

30194

OPERATION AND MAINTENANCE AGREEMENT

(AQUARIUM EDUCATION FEATURE)

1
2
3 This Operation and Maintenance Agreement (Aquarium Education Feature)
4 ("Agreement") is entered into as of June 12, 2007, ("Effective Date") by and between
5 LONG BEACH AQUARIUM OF THE PACIFIC, a non-profit public benefit corporation duly
6 organized and existing under and by virtue of the laws of the State of California
7 ("Aquarium"), and the CITY OF LONG BEACH, a municipal corporation organized and
8 existing under and by virtue of its charter and the Constitution of the State of California
9 ("City"), pursuant to a minute order adopted by the City Council of the City of Long Beach
10 at its meeting held on June 12, 2007.

RECITALS

11
12
13 A. WHEREAS, the California State Coastal Conservancy has authorized a
14 grant (Grant Agreement No. 05-063) to Aquarium for the construction of a new outdoor
15 Aquarium Education Feature known as "Our Watershed Story"; and

16 B. In order to enhance the Aquarium experience, Aquarium has requested,
17 and City has agreed, that Aquarium shall construct, operate, repair, refurbish and maintain
18 *the Aquarium Education Feature as described below in the area adjacent to the Pierpoint*
19 *Landing Building in a location shown on the site plan ("Site Plan") attached hereto as*
20 Exhibit A and incorporated herein by this reference on the terms and conditions set forth
21 in this Agreement.

22 C. WHEREAS, improvements to be made by Aquarium include the
23 installation of a lenticular billboard and graphic display station in the form of a 50 gallon
24 metal water drum; and

25 D. In order to enable the Aquarium to meet its obligations hereunder, City
26 agrees to allow Aquarium access to and use of the area adjacent to the Pierpoint Landing
27 Building as described herein for the term of this Agreement.

28 NOW THEREFORE, in consideration of the foregoing recitals and the covenants

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 contained herein and for other good and valuable consideration, the receipt of which is
2 hereby acknowledged, City and Aquarium hereby agree as follows:

3 1. Incorporation of Recitals. The foregoing recitals are incorporated into this
4 Agreement by this reference.

5 2. Term. The term of this Agreement shall be equal to the useful life of the
6 Aquarium Education Feature (which term is defined in Section 3 below), which the parties
7 estimate to be twenty (20) years ("Base Term"). Upon the expiration of the Base Term, the
8 parties, by mutual agreement, may extend the Base Term, but in no event beyond the
9 expiration of the Ground Lease (including any agreed upon extensions thereof). Upon the
10 expiration of the useful life, or Base Term (or any mutually agreed extension thereto), City,
11 in its sole discretion, shall be entitled to (I) require the removal of the Aquarium Education
12 Feature and the paving over (or landscaping) of the affected area with a surface
13 compatible with the surrounding hardscape and approved by City (which approval shall not
14 be unreasonably withheld) at the sole cost of the Aquarium, or (ii) City may treat the
15 Aquarium Education Feature as if City owned the Aquarium Education Feature for the then
16 remaining term of the Ground Lease (including any agreed upon extensions thereof),
17 including, without limitation, having the right to remove, alter, replace, reconstruct or
18 operate the Aquarium Education Feature or any other improvements that City shall
19 construct in the Aquarium Education Feature area on such terms as the City, in its sole
20 discretion, shall deem appropriate. Notwithstanding the above, any extension of the Base
21 Term may be terminated upon 180 days written notice from City to Aquarium, upon the
22 expiration of such time period, City, in its sole discretion, shall be entitled to (I) require the
23 removal of the Aquarium Education Feature and the paving over (or landscaping) of the
24 affected area with a surface compatible with the surrounding hardscape and approved by
25 the City (which approval shall not be unreasonably withheld) at the sole cost of Aquarium,
26 or (ii) City may treat the Aquarium Education Feature as if City owned the Aquarium
27 Education Feature for the then remaining term of the Ground Lease (including any agreed
28 upon extensions thereof), including, without limitation, having the right to remove, alter,

1 replace, reconstruct or operate the Aquarium Education Feature.

2 3. Description of Aquarium Education Feature. The Aquarium Education
3 Feature shall be located in the area adjacent to the Pierpoint Landing Building. The
4 description of the physical characteristics, design and dimensions of the Aquarium
5 Education Feature, including the surrounding area that the Aquarium shall be responsible
6 to construct, repair and maintain (collectively, the "Aquarium Education Feature"), are set
7 forth in Exhibit B which is incorporated into this Agreement by this reference.
8 Notwithstanding any approval by City of any aspect of the Aquarium Feature, including,
9 without limitation, its design, City shall incur no liability to Aquarium or any third party in
10 connection with such approval, and Aquarium hereby releases City from any and all such
11 liability to Aquarium.

12 4. Construction of Aquarium Education Feature.

13 4.1 Costs; Approved Plans and Time Line. Aquarium shall bear all costs of
14 construction and installation of the Aquarium Education Feature. Aquarium shall bear all
15 responsibility for constructing and installing the Aquarium Education Feature in accordance
16 with Exhibit B.

17 4.2 Construction of Aquarium Education Feature. Aquarium shall exercise
18 due diligence to complete the construction of the Aquarium Education Feature prior to June
19 10, 2007 (the "Time Line").

20 4.3 Coordination of Construction Activities: Staging Area. During the course
21 of constructing the Aquarium Education Feature, Aquarium agrees to cause its contractors
22 to stage their equipment and construction materials in that certain staging area location.
23 Queensway Bay Supervisor, Paul Bays will assign and designate the staging area. Mr.
24 Bays contact information office (562) 570-1596, cell (562) 577-8427. City shall cooperate
25 with Aquarium in its construction of the Aquarium Education Feature in order to permit
26 Aquarium to meet the Time Line.

27 5. Operation, Maintenance and Repair. During the term of this Agreement
28 (as may be extended in accordance with Section 2 hereof), Aquarium shall be responsible

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 for all costs of operation, maintenance and repair of the Aquarium Education Feature, and
2 City shall have no responsibility in connection therewith. Aquarium shall operate, repair
3 and maintain the Aquarium Education Feature in accordance with first class standards.
4 Aquarium shall pay all utilities in connection with the operation of the Aquarium Education
5 Feature including water and power, if any. Aquarium is hereby granted access to the
6 Aquarium Education Feature in order to fulfill its obligations under this Agreement,
7 including without limitation, its repair and maintenance obligations. In the event Aquarium
8 breaches its repair and maintenance covenant under this Agreement, City shall be entitled,
9 but not obligated, to complete any reasonably necessary repairs and maintenance to the
10 Aquarium Education Feature from time to time, and shall be entitled to seek
11 reimbursement from Aquarium for such costs within thirty (30) days after presentation of
12 invoices.

13 6. Payment of Taxes. Aquarium shall promptly pay its pro rata share of all
14 assessments, real property and other taxes, if any, attributable to the Aquarium Education
15 Feature.

16 7. Insurance. The parties acknowledge that the City is self-insured for
17 general liability. For so long as the Aquarium Education Feature shall exist,
18 City and Aquarium shall each maintain sufficient reserves or insurance to fulfill its
19 obligations under this Agreement. The foregoing requirement shall not operate to limit the
20 liability of Aquarium or City in connection with the Aquarium Education Feature or this
21 Agreement. City and Aquarium hereby waive all claims for insured losses against one
22 another arising in connection with the Aquarium Education Feature and this Agreement,
23 and waive subrogation in favor of both City and Aquarium.

24 8. Indemnification. Aquarium shall protect, defend (with counsel acceptable
25 to City) indemnify and hold harmless City and its officers, directors, agents and employees
26 (collectively, "City") from and against any and all claims arising out of or in connection with
27 the Aquarium Education Feature, or from any activity, work or things done, permitted or
28 suffered by City in or about the Aquarium Education Feature or elsewhere, and shall further

1 protect, defend, indemnify and hold harmless City from and against any and all claims
2 arising from any breach or default in the performance of any obligation on Aquarium's part
3 to be performed under the terms of this Agreement, or arising from any negligence of
4 Aquarium, or any of Aquarium's agents, contractors or employees, and from and against
5 all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim
6 or any action or proceeding brought thereon, except to the extent that any of the foregoing
7 directly result from the actions of City, its employees, agents and contractors, other than
8 actions (including the exercise of remedies) by City under this Agreement. Aquarium, as
9 a material part of the consideration to City, hereby assumes all risk of damage to property
10 or injury to persons, in, upon or about the Aquarium Education Feature arising from any
11 cause other than the actions of City, its employees, agents and contractors, other than
12 actions (including the exercise of remedies) by City under this Agreement, and Aquarium
13 hereby waives all claims in respect thereof against City.

14 City shall protect, defend, indemnify and hold harmless Aquarium and its officers,
15 directors, agents and employees from and against any and all claims and against all costs,
16 attorneys' fees, expenses and liabilities relating to the Aquarium Education Feature or the
17 operation thereof from any breach or default in the performance of any obligation on City's
18 part to be performed under the terms of this Agreement, or arising from the actions of City,
19 its employees, agents or contractors.

20 9. Events of Default. *The following shall be deemed to be events of default*
21 *("Events of Default") under this Agreement.*

22 9.1 Monetary Default. Any failure to pay any sum due hereunder to either
23 party or any third party (such as a utility) within thirty (30) days after receipt of written notice
24 to do so from City.

25 9.2 Nonmonetary Default. Any breach of any other requirement, covenant
26 or condition of this Agreement not involving the payment of money, where cure of such
27 breach is not commenced within thirty (30) days after receipt of written notice to do so from
28 either party, and thereafter completed in the exercise of due diligence.

1 10. Remedies. In the event any Event of Default is not cured within the time
2 periods prescribed in Section 9 above, or in the event of an Event of Default described in
3 Section 9.2 above that is incurable, either party shall be entitled to exercise any remedy
4 available at law or in equity, including without limitation the following:

5 10.1 Damages. Either party shall be entitled to seek damages when
6 available under applicable law.

7 10.2 Equitable Remedies. Either party shall be entitled to equitable
8 remedies, including without limitation, specific performance and/or injunctive relief, when
9 available under applicable law.

10 10.3 Removal of Aquarium Education Feature. City shall be entitled to
11 require the Aquarium to remove the Aquarium Education Feature at the Aquarium's sole
12 cost and expense in the event of a Nonmonetary Default which is not cured within ninety
13 (90) days of written notice thereof by City. In such event, Aquarium shall cause the
14 removal of the Aquarium Education Feature to be commenced within thirty (30) days
15 following notice from City to remove same, and shall cause the removal to be completed
16 within a reasonable time thereafter in the exercise of due diligence. In the event Aquarium
17 does not cause the Aquarium Education Feature to be removed on a timely basis, City
18 may, but shall not be required to, cause the Aquarium Education Feature to be removed,
19 and Aquarium shall reimburse City for all removal costs within thirty (30) days after
20 presentation of invoices.

21 No remedy or election by either party shall be deemed to be exclusive, but shall,
22 wherever possible, be cumulative with all other remedies at law or in equity.

23 11. General Provisions.

24 11.1 Attorneys' Fees. In the event legal action is commenced to enforce
25 or interpret any provision or right under this Agreement, the prevailing party in such
26 litigation shall be entitled to recover from the other its reasonable attorneys' fees, costs and
27 expenses.

28 11.2 No Third Party Beneficiaries. This Agreement is entered into solely

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 for the benefit of City and Aquarium and no third party shall be entitled to enforce, or obtain
2 the benefit of any provision of this Agreement.

3 11.3 Incorporation of Prior Agreements; Amendment. This Agreement
4 contains all of the agreements of the parties with respect to the Aquarium Education
5 Feature and any other matter mentioned herein. No prior agreement or understanding
6 pertaining to any such matter shall be effective. This Agreement may be modified in writing
7 only, signed by the parties in interest at the time of the modification.

8 11.4 Severability. The invalidity of any provision of this Agreement, as
9 determined by a court of competent jurisdiction, shall in no way affect the validity of any
10 other provision hereof.

11 11.5 Notices. Any notice required or permitted to be given hereunder shall
12 be in writing and may be given by personal delivery, overnight courier service, or certified
13 mail, and, if so given, shall be deemed sufficiently given when received, if personally
14 delivered, or delivered by overnight courier service, or if sent by mail, five (5) days after
15 being deposited in the United States mail, postage prepaid, and addressed to the party at
16 the following addresses:

17 To City: City of Long Beach
333 West Ocean Boulevard
18 Long Beach, California 90802
Attention: City Manager
19 Telephone: (562)570-6979
Facsimile: (562)570-6583

20 To Aquarium: Long Beach Aquarium of the Pacific 310 Golden Shore
21 Long Beach, California 90802
Attention: Vice President of Finance and Administration
22 Telephone: (562)951-1600
23 Facsimile: (562)590-3109

24 Either party may by notice to the other specify a different address for notice
25 purposes to the maximum extent reasonably possible, all contacts and communications
26 by and between Aquarium and agencies and departments of the City shall be made by
27 Aquarium through the person designated to receive notices to City hereunder (the City
28 Manager), or through such person's designees.

1 11.6 Waivers. No waiver by either party of any provision of this Agreement
2 shall be deemed a waiver of any other provision of this Agreement, or of any subsequent
3 breach by either party of the same or any other provision of this Agreement. Either party's
4 consent to, or approval of, any act, shall not be deemed to render unnecessary the
5 obtaining of that party's consent to, or approval of, any subsequent act by the other party.

6 11.7 Covenants and Conditions. Each provision of this Agreement
7 performed by either party shall be deemed both a covenant and a condition.

8 11.8 Binding Effect; Choice of Law. This Agreement shall bind the parties,
9 their personal representatives, successors and assigns. This Agreement shall be
10 governed by the laws of the State of California.

11 11.9 Captions. The captions and headings in this Agreement are inserted
12 only as a matter of convenience and for reference, and they in no way define, limit or
13 describe the scope of this Agreement or the intent of any provision hereof.

14 11.10 Force Majeure. City's construction and repair activities shall be
15 excused for such period when the performance of such activity is unavoidably delayed due
16 to events beyond the control of City, including without limitation, in connection with any war,
17 strike, labor unrest, unavailability of materials, act of God, or unusually inclement weather.

18 11.11 Possessory Interest Tax. Aquarium acknowledges that this
19 Agreement may create a possessory interest subject to possessory interest taxes.
20 Aquarium shall pay, prior to delinquency, all taxes on such possessory interest and deliver
21 satisfactory evidence of payment to the City on request.

22 12. Access and Use. City hereby grants permission to the Aquarium for access
23 to and use of the area described in Exhibit A solely for the construction, operation, and
24 maintenance of the Aquarium Education Feature.

25 IN WITNESS WHEREOF, City and Aquarium have executed this Agreement as of
26 the date first set forth above.

27 //
28 //

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

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

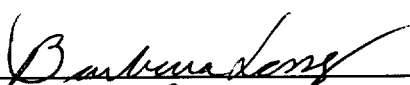
CITY OF LONG BEACH, a
municipal corporation

By 
City Manager

7/24, 2007

CITY

LONG BEACH AQUARIUM OF THE
PACIFIC

By 
Title Vice President

6/22, 2007

AQUARIUM

Approved as to form this 27 day of June,

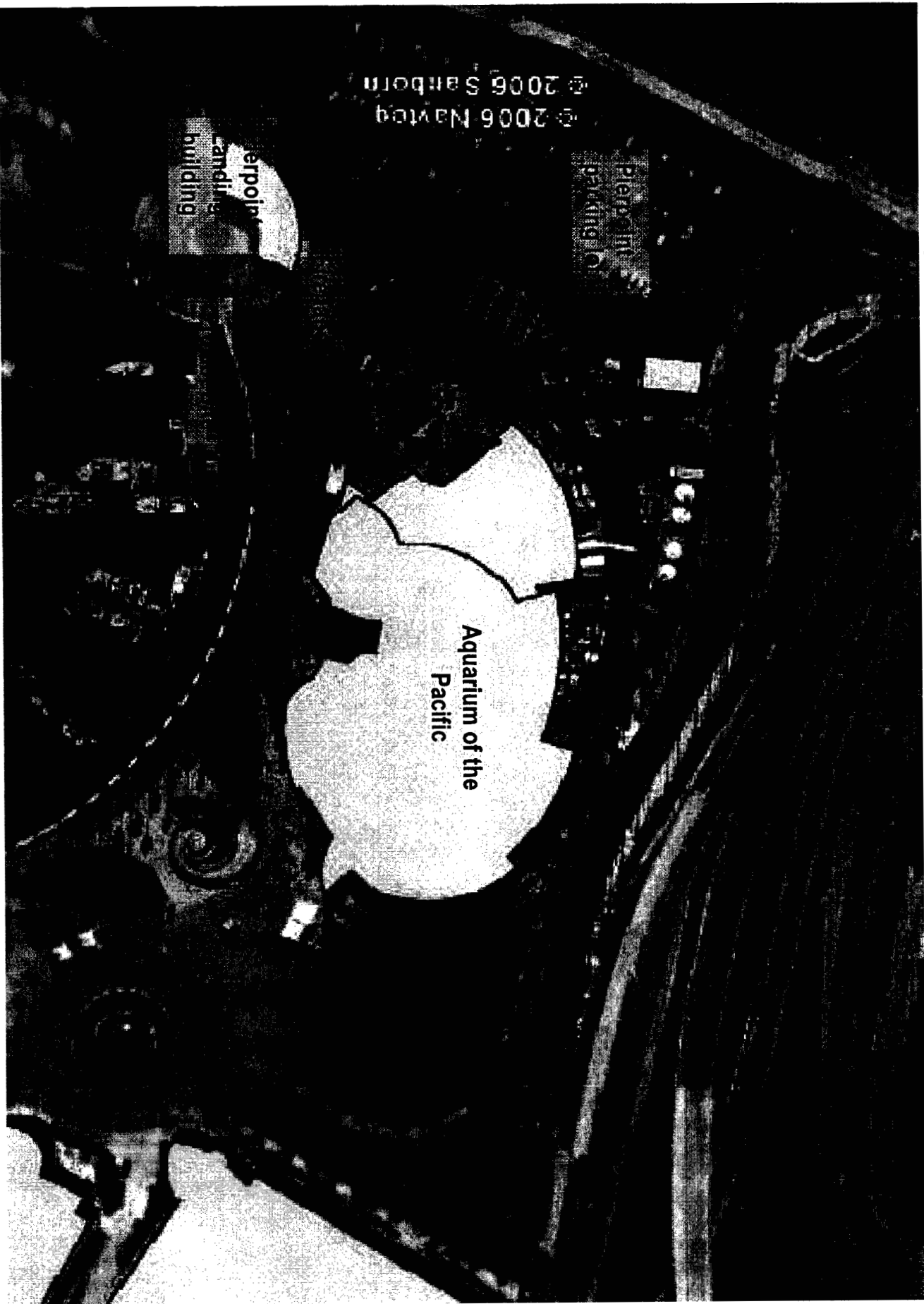
2007.

ROBERT E. SHANNON, City Attorney

By 
Principal Deputy

JCP:abc 5/24/07 07-00112
L:\APPS\CtyLaw32\WPDOCS\D018\PO05\00099245.WPD

Access to Project Site



© 2006 Navteq
© 2006 Sanborn

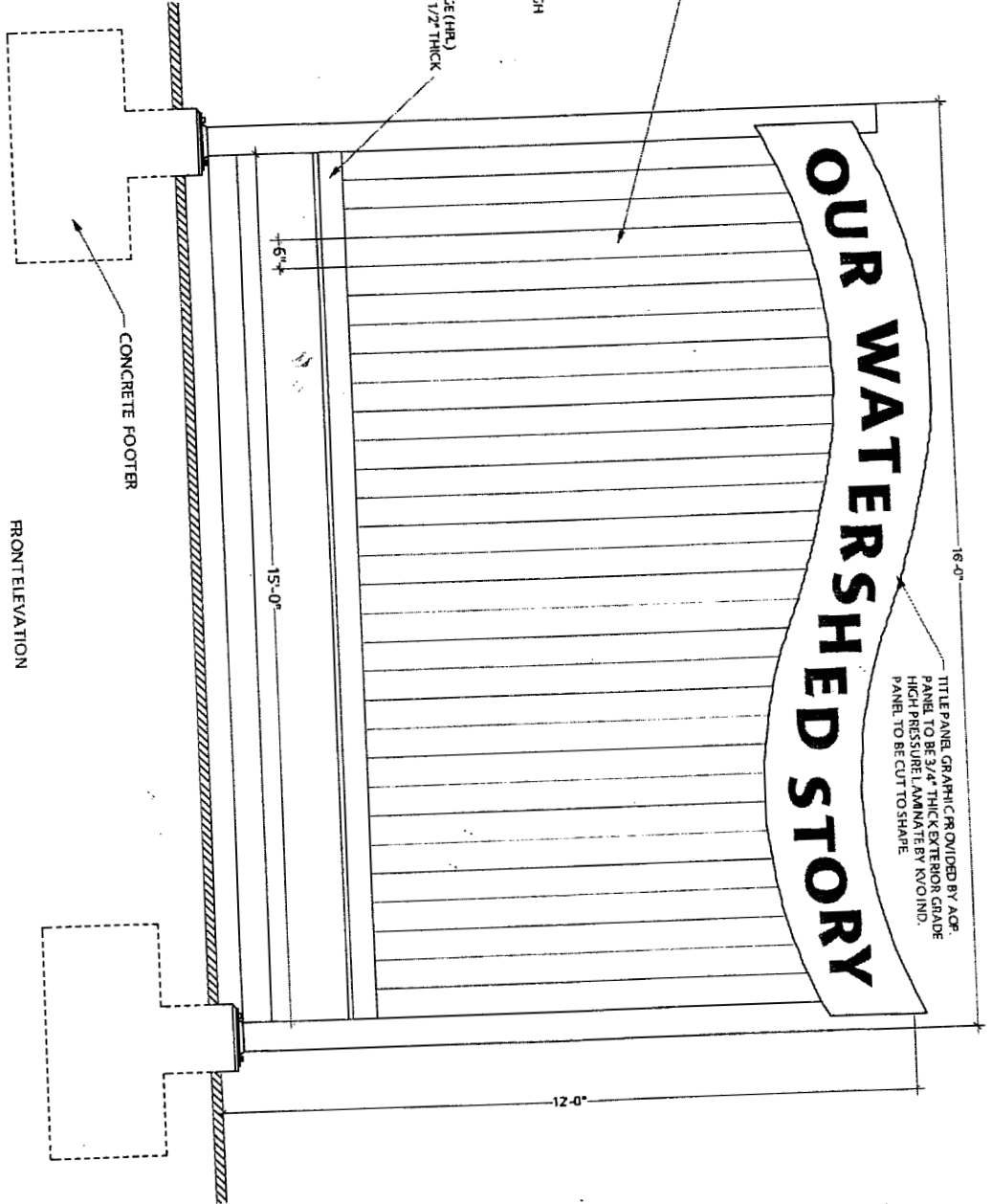
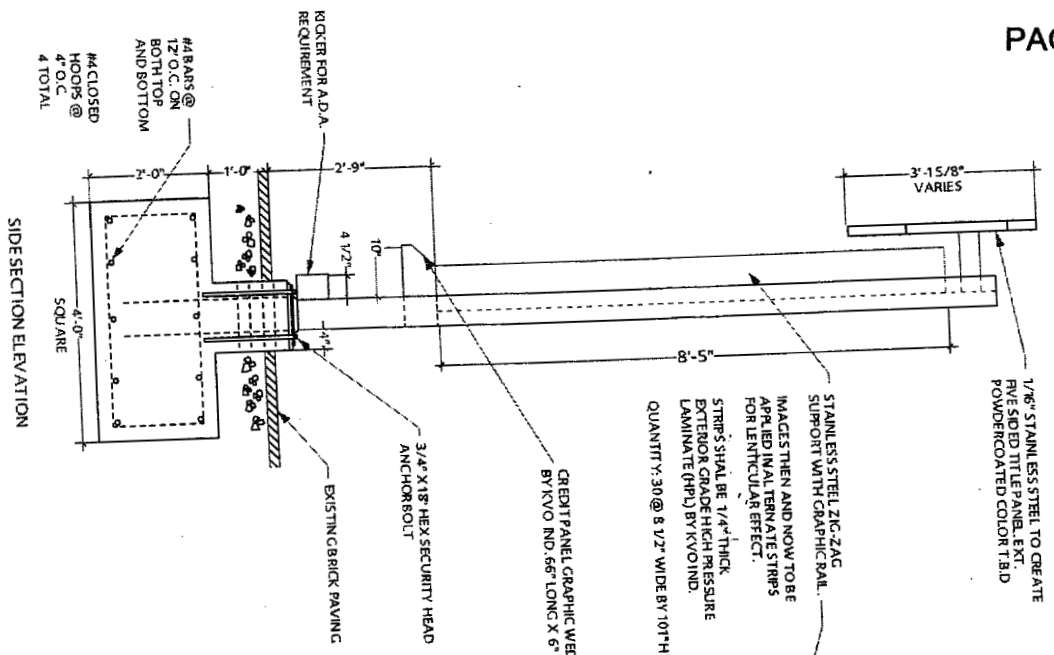
Pierpoint
Landing
Building

Pier 11

Aquarium of the
Pacific

→N

WATERSHED GRAPHIC
Scale: 1/2" = 1'-0"



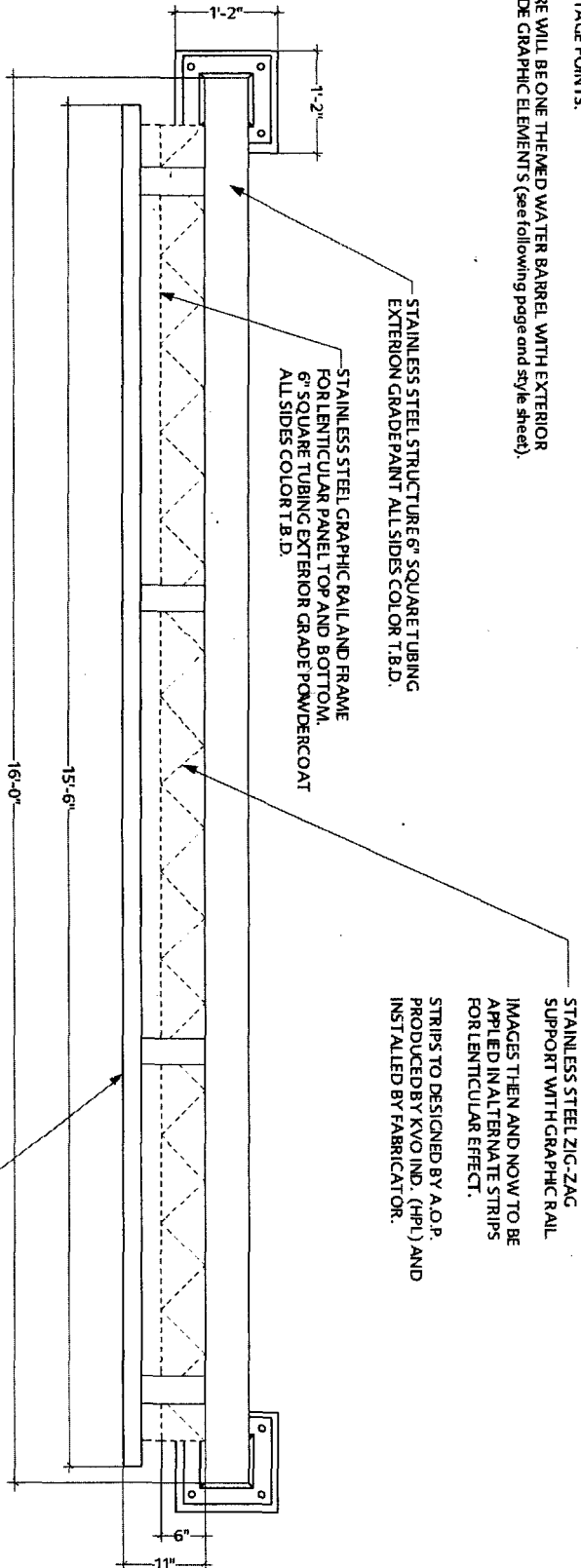
REPOINT WATERBURY EXHIST
A 60% STAINING INDUCE ENAME ZINC-ZINC PANEL
WITH DURABLE EXTERIOR GRADE GRANITE CEMENTS
ON THE SIDE OF THE SIGN PANEL. THIS SIDE WILL SHOW
WATERBURY EXHIST WALL BEHIND FROM OFFER BY
WATERBURY EXHIST
THE REVEAL BEHIND THE SIGN, WITH EXTERIOR
CONCRETE FOOTER (SEE FOLLOWING PAGE AND SIGN AS NOTED)

	ALL CONCEPTS, DESIGNS, AND PLANS REPRESENTED BY THIS DOCUMENT ARE THE PROPERTY OF THE AQUARIUM OF THE PACIFIC AND ARE FOR THE USE OF THE CLIENT ONLY. NO PART OF THIS DOCUMENT SHALL BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, WITHOUT THE WRITTEN PERMISSION OF THE AQUARIUM OF THE PACIFIC.	
	DATE OF REVISION 10-11-2006	PROJECT WATERSHED-1
DRAWN BY BD	CHECKED BY 10-11-2006	DATE 10-11-2006
FINAL DESIGN DRAWING		

PERPOINT WATERSHED EXHIBIT

A FREESTANDING DOUBLE IMAGE ZIG-ZAG PANEL WITH DURABLE EXTERIOR GRADE GRAPHIC ELEMENTS. ONE SIDE OF THE LENTICULAR WILL HAVE THE LOCAL WATERSHED PAST AND THE OTHER SIDE WILL SHOW PRESENT DAY. EACH WILL BE VIEWED FROM DIFFERENT VANTAGE POINTS.

THERE WILL BE ONE THEMED WATER BARREL WITH EXTERIOR GRADE GRAPHIC ELEMENTS (see following page and style sheet).



PLAN VIEW

WATERSHED GRAPHIC
Scale: 3/4" = 1'-0"

	ALL CONCEPTS, DESIGNS, AND PLANS REPRESENTED BY THIS DOCUMENT ARE THE PROPERTY OF THE AQUARIUM OF THE PACIFIC AND ARE FOR USE ON THE PROJECT SPECIFIED IN THIS DOCUMENT. NONE OF SUCH CONCEPTS, DESIGNS, OR PLANS SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE AQUARIUM OF THE PACIFIC.	
	DATE OF REVISION 1 2 3 4	PERPOINT LANDING DRAWN BY BO DATE 10-11-2006 SHEET TITLE WATERSHED-2

FINAL DESIGN DRAWING