



**H-1**

# CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

333 West Ocean Boulevard • Long Beach, CA 90802

February 21, 2012

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

Receive supporting documentation into the record regarding the issuance of Long Beach Bond Finance Authority Refunding Bonds, adopt a Resolution approving proceedings by the Long Beach Bond Finance Authority for the issuance of refunding revenue bonds in an amount not to exceed \$118,000,000 related to the Aquarium of the Pacific, and approving related documents and actions. (District 2)

## DISCUSSION

In 1995, the Aquarium of the Pacific, a California nonprofit public benefit corporation (Corporation), issued the Long Beach Aquarium of the Pacific (AoP) Revenue Bonds 1995 Series A and B in the aggregate amount of \$117,545,000 to finance the acquisition and construction of the AoP facility.

In 2001, the Long Beach Bond Finance Authority (Authority) issued \$129,520,000 of Lease Revenue Bonds in order to refund the AoP Revenue Bonds 1995 Series A and B in the outstanding aggregate amount of \$114,250,000, issued by Corporation. The AoP Series 2001 Refunding Bonds are secured by a first lien and pledge of rental payments from the Corporation, certain pledged parking revenues, Transient Occupancy Taxes (TOT), and the Tidelands Operations Fund revenues. Related to the 2001 restructuring of the 1995 Corporation bond debt, the City, Authority and Corporation entered into the 2001 Site Lease Agreement, 2001 Lease Agreement, Implementation Agreement (2001 Implementation Agreement), an Amended and Restated Owner Participation Agreement (2001 OPA), and an Amended and Restated City Pledge Agreement (2001 Pledge Agreement).

Under the 2001 Site Lease Agreement, the City leased the AoP and location site to the Authority. Under the 2001 Lease Agreement, the Authority leased the AoP and location site to the Corporation. As specified in the 2001 OPA, the rental payments of the Corporation, and certain TOT, are sources of revenues to be used in the repayment of the AoP 2001 Refunding Bonds, which are also backed by the Tidelands Operations Fund.

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February 21, 2012

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Staff recommends issuing the AoP 2012 Refunding Bonds, in an amount not to exceed \$118,000,000, to refund the outstanding AoP 2001 Refunding Bonds in order to take advantage of current market interest rates, release the TOT pledge under the 2001 OPA, allow the City to enter into a new City Pledge Agreement, and pay for the cost of issuance.

The AoP 2012 Refunding Bonds will also create a new restricted sub-fund within the Tidelands Operations Fund titled City Aquarium Account, funded by an encumbrance of a portion of the Tidelands Operations Fund balance, in an amount equivalent to one-year's debt service, or approximately \$8.5 million. This fund balance restriction is a reserve that provides investors additional assurance of the annual debt service payment, and will only be utilized if annual pledged revenues are insufficient.

As with the prior AoP 2001 Refunding Bonds, the AoP 2012 Refunding Bonds will continue to be backed by the Tidelands Operations Fund. To pay annual debt service on the AoP 2012 Refunding Bonds, the new Pledge Agreement will encumber certain amounts to be deposited to the Tidelands Oil Revenue Fund and Tidelands Operations Fund, as well as amounts on deposit in the City Aquarium Account, and certain amounts on deposit in the Tidelands Operations Fund before operating expenses.

This matter was reviewed by Assistant City Attorney Charles Parkin on January 30, 2012 and Budget Management Officer Victoria Bell on February 3, 2012.

### TIMING CONSIDERATIONS

City Council action is requested on February 21, 2012 to take advantage of current market rates to achieve the lowest possible financing cost for the City.

### FISCAL IMPACT

The debt service on the AoP 2001 Refunding Bonds is the responsibility of the City, and is partially backed by the Tidelands Operations Fund. The Tidelands Operations Fund will continue to back the AoP 2012 Refunding Bonds along with pledges of available Tidelands revenues before operating expenses. The annual debt service for the AoP 2001 Refunding Bonds is approximately \$9.3 million. Depending on financial market conditions at sale, the debt refunding is expected to reduce the average annual debt service between \$400,000 and \$800,000, without extending the term of the Bonds. This annual savings will accrue to the Tidelands Operations Fund (TF 401), thus providing budget relief for the remaining life of the bonds. The Tidelands Operations Fund has accumulated deferred infrastructure projects in excess of \$310 million. The annual realized savings will augment funding for maintenance of Tidelands facilities and deferred infrastructure projects. The 2012 AoP Refunding Bonds will not rely upon a pledge of TOT generated in the Tidelands area. The release of that pledge enables the TOT to be restored to the General Fund. There is no local job impact associated with this recommendation.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



JOHN GROSS  
DIRECTOR OF FINANCIAL MANAGEMENT

JG:DN:  
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RESOLUTION

APPROVED:



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PATRICK H. WEST  
CITY MANAGER

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF LONG BEACH APPROVING PROCEEDINGS BY  
THE LONG BEACH BOND FINANCE AUTHORITY FOR  
THE ISSUANCE OF REFUNDING REVENUE BONDS  
RELATED TO THE AQUARIUM OF THE PACIFIC, AND  
APPROVING RELATED DOCUMENTS AND ACTIONS

WHEREAS, the Long Beach Bond Finance Authority (the "Authority") has heretofore issued its \$129,520,000 Long Beach Bond Finance Authority Lease Revenue Refunding Bonds (Aquarium of the Pacific Project) Series 2001 (the "2001 Bonds") in order to refund the Long Beach Aquarium of the Pacific Revenue Bonds (Aquarium of the Pacific Project), 1995 Series A and 1995 Series B, Taxable (collectively, the "1995 Bonds"), the proceeds of which 1995 Bonds were used to finance the costs of the acquisition and construction of an aquarium facility (the "Aquarium of the Pacific Facility") located in the City of Long Beach (the "City"), and owned by the Aquarium of the Pacific, a California nonprofit public benefit corporation (the "Corporation"); and

WHEREAS, in connection with the issuance of the 2001 Bonds, the City entered into a Site Lease (the "2001 Site Lease") with the Authority under which the City leased to the Authority the Aquarium of the Pacific Facility and the site on which it is located, and the Authority and the Corporation entered into a Lease Agreement (the "2001 Lease Agreement") whereby the Authority leased the Aquarium of the Pacific Facility and the site on which it is located to the Corporation; and

WHEREAS, the rental payments by the Corporation under the 2001 Lease Agreement are a source of the revenues for the repayment of the 2001 Bonds, and following the execution and delivery of the 2001 Lease Agreement, the City and the Corporation entered into an Implementation Agreement (as amended by the First

1 Amendment to Implementation Agreement between the City and the Corporation, the  
2 "Implementation Agreement") to provide for the expansion and renewal of the Aquarium  
3 of the Pacific Facility, which Implementation Agreement effectively allowed for, in certain  
4 circumstances, a limitation on the amount of the annual rental payments by the  
5 Corporation under the 2001 Lease Agreement; and

6 WHEREAS, also in connection with the issuance of the 2001 Bonds, the  
7 City entered into a Parking Agreement (the "2001 Parking Agreement") with the  
8 Corporation, and the parking revenues payable by the City under the 2001 Parking  
9 Agreement are also a source of the revenues for the repayment of the 2001 Bonds; and

10 WHEREAS, also in connection with the issuance of the 2001 Bonds, the  
11 City entered into an Amended and Restated Owner Participation Agreement (the "2001  
12 OPA"), with the Redevelopment Agency of the City of Long Beach (the "Agency") and the  
13 Corporation, pursuant to which the Agency agreed to contribute certain hotel taxes as an  
14 additional source of the revenues for the repayment of the 2001 Bonds; and

15 WHEREAS, also in connection with the issuance of the 2001 Bonds, the  
16 City entered into an Amended and Restated City Pledge Agreement (the "2001 Pledge  
17 Agreement") with the Authority and the Corporation, in favor of the trustee for the 2001  
18 Bonds, pursuant to which the City pledged certain amounts deposited to the Tidelands  
19 Operating Fund established under Section 1710 of the City Charter as an additional  
20 source of the revenues for the repayment of the 2001 Bonds; and

21 WHEREAS, the Authority, working together with the City, now proposes to  
22 undertake a refunding of the 2001 Bonds in order to (i) take advantage of current market  
23 interest rates, (ii) allow for a release of the Agency's obligations under the 2001 OPA to  
24 contribute hotel taxes to the repayment of the 2001 Bonds, and (iii) allow the City to enter  
25 into a new City Pledge Agreement with the Authority that will provide for a change in the  
26 nature of the pledge and the overall amounts pledged by the City from such pledge and  
27 amounts provided for in the 2001 Pledge Agreement; and

28 WHEREAS, in order to provide the funds needed to refund the 2001 Bonds,

1 the Authority has determined to issue its Long Beach Bond Finance Authority 2012  
2 Refunding Revenue Bonds (Aquarium of the Pacific Project) (the "Bonds"); and

3 WHEREAS, as required by Section 6586.5(a) of the California Government  
4 Code, a public hearing has been held by the City Council in connection with the financing  
5 contemplated by the Bonds; and

6 WHEREAS, the firm of Loop Capital Markets, together with the other firms  
7 identified therein (collectively, the "Underwriters") have proposed to purchase and  
8 underwrite the Bonds and has presented to the City a form of Bond Purchase Agreement  
9 for the Bonds (the "Bond Purchase Agreement"), to be entered into by and between the  
10 Authority and the Underwriters; and

11 WHEREAS, a proposed form of official statement (the "Preliminary Official  
12 Statement") describing the Bonds, to be used in connection with the marketing of the  
13 Bonds by the Underwriters, has been prepared and has been presented to the City; and

14 WHEREAS, in connection with the issuance of the Bonds, the City expects  
15 (i) to enter into a First Amendment to Site Lease (the "Site Lease Amendment") with the  
16 Authority amending the 2001 Site Lease; (ii) to enter into a Second Amendment to  
17 Implementation Agreement (the "Implementation Agreement Amendment") with the  
18 Corporation amending the Implementation Agreement; (iii) to consent to a First  
19 Amendment to Lease Agreement (the "Lease Agreement Amendment") between the  
20 Authority and the Corporation, amending the 2001 Lease Agreement and otherwise  
21 acknowledging the Implementation Agreement; (iv) to enter into a First Amendment to  
22 Parking Agreement (the "Parking Agreement Amendment") with the Corporation  
23 amending the 2001 Parking Agreement; and (v) to enter into a new City Pledge  
24 Agreement (the "City Pledge Agreement") with the Authority, for the benefit of the trustee  
25 for the Bonds, in replacement of the 2001 Pledge Agreement and pursuant to which the  
26 City will agree to establish a City Aquarium Account within the Tideland Operating Fund  
27 created under Section 1710 of the City Charter, and to pledge amounts in the City  
28 Aquarium Account and certain amounts to be deposited to the Tidelands Oil Revenue

1 Fund created under Section 1709 of the City Charter and to the Tidelands Operating  
2 Fund, and certain amounts in the Tidelands Operating Fund, as a source of revenue and  
3 security for the repayment of the Bonds; and

4 WHEREAS, the City Council has duly considered the transactions  
5 contemplated by all such documents referred to above and wishes at this time to make a  
6 finding of significant public benefit pursuant to Section 6586.5(a)(2) of the California  
7 Government Code, and to approve of the financing and the transactions contemplated by  
8 the Bonds and such documents in the public interests of the City;

9 NOW, THEREFORE, the City Council of the City of Long Beach resolves as  
10 follows:

11 Section 1. Findings and Consent. The City Council hereby finds that  
12 significant public benefits will arise from the financing contemplated by the Bonds and the  
13 documents related thereto, in accordance with Section 6586 of the California  
14 Government Code.

15 Section 2. Approval of Bonds. The City Council hereby approves the  
16 issuance of the Bonds by the Authority in a principal amount of up to \$118,000,000, for  
17 the purpose of providing funds to refund the 2001 Bonds, as well as to pay the costs of  
18 issuance of the Bonds and to fund a reserve fund for the Bonds.

19 Section 3. Approval of City Pledge Agreement. The City Council hereby  
20 approves the City Pledge Agreement in the form on file with the City Attorney. The City  
21 Manager, the Director of Financial Management and the City Treasurer (collectively, the  
22 "Designated Officers"), each acting alone, are hereby authorized and directed to execute,  
23 for and in the name of the City, and the City Clerk is hereby authorized and directed to  
24 attest, the City Pledge Agreement in such form together with any changes therein or  
25 additions thereto deemed advisable by the Designated Officer executing the City Pledge  
26 Agreement following consultation with the City Attorney and Bond Counsel to the  
27 Authority for the Bonds ("Bond Counsel"), and the execution and delivery by a  
28 Designated Officer of the City Pledge Agreement shall be conclusive evidence of the

1 approval of any such changes or additions. The City Council hereby authorizes the  
2 delivery and performance by the City of the City Pledge Agreement.

3           Section 4.   Approval of Amendments. The City Council hereby approves  
4 the Site Lease Amendment, the Implementation Agreement Amendment, the Lease  
5 Agreement Amendment and the Parking Agreement Amendment in the respective forms  
6 on file with the City Attorney. The Designated Officers, each acting alone, are hereby  
7 authorized and directed to execute, for and in the name of the City, and the City Clerk is  
8 hereby authorized and directed to attest, the Site Lease Amendment, the Implementation  
9 Agreement Amendment and the Parking Agreement Amendment each in such forms,  
10 together with any changes therein or additions thereto deemed advisable by the  
11 Designated Officer executing them following consultation with the City Attorney and Bond  
12 Counsel, and the execution and delivery by a Designated Officer of the Site Lease  
13 Amendment, the Implementation Agreement Amendment and the Parking Agreement  
14 Amendment shall be conclusive evidence of the approval of any such changes or  
15 additions. The Designated Officers, each acting alone are hereby authorized and  
16 directed to execute, for and in the name of the City, a consent to the Lease Agreement  
17 Amendment, in the form executed by the Authority and the Corporation. The City Council  
18 hereby authorizes the delivery and performance by the City of the 2001 Site Lease, as  
19 amended by the Site Lease Amendment, the Implementation Agreement, as amended by  
20 the Implementation Agreement Amendment, and the 2001 Parking Agreement, as  
21 amended by the Parking Agreement Amendment.

22           Section 5.   Sale of the Bonds. The City Council hereby approves the sale  
23 of the Bonds by the Authority to the Underwriters pursuant to the Bond Purchase  
24 Agreement as executed by the Authority, so long as the Underwriters' discount (without  
25 regard to any original issue discount) is not more than one-half of one percent (0.50%) of  
26 the initial principal amount of the Bonds, the initial principal amount of the Bonds is not in  
27 excess of \$118,000,000, and the net interest cost of the Bonds is not in excess of five  
28 percent (5.00%). The City Council hereby approves the letter of representations of the



1 City (the "City Representation Letter") in the form appended to the Bond Purchase  
2 Agreement on file with the City Attorney, together with any changes to the City  
3 Representation Letter or additions to the City Representation Letter deemed advisable by  
4 the Director of Financial Management upon consultation with the City Attorney and Bond  
5 Counsel. The Director of Financial Management, or in his absence the City Treasurer, is  
6 hereby authorized and directed to execute, for and in the name of the City, the final form  
7 of the City Representation Letter.

8           Section 6. Official Statement. The City Council hereby approves, and  
9 hereby deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange  
10 Act of 1934, as amended (the "Rule"), the Preliminary Official Statement in the form on  
11 file with the City Attorney. The Designated Officers, each acting alone, are hereby  
12 authorized and directed to execute an appropriate certificate stating the City's  
13 determination that the Preliminary Official Statement is nearly final within the meaning of  
14 the Rule. Distribution of the Preliminary Official Statement in connection with the sale of  
15 the Bonds is hereby approved. The Designated Officers, each acting alone, are hereby  
16 authorized and directed, upon consultation with the City Attorney and Disclosure Counsel  
17 to the Authority for the Bonds, to approve any changes in or additions to the Preliminary  
18 Official Statement deemed necessary or desirable to bring it into the form of a final official  
19 statement (the "Final Official Statement"), and, if required by the Underwriters, the Final  
20 Official Statement shall be executed in the name and on behalf of the City by any  
21 Designated Officer whose execution thereof shall be conclusive evidence of approval of  
22 any such changes and additions. The City Council hereby authorizes the distribution of  
23 the Final Official Statement by the Underwriters.

24           Section 7. Official Actions. The City Manager, the Director of Financial  
25 Management, the City Treasurer, the City Attorney, the City Clerk and all other officers of  
26 the City are each authorized and directed in the name and on behalf of the City to make  
27 any and all assignments, and to execute any and all certificates (including the Continuing  
28 Disclosure Certificate referenced in the Final Official Statement), requisitions,

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 agreements, notices, consents, instruments of conveyance, warrants and other  
2 documents, which they or any of them deem necessary or appropriate in order to  
3 consummate the sale and issuance of the Bonds, the refunding of the 2001 Bonds, and  
4 any of the other transactions contemplated by the documents approved pursuant to this  
5 Resolution. Whenever in this Resolution any officer of the City is authorized to execute or  
6 countersign any document or take any action, such execution, countersigning or action  
7 may be taken on behalf of such officer by any person designated by such officer to act on  
8 his or her behalf in the case such officer shall be absent or unavailable.

9 Section 8. This resolution shall take effect immediately upon its adoption  
10 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

11 I hereby certify that the foregoing resolution was adopted by the City  
12 Council of the City of Long Beach at its meeting of February 21, 2012, by the following  
13 vote:

14  
15 Ayes: Councilmembers: \_\_\_\_\_

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17 \_\_\_\_\_

18 \_\_\_\_\_

19 Noes: Councilmembers: \_\_\_\_\_

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21 Absent: Councilmembers: \_\_\_\_\_

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25 \_\_\_\_\_  
City Clerk