

November 27, 2019

MEMORANDUM

To: Civic Development, Public Assets and Native Communities Committee
From: Eric McConaghy, Analyst
Subject: Agreement between City and Seattle Aquarium Society regarding the Ocean Pavilion project – Council Bill (C.B.) 119700

On December 4, the Civic Development, Public Assets and Native Communities Committee (Committee) is scheduled to discuss and potentially vote on [Council Bill \(C.B.\) 119700](#).

The legislation authorizes the execution of agreements between the City of Seattle (City) and the Seattle Aquarium Society (SEAS) for funding and constructing a new aquarium facility known as the [Ocean Pavilion](#) to be located near the existing Seattle Aquarium on the Central Waterfront. C.B. 119700 would:

- Authorize the execution of a funding agreement ([Attachment 1 to C.B. 119700](#)) for the Ocean Pavilion Project;
- Authorize the execution of a future construction agreement for the Ocean Pavilion Project fulfilling terms specified in the funding agreement;
- Find that the proposed funding and construction agreements together would satisfy the intent and purpose of the project development agreement (PDA) specified in [Ordinance 125630](#) and the [2018 Memorandum of Understanding \(MOU\) between the City and SEAS \(2018 MOU\)](#) authorized by Ordinance 125630 and
- Amend Ordinance 125630 to delete language specifying actions prerequisite for the execution of the PDA.

This memo describes the proposed Ocean Pavilion project and outlines how Council's vote on C.B. 119700 is a policy choice adjusting the City's agreement with SEAS regarding the Ocean Pavilion. The memo also provides background on the City's current agreement with SEAS for the Ocean Pavilion project.

Ocean Pavilion

The Ocean Pavilion project is the anticipated new aquarium building that will be integrated with aspects of the City's Central Waterfront program. The project would create a new building to the east of the existing Seattle Aquarium, which is located on Piers 59 and 60, and east of the future Waterfront Promenade. The proposed building would be adjacent to the City of Seattle's future Overlook Walk and would include approximately 48,000 square feet of public aquarium exhibits and associated support space.

The projected cost for design and construction of the Ocean Pavilion is approximately \$113 million that will be financed through a combination of public and private funds, including a commitment of \$34 million from the City. SEAS estimates groundbreaking in 2021, with an opening celebration for the new Ocean Pavilion in late 2023. SEAS expects the Ocean Pavilion project will be open at roughly the same time as the completion of the City's new waterfront park.

The City plans to construct the [Overlook Walk Project](#) that will include a bridge from the [Pike Place MarketFront](#) over Alaskan Way to the roof of the Ocean Pavilion, stairs extending west towards Pier 62, and stairs wrapping the north side of the Ocean Pavilion. SEAS would be responsible for constructing the accessible rooftop on the Ocean Pavilion, the public stair on the west façade of the Ocean Pavilion, and the public stair and elevator on the south façade of the Ocean Pavilion.

Policy choice: Agreements

The Mayor presents Council with two policy choices with C.B. 119700:

1. Should Council authorize the Executive to execute a funding agreement with SEAS committing the City to funding \$34 million of the Ocean Pavilion project now without the opportunity to review a feasibility report on a comprehensive funding plan based on a cost estimate for the Ocean Pavilion project? and
2. Should Council authorize the Executive to execute a future construction agreement with SEAS without the opportunity to review the construction agreement?

Currently, the City and SEAS are guided by Ordinance 125630 and the 2018 MOU. The passing of Ordinance 125630 increased the maximum amount of City funding for design and development of the proposed Ocean Pavilion project from \$1.8 million to \$4.7 million to reimburse SEAS up to 50 percent of eligible costs. The 2018 MOU, executed in 2018, also included the City's commitment of \$4.7 million and reiterated the City's anticipated total funding of \$34 million as described in the City's 2018-2023 Capital Improvement Program (CIP).

The 2018 MOU also stated that the City would reimburse SEAS for construction costs of the Ocean Pavilion according to a PDA. The ordinance specified actions prerequisite for the execution of the PDA:

- Completion of 60 percent design development, including cost estimates;
- SEAS providing the Director of the City Budget Office with a cost estimate and comprehensive funding plan;
- Council being provided with a report on the feasibility of the comprehensive funding plan and
- Council authorization of execution of the PDA by ordinance.

The differences between the current arrangement and the Mayor's proposal are in the sequence of events and decision-making. Under the Mayor's proposal, Council would decide upfront (1) to commit City funds and (2) to authorize a construction agreement before SEAS completes a comprehensive funding plan rather than review the sufficiency of SEAS comprehensive funding plan and, then, decide on a PDA that would commit funds and guide construction.

By passing C.B. 119700, Council would authorize the Director of Office of the Waterfront and Civil Projects (the Director of OWCP) and the Superintendent of Parks and Recreation (Superintendent of SPR) to execute the proposed funding agreement with SEAS ([Attachment 1 of C.B. 119700](#)) committing the City to include \$34 million in the City's CIP for the Ocean Pavilion project. The funding agreement would make disbursing City funds to SEAS contingent upon the execution of a future construction agreement and the yearly funding plan identified in the CIP.

The City's funding would be allocated to reimburse SEAS for Ocean Pavilion costs before SEAS would have an obligation to use funding from other sources. If the project budget were to be significantly reduced by SEAS, then the City would reserve the right to adjust the City's funding commitment.

The funding agreement would require SEAS to provide a comprehensive funding plan to the City Budget Director by June 30, 2020. The City Budget Director would evaluate the sufficiency of the plan and there would be no required review by Council. By authorizing the execution of the funding agreement, Council would agree to committing City funds to the Ocean Pavilion project in expectation of the success of SEAS's ongoing fund raising for the remaining \$79 million projected costs of the project.

By passing C.B. 119700, Council would authorize the Director of OWCP and the Superintendent of SPR to execute the construction agreement later. The proposed funding agreement includes requirements for the future construction agreement and would require the City and SEAS to negotiate in good faith and agree upon it by August 30, 2020.

Considered together, the proposed funding and construction agreements address the prerequisites for a PDA required under Ordinance 125630 and meet the specifications for a PDA as provided in the 2018 MOU, mostly.¹ The proposal differs in that it would not include providing Council with a report on the SEAS funding plan and would not require Council approval for construction by an ordinance authorizing a PDA *after* reviewing the feasibility report.

¹ Note also that the first prerequisite for a PDA in Ordinance 125630 seems to be satisfied because SEAS has completed 60 percent design for the Ocean Pavilion and has projected the cost estimate at \$113 million (see [Attachment 1 – Exhibit C of C.B. 119700](#)).

If Council chooses to authorize the execution of these agreements as proposed, then it would be consistent with this choice to find that together the agreements satisfy the intent and purpose of the PDA specified in Ordinance 125630 and the 2018 MOU. For this reason, C.B. 119700 would delete the section on prerequisites for a PDA from Ordinance 125630.

The Executive has said that providing the financial commitment will assist SEAS in its fundraising from private individuals, corporations, foundations and government sources other than the City. Council's authorization now for the execution of a future construction agreement would reinforce the financial commitment because the City's disbursement of funding is contingent upon the execution of the funding agreement.

Background

In 2013, the City passed [Ordinance 124121](#), authorizing the execution of an MOU Concerning Renovation and Expansion of the Seattle Aquarium and Development of the Central Waterfront Project between the City and SEAS ("[2013 MOU](#)"). In 2013, the City and SEAS signed the 2013 MOU which appropriated \$1 million to SEAS for design and planning of an Aquarium expansion located over water to the south of Pier 59. The MOU directed the City to coordinate design efforts with SEAS, so that a potential expansion would be consistent with the overall central waterfront design and vision.

The 2013 MOU also identified a potential City contribution not to exceed \$45 million toward the Aquarium expansion. In 2014, the City's anticipated contribution to the Aquarium expansion project was reduced, shown as \$33.5 million on the project page for the Aquarium Expansion project in the [Department of Parks and Recreation portion](#) of the Adopted 2015 – 2020 Capital Improvement Plan (CIP).

In 2015, the City approved SEAS's Master Plan by [Resolution 31603](#). By approving the Master Plan, the City Council directed the Office of the Waterfront² and DPR to advance the design and environmental review of the Aquarium expansion, today known as the Ocean Pavilion, at the Overlook Walk Location.

Also in 2015, the City passed [Ordinance 124908](#), amending the 2013 MOU to increase the City's maximum compensation to SEAS for 50 percent of its expenditures for the Aquarium Expansion Project engineering, design, and consultant services incurred beginning January 1, 2013 from \$1 million to \$1.8 million.

In 2017, the City Council passed [Ordinance 125422](#), authorizing a second amendment to the 2013 MOU that reaffirmed the City's commitment to the Ocean Pavilion concept, outlined the design process to reach 30 percent schematic design, required SEAS to fund 30 percent schematic design, and committed the City and SEAS to develop a funding plan and new memorandum of understanding to be brought to the City Council for consideration. As

² Now, the Office of the Waterfront and Civic Projects

described above, in 2018 Council passed Ordinance 125630 authorizing the execution of the 2018 MOU and replacing and superseding the 2013 MOU.

Next steps

If the Committee votes to recommend adoption of C.B. 119700 on December 4, then Council could consider and vote on the legislation as soon as December 9.

cc: Kirstan Arestad, Central Staff Executive Director
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