



Legislation Text

File #: 22-0949, **Version:** 1

Recommendation to authorize City Manager, or designee, to execute any and all documents necessary for a replacement Lease with Aquarium of the Pacific, a California nonprofit public benefit corporation, for City-owned property located at 100 Aquarium Way. (District 1)

In 1995, the Aquarium of the Pacific, a California nonprofit public benefit corporation (Corporation), entered into a Ground Lease with the City of Long Beach (City) for the property located at 100 Aquarium Way for the development of the Aquarium of the Pacific (AoP Facility) (Ground Lease). In addition to the land transaction, the Corporation issued revenue bonds to finance the acquisition and construction of the AoP Facility. In 2001, the City, through the Long Beach Bond Finance Authority (Authority), issued lease revenue bonds to restructure the 1995 Corporation bond debt, and the City, Authority, and Corporation entered into a Site Lease Agreement, whereby the City leased the AoP Facility to the Authority and the Authority, in turn, leased the AoP Facility to the Corporation for continued operation. The Authority restructured the 2001 debt in 2012 and has put forth a recommendation to refund the 2012 bonds through the issuance of 2022 bonds in a separate action placed on the August 9, 2022 City Council agenda for consideration (2022 Bonds).

Should the issuance of the 2022 Bonds be approved, the existing Site Lease Agreement between the City, Authority, and Corporation for the AoP Facility will dissolve on the day of closing for the new 2022 Bonds (tentatively scheduled for September 6, 2022). A new lease agreement is necessary for the Corporation to continue to occupy and operate the AoP Facility. The new Lease will incorporate certain provisions of and otherwise replace (i) the Ground Lease, (ii) an ancillary lease for southerly expansion space between the City and Corporation, (iii) an implementation agreement between the City and Corporation related to previously issued bonds, and (iv) an existing Parking Agreement between the City and Corporation related to the parking structure adjacent to the AoP Facility. The new Lease will simplify the relationship between the City and Corporation by including major terms and conditions in a single agreement. The new Lease is intended by the parties to generally continue with the same operating terms and conditions currently in place, amended as necessary to reflect the refunding of the existing bonds and the issuance of the 2022 Bonds. AoP Facility revenues will continue to be required to be deposited into various funds, including without limitation an operating and maintenance fund, a capital improvement fund, and an education and programs fund, which such funds (or similar funds) have been in place for several years to support the long term success of the AoP Facility.

The following are the major terms and provisions recommended for the new Lease agreement:

Lessor: City of Long Beach, a municipal corporation.

- Lessee: Aquarium of the Pacific, a California nonprofit public benefit corporation.
- Premises: 100 Aquarium Way.
- Term: Commencing upon the issuance of the 2022 Bonds and expiring on November 1, 2060.
- Extension Term: The parties agree to negotiate in good faith for a potential extension if necessary to accommodate a major improvement to the AoP Facility or 20 years prior to scheduled expiration, whichever occurs first.
- Base Rent: \$1 annually.
- Additional Rent: The Corporation shall pay to the City as additional rent, fifty percent (50%) of any revenue in excess of \$500,000 after the deduction of all actual operating, maintenance, educational, capital, and other City-approved expenses, and any amounts transferred to required reserve accounts.

City staff recommend approval of the new Lease, expressly conditioned upon the approval and actual issuance of the 2022 Bonds and the refunding of the existing bonds.

This matter was reviewed by Principal Deputy City Attorney Richard F. Anthony and Budget Analysis Officer Greg Sorensen on August 1, 2022.

City Council action is requested on August 9, 2022, to allow the City to enter into the replacement agreements should the 2022 revenue bonds be issued.

As explained in the 2022 bond refunding item concurrently on the August 9, 2022 City Council agenda, the Corporation has an existing rent obligation to the City of \$2.154 million per year through the rest of the decade, to help the Tideland Operating Fund pay debt service on Aquarium-related bonds. In relation to the 2022 bond refunding, the Corporation has agreed to prepay its entire remaining rent obligation with surplus funds accumulated by the Corporation over the last few years through a combination of grants and strong financial performance. With the resulting extinguishment of the Corporation's existing rent obligation, base rent for the Aquarium facility drops to a nominal \$1 per year, with the potential for additional rent as described above. At this point, it is not possible to predict when, if ever, such additional rent may materialize, or in what amount.

This recommendation has no staffing impact beyond the normal budgeted scope of duties and is consistent with existing City Council priorities. There is no fiscal or local job impact associated with this recommendation.

Approve recommendation.

JOHNNY M. VALLEJO
ACTING DIRECTOR OF
ECONOMIC DEVELOPMENT

APPROVED:

THOMAS B. MODICA
CITY MANAGER