

AGREEMENT NO. \_\_\_\_\_

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES AND  
ALTASEA AT THE PORT OF LOS ANGELES

This Agreement (the "Agreement"), dated for reference purposes as of \_\_\_\_\_, 2019, is entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board") and ALTASEA AT THE PORT OF LOS ANGELES, a California non-profit public benefit corporation, 222 West 6<sup>th</sup> Street, Suite 1010, San Pedro, California 90731 ("Applicant").

RECITALS

WHEREAS, Applicant is constructing a world class urban marine research facility known as AltaSea at the Port of Los Angeles ("Project") on property consisting of approximately 34.75 acres and approximately 180,000 square feet of institutional, research and commercial space ("Property") and controlled by the Los Angeles Harbor Department ("Department"); and

WHEREAS, the City and Applicant entered into the Amended and Restated Lease No. 904 ("Lease") effective August 23, 2017 which authorizes Applicant to construct, operate and maintain the Project until December 22, 2063; and

WHEREAS, in October 2012, the Board approved the Project and certified a Final Environmental Impact Report SCH#2010121013 ("FEIR"); in September 2013 the Board considered the First Addendum to the FEIR; and in August 2017 the Board considered the Second Addendum to the FEIR; and

WHEREAS, Applicant intends to submit to the Department one or more Applications for Port Permits to construct modifications to the Project; and

WHEREAS, the Department, as the lead agency for purposes of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) ("CEQA"), has determined that an appropriate environmental assessment of the Project must be prepared prior to consideration of modifications to the Project's approval; and

WHEREAS, the Department has determined that modifications to the Project may require a permit from the U.S. Army Corps of Engineers ("Corps") with appropriate environmental review pursuant to the National Environmental Policy Act (42 U.S.C. section 4321 et seq.) ("NEPA") and that the Corps will be the lead agency under NEPA; and

WHEREAS, pursuant to the terms of the Lease, Applicant is responsible for the costs to fund the CEQA and/or NEPA environmental assessment(s) and any associated documentation or technical studies related to the proposed modifications to the Project;

NOW, THEREFORE, in reliance on the foregoing recitals and in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Applicant hereby agree as follows:

1. ENVIRONMENTAL ASSESSMENT AND ENTITLEMENTS.

A. The Department, as the CEQA lead agency, will prepare the appropriate environmental review documents under CEQA ("Environmental Assessment") based upon Applicant's proposed Project modifications to be submitted in future Applications for Port Permits. Such Environmental Assessment shall be completed as required by law in order for the Board and City to consider discretionary decisions to grant entitlements for and approve any proposed modifications to the Project. It is understood by the Applicant that the Department, as the CEQA lead agency, has the principal responsibility for assessing or approving any project which may have an impact on the environment; is responsible for the adequacy of its Environmental Assessment and to ensure that it reflects the independent judgment of the lead agency in terms of adequacy and objectivity.

B. Pursuant to Section 7.3 of the Lease, Applicant is responsible for obtaining all permits, including permits from the Corps. City and Applicant acknowledge that the Corps, as the lead agency under NEPA, is required to conduct environmental review of the effects of any federal actions on the environment and is required to prepare Environmental Assessments in such circumstances. It is understood by the City and Applicant that the Corps, as the NEPA lead agency, has the principal responsibility for carrying out or approving any project which may have an impact on the environment; is responsible for the adequacy of its environmental review and to ensure that it reflects the independent judgment of the lead agency in terms of adequacy and objectivity.

2. NO APPROVAL; NO WAIVER OF CITY'S DISCRETIONARY AUTHORITY. Applicant and City expressly acknowledge and agree that this Agreement does not grant Applicant or City any right or obligation to enter into any other binding agreement or amendment of agreement relative to the design, engineering, construction, development, operation, and lease of any proposed modifications to the Project or property, nor obligate the City, Board, the Department and/or the Council to take any action to certify or amend the environmental assessment under CEQA or NEPA or approve or amend the approval of any proposed modifications to the Project, or any lease, permit or entitlement of the Property. Any proposed modifications to the Project shall be subject to the discretionary review and approval of all underlying entitlements and approvals to the extent required by the law and by City's Charter, Administrative Code, policies, rules and regulations, including approvals provided by the

Board, any oversight committees of the City Council, and the full City Council, or appeals of such decisions as provided by applicable law. City retains its sole discretion to, among other things, make decisions regarding the Environmental Assessment's compliance with CEQA and proposed modifications to the Project approval, further modify the proposed Project and/or select alternatives to the proposed modifications to the Project, including the "no project modification" alternative in connection with the CEQA process, or any other aspect of the Project or Environmental Assessment. Furthermore, the Department retains its sole discretion to undertake any studies, peer review or inquiries it deems necessary or appropriate to ensure preparation of a legally adequate Environmental Assessment.

3. TERM AND TERMINATION. Subject to the provisions of Charter Section 245, the effective date of this Agreement ("Effective Date") shall be the date of its execution by the Executive Director following authorization of the Board. Applicant is aware that pursuant to Charter Section 245, the Los Angeles City Council has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until after the expiration of the fifth Council meeting day after Board action, or the date of City Council's approval of the Agreement. The term of this Agreement shall commence upon the Effective Date and shall terminate upon the date which is three (3) years following the Effective Date ("Termination Date"), unless the parties enter into a written amendment or terminate the Agreement pursuant to the terms set forth herein.

4. REIMBURSEMENT. Applicant agrees to reimburse City for One Hundred Percent (100%) of all City staff time, Corps oversight and staff time, filing fees, advertising costs, and consultant costs of preparation and defense of the environmental review of any proposed Project modifications, as follows:

A. Consultant Selection: The Department, as the lead agency for purposes of CEQA and for the purpose of hiring consultants to prepare environmental documents for the Corps pursuant to NEPA, has consulting agreements in place for as-needed CEQA and NEPA environmental services. The Department shall select a consultant from among its pre-approved pool of as-needed CEQA/NEPA environmental consultant firms to perform the work in connection with the preparation of the CEQA and NEPA Environmental Assessment of the Project ("Consultant Contract" or "Consultant Contracts"). If at any time during the term of this Agreement, the Department determines that due to City staffing considerations, a consultant is required to provide internal support for the preparation of the environmental documents, the Department shall consult with Applicant on said determination. Thereafter, the Department may, in its sole discretion, select a consultant to perform internal project management oversight and quality assurance/quality control services, the cost for which shall also be the responsibility of Applicant.

B. Staff Work: Staff work shall include all City staff time in connection with the preparation of the CEQA Environmental Assessment, including work through the CEQA Environmental Assessment certification, as well as preparation of the administrative record and other post-certification tasks. Notwithstanding inquiries

involving nominal time commitment (e.g. time customarily provided by the Department to a member of the public without charge), consultations requested by Applicant with City staff and/or Consultants prior to submission of an Application for Port Permit or outside the scope of an existing Application for Port Permit, shall be a reimbursable cost without further approval from Applicant and shall be not be subject to the process set forth in Section 4(C) herein.

C. Scope of Work and Cost Estimate: After each submission by Applicant of an Application for Port Permit, the Department shall provide Applicant with an estimated budget for the proposed environmental review work and preparation of the Environmental Assessment(s), before commencing work or billing Applicant for any fees or costs. The Department shall also inform Applicant in writing of the consultant (or consultants), along with hourly rates, selected to perform the Environmental Assessment. The Department will not commence work until Applicant has approved the estimated budget in writing. The parties acknowledge and agree that subsequent modifications to pending Applications for Port Permits may result in a modified scope of work and estimated budgets (including increases) for the Environmental Assessment. Prior to incorporating any Project modifications into the Environmental Assessment, the Department and Applicant shall consult on whether the budget is estimated to increase more than ten percent (10%) of the then existing budget, in which case Applicant shall inform the Department in writing whether or not to proceed with the Project modification and correlating changes to the Environmental Assessment work. Any modifications to the Project resulting in a budget increase of less than 10% may be incorporated into the Environmental Assessment work without further consultation between the parties and for which Applicant shall be fully responsible. The parties acknowledge and agree that the Department is obligated to comply with any and all legislative/regulatory changes or judicial decisions that may occur during the term of the Agreement regarding CEQA and NEPA compliance, and that such changes may require modifications to the scope of work and budget in order to complete the Environmental Assessment, and the Department shall incorporate such modifications without further consultation with Applicant.

D. Process for Cost Reimbursement: The Department shall submit invoices on a monthly basis to Applicant (the "Monthly Invoice"), listing the monthly charges generated for the ongoing completion of any Environmental Assessment. The Monthly Invoice shall include a progress report describing the activities performed during the subject month, along with the charges associated with such activities. The invoice shall be due for payment to the Department within thirty (30) days of its receipt by Applicant.

5. STANDARD OF CARE. The Department hereby represents and warrants that the work performed to complete any Environmental Assessment(s) shall be undertaken with the same standard of care and diligence as has been applied to its most recent environmental assessment work. However, as the Department is the lead agency and its independent judgment must apply, as provided for in section 6 below, the Department may further determine whether the standard of care is the same as has

been applied to its most recent environmental assessment work or whether the standard of care shall be modified for the proposed Environmental Assessment.

6. LEAD AGENCY'S INDEPENDENT JUDGMENT. Any CEQA review must reflect the lead agency's independent judgment (CEQA Section 21082.1(c) and 14 C.C.R. Section 15084). Accordingly, the final responsibility and final authority on all questions concerning the content and quality of the Environmental Assessment and related tasks lies in the sole discretion of the Department. Applicant understands and agrees that any consultant(s) employed by the Department to perform services hereunder only owes a duty to the Department and said consultant(s) will be accountable to the Department alone and not to the Applicant nor to any other third-person or entity.

7. NO CONFIDENTIALITY. The parties may reveal all or part of this Agreement to others as required by law.

8. ASSIGNMENTS. Applicant may not assign its rights under this Agreement to any third party but may assign the entire agreement to any subsidiary or affiliate of Applicant. Any assignment by Applicant shall not relieve Applicant from its duties hereunder. Any prohibited assignment or purported assignment shall be null and void, and Applicant shall bear sole responsibility for any consequences resulting from such prohibited or purported assignment. The Department may not assign its rights under this Agreement.

9. MISCELLANEOUS.

A. Applicable Law. This Agreement shall be governed by and constructed under the laws of the State of California without regard to conflicts of laws principles. Any action or proceeding arising out of or related to this Agreement shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California, in the judicial district mandated by applicable court rules.

B. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same document, which shall be binding and effective as to each of the parties hereto. A facsimile shall be deemed to be an original.

C. Legal Capacity. Each individual executing this Agreement hereby represents and warrants that he has the capacity set forth on the signature pages hereof with the full power and authority to bind the party on whose behalf he is executing this Agreement to the terms hereof.

D. Notices. Any notice or correspondence to be provided by either party shall be in writing and dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile

transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service or courier service or by U.S. Postal Service). The following addresses shall serve as the locations to which notices and other correspondences relating to this Agreement between Applicant and the Department shall be sent:

To Applicant: AltaSea at the Port of Los Angeles  
222 West 6<sup>th</sup> Street, Suite 1010  
San Pedro, CA 90731  
Attn: Timothy B. McOsker

With a copy to: Charuni P. Patibanda, Esquire  
Glaser Weil Fink Howard Avchen & Shapiro LLP  
333 S. Hope Street, Suite 2610  
Los Angeles, CA 90071

To the Department: City of Los Angeles Harbor Department  
425 S. Palos Verdes Street  
San Pedro, CA 90733-0151  
Attn: Director, Environmental Management

With a copy to: Office of the City Attorney  
425 S. Palos Verdes Street  
San Pedro, CA 90733-0151  
Attn: General Counsel

E. Modification. Any amendments or modifications to this Agreement must be agreed to by the Parties and must be in writing. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written.

F. Termination. Either party may terminate and cancel this Agreement upon giving the other party ten (10) days-notice in writing of its election to cancel and terminate this Agreement. The Applicant shall be responsible for the expenses incurred by the Department's consultant(s) up to and including the effective date of termination. Upon termination of the Agreement, City shall determine the services actually performed by any consultant(s) up to the date of termination of this Agreement and the amount owed to any consultant(s). City shall invoice Applicant according to the terms of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of their signatures below.

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
Secretary

ALTASEA AT THE PORT OF LOS ANGELES, a California non-profit public benefit corporation

Date: 2/11/19

By: [Signature]  
Print name/Title: Tim McCusker

Attest: [Signature]  
Print name/Title: Jenny Kusoe, ED

APPROVED AS TO FORM AND LEGALITY

February 19, 2019  
MICHAEL N. FEUER, City Attorney  
Janna B. Sidley, General Counsel

By: [Signature]  
Heather M. McCloskey, Deputy