

**PUBLIC INTEREST AGREEMENT (Pub. Res. Code 31116 (c))
Aquarium of the Pacific, Shoreline Aquatic Park, Long Beach**

**Recording Requested By and
When Recorded Return to:**

State Coastal Conservancy
1330 Broadway, Suite 1300
Oakland, CA 94612

Attn: Legal Counsel: JG

EXEMPT FROM RECORDING FEES -- GOVERNMENT CODE SECTION 6103

30093

**AGREEMENT PROTECTING THE PUBLIC INTEREST
IN CERTAIN IMPROVEMENTS AND DEVELOPMENT
(Public Resources Code § 31116(c))**

This agreement is entered into by the California State Coastal Conservancy, (“the Conservancy”), a state agency, Aquarium of the Pacific, (“the nonprofit organization”), a California nonprofit corporation, and the City of Long Beach, (“the City”), a municipal corporation. The purpose of this agreement is to protect the public interest in construction and development accomplished with Conservancy funds, as required by California Public Resources Code § 31116(c).

PERTINENT FACTS

- A. California Public Resources Code §§ 31116 authorizes the Conservancy to award grants to nonprofit organizations for the purposes of Division 21 of the Public Resources Code.
- B. The nonprofit organization is a California nonprofit organization exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code and whose purposes are consistent with Division 21.
- C. The City owns certain real property (“the property”), commonly known as Shoreline Aquatic Park, located at 100 Aquarium Way, Long Beach, CA 90802.
- D. On October 27, 2005, the Conservancy authorized a grant to the nonprofit organization, subsequently awarded under Grant Agreement No. 05-063 to develop and construct a new outdoor exhibit, “Our Watershed Story” on the property. The exhibit and all improvements associated with the “Our Watershed Story” exhibit will be referred to throughout this agreement as “the facilities”.

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- E. Public Resources Code § 31116(c) requires that the Conservancy execute an agreement sufficient to protect the public interest in any improvements or development constructed under its grant; this agreement must be recorded in the county in which the real property is located.
- F. The grant referred to above was conditioned on the nonprofit organization, the City, and the Conservancy executing and recording an agreement to protect the public interest in all improvements or developments constructed with Conservancy funds and assure public access, in accordance with Public Resources Code § 31116(c).
- G. The nonprofit organization operates the City of Long Beach's aquarium facility and will manage and operate the facilities.
- H. The nonprofit organization receives 1.25 million annual visitors and provides environmental education programs for students and teachers both at the aquarium and through an outreach program, *The Aquarium on Wheels*.
- I. State policy favors providing maximum public access to the coast.

THE NONPROFIT ORGANIZATION, THE CITY, AND THE CONSERVANCY AGREE AS FOLLOWS, in order to carry out the purposes of Public Resources Code § 31116(c), and in light of the Pertinent Facts, above:

1. **DURATION**. The term of this agreement shall be for the reasonable lifetime of the improvements made with Conservancy funds, but in no event less than five years from the date of completion of construction.
2. **PUBLIC ACCESS**. For the duration of this agreement, neither the City nor the nonprofit organization shall restrict or deny public access to the facilities, provided that the City and the nonprofit organization reserve the right to enforce such rules and regulations regarding public access to, and use of, the property as are reasonably necessary to protect the public's health and safety and the property.
4. **EMERGENCY RESTRICTIONS**. The City, subject to its agreement with the nonprofit organization, and the nonprofit organization may restrict or deny public access to the facilities if an emergency exists which threatens public health and safety or requires temporary closure of the property. In that event, all reasonable measures shall be taken to remedy the emergency conditions and restore the public's right of access.
6. **MAINTENANCE AND OPERATION**. During the term of this agreement, the City and the nonprofit organization shall maintain and operate the property and the facilities and shall use the property and facilities in a manner consistent with the purposes of the Conservancy's grant to the nonprofit organization.

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7. **IMPLEMENTATION**. The nonprofit organization shall develop and implement all improvements for the facilities in accordance with Grant Agreement No. 05-063.
8. **COVENANTS RUNNING WITH THE LAND**. The obligations of this agreement are agreed to be covenants running with the land within the meaning of California Civil Code § 1468. The covenants shall run with the property and be binding upon and inure to the benefit of the nonprofit organization, its assigns and successors in interest, and the people of the State of California for the duration of this agreement.
10. **ACCESS BY THE NONPROFIT ORGANIZATION**. Throughout the duration of this agreement, the nonprofit organization shall have access to the property to develop and implement the improvements for the facilities, to operate and maintain the facilities and to accomplish the purposes of this agreement.
11. **INSPECTION**. The nonprofit organization and the City shall permit the Conservancy, its agents or employees, to visit the property and the facilities at reasonable intervals to determine whether access is being provided to the public on a nondiscriminatory basis in accordance with this agreement.
12. **THE CITY'S USE OF THE PROPERTY**. The City reserves the right to use the property in any manner, provided that its use does not unreasonably interfere with the facilities and the nonprofit organization's rights and obligations under this agreement.
13. **SUPERVISION**. The nonprofit organization and the City shall exercise reasonable diligence in supervising members of the public who use the facilities. The nonprofit organization shall not conduct its programs or operate and manage the facilities in any manner that would jeopardize public safety or damage the property.
14. **LIABILITY**. The nonprofit organization shall indemnify and save harmless the Conservancy, its officers, agents, and employees from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to the property and improvements on it, except for the active negligence of the Conservancy, its officers, agents or employees. The duty to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778. The nonprofit organization waives any and all rights to any type of express or implied indemnity or right of contribution from the Conservancy, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to the property and improvements on it.
15. **SUCCESSORS TO THE NONPROFIT ORGANIZATION**. If, for any reason, including, but not limited to the dissolution and winding up of the nonprofit organization, the nonprofit organization is unwilling or unable to meet its obligations under this agreement, the Executive Officer of the Conservancy shall have the right to designate a public entity or nonprofit corporation to assume the responsibilities of the nonprofit organization under this agreement.

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16. **SUCCESSORS IN INTEREST.** The terms of this agreement shall be binding on all successors and assigns of the parties to this agreement.
17. **FORBEARANCE NOT A WAIVER.** Any forbearance on the part of the Conservancy, or its successor in interest, to enforce the terms and provisions of this agreement in the event of a breach shall not be deemed a waiver of the Conservancy's right regarding any subsequent violation or breach.
18. **SEVERABILITY.** If any of the provisions of this agreement are found by a court of law to be of no force or effect, the validity of all other provisions shall be unaffected.
19. **NOTICES.** Notices issued pursuant to this agreement shall be sent to the following addresses (or to a subsequent address of which notice has been provided in writing):

State Coastal Conservancy
1330 Broadway, Suite 1100
Oakland, CA 94612
Tel: 510/286-1015

City of Long Beach
333 W. Ocean Blvd.
Long Beach, CA 90802
Tel: (562) 570-6555


Aquarium of the Pacific
100 Aquarium Way
Long Beach, CA 90802
Tel: 562/590-3100

20. **RECORDATION.** This agreement shall be recorded in the official records of the County of Los Angeles.

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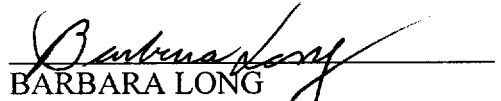
21. **LOCUS OF CONTRACT.** This agreement is entered into in the County of Alameda, California.

STATE COASTAL CONSERVANCY


SAMUEL SCHUCHAT
Executive Officer

4/30/07
Date

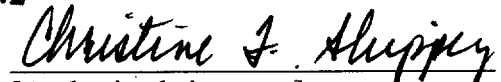
THE AQUARIUM OF THE PACIFIC


BARBARA LONG
Vice President & Corporate Secretary

3/15/07
Date

CITY OF LONG BEACH

ASSISTANT

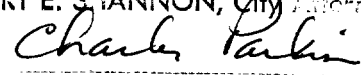

[Authorized signature]

4-13-07
Date

GERALD R. MILLER]
City Manager

OFFICE OF THE CITY CLERK
CITY OF LONG BEACH
400 WEST OCEAN BLVD.
LONG BEACH, CA 90802
TEL: 562-592-2000
FAX: 562-592-2001

APPROVED AS TO FORM

3-29, 2007
ROBERT E. SHANNON, City Attorney
By 
PRINCIPAL DEPUTY CITY ATTORNEY