

## SECOND AMENDMENT TO IMPLEMENTATION AGREEMENT 29491

This Second Amendment to Implementation Agreement (the "Second Amendment"), dated as of March 1, 2012, is by and between the City of Long Beach, a municipal corporation and chartered city existing under and pursuant to its charter and 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 2001, in order to refinance certain outstanding indebtedness issued to provide capital financing for the Aquarium of the Pacific (the "Facility"), and to provide additional funding for the Facility, the Long Beach Bond Financing Authority (the "Authority") issued \$129,520,000 aggregate principal amount Lease Revenue Refunding Bonds (Aquarium of the Pacific Project) Series 2001 (the "Series 2001 Bonds") pursuant to an Indenture of Trust, by and between the Authority and U.S. Bank Trust National Association (predecessor in interest to U.S. Bank, National Association) (the "2001 Trustee"), dated as of April 1, 2001 (the "2001 Indenture"); and

WHEREAS, the Series 2001 Bonds were secured by Pledged Revenues (as defined in the 2001 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 (the "2001 Lease Agreement") in an amount equal to Revenues (as defined in the 2001 Indenture), including proceeds of grants, membership fees and contributions to the Corporation, but only to the extent that such proceeds are not otherwise restricted by the terms thereof; and

WHEREAS, subsequent to the issuance of the Series 2001 Bonds and the execution and delivery of the 2001 Lease Agreement, in order to implement terms which the City and the Corporation concluded were reasonably necessary to provide for the expansion and periodic renewal of the Facility in accordance with the rights and obligations of the City and the Corporation set forth in the 2001 Lease Agreement, the 2001 Indenture and the Sixth Amended and Restated Bylaws of the Corporation (the "Bylaws"), the City and the Corporation entered into an Implementation Agreement, dated as of March 1, 2006 (the "Original Implementation Agreement"), which was subsequently amended by a First Amendment to Implementation Agreement, by and between the City and the Corporation (the "First Amendment," and, together with the Original Implementation Agreement and this Second Amendment, the "Implementation Agreement"); and

WHEREAS, for the purpose of providing funds to currently refund and legally defease the Series 2001 Bonds, the Authority is issuing 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 The Bank of New York Mellon Trust Company, N.A. (the "Trustee"), dated as of March 1, 2012 (the "2012 Indenture"); and

WHEREAS, the Series 2001 Bonds will no longer be outstanding under the 2001 Indenture upon the issuance of the Series 2012 Bonds;

WHEREAS, in connection with the issuance of the Series 2012 Bonds: (i) the Authority and the Corporation are entering into a First Amendment to Lease Agreement, dated as of March 1, 2012 (the "First Amendment to Lease Agreement, and, together with the 2001 Lease Agreement, the "Lease Agreement"), (ii) the City, the Trustee and the Authority are entering into a City Pledge Agreement, dated as of March 1, 2012 (the "City Pledge Agreement"),

pursuant to which the City will agree to establish a City Aquarium Account and to pledge amounts therein to the payment of the Series 2012 Bonds, as well as to pledge certain amounts to be deposited to the City's Tideland Oil Revenue Fund and the City's Tideland Operating Fund to the replenishment of the City Aquarium Account, which amounts in the City Aquarium Account can then be remitted to the Trustee to be used to pay debt service on the Series 2012 Bonds, and (iii) the City and the Corporation are entering into a First Amendment to Parking Agreement, dated as of March 1, 2012 (the "First Amendment to Parking Agreement") amending the Parking Agreement by and between the City and the Corporation, dated as of April 1, 2001 (the "Original Parking Agreement," and, together with the First Amendment to Parking Agreement, the "Parking Agreement") pursuant to which the City will agree to remit certain revenues from a parking facility adjacent to the Facility to the Trustee; and

WHEREAS, the Corporation and the City desire to enter into this Second Amendment in order to amend the Implementation Agreement to include references to the Series 2012 Bonds and the various documents related thereto.

#### AGREEMENT:

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

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes of the Implementation Agreement, and of any amendment or supplement hereto, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. All capitalized terms not defined herein have the meanings ascribed thereto in the Implementation Agreement (including the recitals and body of this Second Amendment), the Indenture, the Lease Agreement and the Parking Agreement.

All references in the Original Implementation Agreement and First Amendment to "Revenues," "2001 Indenture," "2001 Lease Agreement," "2001 Parking Agreement," and "Series 2001 Bonds" shall hereinafter be deemed references to the "Aquarium Operating Revenues" (as defined in the Lease Agreement), "Indenture," "Lease Agreement," "Parking Agreement" and "Series 2012 Bonds," as defined in the recitals of this Second Amendment, respectively.

Additionally, the term "Pledged Revenues Available To Pay Debt Service" is hereby amended and restated in its entirety to mean the following:

*"Pledged Revenues Available To Pay Debt Service"* means, collectively, (1) Rental Payments, (2) Parking Revenues, (3) Available Tidelands Operating Fund Balance, (4) Available Tidelands Operating Revenue, (5) Available Tidelands Oil Revenue, and (6) all interest, profits or other income derived from the investment of such amounts in any fund or account established pursuant to the Indenture, to the extent such amounts are available (if needed) to be deposited in the Bond Fund.

Section 2. Provisions of Original Implementation Agreement and First Amendment Not Otherwise Modified. Except as specifically amended by this Second Amendment, the Original Implementation Agreement and First Amendment thereto remain in full force and effect and are incorporated by reference herein.

Section 3. Severability. If any one or more of the covenants or agreements provided in this Second 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 Agreement.

Section 4. Counterparts. This Second 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 5. Governing Law. This Second Amendment shall be construed under the laws of the State of California.

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

THE CITY OF LONG BEACH

By: David [Signature]  
Treasurer

APPROVED AS TO FORM:

By: Charles [Signature]  
City Attorney

AQUARIUM OF THE PACIFIC, a California  
nonprofit public benefit corporation

By: \_\_\_\_\_  
President and Chief Executive Officer

[signature page to Second Amendment to Implementation Agreement –  
Aquarium of the Pacific refunding]

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Treasurer

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

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By:  \_\_\_\_\_  
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