CITY OF VIRGINIA BEACH

OFFICE OF THE CITY AUDITOR

(757) 385-5870 | FAX (757) 385-5875
TTY (In State) 711
City Auditor | City of Virginia Beach

INTER-OFFICE MEMORANDUM

DATE: August 30, 2024

TO: Cynthia Whitbred-Spanoulis, President and Chief Executive Officer, Virginia Aquarium & Marine Science Center

FROM: Lyndon S. Remias, City Auditor

SUBJECT: Review of the Virginia Aquarium & Marine Science Center

We have completed our review of the Virginia Aquarium & Marine Science Center. This review focused on the operating agreement between the City's Department of the Virginia Aquarium (Aquarium) and the Virginia Aquarium & Marine Science Center Foundation, Inc. (Foundation).

Background

The Aquarium opened June 14, 1986, and began as a 41,500 square-foot facility on a 9-acre site for a total cost of $8 million dollars and an 800-visitor capacity. Currently, the Aquarium campus encompasses 171,872 square feet, utilizing 48 acres, and has a visitor capacity of approximately 3,660 visitors per day. The Aquarium consists of three buildings; two are available to the public for visitation.



The Aquarium is dedicated to marine education, conservation, tourism, and research. This facility offers visitors a comprehensive look into marine life and ecosystems, combining interactive exhibits with educational programs.

The Aquarium's mission includes:

- **Education:** Educating the public about marine life and ecosystems through engaging exhibits, interactive displays, and educational programs.
- **Conservation:** Supporting and promoting marine conservation efforts, both locally and globally.
- **Research:** Conducting and supporting scientific research to advance knowledge about marine species and habitats.
- **Tourism:** Being an economic engine for the City of Virginia Beach (City).

Key components include:

- **Exhibits:** The Aquarium features a variety of exhibits that showcase marine life from local waters and beyond. These exhibits include large tanks with various species of sharks, sting rays, and sea turtles, smaller exhibits with local fish and invertebrates, as well as many interactive/hands-on exhibits.
- **Nature Trails:** The campus includes outdoor nature trails that offer visitors a chance to explore local wetlands and estuaries, providing insights into coastal ecosystems and their inhabitants.
- **Educational Programs:** The Aquarium offers a range of educational programs, including school field trips, workshops, summer camps, and special events. These programs are designed to engage visitors of all ages in learning about marine science and conservation.
- **Research Facility:** The Darden Marine Animal Conservation Center (DMACC) supports marine research through its laboratories and partnerships with other research institutions. It conducts studies on local marine species and ecosystems, contributing to the broader understanding of marine science.

The City is the owner of the Aquarium's buildings, grounds, and related facilities. Funding for the Aquarium comes from a combination of sources, including admission fees, retail store revenue, memberships, grants, and sponsorships. The facility also benefits from partnerships with local businesses and governmental organizations. Below are the City revenue and expenditure figures for the past three fiscal years (*highlighted amounts are budgeted figures previously reported to City Council)*.

Table 1. City Revenue and Expenditures – FY22 Through FY24

	Budget	***Actual***	***Actual***	***Actual***
	FY24	**FY24**	**FY23**	**FY22**
Revenue:				
Operating Revenue	$ 12,883,794	$ 15,047,136	$ 13,503,440	$ 18,224,790
Admissions Tax	$ 944,125	$ 912,776	$ 944,126	$ 992,126
Sales Tax (City Portion)	$ 147,523	$ 159,019	$ 147,524	$ 151,773
Total Revenue	**$ 13,975,442**	**$ 16,118,931**	**$ 14,595,090**	**$ 19,368,689**
Expenditures:				
Operating Expenditures	$ 16,021,491	$ 15,420,007	$ 14,075,348	$ 12,598,950
Utilities	$ 960,720	$ 960,720	$ 960,720	$ 960,720
CIP Appropriations	$ 2,818,840	$ 2,818,840	$ 2,034,540	$ 2,034,540
Debt Service (Estimated Principal)	$ 621,741	$ 621,741	$ 621,741	$ 621,741
Total Expenditures	**$ 20,422,792**	**$ 19,821,308**	**$ 17,692,349**	**$ 16,215,951**
Difference	**$ (6,447,350)**	**$ (3,702,377)**	**$ (3,097,259)**	**$ 3,152,738**

Source: *OFC, Budget, and MLT*

Foundation

Organized on October 29, 1981, before the Aquarium was built, the Foundation is a private non-stock corporation chartered under Chapter 2, Title 13.1 of the Code of Virginia (1950), as amended, with a tax-exempt status under section 501(c)(3) of the Internal Revenue Code.



The mission of the Foundation is to connect people to the marine environment, inspiring a more sustainable future. The Foundation aspires to be a driver in conservation, education, tourism, and sustainability, leading the charge to save wildlife and their ecosystems. It is governed by a Board of Trustees elected independently of the City, per their Articles of Incorporation.

The Foundation was formed and has functioned for many years for the purposes of:

i. Supporting the Aquarium and its programs;
ii. Acquiring, leasing or otherwise holding real estate necessary for the purposes of the Aquarium;
iii. Assisting in the identification, acquisition and construction of exhibits, including the animals comprising such exhibits;
iv. Providing financial support;
v. Receiving gifts, bequests, monies, bonds, grants, scientific equipment, and objects of art in support of the Aquarium; and
vi. Increasing public knowledge of the marine environment.

Foundation revenue and expenditure figures for the past three fiscal years along with combined amounts for the City and the Foundation can be found on the two pages which follow.

Table 2. Foundation Revenue and Expenditures – FY22 Through FY24

	Preliminary	*Actual*	*Actual*
	FY24	**FY23**	**FY22**
Operating Revenue:			
Concessions*	$ 729,182	$ 743,570	$ 839,642
Contributions - Cash	$ 2,131,303	$ 1,752,172	$ 1,753,345
Contributions - Noncash	$ 1,526,806	$ 1,273,850	$ 1,182,295
Facility Rental Income	$ 97,441	$ 77,041	$ 48,396
Fundraising Events (Net)	$ 208,232	$ 217,091	$ 171,357
Grant Revenue	$ 179,221	$ 169,047	$ 177,588
Program Revenue**	$ 1,191,288	$ 1,119,551	$ 996,595
Transfer of Board Reserves	$ 12,359	$ 6,627	$ -
Total Operating Revenue	**$ 6,075,832**	**$ 5,358,949**	**$ 5,169,218**
Operating Expenditures:			
Program Services			
Educational Programs	$ 1,407,218	$ 1,441,511	$ 1,258,011
Exhibits	$ 1,139,084	$ 973,319	$ 658,624
Research and Conservation	$ 1,504,628	$ 1,352,431	$ 1,374,320
General and Administrative	$ 670,163	$ 586,053	$ 559,657
Fundraising	$ 527,696	$ 536,982	$ 491,624
Total Operating Expenditures	**$ 5,248,789**	**$ 4,890,296**	**$ 4,342,236**
Difference	**$ 827,043**	**$ 468,653**	**$ 826,982**
* Café/Vending/Catering; Adventure Park; Souvenir Photos; Penny Smash Machine			
** Temporary Exhibits; Aquarium Fund Donations; Educational Programs (Attractions - Boat Programs and Behind-The-Scenes-Tours; Classroom Programs; Specialty Programs)			

Source: *Preliminary unaudited financial information for FY24; Audited F/S for FY23 and FY22*

Table 3. Combined Revenue and Expenditures – FY22 Through FY24

	FY24	FY23	FY22
City	*Actual*	*Actual*	*Actual*
Total Revenue	$ 16,118,931	$ 14,595,090	$ 19,368,689
Total Expenditures	$ 19,821,308	$ 17,692,349	$ 16,215,951
Net	$ (3,702,377)	$ (3,097,259)	$ 3,152,738
Adjusted for one-time ARPA grant	$ -	$ -	$ (4,486,715)
Adjusted Net	**$ (3,702,377)**	**$ (3,097,259)**	**$ (1,333,977)**
Sources: OFC and Budget			
Foundation	*Preliminary*	*Actual*	*Actual*
Operating Revenue	$ 6,075,832	$ 5,358,949	$ 5,169,218
Operating Expenditures	$ 5,248,789	$ 4,890,296	$ 4,342,236
Net	**$ 827,043**	**$ 468,653**	**$ 826,982**
Sources: Preliminary unaudited financial information for FY24; Audited F/S for FY23 and FY22			
Combined			
Total Revenue	$ 22,194,763	$ 19,954,039	$ 20,051,192
Total Expenditures	$ 25,070,097	$ 22,582,645	$ 20,558,187
Net	**$ (2,875,334)**	**$ (2,628,606)**	**$ (506,995)**

Specifically, our review focused on examining the terms and execution of the operating agreement, which spells out the respective duties and obligations of each party.

Results

Finding 1. Operating Agreement Can Be Enhanced and Clarified

The operating agreement between the City and the Foundation has been in place for many years and was most recently amended and restated on April 3, 2019. Based on our review of the agreement, we noted the following areas that could be enhanced and clarified:

I. Include the Required Right-to-Audit Clause in Agreement

While the Foundation provided us with the required documents as stated in the agreement, additional information requested such as detailed revenue/expense transactions were not provided. Since the required right-to-audit clause was not in the signed agreement, we could not require the Foundation to provide this additional information.

Thus, because we only received limited documentation, we could not review and test internal controls or determine the appropriateness of any Foundation revenue/expense. A review of these records would have been helpful because all activity of the Foundation impacts the Aquarium, both directly and indirectly.

II. Review the Distribution of Concessions and Program Revenue and Expenditures Going Directly to the Foundation Instead of the City.

The City is the owner and operator of the facility while the Foundation supports the Aquarium. Although the City is the operator, the agreement requires many operating activities to go directly to the Foundation, as opposed to the City. For example, the following revenues and related expenditures, per the agreement, go directly to the Foundation:

- **Concessions:** Café, vending, catering, Adventure Park, souvenir photos, penny smash machines, etc.
- **Program Revenue:** Revenue from temporary exhibits, boat tours, behind-the-scenes tours, classroom programs, and various specialty programs.
- The only operating revenue that is split between the Foundation and the City is facility rental income, which is one of the smaller revenue line items of the Foundation. The City's share for FY 23 was $25,680.

III. Serving in Dual Roles as Aquarium Director and Foundation Executive Director Presents Inherent Risk

The agreement calls for the Director of the Aquarium to also serve as the Executive Director of the Foundation. While the Director has successfully held both roles for many years, this requirement inherently increases the risk, in fact or appearance, of a conflict of interest.

IV. Accreditation Should Be Done Under the Name of the Aquarium and Not the Foundation

The Aquarium is currently accredited by three animal care professional organizations:

- Association of Zoos and Aquariums (AZA)
- Alliance of Marine Mammal Parks and Aquariums (AMMPA)
- World Association of Zoos and Aquariums (WAZA)

The City is the owner and operator of the Aquarium and pays all insurance coverage for the Aquarium, yet the accreditations are under the name of the Foundation. The Foundation covers all costs associated with the Aquarium's accreditations, including the fees for evaluation and the preparation of necessary documentation. Thus, the Foundation receives and owns the accreditation reports, and access to the reports by the City, as well as the public, is controlled by the Foundation.

NOTE: Other areas of the operating agreement that need to be addresses are detailed in Appendix 1.

Recommendation:

1.0 City management should work with City Council and the Foundation to address all the issues specified in Finding 1 to include:

- Add City required audit clause (City Code Section 2-468) to the agreement so that the City Auditor can have access to all necessary information while ensuring the confidentiality of donors.
- Review the distribution of concessions and program revenue and expenditures.
- Review the pros/cons of the Aquarium Director and Foundation Executive Director serving in dual roles.
- Ensure accreditation of the Aquarium is done under the name of the Aquarium and not the Foundation.

In addition, review and make the necessary changes to update the agreement for all findings noted in Appendix 1.

Finding 2: City Must Work with State/Federal Governments to Seek Additional Sources of Funding



The City has invested about half a million dollars each year in operating the DMACC. This building, which is not available for the public to visit, functions as a rehabilitation center for injured marine animals, provides crucial acquisition and quarantine space for all Aquarium animals, and serves as a hub for scientific research and education. On the following page are the costs to operate the DMACC.

Table 4. Darden Marine Animal Conservation Center Operating Costs

	FY24	FY23	FY22
Animal Care, Veterinary Services & Related Equipment	18,414	30,990	20,669
Utilities	9,369	11,359	678
Supplies	28,355	76,143	39,949
Risk Management Internal Service Fund Charges	-	-	2,499
Permits & Fees	579	-	-
Payroll Expenses	427,721	400,560	499,390
Total Expenses	484,438	519,052	563,185

Source: *Oracle Financials Cloud*

Although acquisition and quarantine make up the majority of operating costs, stranding response programs are vital and reach beyond the borders of Virginia Beach. For example, the Stranding

Response Team's area of responsibility for stranded marine mammals and sea turtles encompasses over 7,200 miles of the state's coastal shorelines. The Stranding Response Team has responded to hundreds of stranding incidents over the years and recently responded to a deceased juvenile male humpback whale at the oceanfront. Shouldering the burden of this work should not rest with one entity. Additional information related to stranding response is detailed below.

Table 5. Stranding Response

	FY23	FY22	FY21
Marine Mammal Stranding Response	92	113	79
Sea Turtle Stranding Response	333	156	213
Sea Turtles Rehabilitated and Released	79	45	27

Source: *Virginia Aquarium Annual Report*

Recommendation:

2.0 City management should work with City Council to include an initiative in the next Legislative Agenda Package to seek Federal/State funding to further augment the City's cost of providing statewide education, conservation, stranding, and research efforts.

Finding 3. Survey and Discussions Reveal Concerns About Morale, Condition of the Aquarium, and Communication Breakdowns



We recently distributed surveys to both employees and Foundation Board Members aimed at understanding their perspectives and satisfaction levels regarding the Aquarium. Participation included 35% of employees and 43% of Foundation members. Additionally, we met with key members of the Foundation. A summary of the main concerns is as follows:

I. Morale

- "Short staffed - can't replace many staff as some won't take jobs while unsure about future."
- "Unmotivated staff; loss of several staff because of the city selling the Aquarium; staff having to pick up extra workloads because of lack of staff; tired and overwhelmed; no/low morale and no budget for the staff morale and fun activities."
- "It is hard because we are losing good people, and some areas are short-staffed, and others are doing double work."
- "The Foundation is now in a position where key staff has left that supported fundraising etc....The Foundation must now find ways to fill the void and having qualified candidates interested in joining the team is now damaged with uncertainty. (The same concerns hold true for the Aquarium City Staff--Turnover and replacing a real issue)."

II. Physical Condition of Facility

- "From an infrastructure standpoint, the North Building is aging. Ceilings leak, guests comment on how "outdated" we are, and we have to take the criticism with little means to fix the situation."
- "Being a part of the life support team, we're faced with keeping a building that is over 30 years old in some parts. We've been piecemealing repairs to keep things afloat. There are some major systems, such as our shark exhibit, that will need a major overhaul of its filtration and plumbing or risk failure."
- "Some of the exhibits have been the same for 20+ years. I believe there are renovation plans in the works, but with the aquarium's ownership in question, I fear that the exhibits will remain outdated until that question is answered."

III. Communication

- Some Foundation Board Members expressed concern that City Council Members have not regularly been appointed to serve as liaisons to the Foundation. While there are currently two City Council liaisons, this has not always been the case. This has led to a lack of communication and proper understanding of the status of the needs of the Aquarium.

Recommendations:

3.0 To address low morale stemming from concerns about the future of the aquarium, City leadership should engage in transparent communication, actively involve employees in strategic planning, and provide reassurance through clear, actionable steps that demonstrate a commitment to navigating challenges together.

3.1 To address concerns about the longevity of the building, leadership should proceed with obtaining a detailed assessment of the building's condition, outline any planned maintenance or upgrades, and ensure ongoing communication to reassure employees.

3.2 Continue to annually appoint City Council liaisons to the Foundation.

Our findings and recommendations have been discussed with management.

We would like to thank the management and staff of the Aquarium and Foundation Board Members for their courteous assistance during our engagement.

Should you have any questions, please do not hesitate to contact me at (757) 385-5870 or via e-mail at Lremias@vbgov.com.

LSR/kp

c: City Council Members
Audit Committee Members
Virginia Aquarium & Marine Science Center Foundation, Inc. Board of Trustees
Patrick A. Duhaney, City Manager
Kenneth L. Chandler, Deputy City Manager

APPENDIX 1
OPERATING AGREEMENT FINDINGS

#	Operating Agreement Criteria	Finding
1	**Section 1**	No definitions are listed for "Exhibit", "Temporary Exhibit", and "Permanent Exhibit".
2	**Section 2 states "Subject to the approval of the City Manager and the Board of Trustees of the Foundation, the Director shall also serve as Executive Director of the Foundation but shall have no voting rights with respect to Foundation business or affairs."**	Section 13 contradicts this and states the Foundation is not subject to the control of the City.
3	**Section 4 states "With the City Manager's approval, the Director and City employees authorized by the Director may, at the request of the Foundation, solicit donations on behalf of the Foundation."**	Section 13 contradicts this and states the Foundation is not subject to the control of the City.
4	**Section 5 states "Revenues collected by the City in the Aquarium Store directly from the sale of Foundation merchandise, less any applicable taxes, shall be remitted by the City to the Foundation at the end of the fiscal year in which such revenue is received by the City."**	The section is no longer applicable. Foundation merchandise is no longer sold.
5	**Section 5 states "The portion of the revenue from Conservation Society purchases in excess of the cost of the corresponding Membership Level benefits included in Conservation Society memberships shall belong to the Foundation."**	The section is no longer applicable. All membership revenue belongs to the City.
6	**Section 5 states in part "The City shall operate the Aquarium admission facilities and sell admission tickets and theater tickets to the Aquarium and shall receive the revenue therefrom…"**	The section is no longer applicable. The IMAX theater is no longer in operation.
7	**Section 5 states "The Foundation shall be responsible for, and shall retain all revenues it receives from, Food and Beverage Services, boat trips, photo concession, and Adventure Park activities."**	These are common operational functions, yet the City neither operates nor receives revenue from these activities, despite owning the land.

8	**Section 5 states in part "The Foundation shall reimburse the City, no less frequently than quarterly, for the cost of the salaries paid through Budget Unit 27029, (Aquarium Foundation)…"**	The reimbursement is currently made through Program 28908 and not 27029.
9	**Section 7 states "The Foundation shall be responsible for the operation and maintenance of all Attractions and Concessions, or contracting for the same, except as may be specifically designated to be operated by the City in this Agreement or an amendment thereto."**	These are common operational functions, yet the City neither operates nor receives revenue from these activities, despite owning the land.
10	**Section 7 states in part "With the prior written permission of the City Manager, the Foundation shall be authorized to utilize such portion or portions of the Park and Entertainment Land and other property identified in Section 1 of this Agreement..."**	Section 13 contradicts this and states the Foundation is not subject to the control of the City.
11	**Section 7 states "The Foundation shall be responsible for the operation and maintenance of the Adventure Park as an Attraction, or contracting for the same, on so much of the Park and Entertainment Land or other property as shall be approved in writing by the City Manager."**	Section 13 contradicts this and states the Foundation is not subject to the control of the City.
12	**Section 8 states the City shall operate and maintain the Aquarium and shall repair and, as necessary, replace at its sole expense, any item, facility, or portion of the building occupied by the Aquarium that is part of the original or subsequent capital improvement projects to construct the buildings that constitute the Aquarium and are funded and constructed by the City.**	The Aquarium is not the accredited entity even though the City operates and maintains the Aquarium.

13	**Section 8 states "For the duration of the lease between the City and the owner of the current Marine Animal Conservation Center property located at 1213 Southern Boulevard in the City of Virginia Beach, or any extensions thereof ("Current Lease"), the Foundation shall pay the City thirty-five percent (35%) of the cost of the Current Lease. A new Marine Animal Conservation Center building is currently under construction and shall be located on Bell's Road in Virginia Beach ("New MACC"). The City shall be solely responsible for the repair and maintenance of the New MAC building and its appurtenances."**	The property located at 1213 Southern Boulevard is no longer used. The property at 1008 Bells Road is now being used.
14	**Section 12 states the City shall provide liability insurance coverage for the Foundation.**	The Aquarium is not the accredited entity even though the City provides liability insurance coverage for the Foundation.
15	**Section 13 states "The City and the Foundation acknowledge that neither entity is the agent, employee, partner, joint venture or associate of the other."**	The City and the Foundation commonly refer to each other as "partners," this is contradictory to Section 13.

CITY OF VIRGINIA BEACH

INTER-OFFICE MEMORANDUM

Date: August 28, 2024

To: Lyndon S. Remias, City Auditor

From: Cynthia Whitbred-Spanoulis, Director, Virginia Aquarium

Subject: Audit Response

I would like to extend my gratitude for your unwavering dedication and meticulous efforts in your review of the Virginia Aquarium. Your commitment to fostering transparency and accountability is profoundly appreciated. I am especially thankful for the exceptional support and guidance your team has offered throughout this audit process. Your continued expertise and steadfast support have been invaluable, and I am deeply grateful for your contributions.

Thank you for the opportunity to provide a few clarifying points on your findings. The expedited nature of your review may not have afforded a comprehensive understanding of the complexities involved in the Virginia Aquarium Foundation's relationship with the City of Virginia Beach, and I would like to provide some additional thoughts primarily focused on aspects that could impact the Foundation's fundraising efforts and eligibility for various grants.

Finding 1

The recommendation to transition all program revenues to the City, while appearing straightforward, does not align with traditional funding and grant management practices. Many of the Foundation revenue streams are designated to support its mission but often come with associated costs, resulting in net losses for some programs. Should the City claim all these revenues, it would also assume the corresponding expenses, potentially leading to a net loss rather than a financial benefit. Additionally, the Foundation currently receives grant funding specifically designated for programming. The City would be ineligible for most of these grants as they are typically reserved for non-profit entities. Moreover, many of the Foundation's donors are particularly interested in supporting these initiatives.

Additionally, having two Directors oversee operational tasks could create significant challenges. Splitting responsibilities, such as animal procurement and exhibit management (currently managed by the Foundation), from the day-to-day operations of a large organization like the Aquarium (managed by the City), might lead to confusion and inefficiencies. This division could potentially undermine our ability to run the Aquarium effectively.

Regarding accreditations, it is important to note that the Deputy City Attorney guided the Aquarium leadership on June 26, 2013, to manage these accreditations through the Foundation. This recommendation ensures that all records related to the animals, which are owned by the Foundation, remain under the purview of the non-profit organization rather than becoming part of the public entity's records.

Finding 2

While we fully support the recommendation to seek additional grant funding for stranding response, we want to clarify that the only federal funding currently available is NOAA's Prescott Grant Program. This program is very competitive, with 78 other stranding organizations applying, and it only covers marine mammal strandings, not sea turtles. However, we are open to exploring other funding opportunities from federal and state sources.

Additionally, it's important to note that more than half of the square footage at the Darden Marine Conservation Center's facilities are dedicated to acquiring and quarantining animals for the exhibits in the publicly visited areas of the Virginia Aquarium. This aspect of our operations is crucial for maintaining the aquarium **but is unrelated to stranding activities**.

Finding 3

To clarify, the Aquarium leadership team was not significantly involved in the discussions and decisions made over the past year regarding the future of the facility. For accuracy, the term "leadership", in this context, should refer to the City Manager's office.

I hope this memorandum clarifies my position and the complexities involved in the Aquarium's operations. We remain committed to working collaboratively with you to address any concerns and to ensure effective management of the Virginia Aquarium.

Thank you again for the work you and your team have done.