</p> <p>(ADDRESS)</p> <p>638371</p> <p>(CONTRACTOR'S LICENSE NO.)</p> | <p><b>By</b> _____</p> <p><b>ANDRE</b></p> <p>(NAME)<br/>1111 North Glendale Blvd, Suite 405<br/>Glendale, CA 91202-3023</p> <p>(ADDRESS)</p> <p>825180</p> <p>(CONTRACTOR'S LICENSE NO.)</p> |
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**NOTE:** This document has important legal consequences. Consultation with an attorney prior to execution of this document is encouraged. Some construction prime contracts may require the use of specialized provisions not included in this form.

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## APPENDIX TO THE CONTRACT WITH SUBCONTRACTOR

It is hereby understood and agreed that the following items are included in the contract and honored as part of the contract between the Contractor and the Subcontractor listed on page 1.

1. Subcontractor warrants that it has obtained or will obtain certificate of insurance with limits of liability equal to or greater than limits required by the Specification book prior to commencement of any work performed by the subcontractor.
2. Subcontractor warrants that his insurance policies are valid to start the work and will remain valid by the end of the contract.
3. Subcontractor warrants that he has obtained or will obtain hold harmless agreements from his indemnifying against all losses from the work performed for the Contractor.
4. Subcontractor warrants that he has confirmed or will confirm to list the Owner and Contractor named as additional insured on his insurance policies including but not limited to : General Liability and Auto insurance policy(ies).
5. Subcontractor is responsible to protect their scope of work performed until the Owner has taken possession of the project. Subcontractor is responsible for the safety and protection of their work, material and final work against any theft and/or vandalism.
6. Subcontractor is required to receive authorization before commencing work for any change of scope of work. Subcontractor is not entitled to get paid for any unauthorized work.
7. Subcontractor is responsible to provide their own temporary facilities including but not limited to storage, water and power.
8. Subcontractor is responsible to pull any needed permit for their scope of work and all related fees to the permit.
9. Subcontractor is responsible to perform surveying and layout for their scope of work.
10. This contract will be valid to proceed after it has been signed. All prior discussions and negotiations are considered null and void. All signatures on the contract shall be notarized.

In the event the subcontractor fails or failed to comply with the above conditions whose work directly or indirectly gives rise to a claim, coverage for such claim will be voided under Contractor's policy. The subcontractor agrees that the contractor need not to demonstrate any prejudice in order to enforce these conditions .



License No. 825180  
A, B, C21

## BID PROPOSAL

Proposal Date: 6/11/13 (3 pages +1 suppl.)  
Expiration Date: 6/11/13 (Bid Date 6/11/13)

Bid To: GENERAL CONTRACTORS

Project / Job: 109<sup>th</sup> Street Recreation Center Project / Pool and Bath-house replacement  
City of Los Angeles

Applicable Bid Documents: Bid set  
Addendum Noted:

QUESTIONS CALL ANDRE AT (818)378-8865

PLEASE REFER TO THE ATTACHED SUPPLEMENTAL SCOPE OF WORK CHECKLIST FOR DETAILS.

### Scope of Work:

We propose to furnish the following work items in accordance with the bid documents noted hereon, and in accordance with the terms and conditions of this proposal:

(Please call for separating any item. Our bid is as lump sum of total items).

TOTAL BID = 589,000

#### 1. BUILDING FOUNDATION AND SLAB AS FOLLOWS :

\$189,000

- Construction of building concrete foundation.
- Construction of building concrete slab.
- Our work includes, furnish and install rebar, set form and pour concrete.
- Our work includes vapor barrier (visqueen) and sand for slab underlayment.
- Construction of cast -in- place concrete bench by others.

#### 2. STRUCTURAL STEEL WORK AS FOLLOWS :

\$159,000

- All building post and beam structural steel framing.
- All mechanical roof curb and opening reinforcement (HVAC and ducting).
- All Canopy framing and roof steel framing.
- All steel framing for Pyramid canopy.  
(All required HDG, is included)
- All structural steel embeds. (installed by CMU contractor)
- Welding for A706 rebars to posts in CMU wall (Rebars to be provided by others)

#### 3. BUILDING CMU WALLS AS FOLLOWS:

\$199,000

- All 12-inch and 8-inch CMU proposed walls including rebar per plans.
- All A706 re-bars to be welded to steel posts as part of item No.2
- Angelus block three types per plans.
- Scaffolding included.
- Solid grout and rebars included.

#### 4. METAL DECKING:

\$42,000

- Furnish and install all metal decking (Verco) for the building per plans.

Continued/Bid Proposal / 109<sup>th</sup> Street Recreation Center-City of Los Angeles / Page 2 of 3**Scope of work is as follows:**

- a) *Furnish Anchor Bolts and templates for Steel Columns and posts.*
- b) *Furnish, erect and install all building steel columns, beams and bracings as shown on structural plans complete in place. (All structural steel components are shop primed).*
- c) *Including all field erection equipment (cranes, fork-lifts, man-lifts) and Shop Drawings Included.*

**OPTIONAL ITEM:** Steel Fence, Gates (gate #1, #2, #3 and #4), Sump pit railing and Ramp railing: 242,000

- **Furnish and install all site steel fence and gates. (Footing, set post and HDG. Included)**
- **Furnish and install sump pit railing.**
- **Furnish and install ramp railings.**
- **All paint work by others.**

**Includes:**

- General Liability Insurance and WC Insurance.
- One year warranty per contract.
- Certified Payroll for prevailing wages.

**Standard Exclusions:**

Cost of any additional Special endorsement certificate required by the contractor – Bonding and Permit Costs

**Special Exclusions:**

- Construction survey, verification and certification of the horizontal and vertical elevations.
- Special Inspection or Laboratory welds testing cost (UT, MT, ...).
- Any light gauge, cold formed metal framing and metal stud work.
- All wood framing work by others.
- All Simpson products to be provided by G.C.
- Aluminum, sheet metal, and Stainless Steel work.
- All Weldable rebars (A706) to be provided by others. (unless Encore Performs CMU work).
- Any Anti-graffiti or water repellent coating on CMU by others.

### Terms & Conditions of Agreement

Acceptance of this proposal by Contractor shall be acceptance of all terms and conditions recited herein, which shall supersede any conflicting term in any other contract document. Any of the Contractor's terms and conditions in addition or different from this proposal are objected to and shall have no effect. Contractor's agreement herewith shall be evidenced by Contractor's signature hereon or by permitting subcontractor to commence work for project.

1. Subcontractor shall be paid monthly progress payments on or before the 15<sup>th</sup> of each month for the value of work completed plus the amount of materials and equipment suitably stored on or off-site. Final payment shall be due 30 days after the work described in the proposal is substantially completed. No provision of this agreement shall serve to void the subcontractor's entitlement to payment for properly performed work or suitably stored materials or to require the subcontractor to continue performance if timely payments are not made to subcontractor for suitably performed work or stored materials or to void Subcontractor's right to file a lien or claim on its behalf in the event that any payment to Subcontractor is not timely made.

2. The contractor will withhold no more retention from the Subcontractor than is being withheld by the Owner from the Contractor with respect to the Subcontractor' work.

3. All sums not paid when due shall bear an interest rate of 1% per month or the maximum legal rate permitted by law whichever is less; and all costs of collection, including the attorney's fee, shall be paid by the contractor.

Continued/Bid Proposal / 109<sup>th</sup> Street Recreation Center-City of Los Angeles / Page 3 of 3

4. No back charge or claim of the contractor for services shall be valid except by an agreement in writing by the Subcontractor before the work is executed, except in the case of the Subcontractor's failure to meet any requirement of the subcontract agreement. In such event, the Contractor shall notify the Subcontractor of such default, in writing, and allow the Subcontractor reasonable time to correct any deficiency before incurring any cost chargeable to the Subcontractor.

5. Contractor is to prepare all work areas so as to be acceptable for Subcontractor work under the Subcontract. Subcontractor will not be called upon to start work until sufficient areas are ready to insure continued work. The Contractor shall furnish all temporary site facilities including suitable storage space and temporary electrical and water at no cost to Subcontractor.

6. Subcontractor shall be given a reasonable time in which to make delivery of materials and/or labor to commence and complete the performance of the contract. Subcontractor shall not be responsible for delays or defaults where occasioned by causes of any kind and extent beyond its control, including but not limited to: delays caused by the owner, General contractor, architect and/or engineers, delays in transportation, shortage of raw materials, civil disorders, labor difficulties, vendor allocations, fires, floods, accidents and act of God. Subcontractor shall be entitled to equitable adjustment in the subcontract amount for additional costs due to unanticipated project delays or accelerations caused by others whose acts are not the subcontractor's responsibility and to time extensions for unavoidable delays. The contractor shall make no demand for liquidated damages for delays in excess of the amount specified in the subcontract agreement and no liquidated damages may be assessed against Subcontractor for more than the amount paid by the Contractor for unexcused delays to the extent actually caused by Subcontractor.

7. The Subcontractor's materials and work are guaranteed by the Subcontractor for a period of ONE YEAR from the date of substantial completion or use by the Contractor or the Contractor's customer, whichever is earlier. This warranty is in lieu of all other warranties, express or implied, including any warranties of merchantability or fitness for a particular purpose. The exclusive remedy shall be that Subcontractor will replace or repair any part of its work, which is found to be defective. Subcontractor shall not be responsible for damage or defect caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation or normal wear, tear and usage.

8. Work called for herein is to be performed during Subcontractor regular working hours. All work performed outside of such hours shall be charged for at rates or amounts agreed upon by the parties at the time overtime is authorized.

9. Contractor shall, if the owner does not, purchase and maintain all risk insurance upon full value of the entire work and/or materials delivered to the jobsite, which shall include the interest of Subcontractor.

10. The Subcontractor shall indemnify and hold harmless the Contractor, Owner, Architect, or others from damages only to the extent such damages were caused by any negligent act or omission of the Subcontractor or anyone for whose acts the Subcontractor is Liable.

11. The subcontractor form used between the Subcontractor and the Contractor will be AIA Standard Form Subcontract Document A401. Where there is a conflict between provisions of either the AIA Standard Form, or the contract documents between the Owner and Contractor and this proposal, then this proposal shall govern.

12. Subcontractor's scope of work is per this bid proposal and will be made part of any contract.

13. Access to work area, security of the site as well as necessary field fabrication area to be provided by the prime contractor with no charge to the subcontractor. Power for site erection to be provided by the prime contractor.

14. Any phasing of the work by the Contractor not included in the bid documents at the time of the bid that affect our work will be subject to additional cost and remobilization costs.

15. The contractor to provide sufficient advance notice and a schedule to the subcontractor upon the contract execution in order to allow enough fabrication time for the material. A mutual time agreement is necessary to allow fabricate of all components after shop drawings approval.

Andre,

As agreed over the phone, steel fence & gates..... will be \$ 176,000  
and you provide bond as needed for your work

Contractor Acceptance:

Company Name:

Singh Co. Inc

Title / Signature:

*[Handwritten Signature]*

Date:

6-11-2013



# **SIMGEL CO. INC.**

**General Building Contractor  
State License #638371**

DATE: May 20, 2013

TO: MBE's, DBE's, WBE's, OBE's, DVBE's

FOR: BID REQUEST

PROJECT: 109<sup>th</sup> St. Pool & Bathhouse Replacement

PROJECT NO.: W.O.E1906494

OWNER: The City of Los Angeles

TRADE REQUEST BID:

- |                |                         |
|----------------|-------------------------|
| *Demolition    | *Grading                |
| *Concrete      | *Steel Structure        |
| *Masonry       | *Landscape & Irrigation |
| *Swimming Pool | *Electrical             |
| *Plumbing      |                         |

Dear Estimator,

We request a bid for the above project on all TRADE REQUEST BID

The owner of the project is the City of Los Angeles, Department of Recreation and Park.

The plans are available in our office located at

2035 Westwood Blvd. Ste. 212  
Los Angeles, CA 90025

If you have any question, Please call our office at 310-475-7663

We are an equal employer contractor. Bond is needed for this project.

Sincerely,

Emanuel Sasoon  
President  
Simgel Co. Inc.