



CITY OF LONG BEACH

OFFICE OF THE CITY MANAGER

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GERALD R. MILLER
CITY MANAGER

September 20, 2005

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Authorize the City Manager to execute an Implementation Agreement with the Aquarium of the Pacific, a California nonprofit public benefit corporation, to facilitate privately-funded expansion efforts and provide for a term extension to 55 years through 2060. (District 2)

BACKGROUND

On August 1, 1995, the City Council authorized the issuance of a \$117.5 million bond by the Aquarium Corporation (AoP) for construction of the Aquarium of the Pacific, and the execution of a Ground Lease to lease the tidelands property to the AoP (see Exhibit "A"). In June 1998, the Aquarium opened to large crowds and achieved an attendance level of 1.2 million in just six months. However, it became apparent at that time that the physical layout of the Aquarium could not accommodate the 2.2 million visitors it was projected to draw. Since that time, an operational and capacity analysis has been conducted which determined that the Aquarium could reasonably accommodate 1.46 million visitors annually.

The capacity analysis revealed that the AoP could not achieve attendance levels necessary to generate sufficient revenues to cover operating costs and the bond payments. To address this issue, on April 3, 2001, the City Council authorized the issuance of a refunding bond that had the effect of reducing the annual bond payments, but extending the term (see Exhibit "B"). At that time, it was anticipated that the City would likely have to participate in the bond payments to an undetermined level, depending upon attendance and projected increases in unrestricted donations. Shortly thereafter, the terrorist acts of 9/11 occurred, severely impacting both attendance and donations, resulting in the need for immediate participation by the City to cover the debt service payments.

The City and AoP were co-applicants for a grant from the federal Economic Development Administration to accomplish a feasibility analysis and conceptual plan to better encourage private fund development leading to greater financial stability (see Exhibit "C"). The end result of this effort was a Campus Master Plan.

CURRENT DISCUSSIONS

In January 2005, the AoP unveiled its Campus Master Plan (CMP) which focused on expanding capacity to 2.2 million visitors and growing average annual attendance to 1.7 - 1.8 million per year. The CMP identified certain physical expansions and program enhancements to achieve these goals. AoP developed assumptions and projections which revealed that, without expansion, AoP's financial condition would deteriorate, possibly increasing the level of the City's participation in debt service payments. Two major expansion projects were identified and modeled to determine their prospective impact on attendance and revenues. Both proposed expansion projects, Pacific Visions and Channel Islands Experience, are designed to provide the additional capacity and generate the additional attendance needed to achieve the goal of long-term financial stability. Any such expansion is to be funded from sources other than City-issued bonds.

In order to launch their capital campaign for the first expansion, currently scheduled to open in 2011, AoP approached the City and requested lease modifications, which would serve to strengthen AoP's ability to secure donations. These requests included, among other things, a fixed lease-payment, a predicable parking revenue income stream, a predicable operations and maintenance budget and additional program reinvestment funds to be used to refresh and enhance exhibits and related programming.

City staff and AoP staff and Board representatives have been meeting diligently over the past few months to better understand, analyze, verify and support the basis, findings and recommendations of the CMP. To that end, the City Manager hired an independent consultant to assist staff in comparing the AoP to industry standards. The City's consultant determined that the AoP operates within the range of operational ratios of its peers in many of the comparative categories. Among its peers, the AoP has the second highest number of visitors per square foot and the highest earned income ratio.

In an effort to achieve the goals of the CMP and thereby improve the economic vitality of the AoP, certain concepts have been discussed, the implementation of which would result in a modification of existing obligations of the City and AoP. This modification would be set forth in an Implementation Agreement. On August 25, 2005, the AoP Board of Directors approved, in concept, the terms of the Implementation Agreement, the significant terms of which are:

- AoP shall pay \$3,528,000 in annual base rent, applied to the bond payments.
- In the event that actual parking revenues are less than the amount budgeted by AoP, AoP may utilize the budgeted amount, as approved by the City, in its calculation of rent.
- Pre-expansion: City has first priority on net revenue, after annual base rent, in an amount equal to any shortfall in parking revenue.

- Post-expansion: City has first priority on net revenue as above. AoP has second priority on remaining net revenue, up to \$500,000, adjusted for inflation, for Program Reinvestment. The remaining net revenue is to be shared equally between City and AoP.
- The Lease is proposed to be extended to 55 years to 2060, from its current expiration in 2031.
- City, at its option, may require performance and material bonds on all phases of construction.
- No phase of construction shall begin until 75 percent of the dollars have been received, to the satisfaction of the City.
- The City agrees to an Operating and Maintenance annual budget of 5 percent of revenues through 2015, 6 percent from 2016 through 2024, and 7 percent from 2025 through at least 2030.
- All construction projects shall be subject to the City's standard permitting process.
- The AoP will develop an Investment Policy for Restricted Funds.
- The City Manager will participate in the selection of future Presidents or Chief Executive Officers, and be briefed on the annual performance review of the President or Chief Executive Officer.

It is our belief that the proposed Implementation Agreement and lease extension would greatly enhance the AoP's ability to conduct needed private fundraising activities which will ultimately result in the implementation of the Campus Master Plan. It is also our belief that the implementation of the Campus Master Plan is the greatest opportunity available to increase attendance at, and provide ongoing support for the AoP, thus leading to the renewal of and reinvestment in the facility at a critical juncture in the AoP's evolution.

This letter was reviewed by Chief Assistant City Attorney Heather A. Mahood on September 9, 2005 and Budget Management Officer David Wodynski on September 12, 2005.

TIMING CONSIDERATIONS

City Council action is requested on September 20, 2005 to allow AoP to start its capital campaign to raise revenue for its first expansion.

HONORABLE MAYOR AND CITY COUNCIL
September 20, 2005
Page 4

FISCAL IMPACT

With the approval of the Implementation Agreement, it is estimated that the City's portion of the debt service payments will be \$4,382,000 (net bond payment of \$7,910,000 less \$3,528,000 paid by AoP) in FY 06 and \$5,196,000 (net bond payment of \$8,724,000 less \$3,528,000 paid by AoP) in FY 07 and beyond. This amount is included in the FY 06 budget in the Tideland Fund (TF) in the Financial Management Citywide Department Fund (XC).

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



GERALD R. MILLER
CITY MANAGER

GRM:CFS:MPC

Attachment: Exhibit "A" Council Letter Dated August 1, 1995

Exhibit "B" Council Letter Dated April 3, 2001

Exhibit "C" Council Letter Dated May 29, 2001

9.20.05 Revised Council Ltr.