

**APPROVED**  
DEC 10 2012

REPORT OF GENERAL MANAGER

NO. 12-327

DATE December 10, 2012

BOARD OF RECREATION  
& PARK COMMISSIONERS

C.D. 7

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: HANSEN DAM PARK – DISCOVERY SCIENCE CENTER OF LOS ANGELES – RESCISSION OF PREVIOUSLY APPROVED LEASE AGREEMENT WITH THE DISCOVERY SCIENCE CENTER FOR THE USE, OPERATION, AND MAINTENANCE OF DISCOVERY SCIENCE CENTER OF LOS ANGELES; REVISED LEASE AGREEMENTS; CONSENT TO LEASEHOLD DEED OF TRUST

R. Adams \_\_\_\_\_  
H. Fujita \_\_\_\_\_  
V. Israel \_\_\_\_\_

K. Regan \_\_\_\_\_  
\*M. Shull MS  
N. Williams \_\_\_\_\_

[Signature]  
General Manager

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATIONS:

That the Board:

1. Rescind approval of Board Report No. 12-308, approved by the Board at its meeting of November 7, 2012, which approved a 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 of Los Angeles (DSCLA), for the use, operation, and maintenance of a museum and environmental learning center at Hansen Dam Park, proposed to be called the Discovery Science Center of Los Angeles;
2. Approve a proposed Lease Agreement, substantially in the form on file in the Board Office, between RAP and Discovery Science Center Leverage Lender, LLC (DSC, LLC) for the use, operation, and maintenance of a museum and environmental learning center at Hansen Dam Park, proposed to be called the Discovery Science Center of Los Angeles, 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;
3. Approve a proposed Lease Agreement, substantially in the form on file in the Board Office, between RAP and the Discovery Science Center of Los Angeles (DSCLA) for the use, operation, and maintenance of a museum and environmental learning center at

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Hansen Dam Park, proposed to be called the Discovery Science Center of Los Angeles, 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;

4. Approve a proposed Consent to Leasehold Deed of Trust and Modification of Lease, substantially in the form on file in the Board Office, between DSCLA, RAP, and the Lenders to effectuate the New Market Tax Credit (NMTC) financing for DSCLA to develop the Center's improvements and exhibit program, subject to the approval of the Mayor, the City Council, and the City Attorney as to form;
5. Authorize the General Manager to execute any documents between DSC, LLC, DSCLA, and RAP, that may be necessary to effectuate Recommendation No. 4 for DSCLA to obtain New Market Tax Credit financing under Internal Revenue Code Section 45 for the Center's improvements and exhibit program, subject to approval of the City Attorney as to form;
6. Request that the City Council consent to DSC, LLC, DSCLA, and RAP entering into any agreements, that may be necessary for DSCLA to obtain New Market Tax Credit financing under Internal Revenue Code Section 45 for the Center's improvements and exhibit program;
7. Direct the Board Secretary to transmit the proposed Agreements and the Consent to Leasehold Deed of Trust concurrently to the Mayor in accordance with Executive Directive No. 3, and to the City Attorney for review and approval as to form; and,
8. Authorize the Board President and Secretary to execute the Agreements and the Consent to Leasehold Deed of Trust upon receipt of the necessary approvals.

SUMMARY:

In Board Report No. 12-308, approved by the Board of Recreation and Park Commissioners (Board) at its meeting of November 7, 2012, a Lease Agreement, between the Discovery Science Center of Los Angeles (DSCLA), a non-profit organization formed by the Discovery Science Center based in the City of Santa Ana in Orange County (DSC-OC), and the City of Los Angeles, acting by and through the Board was approved, for the use, operation, and maintenance of a museum and environmental learning center at Hansen Dam Park, proposed to be called the Discovery Science Center of Los Angeles.

Subsequent to the November 7, 2012 meeting of the Board, it was determined that various modifications are needed to the Lease Agreement to comply with New Markets Tax Credits (NMTC) funding requirements and to maximize the amount of funds the project is eligible to

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receive. The Discovery Science Center in Orange County (DSC-OC) created a new legal entity, the DSC Leverage Lender, LLC (DSC LLC), to serve as a conduit for leveraging additional equity to maximize the amount of New Market Tax Credit (NMTC) financing that DSCLA would be eligible to receive for the Center's improvements and exhibit program.

In order to effectuate the necessary NMTC transactions, a lease agreement with the City must be initially executed with the DSC, LLC, instead of the Discovery Science Center of Los Angeles (DSCLA) as was approved by the Board at its meeting of November 7, 2012. Once the NMTC financing deal closes, the DSC, LLC will assign its lease to DSCLA, at which time the successor lease between RAP and DSCLA will become effective, and the lease between RAP and the DSC, LLC will terminate. The NMTC financing is provided to DSCLA by the lender in the form of a loan that DSCLA essentially repays by creating jobs and providing services in a low income community. This concept is discussed in more detail below. The loan is secured by a Leasehold Deed of Trust on the leasehold interests of the DSCLA. In the event of a default on the loan by DSCLA, the NMTC structure allows the lender to select a replacement operator that would be required to operate the Center within the terms of the lease between RAP and DSCLA. The proposed Consent to Leasehold Deed of Trust and Modification of Lease effectuates the lender securing the loan with DSCLA's leasehold interests and provides remedies to the lender in the event DSCLA defaults on the loan. Alternatively, in the event DSCLA defaults on the loan, RAP would have the right to terminate the Lease with DSCLA and operate the center itself or secure another operator. Neither the City nor RAP would have any liability for DSCLA's obligations under the NMTC financing. The City Attorney has reviewed the related transactional documentation and has opined that they are in order.

### Lease Agreements

As discussed above, staff is recommending that the Board approve two separate lease agreements for the Center – the initial lease with DSC, LLC, which will terminate upon the successor lease with DSCLA becoming effective. The terms and conditions of the two lease agreements are substantially the same.

A summary of the major provisions of the lease agreements is provided below:

- 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.
- 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 an estimate two hundred seventeen (217) hours per

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month. Additionally, DSCLA may sponsor up to thirty (30) evening events annually at the Center, with the prior written approval of the General Manager.

- Admission Fees - DSCLA 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 - DSCLA 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 DSCLA 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 DSCLA at the Center at any time during the Term of the lease, would be owned by DSCLA during the Term. At the end of the Term of the lease, the Ownership of the building and tenant improvements revert to the City upon termination of the Lease Agreement.
- Improvements and Exhibit Agreement - The "Improvements and Exhibits Agreement", which is Exhibit E of the lease agreements, governs (a) the design and modification of the existing building on site, (b) the design, construction and installation of the Center's improvements and exhibit program, 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) the adequacy of the maintenance levels at the Center, and (c) compliance with any funding or grant agreements reporting obligations.
- Termination - Lease agreements provide for early termination if (a) by September 30, 2013, 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, (b) sufficient funding commitments have not been secured to open and operate the Center by the March 31, 2015 deadline, and (c) DSC fails to open the Center on or before March 31, 2015.

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Again, it should be noted that the DSC, LLC lease will terminate once NMTC funds are issued, and upon termination of that lease the lease with DSCLA would become effective.

### U.S. Army Corps of Engineers

A portion of the land proposed to be leased to DSC, LLC and then to DSCLA 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 agreements are 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 DSCLA to pursue NMTC financing to help fund improvements to the Center's improvements and exhibit program. DSC anticipates it will be able to secure up to \$3.2 million in NMTC allocations for the project.

New Market Tax Credits 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.

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 operate the project. This entity is known as a Qualified Active Low-Income Community Business (QALICB).

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The proposed lease agreements with DSC, LLC and DSCLA would allow for DSCLA to pursue NMTC funds for the Center's exhibit program. In order to effectuate the necessary NMTC transactions and maximize the amount of funds the project is eligible to receive, the lease with the City must be initially executed with the DSC, LLC. Then DSCLA essentially purchases the building and lease from DSC, LLC, and the value of the building and lease increase the borrower's (DSCLA) equity, thereby maximizing the NMTC funds that DSCLA is eligible to receive for the Center. Once the NMTC funds are issued to DSCLA, the successor lease between the City and DSCLA will become effective, and the lease with DSC, LLC will terminate.

Pursuant to Article 17.1 of the lease agreements, DSC, LLC and DSCLA are not permitted to sublet, transfer, or assign the Center or Center Improvements without the consent of the Board and the City Council. Therefore, in order to permit DSCLA to pursue NMTC to help fund improvements to the Center and the Center exhibit's program, it is also necessary for the Board to approve the proposed Consent to Leasehold Deed of Trust and Modification of Lease and to authorize the General Manager to entering into any collateral agreements that may be necessary for DSCLA to obtain NMTC financing for the Center, subject to approval by the City Attorney as to form.

### Improvements and Exhibit Program

At this time, the detailed final plan for the exhibit program for the Center is not complete. Pursuant to the terms of the "Improvements and Exhibit Agreement" (which is an exhibit to each of the lease agreements), 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. The deadline for DSCLA to start fabrication of the Center's exhibits is September 30, 2013. The budget for exhibit program is currently estimated at \$21.3 million. City and DSC have identified sufficient capital funds, including the \$3.2 million in NMTC funds discussed above, needed in order to fully fund the proposed exhibit program.

### 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 Agreements 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 Agreements, 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.

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Therefore, the previously adopted MND is still valid for these Lease Agreements, and no additional CEQA documentation is required for Board approval.

FISCAL IMPACT STATEMENT:

The approval and execution of the proposed lease agreements and Consent to Leasehold Deed of Trust and Modification of Lease 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 the Lease Agreements 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 DSCLA.

Implementation of these lease agreements 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.