

October 8, 2019

**C-9**

HONORABLE MAYOR AND CITY COUNCIL

City of Long Beach

California

**RECOMMENDATION:**

Authorize the City Manager, or designee, to execute all documents necessary for a Third Amendment to Lease No. 32944 with the Friends of Colorado Lagoon, for the continued tenancy and operation of the Colorado Lagoon Wetland and Marine Science Education Center, at 5119 East Colorado Street, for a term of three years, with two, two-year renewal options, at the discretion of the City Manager; and,

Authorize the City Manager, or designee, to execute all documents necessary for a Third Amendment to Right-of-Entry Permit No. 32943 with the Friends of Colorado Lagoon, concurrent to the recommended action above, to allow for continued third-party maintenance of portions of the Colorado Lagoon, and authorize the City Manager to amend the Use and Permit Area to add or remove areas of responsibility, as needed. (District 3)

**DISCUSSION**

On December 18, 2012, the City Council authorized Lease No. 32944 (Lease) with the Friends of Colorado Lagoon (FOCL), a 501(c)3 nonprofit organization, for tenancy of a 400-square-foot City-owned facility, at 5119 East Colorado Street commonly known as the Colorado Lagoon Wetland and Marine Science Educational Center (WAMSEC). For the past six years, FOCL has used the WAMSEC for the purposes of conducting educational programming and general advocacy for the Colorado Lagoon (Lagoon), in tandem with the Parks, Recreation and Marine Department (PRM).

In addition to the Lease for the WAMSEC, the City Council also authorized the execution of Right-of-Entry Permit No. 32943 (Permit), which facilitated FOCL's revegetation and maintenance of portions of the Lagoon, pursuant to a grant received from the San Gabriel and Lower Los Angeles River and Mountains Conservancy. While FOCL has completed much of the grant-funded revegetation of the Lagoon, it still performs some revegetation and ongoing maintenance, at its discretion. However, it should be noted that although FOCL is continuing to provide revegetation and maintenance of the Lagoon, FOCL is not responsible for meeting any performance standards for the Lagoon, nor is it required to maintain any of the components of the mitigation bank in the Lagoon.

All initial and extension terms for the Lease and Permit have expired and FOCL has requested extension of both. Concurrently, the Public Works Department (PW) is set to begin phases 2A and 2B of the mitigation bank project, which may result in adjustments to FOCL's use of the WAMSEC and/or the Lagoon restoration area (Permit Area) (Attachment A).

In light of the above, PRM has negotiated a Third Amendment to the Lease, which will contain the following amended terms and provisions:

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- Amended Term: The amended Term of the Lease will be for three years, commencing retroactively on October 1, 2018 and terminating on September 30, 2021. The Lease and Right-of-Entry Permit are intended to be coterminous and interdependent with one another, therefore, should either of the contracts terminate or expire the other will automatically terminate or expire.
- Renewal Options: The Lease may be renewed for two, two-year periods, at the discretion of the City Manager.
- Amended Rent: In lieu of fair market rent and in recognition of this partnership, FOCL will continue to pay rent in the amount of One Dollar (\$1.00) per year and will conduct educational programming, general advocacy, revegetation and ongoing maintenance of the Permit Area, and other mutually agreed to areas of the Lagoon.
- Community Benefit Report: In lieu of fair market rent, FOCL will provide PRM with an annual community benefit report, which outlines the frequency, type, and scope of all educational programming performed during the prior year.
- Annual Inventory and Inspection of WAMSEC: It is FOCL's understanding that City Fixtures, Furniture and Equipment (FF&E) in the WAMSEC includes cabinets, light fixtures, water heater, shelves, toilet and a sink. City may, at its discretion, conduct annual inventory of City FF&E and of the WAMSEC needed maintenance.
- WAMSEC Maintenance Clarification: The City will be responsible for the reasonable general maintenance of the WAMSEC, including the exterior and interior paint, interior flooring, exterior murals, roof, doors, electrical, plumbing, and its FF&E. FOCL will be responsible for keeping the interior and exterior of the WAMSEC clean and free and clear of all hazards. In addition to City's annual inspection, WAMSEC will notify the City if City-provided maintenance is required. FOCL will not make any repairs at the expense of the City. Should the WAMSEC need substantial capital improvements or repairs, City, at its option, may make those repairs or may notify FOCL that the City will not make the repairs and FOCL will have the right to terminate the Lease by giving City 15 days advance written notice.
- Meeting Space: FOCL will be allowed to use the WAMSEC for FOCL meetings as needed. City-provided keys to the WAMSEC will be maintained by the FOCL President, FOCL Secretary, and FOCL subcontractor.

To memorialize changes to the Term, Use, and to the Permit Area provisions of the Permit, PRM has negotiated a Third Amendment to the Right of Entry Permit, which will contain the following amended terms and provisions:

- Amended Term: The amended Term of the Right-of-Entry Permit will be for three years, commencing retroactively on October 1, 2018 and terminating on September 30, 2021. The Right of Entry Permit and Lease are intended to be coterminous and independent with one

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another, therefore, should either of the contracts terminate or expire the other will automatically terminate or expire.

- Renewal Options: The Permit may be renewed for two, two-year periods at the discretion of the City Manager.
- Amended Use: FOCL will be allowed to continue revegetation and maintenance of the Permit Area, at its discretion. No other permitted use of the Permit Area will occur without the prior written consent of the City Manager or his designee.
- Amended Permit Area: The Permit Area will be amended to remove the Appian Way street median, as shown in Attachment A. The Permit Area may be amended in writing by the City Manager or his designee, as required to remove or add areas within the Permit Area.

The following additional terms and provision will apply to both the Lease and the Permit:

- Grant Approval Process: FOCL's restoration and education programming is primarily grant-funded and supplemented with membership fees and donations. Should FOCL identify a grant funding opportunity, FOCL will send a written notification of the grant opportunity to the City to seek permission to apply for funding well in advance of the grant deadline. The City will review FOCL's request, in light of other City Departments who may also be seeking the same funding. Should there be a conflict in requests for grant funding between the City and FOCL, the City will have grant funding priority and may disallow FOCL's request.
- Live Scan: Prior to coming onto the Permit Area or WAMSEC, FOCL will Live Scan fingerprint all employees, volunteers, and contractors who may come in contact with youth.
- Communication and Meeting Attendance: FOCL's point of contact with the City will be the FOCL President, unless the President designates another representative. As requested, FOCL will send a representative to all City meetings regarding the WAMSEC and Permit Area as FOCL's schedule permits.
- FOCL Volunteer and Participant Numbers: On a quarterly basis, FOCL will provide a report to the City with the number of FOCL volunteers and educational class participants.
- Identification: FOCL will maintain a copy of both the Lease and Permit documents at the WAMSEC. FOCL's subcontractor will also maintain a copy of the Lease and Permit documents on hand/in vehicle(s), which will be available to the public upon request. When working in the Permit Area and WAMSEC, FOCL and its subcontractors will wear FOCL t-shirts.
- Advertising and Signage: Advertising will not be allowed in the Permit Area. Limited signage directly related to FOCL's restoration or programming may be displayed in the Permit Area and WAMSEC, as approved in advance and in writing by the Director of PRM.

This matter was reviewed by Deputy City Attorney Arturo D. Sanchez on September 11, 2019 and by Revenue Management Officer Geraldine Alejo on September 23, 2019.

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TIMING CONSIDERATIONS

City Council action is requested on October 8, 2019, to allow FOCL to continue its tenancy of the WAMSEC and to continue its revegetation and maintenance of the Permit Area.

FISCAL IMPACT

The annual rent of \$1 will continue to accrue to the Tidelands Operating Fund Group in the Parks, Recreation and Marine Department. The total annual maintenance cost is estimated at \$1,000 and is currently budgeted in the Tidelands Operating Fund Group in the Park, Recreation, and Marine Department. This recommendation has no staffing impact beyond the normal budgeted scope of duties and is consistent with existing City Council priorities. There is no local job impact associated with this recommendation.

SUGGESTED ACTION:

Approve recommendation

Respectfully submitted,



GERARDO MOUET  
DIRECTOR OF PARKS, RECREATION AND MARINE

GM:SS:MR:ak/lh

Attachment A: Permit Area

APPROVED:



THOMAS B. MODICA  
ACTING CITY MANAGER





**ATTACHMENT A:**  
Permit Area

**Legend**

- FOCL Area 2.9 ac. (approx.)
- Intertidal Contract Area 4.3 ac. (approx.)
- PRM and Contract Maint. Area 22.0 ac. (approx.)

