

APPROVED
NOV 07 2012

REPORT OF GENERAL MANAGER

NO. 12-308

DATE November 7, 2012

BOARD OF RECREATION
AND PARK COMMISSIONERS

C.D. 7

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: HANSEN DAM PARK - DISCOVERY SCIENCE CENTER OF LOS ANGELES - LEASE AGREEMENT WITH THE DISCOVERY SCIENCE CENTER FOR THE USE, OPERATION, AND MAINTENANCE OF DISCOVERY SCIENCE CENTER OF LOS ANGELES

R. Adams	_____	K. Regan	_____
H. Fujita	_____	*M. Shull	<u><i>M. Shull</i></u>
V. Israel	_____	N. Williams	_____

[Signature]
General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATIONS:

That the Board:

1. Approve a proposed Lease Agreement, substantially in the form on file in the Board Office, between the Department of Recreation and Parks (RAP) and the Discovery Science Center (DSC) for the use, operation, and maintenance of a museum and learning center at Hansen Dam Park, proposed to be called the Discovery Science Center of Los Angeles (DSCLA), subject to the approval of the Mayor, the City Council, the U.S. Army Corps of Engineers (USACE) and the City Attorney as to form;
2. Direct the Board Secretary to transmit the proposed Lease Agreement concurrently to the Mayor in accordance with Executive Directive No. 3, and to the City Attorney for review and approval as to form;
3. Authorize the Board President and Secretary to execute the Lease Agreement upon receipt of the necessary approvals;

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4. Pursuant to Section 17.1 of the Lease Agreement, request that the City Council consent to, DSC entering into any agreements to effectuate the subletting of the Improvements described in Section 11.1 of the Lease Agreement that may be necessary to obtain New Market Tax Credit financing under Internal Revenue Code Section 45 for the Center's exhibit program, provided that the Discovery Science Center notify the General Manager in writing within ten (10) days of such subletting; and,
5. Authorize the General Manager to execute any documents that may be necessary to effectuate Recommendation No. 4 above relating to New Market Tax Credit financing for the Center exhibit program.

SUMMARY:

On May 16, 2012, the Board of Recreation and Park Commissioners (Board) approved (Board Report No. 12-157) a revised Memorandum of Understanding (MOU) between the Discovery Science Center (DSC), a non-profit organization based in the City of Santa Ana in Orange County, and the City of Los Angeles, acting by and through the Board, for the design, fabrication, and installation of exhibits and the operation and maintenance of a Children's Museum and Environmental Learning Center at Hansen Dam (Center) at the facility formerly known as the Children's Museum of Los Angeles. The Board also authorized staff to negotiate the terms and conditions of an agreement for development of exhibits for the Center and for its long-term operation and maintenance, and directed staff to return to the Board for final consideration of the proposed agreement.

Lease Agreement

After significant discussion and negotiations, DSC and City staff have come to an agreement on the terms and conditions of a proposed Lease Agreement for the use, operation, and maintenance of a Center at Hansen Dam Park, proposed to be called the Discovery Science Center of Los Angeles.

A summary of the major provisions of the Lease Agreement is provided below:

- Effective Date - The effective date of the Lease Agreement will be the date the Office of the City Clerk of Los Angeles attests the Lease Agreement.
- Term - Thirty (30) years with an option to extend by one twenty (20) year term subject to successful negotiation of a new lease between the City and USACE to extend the terms of the City's lease of the Hansen Flood Control Basin.

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- Center Opening Date - On or before March 31, 2015.
- Center Hours of Operation - Typical Hours of Operation will be from 10:00 a.m to 5:00 p.m, seven (7) days a week, and for no less than two hundred seventeen (217) hours per month. Additionally, DSC may sponsor up to thirty (30) evening events annually at the Center, with the prior written approval of the General Manager.
- Admission Fees - DSC may charge a reasonable admission fee subject to the written approval of the General Manager. The standard used to approve admission fees shall be that the proposed fee is comparable to that of unsubsidized science centers in the United States of America.
- Parking - City will make available the non-exclusive use of not less than 250 surface parking spaces located within 750 feet of the Center.
- Financing - DSC shall be responsible for any costs associated with the long-term operation and maintenance of the Center. The City may, but has no obligation to, assist DSC in identifying and securing funding for the operation and maintenance of the Center.
- Ownership of Center and Improvements - All improvements located on the site, including the building and tenant improvements constructed by the City or by DSC as of the Effective Date of the Lease, and all tenant improvements constructed at the Center by DSC at any time during the Term of the lease, shall be owned by DSC during the term of the lease. Ownership of the building and improvements will revert to the City upon termination of the Lease Agreement.
- Improvements and Exhibit Agreement - Exhibit E of the Lease Agreement is the "Improvements and Exhibits Agreement", which governs (a) the design and modification of the existing building on site, (b) the design, construction and installation of the Center's exhibits, and (c) the financing and disbursement of payments for the Center improvements and exhibits.
- Quarterly Reports - DSC and City representatives shall confer on a quarterly basis to evaluate (a) the adequacy of the functional and operational responsibilities of each party, (b) adequacy of the maintenance levels at the Center, and (c) compliance with any funding or grant agreements reporting obligations.
- Termination - Lease provides for early termination if (a) DSC and City fail to raise and make available the funds necessary to make improvements to the existing building and needed to proceed with design, fabrication and installation of the Center's exhibits by September 30, 2013, (b) sufficient funding commitments have not been secured to open

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and operate the Center by the March 31, 2015 deadline, and (c) DSC fails to open the Center on or before March 31, 2015.

At this time, the detailed final plan for exhibit program the Center is not complete. Pursuant to the terms of the "Improvements and Exhibit Agreement", the plans and design for the Center's exhibit program, when completed, will be submitted to staff for review, and presented to the Board for approval, prior to any construction taking place at the site.

U.S. Army Corps of Engineers

A portion of the land proposed to be leased to DSC for the Center is City-owned land and a portion of the land is Federally-owned land managed by the U.S. Army Corps of Engineers (USACE). The Federally-owned land is leased to City for recreational purposes pursuant to Department of the Army Lease No. DACW09-1-69-45 between USACE and the City for property located within the Hansen Flood Control Basin.

Pursuant to the terms of Department of the Army Lease No. DACW09-1-69-45, the Lease Agreement is subject to the approval of USACE, as any subletting of land leased to the City within Hansen Flood Control Basin requires the approval of USACE.

Additionally, it should be noted that, for example, admission fees charged by DSC for entry to the Center, food and/or beverages concession operations at the Center, and the planning and permitting of improvements to the Center by DSC, may also be subject to approval of USACE.

New Market Tax Credits

It is the intention of DSC to pursue New Markets Tax Credits (NMTC) to help fund improvements to the Center improvements and the Center exhibit's program.

New Markets Tax Credits (NMTC) are funded from the Community Development Financial Institutions (CDFI) Fund of the U.S. Department of the Treasury. The NMTC Program was established by Congress in 2000 to facilitate economic development in low income communities. The NMTC Program allows individual and corporate investors to receive a tax credit in exchange for making equity investments in specialized financial institutions called Community Development Entities (CDEs). The credit totals 39 percent of the original investment amount and is claimed over a period of seven (7) years. In the recent past, the CDFI Fund has released Notices of Funding Availability to allow CDEs to apply (on a competitive basis) for a new allocation of NMTC each Fiscal Year.

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To allow a project to receive the NMTC funds, it is necessary that a single-asset entity be formed to be the borrower and sign the lease and either operate the project or then sublease. This entity is known as a Qualified Active Low-Income Community Business (QALICB).

The proposed ground lease between the DSC and the City would allow for DSC to form such an entity and pursue NMTC for the Center's exhibit program. However, pursuant to Article 17.1 of the Lease Agreement, DSC is not permitted to sublet, transfer, or assign the Center or Center Improvements without the consent of the Board and the City Council.

In order to permit DSC to pursue New Markets Tax Credits (NMTC) to help fund improvements to the Center and the Center exhibit's program, staff is recommending that the Board consent to DSC entering into any agreements to effectuate the subletting of the Center building and improvements - but not the underlying property - that may be necessary to obtain NMTC financing, provided that the Discovery Science Center notify the General Manager in writing within ten (10) days of any such subletting.

Environmental Review

Staff has determined that the project has been previously evaluated for environmental impacts in compliance with City California Environmental Quality Act (CEQA) Guidelines, and the proposed Lease Agreement will not cause any additional adverse environmental impacts. A Mitigated Negative Declaration (MND) was adopted by the Los Angeles City Council on May 24, 2000 in connection with the Children's Museum of Los Angeles project, including the operations of the facility. A Notice of Determination was filed with the Los Angeles City and County Clerks on June 20, 2000. The proposed operation of the Center, under the terms of the Lease Agreement, will not substantially change the scope of the original operational plan of the Children's Museum of Los Angeles project, nor require any additional mitigation measures. Therefore, the previously adopted MND is still valid for this Lease Agreement, and no additional CEQA documentation is required for Board approval.

FISCAL IMPACT STATEMENT:

The approval and execution of the proposed Lease Agreement will have no significant impact on the Department's General Fund.

The costs for the design, development, and construction of building improvements and tenant improvements that may be developed at the Center through the implementation of this Lease Agreement are anticipated to be funded by funding sources other than the Department's General Fund. The costs associated with the long-term operation and maintenance of the Center will be the responsibility of DSC.

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Implementation of this Lease Agreement may result in an increase the overall level of daily maintenance required at Hansen Dam Park as it is anticipated that the opening of the Center will result in a net increase in daily visitors to the park.

This report was prepared by Darryl Ford, Management Analyst II, Planning, Construction Division, and Maintenance.