

MEMORANDUM OF UNDERSTANDING
BETWEEN THE PACIFIC ISLAND ETHNIC ART MUSEUM AND
THE CITY OF LONG BEACH, THROUGH ITS
DEPARTMENT OF PARKS, RECREATION AND MARINE

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered, in duplicate, as of June 13, 2018 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on June 12, 2018, by and between the PACIFIC ISLAND ETHNIC ART MUSEUM ("PIEAM"), whose address is 695 Alamitos Avenue, Long Beach, California 90802, and the CITY OF LONG BEACH, a municipal corporation ("City"), acting through its Department of Parks, Recreation and Marine ("PRM"), whose address is 2760 Studebaker Road, Long Beach, California 90815.

WHEREAS, the area located at the intersection of Martin Luther King Jr. Avenue and Alamitos Avenue, in the City of Long Beach, California, is known as the Robert Gumbiner Park ("Gumbiner Park" or the "Park"); and

WHEREAS, the Park is funded by a grant from the State of California Natural Resource Agency, which conditions the installation of art in the Park; and

WHEREAS, the Park is located adjacent to or near the National Guard Armory (the "Armory"), which may result in impacts from emergency actions where the Armory has access to and through the Park; and

WHEREAS, the purpose of this MOU is to establish the terms and conditions under which public art shall be installed, maintained and displayed at Gumbiner Park (the "Project"); and

WHEREAS, the Project will involve the installation of artwork appropriate for public display;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this MOU, the parties agree as follows:

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 1. TERM. The term of this MOU shall commence on June 1, 2018, and
2 shall terminate on June 1, 2023, unless terminated earlier as provided in this MOU. The
3 term of this MOU may be renewed for three (3) successive five-year periods by mutual
4 written agreement of the parties. This MOU may be terminated, without cause, by either
5 party upon twelve (12) months prior written notice to the other party.

6 2. RESPONSIBILITIES OF CITY. City shall do the following:

7 A. Subject to use and access rights, if any, of the Armory to any
8 portion of the Park, City shall provide an adequate outdoor area at the Park for the
9 public display of artwork mutually approved by the parties.

10 B. City shall provide any necessary platforms and lighting for
11 display of the artwork, at City's sole discretion.

12 3. RESPONSIBILITIES OF PIEAM. PIEAM shall do the following:

13 A. PIEAM shall follow all standard reservation procedures for
14 reserving the Park for art-related programming. The Park Facility Reservations
15 phone number is (562) 570-3111.

16 B. PIEAM agrees and understands that, at any given time, for
17 any duration and without notice, there may be potential impacts to the Park from
18 the Armory that may interfere with future programming and/or site reservations.
19 PIEAM agrees to waive any and all claims arising at any time and under any
20 circumstance, against the City, it's Boards, Commissions, and their officials,
21 employees and agents, arising from the Armory's use and/or access to the Park.

22 C. PIEAM shall administer the Project and provide at least one
23 (1) piece of artwork for display at the Park at any given time during the term of this
24 MOU. PIEAM shall retain ownership of the artwork.

25 D. PIEAM agrees to require all artists who created artwork
26 provided to the City pursuant to this MOU to execute and deliver to City the Artist
27 Waiver Form attached hereto as Exhibit "B" prior to the installation of the artwork.

28 E. PIEAM agrees and understands that the artwork must be

1 durable, taking into consideration that the Park is an unsecured public space that
2 may be exposed to elements such as weather, temperature variation, and will be
3 subject to human touch and will take this into consideration when proposing
4 artwork so that foreseeable exposure to the elements and general wear and tear
5 will cause the artwork to experience only minor damage and will not cause the
6 artwork to fall below an acceptable standard of display.

7 F. If artwork is a sculpture or like piece, then PIEAM agrees to
8 apply a protective coating over the entire artwork. Prior to application of the
9 coating, PIEAM shall provide to City a copy of the proposed coating specifications
10 for the City's review and approval. PIEAM shall notify the City a minimum of
11 seventy-two (72) hours prior to applying the coating in order to allow City
12 inspection of its application.

13 G. Prior to commencing any work for the installation,
14 maintenance, relocation, or removal of artwork, PIEAM shall obtain a Right-of-
15 Entry Permit from the City's Parks and Recreation Commission ("Commission") to
16 enter the Park.

17 H. PIEAM shall be fully responsible for ascertaining, identifying,
18 applying and obtaining all licenses, permits and other entitlements necessary and
19 shall fulfill all of the responsibilities associated with such entitlements in
20 accordance with all applicable laws and regulations.

21 4. MAINTENANCE. For the entire duration of the term of this MOU,
22 PIEAM shall be responsible for maintenance of the artwork, at PIEAM's sole cost and
23 expense, and shall reasonably protect and maintain the artwork in a safe and attractive
24 condition against the ravages of time, vandalism and the elements. PIEAM agrees to notify
25 the Director of PRM of its intention to perform maintenance, repair or restoration on the
26 artwork three (3) days prior to actual start of work in the public space at the Park. PIEAM
27 shall be responsible for all work, including obtaining a Right-of-Entry Permit as specified in
28 Section 3.G. Furthermore, if City determines that maintenance (including graffiti removal)

1 of the artwork is necessary, City shall provide written notice to PIEAM and request
2 maintenance within a reasonable period of time as mutually determined by the Director of
3 PRM and PIEAM. If so notified, PIEAM shall perform the required maintenance or
4 restoration within the time stated. In the event PIEAM fails to commence and complete
5 such work in the time period described above, the City may, at its sole discretion, perform
6 such work and shall be entitled to full reimbursement from PIEAM for the costs and
7 expenses related to such work.

8 5. RELOCATION OR REMOVAL. If City determines that the artwork or
9 any portion thereof must be relocated or removed after the installation of the artwork, City
10 shall provide written notice to PIEAM and request, relocation or removal within a
11 reasonable period of time as determined by the Director of PRM. If so notified, PIEAM
12 shall perform the required modification, relocation or removal within the time stated.
13 PIEAM shall be responsible for all work, including obtaining a Right-of-Entry Permit as
14 specified in Section 3.G. However, City may, at its sole discretion, modify, relocate or
15 remove the artwork from the Park at any time without prior notification to PIEAM for reasons
16 related to public safety. PIEAM shall bear the financial responsibility of any modifications,
17 relocations or removals so ordered, whether performed by PIEAM or City.

18 6. MATERIALS. PIEAM shall furnish all labor and supervision, supplies,
19 materials, tools, machinery, equipment, appliances, transportation and services necessary
20 to or used in the performance of PIEAM's obligations under this MOU.

21 7. WARRANTY.

22 A. Warranties of Title. PIEAM represents and warrants that: (a)
23 the artwork is unique and original and does not infringe upon any copyright or
24 other intellectual property rights; (b) that the artwork, or a duplicate thereof, has
25 not been accepted for sale elsewhere; and (c) the artwork is free and clear of any
26 liens from any source whatever.

27 B. Warranties of Quality and Condition. PIEAM represents and
28 warrants that: (a) the execution and fabrication of the artwork will be performed in

1 a workmanlike manner; and (b) the artwork, as fabricated and installed, will be free
2 of defects in material and workmanship.

3 8. OWNERSHIP RIGHTS AND COPYRIGHT.

4 A. PIEAM shall place the following copyright protection on the
5 artwork: © [Artist's Name], inserting the date of completion, and that it is owned
6 by PIEAM.

7 B. PIEAM agrees to waive any and all claims arising at any time
8 and under any circumstance, against the City, its Boards, Commissions, and their
9 officials, employees and agents, arising under the Federal Visual Artists Rights
10 Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil
11 Code §§ 987 et seq.), and any other local, state, federal or international laws that
12 convey right of the same nature or any other type of moral right protecting the
13 integrity of the artwork.
14 C. PIEAM agrees that all work performed under this MOU
15 shall comply with all applicable patent, trademark, and copyright laws, rules,
16 regulations, and codes of the State of California and the United States. PIEAM
17 hereby warrants that the artwork does not, and PIEAM has not and will not, utilize
18 photographs, patent, trademark or copyright in performance under this MOU
19 unless and until PIEAM has obtained proper permission and all releases and other
20 necessary documents.

21 C. PIEAM warrants that the artwork does not violate or infringe
22 any patent, copyright, trade secret or other proprietary right of any other party.
23 PIEAM agrees to and shall protect, defend, indemnify and hold City, its officials
24 and employees harmless from any and all claims, demands, damages, loss,
25 liability, causes of action, costs or expenses (including reasonable attorney's fees)
26 whether or not reduced to judgment, arising from any breach or alleged breach of
27 this warranty.

28 D. Except for the artist being entitled to keep a negative copy the
artwork, PIEAM shall not make any duplicates of any artwork accepted by City for

1 the Park, nor shall PIEAM grant permission to others to do so except with the prior
2 written consent of City which shall not be unreasonably withheld. PIEAM shall
3 credit City when showing or reproducing artwork installed in the Park.

4 E. PIEAM shall not sell or reproduce the design of any artwork
5 without the prior written consent of City which shall not be unreasonably withheld.

6 F. PIEAM grants to City permission to make two-dimensional
7 reproductions of the artwork for non-commercial purposes, including but not
8 limited to reproductions used in advertising, brochures, media publicity, and
9 catalogues or other similar publications. The city will provide credit to the artist and
10 PIEAM in any reproductions.

11 9. WAIVER OF LIABILITY. PIEAM agrees that prior to installing,
12 maintaining, removing, or performing any other activity with respect to the artwork, PIEAM
13 will inspect the facilities, equipment and areas to be used, and shall assume any and all
14 risks of bodily injuries to PIEAM, including medical or hospital bills, permanent or partial
15 disability and death or damages to property, caused by or arising from PIEAM's work in
16 connection with the Project. PIEAM agrees not to sue or present any claim for personal
17 injury, property damage, or wrongful death against the City of Long Beach generally or
18 their officers, employees and agents, for damages attributable to the Project, whether the
19 same shall arise by their negligence or otherwise. PIEAM agrees to require all persons
20 working on the Project to execute and deliver to City the form attached hereto as Exhibit
21 "A" prior to the commencement of any work.

22 10. INDEMNITY.

23 A. PIEAM shall indemnify, protect and hold harmless the City of
24 Long Beach and their Boards, Commissions, officials, employees and agents
25 ("Indemnified Parties"), from and against any and all liability, claims, demands,
26 damage, loss, obligations, causes of action, proceedings, awards, fines,
27 judgments, penalties, costs and expenses, arising or alleged to have arisen, in
28 whole or in part, out of or in connection with (1) PIEAM's breach or failure to

1 comply with any of its obligations contained in this MOU or (2) negligent or willful
2 acts, errors, omissions or misrepresentations committed by PIEAM, its officers,
3 employees, agents, subcontractors, or anyone under PIEAM's control, in the
4 performance of work or services under this MOU (collectively "Claims" or
5 individually "Claim").

6 B. In addition to PIEAM's duty to indemnify, PIEAM shall have a
7 separate and wholly independent duty to defend Indemnified Parties at PIEAM's
8 expense by legal counsel approved by City, from and against all Claims, and shall
9 continue this defense until the Claims are resolved, whether by settlement,
10 judgment or otherwise. No finding or judgment of negligence, fault, breach, or the
11 like on the part of PIEAM shall be required for the duty to defend to arise. City
12 shall notify PIEAM of any Claim, shall tender the defense of the Claim to PIEAM,
13 and shall assist PIEAM, as may be reasonably requested, in the defense.

14 C. If a court of competent jurisdiction determines that a Claim
15 was caused by the sole negligence or willful misconduct of Indemnified Parties,
16 PIEAM's costs of defense and indemnity shall be (1) reimbursed in full if the court
17 determines sole negligence by the Indemnified Parties, or (2) reduced by the
18 percentage of willful misconduct attributed by the court to the Indemnified Parties.

19 D. The provisions of this Section shall survive the expiration or
20 termination of this MOU.

21 11. INSURANCE.

22 A. As a condition precedent to the effectiveness of this MOU,
23 PIEAM shall procure and maintain, at PIEAM's expense for the duration of this
24 MOU, from insurance companies that are admitted to write insurance in California
25 and have ratings of or equivalent to A:V by A.M. Best Company or from authorized
26 non-admitted insurance companies subject to Section 1763 of the California
27 Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best
28 Company, the following insurance:

1 B. PIEAM shall require that all subconsultants or contractors that
2 PIEAM uses in the performance of these services maintain insurance in
3 compliance with this Section unless otherwise agreed in writing by City's Risk
4 Manager or designee.

5 C. Prior to the start of performance, PIEAM shall deliver to City
6 certificates of insurance and the endorsements for approval as to sufficiency and
7 form. In addition, PIEAM shall, within thirty (30) days prior to expiration of the
8 insurance, furnish to City certificates of insurance and endorsements evidencing
9 renewal of the insurance. City reserves the right to require complete certified
10 copies of all policies of PIEAM and PIEAM's subconsultants and contractors, at
11 any time. PIEAM shall make available to City's Risk Manager or designee all
12 books, records and other information relating to this insurance, during normal
13 business hours.

14 D. Any modification or waiver of these insurance requirements
15 shall only be made with the approval of City's Risk Manager or designee. Not
16 more frequently than once a year, City's Risk Manager or designee may require
17 that PIEAM, PIEAM's subconsultants and contractors change the amount, scope
18 or types of coverages required in this Section if, in his or her sole opinion, the
19 amount, scope or types of coverages are not adequate.

20 E. The procuring or existence of insurance shall not be
21 construed or deemed as a limitation on liability relating to PIEAM's performance
22 or as full performance of or compliance with the indemnification provisions of this
23 MOU.

24 12. NOTICES. Any notice or approval required by this MOU shall be in
25 writing and personally delivered or deposited in the U.S. Postal Service, first class, postage
26 prepaid, addressed to PIEAM at the address first stated above, and to City at 333 West
27 Ocean Boulevard, Long Beach, California 90802, Attn: City Manager. Notice of change of
28 address shall be given in the same manner as stated for other notices. Notice shall be

1 deemed given on the date deposited in the mail or on the date personal delivery is made,
2 whichever occurs first.

3 13. AMENDMENTS. Either party may request changes to this MOU. Any
4 changes, modifications, revisions or amendments to this MOU, which are mutually agreed
5 upon by and between the parties to this MOU shall be incorporated by written instrument,
6 and effective when executed and signed by all parties to this MOU.

7 14. APPLICABLE LAW. The construction, interpretation and enforcement
8 of this MOU shall be governed by the laws of the State of California. The courts of the State
9 of California shall have jurisdiction over any action arising out of this MOU and over the
10 parties, and the venue shall be the County of Los Angeles, State of California for state
11 actions and the Central District of California for any federal actions. PIEAM shall comply
12 with all laws, ordinances, rules and regulations of and obtain such permits, licenses, and
13 certificates required by all federal, state and local governmental authorities.

14 15. ENTIRETY OF MOU. This MOU represents the entire and integrated
15 agreement between the parties and supersedes all prior negotiations, representations and
16 agreements, whether written or oral.

17 16. SEVERABILITY. Should any portion of this MOU be judicially
18 determined to be illegal or unenforceable, the remainder of the MOU shall continue in full
19 force and effect, and either party may renegotiate the terms affected by the severance.

20 17. AUDIT. City shall have the right at all reasonable times during the
21 term of this MOU and for a period of five (5) years after termination or expiration of this
22 MOU to examine, audit, inspect, review, extract information from and copy all books,
23 records, accounts and other documents of PIEAM relating to this MOU.

24 18. THIRD PARTY BENEFICIARY RIGHTS. The parties do not intend to
25 create in any other individual or entity the status of a third party beneficiary, and this MOU
26 shall not be construed so as to create such status. The rights, duties and obligations
27 contained in this MOU shall operate only between the parties to this MOU, and shall inure
28 solely to the benefit of the parties to this MOU. The provisions of this MOU are intended

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lana Beach, CA 90802-4664

1 only to assist the parties in determining and performing their obligations under this MOU.
2 The parties to this MOU intend and expressly agree that only parties signatory to this MOU
3 shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy
4 arising out of a party's performance or failure to perform any term or condition of this MOU,
5 or to bring an action for the breach of this MOU.

6 IN WITNESS WHEREOF, the parties have caused this document to be duly
7 executed with all formalities required by law as of the date first stated above.

8 PACIFIC ISLAND ETHNIC ART MUSEUM
9 5/31/18, 2018 By [Signature]
10 Name Michael Devoldt
11 Title President

12 5/31/18, 2018 By [Signature]
13 Name Hugo Albanan
14 Title Associate Director

15 "PIEAM"
16 CITY OF LONG BEACH, a municipal
17 corporation
8/7, 2018 By [Signature]
18 City Manager
19 "City"

20 This Memorandum of Understanding is approved as to form on
21 7/30, 2018.

22 CHARLES PARKIN, City Attorney
23 By [Signature]
24 Deputy
25
26
27
28

EXHIBIT "A"

Waiver of Liability

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664



City of Long Beach
Department of Parks, Recreation and Marine
Release and Waiver of All Liability
and Assumption of Risk Agreement

FOR GOOD AND VALUABLE CONSIDERATION, including permission to participate in

_____ and related activities ("ACTIVITY"), I, for myself, my successors, heirs, assigns, executors, administrators, spouse, and next of kin:

1. Agree that, prior to participating I will inspect the facilities, equipment, and areas to be used, and, if I believe that any of them are unsafe, I will immediately advise the person supervising the ACTIVITY, facility, or area;
2. Acknowledge that I fully understand that **my participation may involve risk of serious injury or death**, including economic losses, which may result not only from my own actions, inaction, or negligence, but also from the actions, inaction, or negligence of others, the condition of the facilities, equipment, or areas where the ACTIVITY is being conducted, the rules of play, or this type of ACTIVITY;
3. **Assume any and all risk** of bodily injuries to myself, including medical or hospital bills, permanent or partial disability, death, and damages to my property, caused by or arising from my participation in the ACTIVITY;
4. **Covenant not to sue or present any claim** for personal injury, property damage, or wrongful death against the City of Long Beach, its commissions, officials, employees, volunteers, and agents for damages attributable to my participation in the ACTIVITY;
5. **Release, waive, discharge, and relinquish**, to the extent allowable by law, the City of Long Beach, its commissions, boards, officials, employees, volunteers, and agents from any liability, loss, damage, claim, demand, or cause of action against them arising from or attributable to my participation in the ACTIVITY, whether same shall arise by their negligence or otherwise;
6. Agree that photographs, pictures, slides, movies, or videos of me may be taken in connection with my participation in the ACTIVITY without compensation from the City of Long Beach and consent to the use of these photographs, pictures, slides, movies, or videos for any legal purpose, and
7. Warrant that I am in good health and have no physical condition that would prevent me from participating in this ACTIVITY.

THIS DOCUMENT RELIEVES THE CITY AND OTHERS FROM LIABILITY FOR BODILY INJURY, WRONGFUL DEATH, AND PROPERTY DAMAGE BY NEGLIGENCE. I HAVE READ THIS DOCUMENT, UNDERSTAND THAT I GIVE UP SUBSTANTIAL RIGHTS AND ASSUME ALL RISKS BY SIGNING IT, AND SIGN VOLUNTARILY.

PRINTED NAME

SIGNATURE

DATE

EXHIBIT "B"

Artist Waiver Form

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

Artist Waiver Form

The provisions of this document shall apply to modify the undersigned Artist's rights of attribution and integrity as set out in the Visual Artists Rights Act, 17 U.S.C §§ 106A and 113(d) ("VARA"), the California Art Preservation Act, Cal. Civil Code §§ 987 and 989 ("CAPA"), and any rights arising under United States federal or state law or under the laws of another country that convey rights of the same nature as those conveyed under VARA and CAPA, as against the City of Long Beach ("City"), its boards and commissions, and their officials, employees and agents.

The City has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the [describe artwork/project: mural, sculpture, etc. and medium]:

entitled [title of work]:

and located at [identify address and/or site, including interior location if applicable],:

in whole or in part, in City's sole discretion.

Artist's Address for Notice:

Artist bears the sole responsibility for providing the City with any changes to the Artist's Address for Notice. Notice of changes must be mailed to:

City of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Attn: City Manager

Artist understands the effect of this waiver and hereby acknowledges that Artist is surrendering the rights described herein with respect to the work.

ARTIST NAME

_____, 20__ By _____
Artist

"Artist"

CITY OF LONG BEACH, a municipal corporation

_____, 20__ By _____
City Manager

"City"