

**29491**

**SECOND AMENDMENT TO AMENDED AND RESTATED IMPLEMENTATION AGREEMENT**

This Second Amendment to Amended and Restated Implementation Agreement (this "Amendment") is entered into as of May 15, 2020, by and between the City of Long Beach, California, a municipal corporation and chartered city existing under and pursuant to 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 2012 the Long Beach Bond Financing Authority (the "Authority") issued 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 U.S. Bank National Association, successor to The Bank of New York Mellon Trust Company, N.A., as trustee, dated as of March 1, 2012 (the "2012 Indenture"); and

**WHEREAS**, the Series 2012 Bonds are secured by a pledge of and are payable from Pledged Revenues (as defined in the 2012 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 (as amended, the "Lease Agreement") in an amount equal to Aquarium Operating Revenues (as defined in the Lease Agreement); and

**WHEREAS**, the Corporation operates an aquarium and related facilities (collectively, the "Facility") on property leased to it pursuant to the Lease Agreement; and

**WHEREAS**, the City made a loan to the Corporation in an amount equal to \$10,190,000 (the "2017 Loan"), which Loan is administered and evidenced by, respectively, that certain (i) Loan Agreement dated as of November 15, 2017 executed by the City, as lender, and the Corporation, as borrower (the "2017 Loan Agreement"), and (ii) that certain Promissory Note in the principal amount of the Loan dated as of November 15, 2017 executed by the Corporation in favor of the City (the "2017 Note"); and

**WHEREAS**, in order to provide funds for the 2017 Loan, the City issued, concurrently herewith, \$10,190,000 aggregate principal amount of its Tideland Revenue Bonds, Series 2017A (Aquarium of the Pacific Project) (the "Series 2017 Bonds") pursuant to an Indenture of Trust, by and between the City and U.S. Bank National Association, as trustee, dated as of November 1, 2017 (the "2017 Indenture"); and

**WHEREAS**, in furtherance of the fund development capital campaign, the City has pledged certain funds to the Facility ("Aquarium Challenge Grant Funds") pursuant

to and in accordance with the challenge grant (the "Challenge Grant") as approved by minute order of the City Council of Long Beach adopted on December 20, 2016 and more fully described in the related Staff Report for such item; and

**WHEREAS**, the City has agreed to make a loan to the Corporation in an amount not to exceed \$2,154,000 (the "2020 Loan"), which Loan is to be administered and evidenced by, respectively, that certain (i) Loan Agreement dated as of May 15, 2020 executed by the City, as lender, and the Corporation, as borrower (the "2020 Loan Agreement"), and (ii) that certain Promissory Note in the principal amount of the Loan dated as of May 15, 2020 executed by the Corporation in favor of the City (the "2020 Note"); and

**WHEREAS**, the Corporation and the City have entered into that certain Amended and Restated Implementation Agreement dated as of November 15, 2017 (as amended, the "Implementation Agreement") in order to implement terms which the parties have concluded are reasonably necessary to provide for the operation of the Facility in accordance with the rights and obligations of the City and the Corporation set forth in the Lease Agreement, the 2012 Indenture, the 2017 Indenture, the 2017 Loan, the 2020 Loan and the Amended and Restated Bylaws of the Corporation; and

**WHEREAS**, the Corporation and the City wish to enter into this Amendment in order to, among other things, acknowledge and evidence the prepayment and prefunding of the 2017 Loan and the Challenge Grant by the Corporation and the City, respectively.

## **AGREEMENT**

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

**Section 1. Definitions.** All capitalized terms not otherwise specifically defined herein shall have the meanings given such terms in the Implementation Agreement.

**Section 2. Prepayment of 2017 Loan and Prefunding of Challenge Grant.** As of the date of this Amendment the outstanding balance owed by the Corporation to the City under the 2017 Note is \$11,063,917.50 ("2017 Loan Outstanding Amount"). As of the date of this Amendment the City is conditionally obligated to deliver \$6,200,000 in Aquarium Challenge Grant Funds to the Corporation ("Challenge Grant Outstanding Amount"). The Corporation wishes to prepay the 2017 Loan Outstanding Amount after crediting the Challenge Grant Outstanding Amount. In connection with this Amendment and as a condition to its effectiveness, the Corporation shall deliver to the City, in immediately available funds, an amount equal to \$4,863,917.50 (the "2017 Loan Prepayment Amount").

**Section 3. The Series 2017 Bonds and the 2017 Loan.** Upon receipt of the 2017 Loan Prepayment Amount by the City, the Corporation shall have no further payment obligations to the City in connection with the 2017 Loan and the 2017 Note shall be cancelled. The Corporation acknowledges that, despite the cancellation of the

2017 Note, those certain obligations contained in Section 1.10 and Section 2.11 of the 2017 Loan Agreement shall remain in full force and effect, and Borrower shall be obligated to comply therewith, until all of the Series 2017 Bonds have been redeemed. The City shall be under no obligation to redeem any Series 2017 Bonds except as required by the 2017 Indenture. The Implementation Agreement, including without limitation Section 11 thereof, is hereby amended to reflect the early retirement of the Corporation's payment obligations under the 2017 Note.

**Section 4. Challenge Grant.** Upon receipt of the 2017 Loan Prepayment Amount by the City, the City shall have no further payment obligations to the Corporation in connection with the Challenge Grant, and the Corporation shall no longer be required to comply with any restrictions associated with the Challenge Grant on revenues, grants or other Corporation funds. The Implementation Agreement, including without limitation Section 11 thereof, is hereby amended to reflect the prefunding and retirement of the Challenge Grant.

**Section 5. Continuing Effectiveness.** Except as otherwise expressly amended by this Amendment, the Implementation Agreement remains in full force and effect.

**Section 6. Severability.** If any one or more of the covenants or agreements provided in this 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 Amendment.

**Section 7. Counterparts.** This 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 8. Governing Law.** This Amendment shall be construed under the laws of the State of California.

[signatures on following page]

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

CITY OF LONG BEACH

May 20, 2020 By Rebecca G. Garner

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER

AQUARIUM OF THE PACIFIC, a California  
nonprofit public benefit corporation

May 12, 2020 By Kathie Eckelt  
Kathie Eckelt  
Chairman of the Board of Directors

May 13, 2020 By Jerry R. Schubel  
Jerry R. Schubel  
President and Chief Executive Officer

~~Agreement is approved as to form on \_\_\_\_\_, 2020~~

~~CHARLES PARKIN, City Attorney~~

APPROVED AS TO FORM

May 19, 2020  
CHARLES PARKIN, City Attorney

By Erin Weesner-Mckin  
ERIN WEESNER-MCKIN  
DEPUTY CITY ATTORNEY