

# CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

# R-32

333 West Ocean Boulevard 6<sup>th</sup> Floor • Long Beach, CA 90802 • (562) 570-6465 • Fax (562) 570 -5836

October 3, 2017

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

Receive the supporting documentation into the record regarding the debt issuance by the City of Long Beach; adopt a Resolution authorizing the issuance of the Tidelands Revenue Bonds Series 2017A (Aquarium of the Pacific Project) and Series 2017B (Queen Mary Improvements), in an aggregate principal amount not to exceed \$30,250,000; and, authorize the execution of all necessary related documents and actions. (District 2)

## DISCUSSION

On November 1, 2016, the City Council approved up to \$23 million in infrastructure repairs for the Queen Mary (Attachment A). The Queen Mary infrastructure improvements were expected to be funded by approximately \$5.8 million from Tidelands Fund reserves that were designated for the Queen Mary. The remaining \$17.2 million in repairs were expected to be funded by a Tidelands bond issue and intended to be repaid entirely by passenger fee revenues and base rent received by the Urban Commons, the lessee of the Queen Mary.

On May 9, 2017, the City Council approved a loan to the Aquarium of the Pacific Corporation (Corporation) of up to \$10.5 million from the Tidelands Fund to provide funding for the construction of the Corporation's Pacific Visions Project (Attachment B). The loan was expected to be funded by a Tidelands bond issue, intended to be repaid from "restricted" Corporation assets such as donations and grants.

The City proposes to issue the Tidelands Revenue Bonds, Series 2017A (Aquarium of the Pacific Project) and 2017B (Queen Mary Improvements), which, collectively, would be the Series 2017 Bonds. The aggregate principal amount of the Series 2017 Bonds is not to exceed \$30,250,000. Proceeds from the Series 2017 Bonds will be used to: 1) fund the loan to the Corporation of \$10.5 million for the Pacific Visions Project; 2) pay for Queen Mary Improvements, or reimburse the Tidelands Fund for expenses already incurred associated with the Queen Mary improvements under the Urban Commons Lease; and, 3) fund the cost of the bond issuance.

HONORABLE MAYOR AND CITY COUNCIL

October 3, 2017

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This matter was reviewed by Deputy City Attorney Richard F. Anthony on September 13, 2017 and by Assistant Finance Director Lea Eriksen on September 12, 2017.

TIMING CONSIDERATIONS

City Council action is requested on October 3, 2017, to ensure adequate funding for both the Pacific Visions Project and the Queen Mary Improvements.

FISCAL IMPACT

The Series 2017 Bonds will be secured by all of Tidelands revenues, including oil revenues and the transfer from the Harbor Revenue Fund. The average annual debt service payment will be approximately \$3.2 million. The City anticipates the Corporation will pay approximately \$1.2 million of this amount from donations and grants. The remaining \$2.0 million will be paid from passenger fee revenues and base rent received by Urban Commons in accordance with prior City Council-approved actions. The City's General Fund will not be liable for the debt service payments of the Series 2017 Bonds.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



JOHN GROSS  
DIRECTOR OF FINANCIAL MANAGEMENT

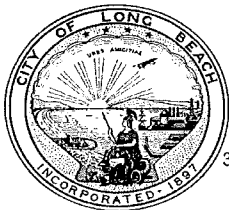
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ATTACHMENTS

APPROVED:



PATRICK H. WEST  
CITY MANAGER



# CITY OF LONG BEACH

DEPARTMENT OF ECONOMIC AND PROPERTY DEVELOPMENT  
333 West Ocean Boulevard 3<sup>RD</sup> Floor • Long Beach, CA 90802 • (562) 570-6099 • Fax (562) 570-6380

November 1, 2016

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

Authorize the City Manager, or designee, to execute any and all documents, including additional lease and capital funding provisions, necessary for an Amended and Restated Lease and Operations Agreement No. 22697 with Urban Commons, LLC, for the Queen Mary and adjacent properties; and,

Authorize the City Manager to proceed with funding up to \$23 million in infrastructure repairs to the Queen Mary by using up to \$5.8 million in total reserves designated for the Queen Mary and borrowing approximately \$17.2 million to be repaid from Queen Mary related revenues. (District 2)

## DISCUSSION

On November 17, 2015, the City Council authorized the City Manager to execute an Amended and Restated Lease and Operations Agreement No. 22697 (2015 Amended and Restated Lease) with Urban Commons, LLC (Urban Commons), as Successor Lessee to Garrison Investment Group, LLC (attached). The previous action also authorized the assignment of the 2015 Amended and Restated Lease from Garrison Investment Group, LLC to Urban Commons, LLC. Significant deal points of the 2015 Amended and Restated Lease included making capital improvements to the Queen Mary using City revenue from Carnival Corporation (Carnival) passenger fees. Another key deal point was the requirement for Urban Commons to sublease the entire dome to Carnival for expanded terminal operations to accommodate larger cruise ships, the first of which is expected to arrive in January 2018. The other major deal point was to ensure that Urban Commons had the financial capability to develop the land surrounding the Queen Mary.

Subsequent to the approval of the terms by the City Council on November 17, 2015, the negotiations between Urban Commons and Carnival to accomplish several of the deal points were more complicated, and more costly to implement than initially anticipated; therefore, the 2015 Amended and Restated Lease was not executed.

The City and Urban Commons have now agreed to changes in lease terms associated with urgent Queen Mary repairs and the replacement passenger facility. The proposed changes to the lease terms (2016 Amended and Restated Lease) and the impacts to the City are outlined as follows:

### Urgent Queen Mary Repairs

The 2015 Amended and Restated Lease provided that Urban Commons would continue to assume responsibility for maintenance and repair of the Queen Mary. However, due to the age and location of the ship, there are significant structural and utility deficiencies requiring urgent

HONORABLE MAYOR AND CITY COUNCIL

November 1, 2016

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attention. In order to protect this City asset, the 2015 Amended and Restated Lease contemplated that the City would participate by annually pledging revenues to be used for capital projects and historic preservation. These revenues would be deposited into a reserve account, called the Historic Preservation Capital Improvement Plan (HPCIP) fund.

HPCIP funding would come from Passenger Fee Revenues paid annually by Carnival to Urban Commons and passed-through to the City (estimated at \$2.15 million) and Base Rent paid annually by Urban Commons (\$300,000). The level of urgently needed repairs requires an investment in excess of this annual revenue stream. Therefore, City staff and Urban Commons have negotiated a plan in which the City would provide significant upfront funds for capital repairs and renovations to the Queen Mary. The proposal uses existing cash reserves currently designated for the Queen Mary (up to \$5.8 million) and a ten-year City bond issue of about \$17.2 million to provide up to \$23 million for repairs agreed upon by the City and Urban Commons. Payment of the debt service on the bond issue will come from future Passenger Fee Revenues and Base Rent during the first seven years of the 2016 Amended and Restated Lease. These revenues would have been deposited in the HPCIP fund for preservation, conservation, and restoration of historical assets associated the Queen Mary, but will instead, for the first seven years, be used to pay debt service on the bond issue to partially fund the needed immediate improvements. In addition, Urban Commons will divert a portion of its share of Passenger Fee Revenues in Years 6 to 10.

The total repair needs of the Queen Mary far exceed the amount that will be funded by the proposed upfront funding, but the upfront funding will allow the highest priority repairs to be made in a timely manner and prevents further deterioration of the Queen Mary, and allow the revitalization and development of the associated property to move forward.

The revised lease terms related to the capital repairs of the Queen Mary are as follows:

<b>2015 Amended and Restated Lease</b>	<b>2016 Amended and Restated Lease</b>
Passenger Fee Revenues paid to the City will be deposited into an HPCIP fund annually to be used for preservation, conservation and restoration associated with historic aspects of the Queen Mary, and maintenance, repair and replacement of specific elements associated with the maritime nature of the ship.	No change.
Amount of HPCIP available to Urban Commons is limited to annual Passenger Fee Revenues and Base Rent paid by Carnival.	Within six months from signing the 2016 Amended and Restated Lease, the City will provide upfront funds of up to \$23 million for capital repairs to the Queen Mary.
	City's revenue from Passenger Fee Revenues and Base Rent in Years 1-7 will be used toward repayment of City upfront funding or financing; Urban Commons' revenue from Passenger Fee Revenues in Years 6-10 will be used toward repayment of City's upfront funding or financing.

Deposits of Passenger Fee Revenues from Carnival into the HPCIP that would have been made annually will be directed toward repayment of financing in the first ten years of the 2016 Amended and Restated Lease; therefore, HPCIP funds will not be available to Urban Commons in the event

of capital repair needs. However, this does not relieve Urban Commons from its responsibility for preservation, conservation, restoration, maintenance and repair of the Queen Mary.

#### Replacement Passenger Facility

During negotiations with Urban Commons, it became apparent that the use of the dome is integral to Urban Commons' long-term redevelopment plans as an event venue. This necessitated additional negotiation between Urban Commons and Carnival related to the construction of a new replacement passenger facility, which when completed, would make the dome available to Urban Commons. Urban Commons and Carnival have signed a Second Amendment to the Sublease, which details Urban Commons' responsibility to provide a replacement passenger facility to Carnival. The City and Urban Commons have agreed to amend the Revenue Sharing provision of the 2016 Amended and Restated Lease to increase the Passenger Fee Revenues paid to Urban Commons. The additional revenue to Urban Commons will defray the additional cost of construction of the replacement passenger facility and preserve capital for the commercial development of the land.

<b>2015 Amended and Restated Lease</b>	<b>2016 Amended and Restated Lease</b>
Years 1-5, Urban Commons will pay to the City all Passenger Fee Revenue Fee from Carnival, up to a maximum of \$2.15 million per year.	No change.
Beginning on Year 6, Urban Commons will pay to the City all Passenger Fee Revenues from Carnival, up to approximately \$2.15 million per year; thereafter, the parties will share excess Passenger Fee Revenues equally.	<p>Years 6-15, Passenger Fee Revenues will be split equally, subject to the City receiving a minimum of \$1.5 million per year.</p> <p>Beginning on Year 16, Passenger Fee Revenues will be split equally; subject to the City receiving a minimum of \$2.15 million per year, adjusted from Year 1-16 based on the CPI, with an annual CPI thereafter of not more than 3 percent per year.</p>

The reduction in revenue to the City is estimated at \$5.375 million in the first ten years of the 2016 Amended and Restated Lease, which is the length of the bond issue. This will result in lower revenues than otherwise would have been deposited into the HPCIP fund.

#### City Bond Issuance

The City will provide up to \$23 million for immediate repairs to the Queen Mary through a combination of Tidelands cash (up to \$5.8 million previously designated for the Queen Mary) and a bond issue secured by a general pledge of Tidelands revenues, but intended to be repaid entirely by revenue received by the City and Urban Commons as previously described.

The bond issue is expected to be sized at approximately \$19 million to provide about \$17.2 million in construction proceeds. The bond issue would be backed by a pledge of all Tidelands revenue, including oil revenues and the transfer from the Harbor Revenue Fund. This is the same revenue backing used for the Aquarium Bond issue and the same as any future Tidelands debt. This bond issue thus weakens slightly the City's ability to borrow from Tidelands revenues in the future. The actual source of debt service payment is anticipated to be the Passenger Fee Revenues and Base Rent received from Urban Commons, as shown below.

Source of Revenue	Expected Revenue
City Passenger/Base Rent Revenue Years 1-5	\$2.45 million per year for 5 years
City Passenger/Base Rent Revenue Years 6-7	\$1.933 million per year (estimated) for 2 years
Urban Commons Passenger Fee Revenues Years 6-10 (50 percent of its 50 percent share)	\$816,668 per year (estimated) for 5 years

The bond issue, to be repaid by the Passenger Fee Revenues and Base Rent revenue, has some risk to the City with regard to the sufficiency of the identified funding sources to pay debt service. The Economic and Property Development Department has reviewed the risk and concludes that the risk is low. Carnival is the largest vacation cruise line company in the world and owns other brands, including Princess, Holland America and Cunard. The City terminal is the only terminal owned by Carnival in the United States, which is very strategic to its operations (it is able to control vessel deployment, passenger handling, and terminal operations rather than paying a third party operator). The Southern California market for cruises is consistently strong. The Department believes that the strength of Carnival's business in the City outweighs the risk that Carnival will stop bringing vessels to Long Beach or that its business will deteriorate.

This matter was reviewed by Deputy City Attorney Richard F. Anthony on October 17, 2016 and by Budget Analysis Officer Julissa Josè-Murray on October 18, 2016.

#### TIMING CONSIDERATIONS

Upon the City Council's approval of the additional terms, the parties are prepared to sign the Amended and Restated Lease.

#### FISCAL IMPACT

To address urgent repair needs at the Queen Mary, the City will provide up to \$23 million through the use of Queen Mary reserves of up to \$5.8 million and a bond issue netting approximately \$17.2 million in construction proceeds as outlined above. There is a minute risk that market changes may preclude the City from issuing the expected debt in a timely manner. The Financial Management Department believes this to be extremely unlikely. However, if the financing is delayed, the City will temporarily redirect money from existing resources and reserves and replenish that money as soon as debt can be issued.

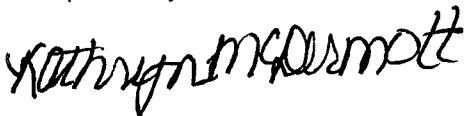
Additionally, to facilitate private development of the replacement passenger facility for Carnival by Urban Commons, the per Passenger Fee Revenue distribution methodology in the lease agreement will be revised. The proposed methodology will redirect approximately \$1 million annually of per Passenger Fee sharing revenues from the City to Urban Commons during Years 6-15. In the unlikely event that the replacement passenger facility is never constructed by Urban Commons, then Urban Commons, at its expense, will be required to construct an alternate facility (subject to City's reasonable approval) intended to provide a general benefit to the public.

The Passenger Fee Revenues being redirected from the HPCIP fund for debt service or the new passenger facility, will not be available for Queen Mary preservation, conservation, restoration, maintenance and repair during that time, although the monies being redirected to pay debt service will be used to fund immediate, instead of future, repairs. Beginning in Year 16 the HPCIP is anticipated to resume receipt of its projected annual funding at \$2,450,000.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

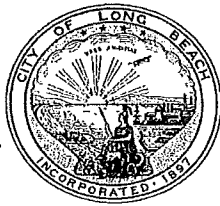


KATHRYN MCDERMOTT  
INTERIM DIRECTOR OF  
ECONOMIC AND PROPERTY DEVELOPMENT

Attachment

APPROVED:

  
\_\_\_\_\_  
PATRICK H. WEST  
CITY MANAGER



# CITY OF LONG BEACH

DEPARTMENT OF ECONOMIC AND PROPERTY DEVELOPMENT

333 West Ocean Boulevard 3<sup>rd</sup> Floor • Long Beach, CA 90802 • (562) 570-8099 • Fax (562) 570-6380

# R-14

November 17, 2015

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

Authorize the City Manager, or designee, to execute any and all documents necessary for an Amended and Restated Lease and Operations Agreement No. 22697 and concurrent assignment to Urban Commons, LLC, as Successor Lessee to Garrison Investment Group, LLC. (District 2)

## DISCUSSION

The Queen Mary is a City-owned asset operated under Lease and Operations Agreement No. 22697 (Lease) with Save the Queen, LLC (STQ). In late 2007, STQ assumed control over Queen's Seaport Development, Inc., and the Lease through bankruptcy proceedings of the ship's prior operator. Subsequently, Garrison Investment Group, LLC (Garrison) foreclosed on STQ and assumed ownership and control of the Leasehold interest. Since that time, Garrison has been an excellent steward of the Queen Mary. Garrison has spent over \$13 million dollars on preservation and renovation, and exceeded capital improvement requirements established during bankruptcy proceedings. Additionally, Garrison and their management company, Evolution Hospitality, have modernized operations, improved retail and restaurant offerings, and brought new and exciting events and exhibits to the ship.

Garrison has done a tremendous job of managing the Queen Mary hotel, attractions and events; however, as an investor, they did not intend to operate the Queen Mary in the long-run or develop the adjacent shoreside property. Consequently, Garrison has conducted an exhaustive search to identify a successor lessee (Successor Lessee) who will maintain excellent stewardship; continue to preserve, restore and maintain the ship; and demonstrate sufficient capitalization and experience to promptly proceed with shore-side development. Urban Commons, LLC, (Urban Commons) was selected by Garrison as their preferred Successor Lessee. Urban Commons is a Los Angeles based real estate investment and development firm specializing in innovative hospitality and entertainment destination developments. Urban Commons has development experience, not only in the Los Angeles area, but also in the Bay Area, Silicon Valley, Central Coast, Pasadena, Palm Desert, and Miami.

City staff have spent considerable time reviewing the financial stability of Urban Commons, their familiarity with the constraints of site development, and their ability to manage an extensive outreach, entitlement and development process. Urban Commons has demonstrated the necessary experience and financial capacity to operate a combined historic hotel and event/attraction facility, and the ability to undertake new development on the unimproved portions of the leasehold area.

The challenging structure of the existing lease has served to be an impediment to investment into preservation, restoration and shore side development. As a result, City staff, Garrison and Urban Commons propose a number of modifications that serve to address these issues. City staff have worked diligently to craft an agreement that would promote shore side development, while also strengthening the capital and preservation support for the Queen Mary. To this end, City staff have negotiated the proposed Amended and Restated Lease No. 22697 containing the following major terms and provisions:

- **Lessor:** City of Long Beach
- **Current Lessee:** Save the Queen, LLC, a wholly owned subsidiary of Garrison Investment Group, LLC
- **Successor Lessee:** Urban Commons, LLC
- **Leased Premises:** 64.22 Acres (43.38 acres land area/20.84 acres water area)
- **Lease Term:** 66 years from execution of Amended and Restated Lease.
- **Minimum Rent:** \$300,000 annually, payable monthly in advance. CPI adjustment on each 10-year anniversary of commencement date, not to exceed 40% in any 10-year period. This reflects an annualized increase of approximately 3.4%.
- **Priority Return:** Priority Return on initial Stipulated Investment Basis (purchase price for the leasehold interest) and eligible capital investments, to the extent it is available from Operating Revenue, shall be paid to the Successor Lessee on an annual basis at a rate of 9%. Priority Return shall not be cumulative.
- **Percentage Rent:** Percentage Rent will be calculated at 10% of Operating Revenue after Successor Lessee achieves its Priority Return, and payable to the extent it exceeds annual Minimum Rent.
- **Land Rent:** The Amended Lease will provide flexibility for the Successor Lessee to terminate the Amended Lease as to individual development parcels, subject to receipt of applicable entitlements, and for Successor Lessee (or its assignee) to enter into new, financeable ground leases for development purposes, not to exceed the term of the underlying 66-year lease.

Land rent shall be based on appraised value to be established at the time of execution of the Amended Lease, with payments beginning when the land included in financeable ground leases generates revenue, either directly or indirectly. Land values shall increase by CPI adjustment on each 10-year anniversary of commencement date, not to exceed 40% in any 10-year period.

- **Participation in Sales and Refinance:** The City shall be entitled to participate in any net profits from either the sale or refinance of the entire leasehold generally at the level of 25% of net proceeds after transaction costs and Successor Lessee's required return.
- **Base Maintenance and Replacement Plan:** Successor Lessee shall be required to establish a new Base Maintenance and Replacement Plan (BMRP) fund. Successor Lessee shall set aside a percentage of Gross Revenues, to fund the capital investment required for continued first class operation of the hotel, event and attraction facilities as follows: 1% during the first and second years; 2% during the third and fourth years; and 3% each year thereafter.
- **Historic Preservation and Capital Investment Plan:** Successor Lessee shall prepare a Historic Preservation and Capital Investment Plan (HPCIP) for preservation, conservation and restoration associated with the special historic status of the ship; and maintenance, repair or replacement of specific elements associated with the maritime nature of the ship.

Funding for the HPCIP will be provided by all or a portion of revenues received from Carnival Passenger Fees; all or a portion of the Minimum Rent paid to the City (excluding the Catalina Express pass-through rent and rent from special events); and any grant funds or other special source funds the City is able to obtain for this purpose. Successor Lessee may contribute additional funds needed to complete the projects on the approved HPCIP, which shall be eligible capital investments and added to the Stipulated Investment Basis for the purpose of calculating Preferred Return.

- **Compliance with Applicable Laws:** Successor Lessee shall comply with all requirements that may be reasonably imposed on the Queen Mary to comply with laws, including compliance with the Americans with Disabilities Act (ADA). These improvements will be considered as eligible capital investments and added to the Stipulated Investment Basis for the purpose of calculating Preferred Return.
- **Financial Reporting:** Financial reporting practices are to be modified to conform to the changes recommended in the City Auditor's Report of September 12, 2012 (including flow of all revenue to a single entity and associated auditing requirements, financial reporting and formatting requirements, etc.).
- **Queen Mary Heritage Foundation:** The Current Lessee has assisted in the establishment of the non-profit Queen Mary Heritage Foundation (QMHF), whose mission and purpose is to support historic preservation, conservation and restoration improvements pertaining to the ship, its historic artifacts and ephemera, and to serve as a vehicle to educate and disseminate information concerning the ship's history. Successor Lessee shall support and participate on the governing board of the Queen Mary Heritage Foundation (QMHF), and the City shall have ex-officio representation on the governing board.

Any and all funds raised by the Foundation and used in support of improvements to the ship shall be not added to the Stipulated Investment Basis for the purposes of calculating Priority Return, and said funds shall be subject to financial reporting requirements and auditing by the City.

- **Restructuring of Carnival Dome Lease:** At a time of mutual agreement between Successor Lessee and Carnival Corporation (Carnival), Successor Lessee shall sub-lease the entire Carnival Dome to Carnival for expanded terminal operations. Each year of the first five years of the Amended Lease term, Successor Lessee shall pay to City an amount equal to the passenger fees received by Successor Lessee from Carnival for the prior year up to a maximum of \$2,150,000 (the "Base Dome Payment"). City shall deposit the Base Dome Payment into an account to which both City and Successor Lessee have mutual access (the "HPCIP Account") for the purpose of capital projects and historic restoration. During the first five years of the Amended Lease term, all passenger fees received by Successor Lessee from Carnival in excess of the Base Dome Payment shall be retained by Successor Lessee. City shall have the right to collect passenger fees directly from Carnival if and to the extent Successor Lessee fails to make the Base Dome Payment.

Beginning in the sixth year of the Amended Lease term and each year thereafter, Successor Lessee shall pay to City all passenger fees received by Successor Lessee from Carnival up to \$2.15 per passenger. Successor Lessee shall further pay to the City 50% of passenger fees generated in excess of \$2.15 per passenger. The other 50% shall be retained by the Successor Lessee and included as revenue for financial reporting purposes. City revenue derived from passenger fees shall be deposited into the HPCIP Account and may be used only to fund HPCIPs as provided above.

The proposed Amended and Restated Lease No. 22697 will facilitate and encourage innovative shore side development, and provide a secure funding source for the historic preservation of, and capital investment into the Queen Mary. Additionally, the Current Lessee and Successor Lessee have expressed keen interest in working cooperatively with the Queen Mary Task Force in connection with outreach, entitlement and development of the leasehold area.

This matter was reviewed by City Attorney Charles Parkin on November 5, 2015 and by Assistant Finance Director Lea Eriksen on November 4, 2015.

#### TIMING CONSIDERATIONS

City Council action on this matter is requested on November 17, 2015 in order to ensure that the Amended Lease can be executed before the end of the year.

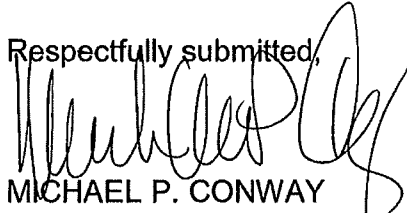
FISCAL IMPACT

Annual rent revenue of approximately \$300,000 will be redirected from the Tidelands Operating Fund (TF 401), which is currently used to support general Tidelands Operations, to the Queen Mary Fund (TF 410) in the Department of Public Works (PW), where it is restricted for capital expenses and investments for the Queen Mary. These funds and the Carnival Passenger Fees will be available to fund the Historic Preservation and Capital Investment Plan for the Queen Mary and will be managed by the Department of Economic and Property Development. Approval of this recommendation will provide continued support to the local economy.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



MICHAEL P. CONWAY  
DIRECTOR OF ECONOMIC &  
PROPERTY DEVELOPMENT

MPC:JMV

APPROVED:



PATRICK H. WEST  
CITY MANAGER



# CITY OF LONG BEACH

**R-17**

OFFICE OF THE CITY MANAGER

333 West Ocean Boulevard • Long Beach, CA 90802 • (562) 570-6711 FAX (562) 570-7650

May 9, 2017

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

**RECOMMENDATION:**

Consider approval of up to a \$10.5 million, ten-year loan to the Aquarium of the Pacific Corporation (Corporation) from the Tidelands Fund, subject to terms; and, authorize the City Manager, or designee, to execute the necessary documents in connection therewith including necessary amendments to the Implementation Agreement between the City and the Corporation. (District 2)

**DISCUSSION**

The Aquarium of the Pacific (Aquarium) is managed and operated, on behalf of the City by the Aquarium of the Pacific Corporation (Corporation), a 501(c)(3) non-profit organization. The Aquarium currently features 19 major habitats and 32 focused exhibits. The Aquarium is home to more than 11,000 ocean animals that represent nearly 500 species from the Pacific Ocean. It provides educational programs for children, families, and adults.

Since the Aquarium opened in 1998, both the City and the Corporation have worked together closely to provide an educational and safe environment for visitors. In 2006, the City and the Corporation entered into an Implementation Agreement that described the relationship from a formal perspective, including requirements with regard to maintenance and preservation of the facility.

Since the inception of the Aquarium, the Corporation has worked diligently to enhance the facility and attract visitors to the region. The Corporation has completed Phase I of the Campus Master Plan. Phase I included the Watershed, the Molina Animal Care Center, the Science on A Sphere, and expansion of retail facilities. Now, the Corporation wishes to proceed with construction of the Pacific Visions Project (Project), which is Phase II of the Campus Master Plan. The Project is a \$53 million educational exhibit expansion to the facility, which will feature a two-story, 50-foot high wing that will contain an immersive theater, a changing exhibit gallery, a pre-show area, a post-show gallery, as well as guest services for ticketing and membership. The Project will also include a new entrance facade with approximately 1,300 square feet of lobby space, and a 2,200 square foot addition to the existing 4,280 square foot retail store.

The Corporation believes that not only will this be a world class educational exhibit exploring major issues such as climate change, but it will also enhance the standing of the Aquarium as an attraction and further improve the attendance and financial standing of the Aquarium. The Project is expected to be funded by pledges received from donations and grants, including a \$15 million Challenge Grant from the City. Some of the donations and grants will be received over time, and fundraising is not yet complete. Accordingly, the Corporation needs \$10 million in net proceeds from a loan to provide for cash flow during construction of the Project. The Corporation was not able to secure a bank loan, due in part to the restrictions of the 2012 Aquarium Bond Indenture. However, the Corporation expects to be able to secure bank financing for an equipment lease and subsequent conversion to ownership when the equipment lease ends.

It is recommended that the City Council consider lending the Corporation up to \$10.5 million for up to ten years from the Tidelands Fund to be replenished by a future Tidelands bond issue. The bond issue is expected to be part of a larger Tidelands bond issue that will include funding for the previously approved Queen Mary improvements and for additional improvements associated with the marinas. The proposed loan to the Corporation would be structured so the debt service payments from the Corporation would reimburse the City for its debt service and costs on the portion of the Tidelands bonds for the Project. There are risks associated with the loan as described under Fiscal Impact.

The terms of the loan are:

1. A loan of up to \$10.5 million that will yield up to \$10 million in construction proceeds from the Tidelands Fund for the Project and issuance costs up to \$500,000 to allow the Corporation to make up for a temporary cash shortfall resulting from donation or grant commitments made, but not yet fully paid in cash. For ease of administration, the City will determine the method by which the Corporation pays issuance costs.
2. The loan may initially be a line of credit, as determined by the City, and will be structured to meet the cash flow needs of the Corporation and the City with regard to matching the debt service on any bond issue to reimburse the Tidelands Funds.
3. The term will be up to ten years and may have an early prepayment option. The amortization schedule will be as determined by the City, after discussion with the Corporation, subject to the requirement that the repayments from the Corporation must cover the City's debt service payments on bonds at the interest rate described below. The loan is expected to be repaid from "restricted" Corporation assets (donations and grants). If no bonds are issued by the City, the City will allow partial or full prepayment at any time, but otherwise the loan will be structured with approximately level debt service.

4. The loan interest rate will be at the expected (and subsequent actual, when and if issued) rate of a City bond issue, plus 0.5 percent, and plus the rate associated with any loss of investment earnings by the City based on the average interest rate on City investments. Issuance costs are also to be amortized in the overall debt service, if not directly paid by the Corporation. If a bond is not issued, the bond rate will be the ten-year Municipal Market Data (MMD) index, plus a credit spread for Tidelands Fund bonds plus any estimated prepayment premium, plus any implicit issuance costs, if not otherwise paid by the Corporation.
5. Debt service would be interest-only for the first two years.
6. The loan would have a lower repayment priority than any other loan to the Corporation that is required to complete the Project made by a separate organization.
7. The loan will be made pursuant to a loan agreement and evidenced by a promissory note.

The loan will also include other terms intended to protect the City; provide financial and operation information to allow the City to better assess the Corporation's financial status; clarify various financial matters; and, allow the Corporation to get other loans subject to City approval and compliance with the 2012 bond indenture and other requirements. These other terms include requiring the Corporation to secure the City's permission for major expansions or discretionary repairs, maintaining the existing Challenge Grant terms, acknowledging that not all project funding has been secured, notification by the Corporation of any non-timely payments or default, large Project change orders, or changes to the Project schedule, use of appropriate funding sources for any loan repayments, providing reports in a timeframe, form and content satisfactory to the City; and, the Corporation's commitment to acknowledge the major donor status of the City with permanent recognition and finding an appropriate location for "LONG BEACH" lettering.

The loan terms will include an amendment to the Implementation Agreement to further protect the City and that clarifies Corporation budget reporting and the City's authority to require reasonable changes to the budget presentation format and periodic reporting; clarifies that the City will own the Aquarium, equipment and other assets when the lease to the Corporation ends; requires the Corporation to continue to keep the City informed about any events or actions that may impact Corporation finances or operations; provides recognition by the Corporation of special events and the City's recognition that it will work to reasonably minimize potential revenue loss to the Corporation; clarifies the City's role with regard to the form and content of audited Corporation financial statements, expands the triggering of remedial steps to include any actual or budgeted non-timely full payment of debt service on any loan or of City rent; and, triggers the potential of further actions if three such events occur in any five-year period.

This matter was reviewed by Deputy City Attorney Richard F. Anthony and by Finance Director John Gross on April 25, 2017.

### TIMING CONSIDERATIONS

City Council action is requested on May 9, 2017, to facilitate the Corporation's construction schedule for the Project and to avoid additional Project construction costs.

### FISCAL IMPACT

The loan of up to \$10.5 million will be funded from a bond issue backed by Tidelands Fund revenues. The bond issue is expected near the end of 2017, but no later than the first half of 2018. If the Corporation requires cash in advance of the bond issue, the cash will come temporarily from Tidelands operating reserves, or from a temporary release of funds for projects not currently under construction. The cash will be restored when the expected Tidelands bonds are issued. No adverse impact on the Tidelands Fund or any Tidelands project is expected from the loan or the associated bond issue. However, there are risks associated with the loan. If the risks result in adverse events, they could have a significant adverse impact.

If for any reason the Corporation is not able to repay the loan or repay on time, or if the Project needs additional funding, it is possible that reserves of the Tidelands Fund may be used and/or that Tidelands projects may be impacted. The risk of these events happening is not insignificant. While the Corporation has taken steps to avoid issues, the Corporation has not yet raised the full funding required to complete the Project, and there are risks associated with construction costs and net operating costs.

Approval of the loan implies future City Council consideration of a bond issue providing up to \$10.5 million to reimburse the Tidelands Fund for the loan. While the bonds are outstanding (ten years or less), the bonds will marginally reduce the Tidelands Fund borrowing capacity for emergencies or other purposes; however, the relatively small reduction is not considered a practical concern.

### SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

  
PATRICK H. WEST  
CITY MANAGER

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF LONG BEACH, CALIFORNIA, AUTHORIZING  
THE ISSUANCE OF TIDELANDS REVENUE BONDS  
SERIES 2017A (AQUARIUM OF THE PACIFIC  
PROJECT) AND SERIES 2017B (QUEEN MARY  
IMPROVEMENTS), IN A PRINCIPAL AMOUNT NOT TO  
EXCEED \$30,250,000, AND APPROVING RELATED  
DOCUMENTS AND ACTIONS

WHEREAS, the City Council of the City of Long Beach (the "City") has  
determined to authorize the issuance of City of Long Beach Tidelands Revenue Bonds,  
Series 2017A (Aquarium of the Pacific Project) (the "Series A Bonds") and of City of  
Long Beach Taxable Tidelands Revenue Bonds, Series 2017B (Queen Mary  
Improvements) (the "Series B Bonds," and collectively with the Series A Bonds, the  
"Bonds"), pursuant to an indenture of trust (the "Indenture"), by and between the City  
and U.S. Bank National Association, as trustee (the "Trustee"), to (a) finance  
improvements to the Aquarium of the Pacific and to the Queen Mary (collectively, the  
"Improvements"), (b) fund a reserve fund for the Bonds, and (c) pay the costs of  
issuance of the Bonds; and

WHEREAS, the Bonds will be special obligations of the City, are payable  
solely from and secured by a pledge of certain Available Tidelands Oil Revenue and  
Available Tidelands Operating Revenue, and Available Tidelands Operating Fund  
Balance (together, the "Tidelands Revenues"), as such capitalized terms are  
defined in the Indenture; and

WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated (the  
"Underwriter") has proposed to purchase the Bonds and has presented to the City a

1 form of bond purchase agreement for the Bonds, to be entered into between the City  
2 and the Underwriter (the "Bond Purchase Agreement"); and

3 WHEREAS, a form of official statement (the "Preliminary Official  
4 Statement") describing the Bonds, to be used in connection with the marketing of the  
5 Bonds by the Underwriter, has been prepared; and

6 WHEREAS, a form of a continuing disclosure certificate (the  
7 "Disclosure Certificate"), providing for ongoing disclosure of matters related to the  
8 Bonds, has been prepared; and

9 WHEREAS, the City Council has duly considered the transactions  
10 contemplated by the documents referred to above and wishes at this time to approve  
11 the issuance of the Bonds and such documents in the public interests of the City;

12 NOW, THEREFORE, the City Council of the City of Long Beach resolves as  
13 follows:

14 Section 1. Issuance of the Bonds; Approval of Indenture. The City  
15 Council hereby authorizes the issuance of the Series A Bonds in a maximum aggregate  
16 principal amount of \$10,500,000 and the Series B Bonds in a maximum aggregate  
17 principal amount of \$19,750,000. The Bonds shall be issued under the provisions of  
18 Division 1 of Chapter 3.52 of Title 3 of the City's Municipal Code and pursuant to the  
19 Indenture, for the purpose of providing funds for the Improvements, as well as to pay  
20 the costs of issuance of the Bonds and to fund a reserve fund for the Bonds.

21 The City Council hereby approves the Indenture in the form on file with  
22 the City Clerk. The City Manager, the Director of Financial Management and the City  
23 Treasurer (each a "Designated Officer"), each acting alone, are hereby authorized and  
24 directed to execute, for and in the name of the City, and the City Clerk is hereby  
25 authorized and directed to attest, the Indenture in such form, together with any  
26 changes therein or additions thereto deemed advisable by the Designated Officer  
27 executing the Indenture upon consultation with the City Attorney and Bond Counsel,  
28 and the execution and delivery of the Indenture by a Designated Officer shall be

1 conclusive evidence of the approval of any such changes or additions. The City  
2 Council hereby authorizes the delivery and performance by the City of the Indenture..

3           Section 2.   Sale of Bonds. The City Council hereby approves the sale  
4 of the Bonds to the Underwriter pursuant to the Bond Purchase Agreement in the form  
5 on file with the City Clerk. The Designated Officers, each acting alone, are hereby  
6 authorized and directed to execute, for and in the name of the City, the Bond Purchase  
7 Agreement in such form, together with any changes therein or additions thereto deemed  
8 advisable by the Designated Officer executing the Bond Purchase Agreement upon  
9 consultation with the City Attorney and Bond Counsel (so long as: the principal amount  
10 of the Series A Bonds does not exceed \$10,500,000, the principal amount of the  
11 Series B Bonds does not exceed \$19,750,000, the maximum annual debt service on the  
12 Series A Bonds is not greater than \$1,600,000, the maximum annual debt service  
13 on the Series B Bonds is not greater than \$2,800,000, and the Underwriter's discount is  
14 not greater than 1.0% of the aggregate initial principal amount of the Bonds), and the  
15 execution and delivery of the Bond Purchase Agreement by a Designated Officer shall  
16 be conclusive evidence of the approval of any such changes or additions. The City  
17 Council hereby authorizes the delivery and performance by the City of the Bond  
18 Purchase Agreement.

19           Section 3.   Disclosure Certificate. The City Council hereby approves the  
20 Disclosure Certificate in the form on file with the City Clerk. The Designated Officers,  
21 each acting alone, are hereby authorized and directed to execute, for and in the name  
22 of the City, the Disclosure Certificate in such form, together with any changes therein or  
23 additions thereto deemed advisable by the Designated Officer executing the Disclosure  
24 Certificate upon consultation with the City Attorney and Disclosure Counsel, and the  
25 execution and delivery of the Disclosure Certificate by a Designated Officer shall be  
26 conclusive evidence of the approval of any such changes or additions. The City Council  
27 hereby authorizes the delivery and performance by the City of the Disclosure Certificate

28           Section 4.   Official Statement. The City Council hereby approves, and

1 hereby deems nearly final within the meaning of Rule 15c2-12 of the Securities  
2 Exchange Act of 1934, as amended (the "Rule"), the Preliminary Official Statement in  
3 the form on file with the City Clerk. The Designated Officers, each acting alone, are  
4 hereby authorized and directed to execute an appropriate certificate stating the City's  
5 determination that the Preliminary Official Statement is nearly final within the meaning  
6 of the Rule. Distribution of the Preliminary Official Statement in connection with the  
7 sale of the Bonds is hereby approved. The Designated Officers, each acting alone,  
8 are hereby authorized and directed, upon consultation with the City Attorney and  
9 Disclosure Counsel, to approve any changes in or additions to the Preliminary Official  
10 Statement deemed necessary or desirable to bring it into the form of a final official  
11 statement (the "Final Official Statement"), and the Final Official Statement shall be  
12 executed in the name and on behalf of the City by a Designated Officer whose  
13 execution thereof shall be conclusive evidence of approval of any such changes and  
14 additions. The City Council hereby authorizes the distribution of the Final Official  
15 Statement by the Underwriter in connection with the sale of the Bonds.

16           Section 5.   Designation of Counsel. The law firm of Quint & Thimmig  
17 LLP is hereby designated as Bond Counsel, and the firm of Stradling Yocca Carlson &  
18 Rauth, a Professional Corporation is hereby designated as Disclosure Counsel with  
19 respect to the Bonds. The City Attorney is hereby authorized and directed to execute  
20 agreements with said firms for their services in connection with the Bonds in form and  
21 substance acceptable to the City Attorney.

22           Section 6.   Designation of Municipal Advisor. The firm of KNN Public  
23 Finance, is hereby designated as municipal advisor to the City with respect to the  
24 Bonds. The City Treasurer is hereby authorized and directed to execute an agreement  
25 with said firm for its services in connection with the Bonds, in form and substance  
26 acceptable to the Treasurer.

27           Section 7.   Official Actions. The City Manager, the Director of Financial  
28 Management, the City Treasurer, the City Clerk and all other officers of the City are

each authorized and directed in the name and on behalf of the City to make any and all assignments, and to execute any and all certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them deem necessary or appropriate in order to consummate the sale and issuance of the Bonds and any of the other transactions contemplated by the documents approved pursuant to this Resolution. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable.

Section 8. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of \_\_\_\_\_, 2017 by the following vote:

Ayes: Councilmembers: \_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_  
City Clerk