

1 THIRD AMENDMENT TO IMPLEMENTATION AGREEMENT

2 **29491**

3 THIS THIRD AMENDMENT TO IMPLEMENTATION AGREEMENT is made
4 and entered, in duplicate, as of January 24, 2014, by and between the AQUARIUM OF
5 THE PACIFIC, a California nonprofit public benefit corporation (the "Corporation"), and
6 the CITY OF LONG BEACH, a municipal corporation and chartered city existing under
7 and pursuant to the law of the State of California (the "City").

8 WHEREAS, City and Corporation entered into that certain Implementation
9 Agreement on October 1, 2005, as previously amended by that certain First Amendment
10 thereto dated November 20, 2007 and that certain Second Amendment thereto dated
11 March 1, 2012 (collectively, the "Implementation Agreement"); and

12 WHEREAS, the parties now desire to modify the terms and conditions of
13 the Implementation Agreement;

14 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
15 conditions herein contained, the parties agree as follows:

16 1. Except in the Recital paragraphs of the Implementation Agreement,
17 all references to "\$3,528,000" of net Revenues available for debt service on the Series
18 2012 Bonds in each fiscal year shall hereinafter be reduced and deemed references to
19 "\$2,154,000".

20 2. The term "Pledged Revenues Available to Pay Debt Service" in
21 Section 1 of the Implementation Agreement is hereby amended and restated in its
22 entirety to mean the following:

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

1 3. City's obligation under the Implementation Agreement and any other
2 document (including but not limited to, the Parking Agreement, the Indenture, and Lease
3 Agreement) to pay to Corporation any Parking Revenues shall hereby be fully
4 extinguished and cancelled.

5 4. Corporation covenants not to sue, to enforce, or take any judicial or
6 administrative action against the City for any claims or demands related to Parking
7 Revenues, including but not limited to, any claims to Parking Revenues pursuant to the
8 Implementation Agreement, the Parking Agreement, the Indenture, the Lease
9 Agreement, or any other document.

10 5. Corporation shall fully defend (at Corporation's sole expense, using
11 its counsel), indemnify and hold harmless City, its boards and commissions, and their
12 officials, employees and agents, from and against any and all liability, claims, demands,
13 and causes of action, arising as a consequence of extinguishing and cancelling City's
14 obligation to pay Corporation any "Parking Revenues".

15 6. The term "Program Reinvestment Costs" in Section 1 of the
16 Implementation Agreement is hereby amended and restated in its entirety to mean the
17 following:

18 "Program Reinvestment Costs" means budgeted Operating and
19 Maintenance Expenses which are categorized as items otherwise payable from
20 the Renewal and Replacement Fund that are specifically and separately identified
21 in the Budget to be payable as Operating and Maintenance Expenses. Program
22 Reinvestment Costs shall equal the lesser of (i) Revenues less Operations and
23 Maintenance Expenses less Section 5.02(c) Rent, or (ii) \$500,000, as adjusted for
24 inflation at a rate equal to the LA/Long Beach CPI Price Deflator each June 30 for
25 the ensuing Fiscal Year.

26 7. The term "Refunding Bonds" in Section 1 of the Implementation
27 Agreement is hereby amended and restated in its entirety to mean the following:

28 "Refunding Bonds" shall mean obligations issued or executed and delivered

1 in order to refund the outstanding Series 2012 Bonds (including any other
2 subsequently issued bonds); provided that such obligations shall not require
3 payments from the Corporation in excess of the lesser of (i) \$2,154,000 in any
4 Fiscal Year, or (ii) actual debt service on such Refunding Bonds in any Fiscal
5 Year.

6 8. Section 2 of the Implementation Agreement is hereby deleted and
7 superseded by the following:

8 "Section 2. Amendment of Budgeting Process in the Bylaws. The
9 Corporation shall cause Section 13.2(b) of the Bylaws to be amended and restated
10 in its entirety as follows (and the City hereby consents to such amendment and
11 restatement pursuant to Section 9.1 of the Bylaws):

12 (b) Budget process. The Corporation will coordinate with the City
13 regarding timely submittal of proposed budgets to meet the requirements of the
14 Lease for submittal of an annual consented budget preferably sixty (60) days but
15 at least thirty (30) days prior to each fiscal year. The City agrees it will not
16 withhold its consent to any budget (or budget amendment) solely on the basis of
17 the shortfall of the resulting earnings before interest, taxes, depreciation and
18 amortization ("EBITDA") submitted in good faith by the Corporation and which
19 meets each of the following parameters:

20 (i) Such budget shall provide for a capital component of
21 Operating and Maintenance Expenses equal to the greater of six percent
22 (6%) of prior year actual expenses, or six percent (6%) budgeted of current
23 year budgeted expenses;

24 (ii) Such budget shall provide for Revenues at least
25 sufficient to pay (a) all projected Operating and Maintenance Expenses of
26 the Corporation and (b) Section 5.02(c) Rent. Subject to Section 13.2(b)(iii)
27 below, Revenues available after the payment of (a) and (b) above shall be
28 budgeted: first, as Program Reinvestment Costs; and second, fifty percent

1 (50%) as Additional Section 5.02(c) Rent and fifty percent (50%) as In Lieu
2 Renewal Operating and Maintenance Expenses; and

3 (iii) The City agrees it will not withhold its consent to any
4 budget (or budget amendment) solely on the basis of the amount of the
5 capital component of Operating and Maintenance Expenses if the budgeted
6 capital component of Operating and Maintenance Expenses is equal to the
7 greater of six percent (6%) of prior year actual expenses, or six percent
8 (6%) budgeted of current year budgeted expenses.

9 (iv) Financial reports shall be provided to the City on a
10 monthly basis in sufficient detail, in a format as determined by the City from
11 time to time and consistent with the capabilities of the Corporation's
12 financial system. The purpose of the reports is to allow the City to
13 reasonably ascertain the financial and budgetary condition of the
14 Corporation. The current format is defined by Exhibit 1 and Exhibit 2 and
15 may be modified from time to time by the City.

16 Exhibit 1 is a budgetary status and report shall be provided on
17 a monthly basis. Shortly after the end of the first half of the Corporation's
18 fiscal year and shortly after the end of each fiscal year, or upon request of
19 the City, the Corporation shall also provide this report along with
20 management comments and assessments on any significant variance
21 (greater than ten percent (10%)) and any planned actions as a result.

22 Exhibit 2 is a general financial report containing activity,
23 balance sheet, and maintenance and capital expenditure information. It is
24 to be provided quarterly. Shortly after the end of the first half of the
25 Corporation's fiscal year and shortly after the end of each fiscal year, or
26 upon request of the City, the Corporation shall also provide this report along
27 with management comments and assessments on any significant variance
28 (greater than ten percent (10%)) of the admissions or the maintenance and

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

AQUARIUM OF THE PACIFIC, a California nonprofit public benefit corporation

MARCH 20, 2014

By Jerry R. Schubel
Name JERRY R. SCHUBEL
Title PRESIDENT & CEO

MARCH 20, 2014

By John Molina
Name JOHN MOLINA
Title CHAIRMAN OF THE BOARD

"Corporation"

CITY OF LONG BEACH, a municipal corporation

4.15, 2014

By SMJ Assistant City Manager
City Manager

"City"

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Third Amendment to Implementation Agreement is approved as to form on March 26, 2014.

CHARLES PARKIN, City Attorney

By Linda Vu
Deputy

Aquarium of the Pacific
Monthly Financial Report
For the Month Ended December 31, 2012
Unrestricted Funds
(In Thousands)

	Adjusted Budget	Month to Date Actuals	Year to Date Actuals	Prior Year to Date Actuals	YTD Variance in Dollars	YTD Variance Percentage
Operating Revenues:						
Admissions	\$ 16,052	\$ 1,418	\$ 17,018	\$ 15,239	\$ 1,779	11.7%
Memberships	3,513	325	3,898	3,245	653	20.1%
Educational Programs	800	92	1,109	953	156	16.4%
Gift Store	3,528	322	3,866	3,663	203	5.5%
Contributions	1,810	727	8,726	4,174	4,552	109.1%
Other Revenues	2,861	295	3,534	3,843	(309)	-8.0%
Total Operating Revenues	28,564	3,180	38,151	31,117	7,034	22.6%
Operating Expenses:						
Husbandry and facilities	6,400	555	6,656	6,472	(184)	-2.8%
Education, interpretation, and outreach	2,900	260	3,117	2,695	(422)	-15.7%
Guest services	3,700	337	4,047	3,736	(311)	-8.3%
Gift store	2,500	229	2,752	2,664	(88)	-3.3%
Development and membership	1,900	184	2,211	2,154	(57)	-2.6%
Marketing	3,550	320	3,836	4,098	262	6.4%
Human resources	593	70	844	759	(85)	-11.2%
Finance and administration	1,900	184	2,205	2,187	(18)	-0.8%
Total Operating Expenses	23,443	2,139	25,668	24,765	(903)	-3.6%
Earnings from Operations	5,121	1,041	12,483	6,352	(6,131)	-96.5%
Non-operating Revenues and Expenses:						
Non-operating Revenues	1,200	66	1,155	1,293	(138)	-10.7%
Non-operating Expenses	(3,528)	(581)	(6,969)	(5,906)	(1,063)	-18.0%
Total Non-operating Revenues and Expenses	(2,328)	(515)	(5,814)	(4,613)	(1,201)	26.0%
Net Income	\$ 2,793	\$ 526	\$ 6,669	\$ 1,739	\$ 4,930	283.5%

Aquarium of the Pacific
Unrestricted Funds Periodic Financial Activity Report
For the Month Ended December 31, 2012

Maintenance and Operating Capital Expenditures (In Thousands)

6% of Prior Year Actual Operating Expenses	\$ 1,486	Note: Adjusted Budget to be equal to or greater than the higher of 6% of Actual Prior Year Expenses or 6% of Current Year Adjusted Budgetted Expenses				
6% of Current Year budgetted Operating Expenses	1,407					
					Budget to Actual	
	Adjusted Budget	Prior Year to Date Actuals	Year to Date Actuals	YTD Variance in Dollars	YTD Variance in Dollars	YTD Variance Percentage
Maintenance and Operating Capital Expenditures	\$ 1,486	\$ 1,386	\$ 1,501	\$ 115	\$ (15)	-1.0%

Activity Based Information

	Prior Year to Date			Year to Date		
	Number of Admissions	Revenue from Admissions	Revenue per Admission	Number of Admissions	Revenue from Admissions	Revenue per Admission
Attendance						
General Admission	264,138	\$ 5,234,000	\$ 19.82	276,655	\$ 5,837,000	\$ 21.10
Discounted Admission	369,597	6,307,000	17.06	402,822	6,942,000	17.23
Group Sales	126,678	1,552,000	12.25	149,501	1,845,000	12.34
Education Sales	140,776	1,702,000	12.09	153,776	1,898,000	12.34
Special Events	19,583	444,000	22.67	23,583	496,000	21.03
Paid Attendance	<u>920,772</u>	<u>\$ 15,239,000</u>	<u>\$ 16.55</u>	<u>1,006,337</u>	<u>\$ 17,018,000</u>	<u>\$ 16.91</u>

Balance Sheet Information (In Thousands)

Cash - Beginning of Year	\$ 5,696	AP - Beginning of Year	\$ 2,696
Cash - End of Period	<u>6,945</u>	AP - End of Period	<u>2,909</u>
Change in Cash	<u>\$ 1,249</u>	Change in AP	<u>\$ 213</u>
AR - Beginning of Year	\$ 2,229	Liabilities - Beginning of Year	\$ 4,564
AR - End of Period	<u>2,210</u>	Liabilities - End of Period	<u>4,757</u>
Change in AR	<u>\$ (19)</u>	Change in Liabilities	<u>\$ 193</u>