

May 5, 2020

R-27

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Authorize the City Manager, or designee, to execute all documents necessary to evidence (i) a loan by the City of Long Beach to the Aquarium of the Pacific Corporation of up to \$2,154,000, from the Tidelands Operating Fund Group, (ii) the acceptance of the prepayment of an existing 2017 loan by the City to the Aquarium, and (iii) the prefunding of the Challenge Grant by the City to the Aquarium; and, approving related documents. (District 2)

DISCUSSION

On March 4, 2020, California Governor Newsom declared a State of Emergency in response to the spread of the novel coronavirus (COVID-19). Shortly thereafter, the City of Long Beach (City) also issued a Proclamation of Local Emergency, beginning a series of measures to protect Long Beach residents. As a result of the State's and City's health orders, the Aquarium of the Pacific Corporation (Corporation) suspended public visitation to the Aquarium of the Pacific (Aquarium). Revenues have been severely impacted and will continue to be impacted until the Aquarium can reopen and have a significant attendance. The Corporation intends to open as soon as allowed with appropriate safeguards complying with any revised health order. If the opening is soon enough and the attendance is adequate, the Corporation's revenue stream could be sufficient to allow the Corporation to meet its October 2020 rent obligations to the City. The rent is deposited and used by the City's Tidelands Operating Fund Group to pay debt service on the 2012 Aquarium refunding bonds. However, there is no assurance that the Aquarium will be able to make the full rent payment.

The Corporation has requested two actions to assist them through this pandemic. The actions are intended to minimize impact on the City while still providing support for this important City landmark and attraction. The proposed actions are as follows:

1. The Corporation has requested a loan, if needed, to pay up to the full amount of the annual \$2,154,000 rent payment due to the City on October 15, 2020. The loan is a term loan due in 2032 (the year after the rent payments end), but can be prepaid in whole or in part. The Corporation has indicated a desire to pay off the loan as soon as practical, potentially by the end of 2024, if, in the Corporation's view, that early payoff is consistent with the Corporation maintaining a sound financial condition. The loan will be evidenced by a loan agreement and a promissory note, drafts of both of which are attached.

2. A combined transaction in which the 2017 loan by the City to the Corporation (related to Pacific Visions) is prepaid in its entirety by the Corporation and the balance of the City's conditional Challenge Grant to the Aquarium (also related to Pacific Visions) is also prefunded and paid to the Aquarium with a net result of a cash payment to the City by the Aquarium of \$4,863,918. This transaction provides the City with more flexibility to manage the financial implications of the COVID-19 pandemic on its own. This combined transaction will be evidenced by the First Amendment to the Amended and Restated Implementation Agreement, a draft of which is attached.

The key terms of the Rent Loan are as follows:

- The principal amount will be up to \$2,154,000.
- The term will be 12 years, maturing in 2032.
- Interest only payments will be made annually in arrears, each October, through 2032.
- The principal will be due in October 2032.
- The Corporation may partially, or fully, repay the loan on any interest payment date without penalty.
- The loan interest rate will be reset each October 1st at the City's annual purchase yield investment pool rate at each September 30th fiscal year end plus 25 basis points (0.25 percent).
- Any payment is first applied against interest due, then against principal.

This matter was reviewed by Deputy City Attorney Richard F. Anthony and by Finance Director John Gross on April 23, 2020.

TIMING CONSIDERATIONS

City Council action is requested on May 5, 2020, to assist the Corporation in its mission to maintain the Aquarium as a major City landmark and attraction, and to support public education.

FISCAL IMPACT

If the City lends money to the Corporation (up to \$2,154,000) before October 15, 2020, this will reduce Tidelands Operating Fund Group cash and increase expenditures by \$2,154,000. If this occurs, an appropriation increase may be needed, and a request would be brought to the City Council at the appropriate time. However, if the Corporation could not make the rent payment, the City would still have an obligation to pay the debt service on the bonds that the rent is intended to cover, which would have the same net impact on the Tidelands Operating Fund Group as the issuance of the loan. Either way, the impact is the same on the City, but in the case of the loan, the Corporation does not go into default as a result of the COVID-19

pandemic; something both the City and the Corporation have an interest to avoid. The loan is unsecured, but the relationship with the City is such that the Corporation is extremely likely to make the payments.

The combined transaction, where the Corporation prepays the 2017 loan from the City and the City prefunds its Challenge Grant, has several practical financial impacts.

- It provides the City with \$4,863,918 in cash.
- It relieves the Corporation and the City of future obligations with regard to the 2017 loan and the Challenge Grant.
- It provides the Corporation with increased financial flexibility to address the pandemic.
- The City will need to fund the remaining \$11,063,918 of debt service on the 2017 Aquarium (Pacific Visions) Bond issue. That debt service is equal, in total, to the amount of the \$4,863,918 that the City will receive in cash from the Aquarium plus what would have been the City obligation for the remaining years of the Challenge Grant. Overall, if the City does not otherwise spend the \$4,863,918 in cash from the Corporation, there is no net financial impact to the City, although the timing and amount in each year will differ.

In any event, either with or without these transactions, the Tidelands Operating Fund Group in the Citywide Activities Department has been, and will continue to be, responsible for both the debt service on the 2012 Aquarium Refunding Bonds and the 2017 Aquarium (Pacific Visions) Bonds. These transactions do not change that ultimate obligation, but rather make it less likely of a technical Corporation default to the City, and give the Corporation additional financial flexibility to weather the pandemic. 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,



JOHN GROSS

DIRECTOR OF FINANCIAL MANAGEMENT

APPROVED:



THOMAS B. MODICA
CITY MANAGER

ATTACHMENTS: LOAN AGREEMENT
PROMISSORY NOTE
FIRST AMENDMENT TO AMENDED AND RESTATED IMPLEMENTATION AGREEMENT

Hypothetical Payment Schedule
 Assumes The Corporation Chooses To Pay All Principal At Maturity
 Illustrates The Maximum Loan Principal And Illustrative Book Yield Rates

Due Date of Loan Payment	Loan Principal Activity (Borrowed) / Repaid	Annual Pool Interest Rate Reset as of Each 9/30	Spread Over the Index Rate	Loan Rate	Interest on 2020 Deferral (Actual/360)	Principal & Interest Repayment
	a	b	c	d=b+c	e=a*d	e=a+e
10/1/2020	\$ (2,154,000.00)					
10/1/2021	\$ -	2.00%	0.25%	2.25%	\$ 48,465.00	\$ 48,465.00
10/1/2022	\$ -	2.10%	0.25%	2.35%	\$ 50,619.00	\$ 50,619.00
10/1/2023	\$ -	2.20%	0.25%	2.45%	\$ 52,773.00	\$ 52,773.00
10/1/2024	\$ -	2.30%	0.25%	2.55%	\$ 54,927.00	\$ 54,927.00
10/1/2025	\$ -	2.40%	0.25%	2.65%	\$ 57,081.00	\$ 57,081.00
10/1/2026	\$ -	2.50%	0.25%	2.75%	\$ 59,235.00	\$ 59,235.00
10/1/2027	\$ -	2.60%	0.25%	2.85%	\$ 61,389.00	\$ 61,389.00
10/1/2028	\$ -	2.70%	0.25%	2.95%	\$ 63,543.00	\$ 63,543.00
10/1/2029	\$ -	2.80%	0.25%	3.05%	\$ 65,697.00	\$ 65,697.00
10/1/2030	\$ -	2.90%	0.25%	3.15%	\$ 67,851.00	\$ 67,851.00
10/1/2031	\$ -	3.00%	0.25%	3.25%	\$ 70,005.00	\$ 70,005.00
10/1/2032	\$ 2,154,000.00	3.10%	0.25%	3.35%	\$ 72,159.00	\$ 2,226,159.00
					\$ 723,744.00	\$ 2,877,744.00

PROMISSORY NOTE

\$2,154,000

May 15, 2020

Long Beach, California

FOR VALUE RECEIVED, the undersigned, AQUARIUM OF THE PACIFIC, a California nonprofit public benefit corporation ("Borrower"), hereby promises to pay to the CITY OF LONG BEACH, CALIFORNIA, a municipal corporation ("Lender"), or order, the principal sum of Two Million One Hundred Fifty-Four Thousand Dollars (\$2,154,000), or such lesser amount as may be funded by Lender at Borrower's written request, together with interest on the unpaid principal balance of this Note (the "Loan") from time to time outstanding at an annual rate as set forth below from October 1, 2020 until fully paid. All payments on this Note shall be remitted to Lender at 411 West Ocean Boulevard, 6th Floor, Long Beach, California 90802, Attention: Director of Financial Management, or at such other place as Lender may from time to time designate in writing to Borrower. This Note evidences the loan made by Lender to Borrower (the "Loan") pursuant to the Loan Agreement, dated as of May 15, 2020, between Lender and Borrower (the "Loan Agreement").

1. Interest. Interest on the unpaid principal balance of this Note will accrue at a variable annual rate equal to Lender's annualized book yield of its investment portfolio rate as of September 30, 2020 plus 0.25% (the "Variable Interest Rate"), and such rate shall be adjusted annually on each September 30 thereafter.

2. Payment. All sums due under this Note are payable in lawful money of the United States. Wire transfers constitute payment only when received, and checks constitute payment only when collected.

3. Method of Calculating Interest. Interest shall be computed based on a 360-day year and the actual number of days elapsed. Borrower acknowledges that interest computed based on a 360-day year is greater than interest computed based on a 365-day year.

4. Payment of Principal and Interest. Borrower shall make annual interest-only payments in arrears and one balloon principal payment on the Maturity Date, and otherwise in accordance with the payment schedule attached as Exhibit A hereto ("Payment Schedule"), subject to the annual adjustment of the Variable Interest Rate. Payments shall be due on the dates noted in the Payment Schedule. Notwithstanding Section 8, the entire unpaid indebtedness (both principal and interest) evidenced by this Note shall be due and payable on October 1, 2032 (subject to acceleration, the "Maturity Date"). Each payment under this Note shall be credited in the following order (a) costs, fees, charges, and advances paid or incurred by Lender or payable to Lender under any provision of the Loan Documents (as defined in the Loan Agreement) in such order as Lender, in its sole and absolute discretion, elects; (b) interest payable under this Note; and (c) principal payable under this Note. Borrower shall have the right to prepay all or a portion of outstanding principal and interest at any time prior to the Maturity Date without penalty, and in such event the Payment Schedule shall be adjusted accordingly to reflect such prepayment. The parties acknowledge that the Payment Schedule initially attached to this Note is meant as a

example only, assuming certain present and future interest rates and assuming Borrower elects to borrow the maximum amount permitted by this Note.

5. Default. Upon the occurrence and continuation of an Event of Default (as defined in the Loan Agreement), Lender may, at its option, declare this Note (including, without limitation, all accrued and unpaid interest and principal) due and payable immediately regardless of the Maturity Date, and Lender may exercise such other remedies as are available to Lender under the Loan Agreement. Borrower expressly waives notice of the exercise of this option.

6. Late Charge. Borrower acknowledges that default in the payment of any sum due under this Note will result in losses and additional expenses to Lender in servicing the indebtedness evidenced by this Note, handling such delinquent payments, and meeting its other financial obligations. Borrower further acknowledges that the extent of such loss and additional expenses is extremely difficult and impractical to ascertain. Borrower therefore agrees that, if any payment due under this Note is not made when due, a charge equal to the greater of (a) five percent (5%) of the regularly scheduled payment or (b) One Thousand Dollars (\$1,000), would be a reasonable estimate of expenses so incurred (the "Late Charge"). If any payment is not received when due, Borrower shall pay the Late Charge to Lender (without prejudicing or affecting any other rights or remedies of Lender) as liquidated damages to cover expenses incurred in handling such delinquent payment.

7. Interest on Default. From and after the Maturity Date (either according to the terms of this Note or as the result of an acceleration), the entire unpaid principal balance of this Note shall automatically bear interest at a rate (instead of the rate specified in Section 1) equal to the lesser of (a) ten percent (10%) or (b) the maximum interest rate allowed by law (the "Default Rate").

8. Failure to Pay Scheduled Payments. If any payment specified in the Payment Schedule is not paid when due, the unpaid amount shall be added to the payment due on the next Payment Date shown in the Payment Schedule, and such scheduled but unpaid amount shall not continue to or otherwise bear interest, subject to Section 7.

9. Attorney Fees. Borrower agrees to pay upon demand the following costs, expenses, and attorney fees paid or incurred by Lender: (a) costs of collection and costs, expenses, and attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; (b) costs, expenses, and attorney fees paid or incurred in connection with representing Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Note; and (c) costs of suit and such sum as a court of competent jurisdiction may adjudge as attorney fees in any action to enforce payment of this Note or any part of it or to enforce the provisions of the Loan Agreement, and interest shall accrue on any such amounts as provided in Section 4.5 of the Loan Agreement.

10. Waiver. Borrower, endorsers, and all other persons liable or to become liable on this Note waive (a) presentment, protest, and demand; (b) notice of protest, demand, and dishonor; and (c) all other notices or matters of a like nature.

11. Notice. Any notice required to be provided in this Note shall be given in writing and shall be sent (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service, marked for next day business delivery. All

notices shall be addressed to the party to whom such notice is to be given at the property address stated below in this Section or to such other address as a party may designate by written notice to the other. All notices shall be deemed effective on the earliest of (a) actual receipt; (b) rejection of delivery; or (c) if sent by certified mail, the third day on which regular United States mail delivery service is provided after the day of mailing or, if sent by overnight delivery service, on the next day on which such service makes next-business-day deliveries after the day of sending.

Borrower: Aquarium of the Pacific
320 Golden Shore, Suite 100
Long Beach, CA 90802
Attn: President

Lender: City of Long Beach
411 West Ocean Boulevard., 10th Floor
Long Beach, CA 90802
Attention: City Manager

12. Loan Documents. In addition to this Note, the Loan is evidenced by and subject to the terms of the Loan Agreement and the other Loan Documents.

13. Forbearance Not a Waiver. If Lender delays in exercising or fails to exercise any of its rights under this Note, that delay or failure shall not constitute a waiver of any Lender rights hereunder or under the other Loan Documents, or of any breach, default, or failure of condition under this Note or under the other Loan Documents. No waiver by Lender of any of its rights or of any such breach, default, or failure of condition shall be effective, unless the waiver is expressly stated in a writing signed by Lender.

14. Assignment. This Note inures to and binds the heirs, legal representatives, successors, and assigns of Borrower and Lender; provided, however, that Borrower may not assign this Note or any proceeds of it, or assign or delegate any of its rights or obligations, without Lender's prior written consent in each instance, which consent may be withheld in Lender's sole and absolute discretion. Lender in its sole discretion may transfer this Note, and may sell or assign participations or other interests in all or any part of this Note, all without notice to or the consent of Borrower.

15. Governing Law. This Note shall be construed and enforceable according to the laws of the State of California for all purposes.

16. Usury. All agreements between Borrower and Lender are expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of this Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money to be advanced under this Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of any provision of this Note or the Loan Agreement or any other agreement pertaining to this Note, after timely performance of such provision is due, shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity. If, under any circumstances, Lender shall ever receive as interest an amount that exceeds

the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under this Note, such excess shall be refunded to Borrower. This provision shall control every other provision of all agreements between Borrower and Lender.

17. Time Is of the Essence. Time is of the essence with respect to all obligations of Borrower under this Note.

18. Waiver of Statute of Limitations. The pleading of any statute of limitations as a defense to the obligations evidenced by this Note is waived to the fullest extent permissible by law.

19. Severability. If any provision of this Note, or the application of it to any party or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other parties or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.

20. Representation on Use of Proceeds. Borrower represents and warrants to Lender that the proceeds of the Loan evidenced by this Note will be used solely as required by the Loan Agreement.

21. Loan Subject to Borrower Termination. If, prior to the funding of any Loan proceeds by Lender under this Note, Borrower gives written notice to Lender of its intention to decline the Loan, then this Note shall immediately and automatically terminate and neither party shall have any further obligations to the other hereunder.

[signatures on following page]

"Borrower"

AQUARIUM OF THE PACIFIC,
a California nonprofit public benefit
corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT A
PAYMENT SCHEDULE

FIRST AMENDMENT TO AMENDED AND RESTATED IMPLEMENTATION
AGREEMENT

This First Amendment to Amended and Restated Implementation Agreement (this "Amendment") is entered into as of May 15, 2020, by and between the City of Long Beach, California, a municipal corporation and chartered city existing under and pursuant to the laws of the State of California (the "City"), and Aquarium of the Pacific, a California nonprofit public benefit corporation (the "Corporation").

RECITALS

WHEREAS, in 2012 the Long Beach Bond Financing Authority (the "Authority") issued its Long Beach Bond Finance Authority 2012 Refunding Revenue Bonds (Aquarium of the Pacific Project), in the aggregate principal amount of \$102,580,000 (the "Series 2012 Bonds"), pursuant to an Indenture of Trust, by and between the Authority and U.S. Bank National Association, successor to The Bank of New York Mellon Trust Company, N.A., as trustee, dated as of March 1, 2012 (the "2012 Indenture"); and

WHEREAS, the Series 2012 Bonds are secured by a pledge of and are payable from Pledged Revenues (as defined in the 2012 Indenture), which include, among other things, rental payments under the lease agreement by and between the Corporation and the Authority, dated as of April 1, 2001 (as amended, the "Lease Agreement") in an amount equal to Aquarium Operating Revenues (as defined in the Lease Agreement); and

WHEREAS, the Corporation operates an aquarium and related facilities (collectively, the "Facility") on property leased to it pursuant to the Lease Agreement; and

WHEREAS, the City made a loan to the Corporation in an amount equal to \$10,190,000 (the "2017 Loan"), which Loan is administered and evidenced by, respectively, that certain (i) Loan Agreement dated as of November 15, 2017 executed by the City, as lender, and the Corporation, as borrower (the "2017 Loan Agreement"), and (ii) that certain Promissory Note in the principal amount of the Loan dated as of November 15, 2017 executed by the Corporation in favor of the City (the "2017 Note"); and

WHEREAS, in order to provide funds for the 2017 Loan, the City issued, concurrently herewith, \$10,190,000 aggregate principal amount of its Tidelands Revenue Bonds, Series 2017A (Aquarium of the Pacific Project) (the "Series 2017 Bonds") pursuant to an Indenture of Trust, by and between the City and U.S. Bank National Association, as trustee, dated as of November 1, 2017 (the "2017 Indenture"); and

WHEREAS, in furtherance of the fund development capital campaign, the City has pledged certain funds to the Facility ("Aquarium Challenge Grant Funds") pursuant

to and in accordance with the challenge grant (the "Challenge Grant") as approved by minute order of the City Council of Long Beach adopted on December 20, 2016 and more fully described in the related Staff Report for such item; and

WHEREAS, the City has agreed to make a loan to the Corporation in an amount not to exceed \$2,154,000 (the "2020 Loan"), which Loan is to be administered and evidenced by, respectively, that certain (i) Loan Agreement dated as of May 15, 2020 executed by the City, as lender, and the Corporation, as borrower (the "2020 Loan Agreement"), and (ii) that certain Promissory Note in the principal amount of the Loan dated as of May 15, 2020 executed by the Corporation in favor of the City (the "2020 Note"); and

WHEREAS, the Corporation and the City have entered into that certain Amended and Restated Implementation Agreement dated as of November 15, 2017 ("Implementation Agreement") in order to implement terms which the parties have concluded are reasonably necessary to provide for the operation of the Facility in accordance with the rights and obligations of the City and the Corporation set forth in the Lease Agreement, the 2012 Indenture, the 2017 Indenture, the 2017 Loan, the 2020 Loan and the Amended and Restated Bylaws of the Corporation; and

WHEREAS, the Corporation and the City wish to enter into this Amendment in order to, among other things, acknowledge and evidence the prepayment and prefunding of the 2017 Loan and the Challenge Grant by the Corporation and the City, respectively.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Corporation and the City agree as follows:

Section 1. Definitions. All capitalized terms not otherwise specifically defined herein shall have the meanings given such terms in the Implementation Agreement.

Section 2. Prepayment of 2017 Loan and Prefunding of Challenge Grant. As of the date of this Amendment the outstanding balance owed by the Corporation to the City under the 2017 Note is \$11,063,917.50 ("2017 Loan Outstanding Amount"). As of the date of this Amendment the City is conditionally obligated to deliver \$6,200,000 in Aquarium Challenge Grant Funds to the Corporation ("Challenge Grant Outstanding Amount"). The Corporation wishes to prepay the 2017 Loan Outstanding Amount after crediting the Challenge Grant Outstanding Amount. In connection with this Amendment and as a condition to its effectiveness, the Corporation shall deliver to the City, in immediately available funds, an amount equal to \$4,863,917.50 (the "2017 Loan Prepayment Amount").

Section 3. The Series 2017 Bonds and the 2017 Loan. Upon receipt of the 2017 Loan Prepayment Amount by the City, the Corporation shall have no further payment obligations to the City in connection with the 2017 Loan and the 2017 Note shall be cancelled. The Corporation acknowledges that, despite the cancellation of the

2017 Note, those certain obligations contained in Section 1.10 and Section 2.11 of the 2017 Loan Agreement shall remain in full force and effect, and Borrower shall be obligated to comply therewith, until all of the Series 2017 Bonds have been redeemed. The City shall be under no obligation to redeem any Series 2017 Bonds except as required by the 2017 Indenture. The Implementation Agreement, including without limitation Section 11 thereof, is hereby amended to reflect the early retirement of the Corporation's payment obligations under the 2017 Note.

Section 4. Challenge Grant. Upon receipt of the 2017 Loan Prepayment Amount by the City, the City shall have no further payment obligations to the Corporation in connection with the Challenge Grant, and the Corporation shall no longer be required to comply with any restrictions associated with the Challenge Grant on revenues, grants or other Corporation funds. The Implementation Agreement, including without limitation Section 11 thereof, is hereby amended to reflect the prefunding and retirement of the Challenge Grant.

Section 5. Continuing Effectiveness. Except as otherwise expressly amended by this Amendment, the Implementation Agreement remains in full force and effect.

Section 6. Severability. If any one or more of the covenants or agreements provided in this Amendment on the part of the Corporation or the City to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenants or agreements shall be null and void and shall be deemed separate from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Amendment.

Section 7. Counterparts. This Amendment may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 8. Governing Law. This Amendment shall be construed under the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed all as of the date first above written.

CITY OF LONG BEACH

_____, 2020

By _____

Thomas B. Modica
City Manager

AQUARIUM OF THE PACIFIC, a
California nonprofit public benefit
corporation

_____, 2020 By _____
Kathie Eckert
Chairman of the Board of Directors

_____, 2020 By _____
Jerry R. Schubel
President and Chief Executive Officer

This Agreement is approved as to form on _____, 2020.

CHARLES PARKIN, City Attorney

By _____
Deputy