

July 31, 2023

MEMORANDUM

To: Public Assets and Homelessness Committee
From: Eric McConaghy, Analyst and Aly Pennucci, Deputy Director
Subject: Council Bill 120626: Second Amendment to the Seattle Aquarium Operations and Management Agreement

On August 2, 2023, the Public Assets and Homelessness Committee (Committee) will discuss and potentially vote on [Council Bill \(CB\) 120626](#) that would authorize the City to execute amendments to the Seattle Aquarium Operations and Management Agreement (OMA), known collectively as the Second Amendment to the OMA.

Since August 2022, shortfalls in the Seattle Aquarium Society's (SEAS) planned fundraising from private and public sources for the Ocean Pavilion Project have resulted in SEAS having both a projected funding gap and cash flow timing issues in its plan to complete the project on schedule (Summer 2024). To address the funding shortfall and avoid construction delays, which would increase total project costs for both this project and the City's [Waterfront Overlook Walk Project](#), SEAS has arranged a private bank loan. The proposed Second Amendment to the OMA are necessary for SEAS to meet the lending requirements stipulated by the bank.

This memo:

- (1) Provides background on the relationship between the City's Overlook Walk project and SEAS' Ocean Pavilion;
- (2) Defines the problem and describes the proposed solution that resulted in the requested Second Amendment to the OMA;
- (3) Describes the proposed legislation;
- (4) Highlights policy questions for the Committee's considerations; and
- (5) Describes the legislative process to date and next steps.

Background

The City owns the Seattle Aquarium, which is located on Piers 59 and 60 along the Seattle Central Waterfront. The non-profit SEAS operates it for the City according to an OMA authorized in 2009 via [Ordinance \(ORD\) 123205](#), and last amended in 2022 via [ORD 126655](#). In 2013, the Council passed [ORD 124121](#), authorizing the execution of a Memorandum of Understanding (2013 MOU) between the City and SEAS concerning the renovation and expansion of the aquarium and the development of the City's Central Waterfront program. The MOU stipulated coordinated design efforts between the City and SEAS, so that a potential aquarium expansion would be consistent with the overall central waterfront design and vision.

Working within the framework of that MOU, the City and SEAS have architecturally integrated the project timing and construction of the Ocean Pavilion with the City's Overlook Walk project (which is one component of the overall Central Waterfront Program). The City has affirmed the location and integration of both projects through multiple legislative actions as part of the City's overall planning for the capital projects of the Central Waterfront Program.¹

Ocean Pavilion Project Overview

The Ocean Pavilion includes a new aquarium building with an accessible rooftop that includes public open space, a public stair on the west façade, and a public stair and elevator on the south façade. The Overlook Walk includes the bridge from the Pike Place Market 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. The Office of the Waterfront and Civic Projects (OWCP) estimates the completion of the Overlook Walk by mid-2025 assuming timely construction of the Ocean Pavilion. Provided sufficient cash is available, SEAS estimates completion of the Ocean Pavilion in time to open to visitors in the summer of 2024.

The City and SEAS have each completed major aspects of the two projects. Since the City's Overlook Walk project is architecturally dependent upon the completion of the Ocean Pavilion, both the Ocean Pavilion and the Overlook Walk would experience delays and related cost escalations if SEAS cannot complete construction of the Ocean Pavilion according to plan. Consistent with the City's ownership of the aquarium, the City will take ownership of the facility enhancements provided by the Ocean Pavilion upon issuance of certificate of occupancy. As described in the next section, due to funding shortfalls and delays, SEAS requires bridge financing to keep construction on track.

Problem Statement and Proposed Solution

Funding Gap and Cash Flow Timing Issues

According to SEAS' estimates, the total estimated construction cost for the Ocean Pavilion is \$160 million. To fully cover the construction costs, the original funding plan relied on a 50/50 split between private donations and public funding. As recently as August of 2022, when the Council approved an amendment to the OMA included in ORD 126655, and committed to contributing an additional \$20 million to the Ocean Pavilion capital project², that plan was assumed to be on track.

While SEAS expects to meet the \$80 million private fundraising goal, it no longer anticipates meeting the \$80 million public funding goal, resulting in a \$19.2 million shortfall. Previously, SEAS anticipated receiving federal grants of that amount that ultimately were not awarded. In addition, a portion of both the private and public pledges identified to date are multi-year in nature. While they are anticipated as firm commitments of resources, SEAS will not receive them until after 2023, creating a cash flow issue. Table 1 provides an overview of the project funding in terms of its level of certainty, and when it is expected to be available.

¹ See the [August 9, 2022, Central Staff memo](#) (pg. 4-6) for additional detail on the legislative background related to the Ocean Pavilion.

² In turn, SEAS would pay the City an Enhanced Facility Fee.

Table 1. Summary of SEAS' Ocean Pavilion Project Funding Sources and Timing of Cashflows

Amounts in million \$	Public	Private	Total
Received Cash in Hand	\$42.7	\$56.9	\$99.6
Pledges Outstanding, Expected in 2023	\$10.8	\$2.9	\$13.7
<i>Amounts available in project timeframe</i>	\$53.5	\$59.8	\$113.3
Pledges Outstanding, Expected Beyond 2023	\$4.0	\$7.1	\$11.1
Future Fundraising	\$3.3	\$13.1	\$16.4
<i>Amounts projected outside construction timeframe</i>	\$7.3	\$20.2	\$27.5
<i>Shortfall in federal grants</i>	\$19.2	-	\$19.2
Totals	\$80.0	\$80.0	\$160.0

As shown in the Table 1, an additional \$13.7 million is expected this year based on current pledges, but has not yet been received by SEAS. Further, approximately \$27.5 million of funds are anticipated after the construction timeframe. Finally, \$19.2 million of funds were originally anticipated from federal grants, but are no longer expected to be received, representing a project shortfall.

Private Loan

To address both the public funding gap and the cash flow challenges resulting from multi-year pledges and the uncertain timing of the ongoing private fundraising campaign, SEAS has negotiated a \$67 million private bank loan with PNC Bank (PNC). The Washington State Housing Finance Commission (WSHFC) would facilitate PNC's loan to SEAS through its [Nonprofit Facilities Program](#). This program makes the private financing more affordable for SEAS. Table 2 shows the breakdown of the uses of \$67 million package.

Table 2. SEAS/PNC Loan Package Details

	\$ Millions ^{1/}
Remaining Project Expenses (July 2023 Through May 2024)	\$45.7
Less: Pledged public and private financing through May 2024	\$(19.2)
<i>Net construction financing need</i>	\$26.5
Prepay Enhanced Facility Fee	\$19.2
<i>Total Project Need</i>	\$45.7
Debt Service Reserve	\$7.0
Total expected loan draw	\$52.7
Additional financing available if no additional fundraising occurs	\$14.0
Total financing available	\$66.7

1/ Based on "Construction Cash Flow as of 6-29-2023" provided by SEAS.

As shown in Table 2, the total anticipated project need from July 2023 through projected completion on May 2024 is \$45.7 million. Through that same period SEAS anticipates receiving \$19.2 million from public and private pledges that have already been formalized. After accounting for these fund sources which will be available to meet project expenses, the net need to complete construction by the May 2024 target is \$26.5 million.

Because completing the project on schedule is necessary to generate the facility operating income that will be used to repay the loan, the total package also includes an additional amount of \$14 million in the unexpected event that no additional pledged revenue is received. This brings the total financing amount to approximately \$67 million. At SEAS' request, the Executive negotiated amendments to the OMA to enable SEAS to meet the requirements of the private bank loan.

Council Bill 120626: Second Amendment to the OMA

The requested amendments to the OMA are necessary for SEAS to secure the loan with PNC bank. Discussions with the private lender for the bank loan have indicated that the amortizations in any private lending package, particularly with regards to the use of future operating income from the new facility to repay the loan, requires a financing term that exceeded the length of the existing OMA.

By approving CB 120626, Council would:

1. Authorize the Seattle Parks and Recreation Superintendent, the Director of City Finance, and the OWCP Director, acting jointly as the Signing Officials, to execute on behalf of the City the Second Amendment to the OMA in substantially the form attached to the CB, with only such additions, deletions, and modifications as the Mayor, and/or Signing Officials acting jointly, determine are in the City's best interest and are consistent with the purposes set out in the ordinance;
2. Authorize the Signing Officials, acting jointly, to execute such ancillary and additional agreements related to and contemplated by the Second Amendment to the OMA as the Mayor, and/or Signing Officials jointly, determined necessary to effectuate the purposes of the amendments and to be in the City's best interest; and
3. Ratify and confirm any act consistent with the authority of the ordinance taken after its passage and prior to its effective date.

The authorizations to make changes to the Second Amendment to the OMA and to execute "ancillary and additional agreements..." are included in the bill to allow the Executive to act on technical aspects and the related financial agreements associated with the amendment. The "ratify and confirm" clause would allow the Executive to sign the Second Amendment to the OMA as soon as the Council approved the legislation rather than waiting the regular thirty days for the ordinance to become effective.

Terms of the Second Amendment to the OMA

The Second Amendment to the OMA (Attachment A to CB 120626) would:

1. Extend the duration of the OMA from June 2030 to December 2040;
2. Prohibit the City from terminating the OMA with SEAS while the bank loan is outstanding except by paying SEAS a termination fee equal to the amount necessary to pay back the bank loan, any SEAS obligations to the City, and any other financial obligations after taking into account all of SEAS' available resources, and assets;
3. Authorize the City Finance Director to consent to the sale of the SEAS Bonds only if SEAS has paid the City in full the Enhanced Facility Fees owing under the OMA;
4. Require SEAS to prepay the principal of the loan from funds available in SEAS' capital campaign account or excess cash flow to keep the maximum, outstanding loan amount below a predetermined, annual maximum;
5. Require SEAS to request funding from the City, subject to appropriation by the Council and approval by the Mayor, if the balance of the required reserve fund falls below \$7 million.³ If the City approves this request, the City would at the same time reinstate the Enhanced Facility Fees. And while the City would not be under any obligation to approve the request, if SEAS is unable to refill the Minimum Reserve to required levels, SEAS would be in default.
6. Prioritize paying the bank loan before paying Enhanced Facility Fees to the City; and
7. Reaffirms SEAS' and the City's commitment to negotiate the specific terms for the transfer of ownership of the completed Ocean Pavilion from SEAS to the City.

Policy Considerations

What happens if the City does not approve the Second Amendment to the OMA which is needed for SEAS to secure additional financing?

Rejecting CB 120626 or taking no other action to provide support to SEAS, would likely lead to cost increases and delays to complete both the Ocean Pavilion and the Overlook Walk projects. Central Staff does not have estimates of these costs but recognizes this risk. Moreover, delays in completing the Ocean Pavilion project would affect expectations of future SEAS' revenues from admissions.

³ If SEAS makes a draw larger than \$53m, the reserve fund could be higher than \$7m depending upon the amount drawn. The Second Amendment to the MOA requires monthly financial reporting to the City.

Are there other options for SEAS to address this shortfall?

The City could increase its contribution to the SEAS' project; this would require debt financing such contribution like the action the Council took in 2022 and would conflict with previous policy direction included in that action (See ORD 126655). Based on several assumptions about interest rates for the private loan (assumed at seven percent), principal payment by SEAS on the loan (assumed to be paid off over seven years) and the City's rate if issuing debt (3.5 percent), the debt service on the private loan option is anticipated to cost approximately \$2-3 million dollars less than the debt service on City financing.

Other than stopping construction and delaying project completion- which will likely result in increased construction costs delaying opening of the Overlook Walk, Central Staff is not aware of alternative options for SEAS to address the funding shortfall.

What if the construction costs exceed the current estimate or they draw more than \$53 million for other reasons?

As stated above, SEAS plans to draw \$53 million of the \$67 million total available via the loan arrangement with PNC and WSHFC. If they are successful in their future fundraising plans, that would leave them with access to \$14 million of additional financing via this bank loan.

If SEAS draws more than \$53 million dollars, the bank would require an increase to the Minimum Reserve Fund. The Second Amendment to the OMA requires monthly financial reporting to the City, including showing reserve balances and notice to the City of any change in the Minimum Reserve levels, which would give the City ample notice and an opportunity to take corrective action if deemed necessary.

What if SEAS can't make the loan payments?

SEAS would be in default and PNC bank would have claim to certain SEAS revenue streams (but not the Ocean Pavilion facility itself). While the City will not be a guarantor of the PNC loan to SEAS, the City would be required to pay a termination fee equivalent to the outstanding debt if the City sought to terminate its relationship with SEAS in the event of a default. Also, SEAS would be required to request additional funding from the City to maintain the Minimum Reserve Fund if SEAS could not do so with available resources. For all practical purposes, should SEAS future fundraising and attendance projections not pan out, the City would likely need to consider intervening. As the owner of the Ocean Pavilion, the City has an interest in monitoring and ultimately ensuring the financial health of the facility.

Process-to-date and Next Steps

The City published the required [public notice for the hearing](#) on the Second Amendment to the OMA in the Daily Journal of Commerce on June 16, 2023. The Committee held the hearing on July 19, 2023. After the hearing, SEAS staff and Executive staff presented on the proposed Ocean Pavilion financing and the proposed Second Amendment to the OMA. [The video recording](#) of the hearing and presentations is available courtesy of the Seattle Channel. The Mayor transmitted CB 120626 to Council on July 19, 2023, and Council introduced and referred the legislation to Committee on August 1, 2023. If the Committee makes a recommendation on CB 120626 on August 2, 2023, then Council could take final action on the legislation as soon as August 8, 2023.

cc: Esther Handy, Director