



City of Long Beach
Working Together to Serve

R-19
Office of Gerrie Schipske
Councilwoman, Fifth District
Memorandum

Date: October 9, 2007

To: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

From: Councilwoman Gerrie Schipske *GS*

Subject: AGENDA ITEM: Memorandum of Understanding with the Aquarium of the Pacific Regarding the Display of the "From Sea to Shining Sea: 200 Years of Charting America's Coasts" Exhibit

BACKGROUND

In recognition of the landmark 200th anniversary of the establishment of the Survey of the Coast, the National Oceanic and Atmospheric Administration (NOAA) and the Smithsonian Institution Traveling Exhibition Service (SITES) created the exhibit, "From Sea to Shining Sea: 200 Years of Charting America's Coasts". The exhibit opened on June 21 at the El Dorado Branch Library and was displayed through August 30.

The City of Long Beach was one of two-hundred cities across the nation that was selected to host the exhibit by the Smithsonian Institute after Councilwoman Schipske completed an on-line application. Long Beach was selected, and as such, is allowed to keep the collection on a permanent basis, provided that the artwork is displayed in public.

Councilwoman Schipske has discussed transferring the exhibit to The Aquarium of the Pacific, where it will be displayed through December 7, 2007. The Aquarium of the Pacific has worked with NOAA on many projects, including the National Marine Sanctuaries on the Aquarium's Whales: A Journey with Giants media experience in 2005 and NOAA's Office of Education on hosting the western regional conference on ocean literacy in 2006. Through the exhibit, the Aquarium's regional audience of school children as well as general visitors will have a new opportunity to learn about the history of coastal surveys in addition to the 12,500 life marine creatures at the Aquarium.

RECOMENDATION

Request the City Manager to enter into a Memorandum of Understanding with the Aquarium of the Pacific that will allow the Aquarium to display the "From Sea to Shining Sea: 200 Years of Charting America's Coasts" exhibit from October 4, 2007 – December 7, 2007.

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is made and entered, in duplicate, as of _____, 2007 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on _____, 2007, by and between the AQUARIUM OF THE PACIFIC, a California nonprofit organization, with a place of business at 100 Aquarium Way, Long Beach, California 90802 ("Aquarium"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City currently possess certain pieces of artwork comprising the exhibit entitled "From Sea to Shining Sea: 200 Years of Charting America's Coasts" (the "Artwork") on loan from the Smithsonian Institution; and

WHEREAS, Aquarium desires to display the Artwork at its facility and City has agreed to allow Aquarium to display the Artwork pursuant to the terms and conditions in this MOU.

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

1. ARTWORK. City hereby agrees to loan to Aquarium the Artwork described on Exhibit "A", attached to this MOU and incorporated by this reference, for display at Aquarium's facility.

2. TERM AND TERMINATION. The term of this MOU shall commence at midnight on _____, 2007, and shall terminate at 11:59 p.m. on _____, 2007, unless sooner terminated as provided in this MOU. City reserves the right to demand delivery of the Artwork at any time during the term of this MOU upon giving Aquarium thirty (30) days' written notice, in which event this MOU shall terminate when the Artwork has been redelivered to City as provided in Section 3 below.

3. DELIVERY AND REDELIVERY OF ARTWORK. On commencement of this MOU, City shall arrange for delivery of the Artwork to Aquarium. On termination or

1 expiration of this MOU, Aquarium shall redeliver the Artwork to City at 333 West Ocean
2 Boulevard, Long Beach, California 90802, Attn: City Manager, or such other address as
3 may be designated by City's City Manager or his designee. City shall pay all costs of
4 delivery and Aquarium shall pay all costs of redelivery of the Artwork.

5 4. EXHIBITION GUIDELINES. Aquarium acknowledges receipt of the
6 "From Sea to Shining Sea: 200 Years of Charting America's Coasts" Exhibitor
7 Handbook, attached to this MOU as Exhibit "B" and incorporated by this reference, and
8 agrees to abide by all of the provisions therein.

9 5. MAINTENANCE AND REPAIR. Aquarium, at its cost, shall provide a
10 suitable public display of the Artwork at such locations as may be approved in writing by
11 City's City Manager or his designee. In addition, Aquarium shall exercise due care for
12 the safekeeping, maintenance and repair of the Artwork so that it shall not be damaged,
13 lost or stolen. In no event shall Aquarium exercise a degree of care less than that degree
14 of care it would exercise over its own property.

15 6. INSURANCE.

16 A. As a condition precedent to the effectiveness of this MOU, Aquarium
17 shall procure and maintain, at Aquarium's expense for the duration of this MOU, from
18 insurance companies that are admitted to write insurance in California and have ratings
19 of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance
20 companies subject to Section 1763 of the California Insurance Code and that have
21 ratings of or equivalent to A:VIII by A.M. Best Company, commercial general liability
22 insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an
23 amount not less than \$1,000,000 per each occurrence and \$2,000,000 general
24 aggregate. This coverage shall include but not be limited to broad form contractual
25 liability, cross liability, independent contractors liability, and products and completed
26 operations liability. City, its boards and commissions, and their officials, employees and
27 agents shall be named as additional insureds by endorsement (on City's endorsement
28 form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26

1 11 85), and this insurance shall contain no special limitations on the scope of protection
2 given to City, its boards and commissions, and their officials, employees and agents.
3 This policy shall be endorsed to state that the insurer waives its right of subrogation
4 against City, its boards and commissions, and their officials, employees and agents.

5 B. Any self-insurance program, self-insured retention, or deductible must
6 be separately approved in writing by City's Risk Manager or designee and shall protect
7 City, its officials, employees and agents in the same manner and to the same extent as
8 they would have been protected had the policy or policies not contained retention or
9 deductible provisions.

10 C. Each insurance policy shall be endorsed to state that coverage shall not
11 be reduced, non-renewed or canceled except after thirty (30) days prior written notice to
12 City, shall be primary and not contributing to any other insurance or self-insurance
13 maintained by City, and shall be endorsed to state that coverage maintained by City shall
14 be excess to and shall not contribute to insurance or self-insurance maintained by
15 Aquarium. Aquarium shall notify City in writing within five (5) days after any insurance
16 has been voided by the insurer or cancelled by the insured.

17 D. If this coverage is written on a "claims made" basis, it must provide for
18 an extended reporting period of not less than one hundred eighty (180) days,
19 commencing on the date this MOU expires or is terminated, unless Aquarium guarantees
20 that Aquarium will provide to City evidence of uninterrupted, continuing coverage for a
21 period of not less than three (3) years, commencing on the date this MOU expires or is
22 terminated.

23 E. Prior to taking possession of the Artwork, Aquarium shall deliver to City
24 certificates of insurance and the endorsements for approval as to sufficiency and form. In
25 addition, Aquarium shall, within thirty (30) days prior to expiration of the insurance,
26 furnish to City certificates of insurance and endorsements evidencing renewal of the
27 insurance. City reserves the right to require complete certified copies of all policies of
28 Aquarium at any time. Aquarium shall make available to City's Risk Manager or designee

1 all books, records and other information relating to this insurance, during normal business
2 hours.

3 F. Any modification or waiver of these insurance requirements shall only be
4 made with the approval of City's Risk Manager or designee. Not more frequently than
5 once a year, City's Risk Manager or designee may require that Aquarium change the
6 amount, scope or types of coverages required in this Section if, in his or her sole opinion,
7 the amount, scope or types of coverages are not adequate.

8 G. The procuring or existence of insurance shall not be construed or
9 deemed as a limitation on liability relating to Aquarium's performance or as full
10 performance of or compliance with the indemnification provisions of this MOU.

11 7. WAIVER OF CLAIMS AND INDEMNITY. Neither City nor any of its
12 boards, commissions, officials, employees or agents shall be liable, and Aquarium waives
13 all claims, for damage to persons or property sustained by Aquarium, its agents,
14 employees, volunteers, visitors or patrons resulting from the condition of the Artwork or
15 Aquarium's use thereof. Aquarium shall defend, indemnify, and hold harmless City, its
16 boards, commissions, officials, employees and agents from all damages or liability arising
17 out of any damage to any person or property (including property owned by City and the
18 Artwork itself) arising out of Aquarium's use of the Artwork.

19 8. TITLE. At no time shall Aquarium acquire any right, title or interest in
20 or to the Artwork, other than as specifically set forth in this MOU. Aquarium shall not
21 transfer or deliver the Artwork to any person or entity other than City without the prior
22 written consent of City's City Manager.

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

1 is made, whichever occurs first.

2 10. AMENDMENT. This MOU, including all Exhibits, shall not be
3 amended, nor any provision or breach waived, except in writing signed by the parties
4 which expressly refers to this MOU.

5 11. ASSIGNMENT. Aquarium may not assign, voluntarily or by
6 operation of law, this MOU or any portion hereof.

7 12. AMBIGUITY. In the event of any conflict or ambiguity between this
8 MOU and any Exhibit, the provisions of this MOU shall govern.

9 13. LAW. This MOU shall be governed by and construed pursuant to the
10 laws of the State of California (except those provisions of California law pertaining to
11 conflicts of laws).

12 14. COSTS. If there is any legal proceeding between the parties to
13 enforce or interpret this MOU or to protect or establish any rights or remedies under it,
14 the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

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

AQUARIUM OF THE PACIFIC, a
California nonprofit organization

_____, 2007 By _____

(Type or Print Name)

_____, 2007 By _____

(Type or Print Name)

"Aquarium"

CITY OF LONG BEACH, a municipal
corporation

_____, 2007 By _____
City Manager

"City"

This Agreement is approved as to form on _____, 2007.

ROBERT E. SHANNON, City Attorney

By _____
Deputy

LAC:bg
07-04411