

FIFTH AMENDMENT TO LEASE NO. 904A
BETWEEN THE CITY OF LOS ANGELES AND
ALTASEA AT THE PORT OF LOS ANGELES

THIS FIFTH AMENDMENT to Lease No. 904A (“Agreement”) is made and 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 (“Tenant”).

The Agreement is hereby amended a fifth time as follows:

1. Section 3.2.1.3(c). Section 3.2.1.3(c) is deleted in its entirety and replaced with the following provision:

“(c) Parcels B57 and B61B: Tenant shall accept Parcels B57 and B61B no later than December 31, 2025. The following shall be required prior to acceptance:

- i. City and Tenant shall agree on a final scope of work for the Parcel B57 Wharf Improvements set forth in Section 3.3.5.2(a) with a not to exceed amount of \$9.62 million for total construction and soft costs which shall not include seismic improvements to the sea wall. Buildings constructed or existing within Parcel B57 may require independent structural support to meet seismic and other structural requirements which shall be the Tenant’s responsibility; and”
- ii. City and Tenant shall agree on a final completion schedule for Parcel B57 after the final project scope is defined and a final scope of environmental assessment is determined by City.
- iii. If Tenant complies with the other requirements of Section 3.2.1.1 and substantially completes the Tenant Improvements in Warehouses B58 and B60, then the Tenant Improvements set forth in Section 3.2.1.1(f)(ii) for Parcels B57.5, and B59 shall no longer be required to be completed.”

2. Section 3.2.1.3(h). Section 3.2.1.3(h) is added as follows:

“(h) Pre-Acceptance Use of Parcel B57: In addition to the Pre-Acceptance Use permitted under Section 3.2.1.3(f), and subject to Environmental Review under Section 3.2.5, Tenant may use or sublease any portion of the Parcel B57 warehouse for the same uses permitted for the Parcel 58 warehouse prior to the acceptance date for Parcel B57 under Section 3.2.1(c).”

3. Section 3.3.4.3. Section 3.3.4.3 hereby is deleted in its entirety and replaced with the following provision:

“3.3.4.3 Parcels B57.5, B58, B59, B60, B61A

(a) Scope

- i. Warehouses 58, 59 and 60 - Develop leasable space for subtenants who qualify to occupy the warehouses at Berths 58 through 60 as set forth under Section 4.1, Permitted Uses. Improvement of up to 120,000 square feet of the existing 180,000 square feet shall be required to meet code requirements for the expected subtenants including but not limited to: new electrical service, electrical rooms and distribution, Upgraded interior and exterior lighting, new cold water system, new fire alarm system, provisions for trailer hook-up within the sheds for office use, modular restroom facilities, modular ramp and stair systems for ADA access to each subtenant space, modular storefront, modular trailers, chain link walls between subtenant spaces, new guardrails along loading dock, signage and environmental graphics displays, parking, exterior seating, new landscaping.
- ii. Public Promenade - Tenant shall provide Public Promenade improvements in compliance with the San Pedro Waterfront Design Guidelines for the entire north to south length of Parcels B58, B59, B60 and B61A, including integration into Parcels B57 and B57.5, and if applicable Parcels B70 and B71.
- iii. Wharf Improvements – To the extent necessary to support any permanent crane installations to be placed by Tenant on the wharf of Berths 57.5 through 60, Tenant shall repair the existing concrete-pile supported concrete and asphalt wharf on approximately 1,500 linear feet of the existing concrete wharf at Berth 57.5 through Berth 60. To the extent necessary to support any permanent crane installations, Tenant shall repair and upgrade the existing in-water piles, the concrete and asphalt deck and the fender piles and repave approximately 56,100 square feet of degraded asphalt on the wharf deck. Tenant may construct a maximum of three crane installation locations including upgraded structural piles within the existing wharf from Berths 58 through 60. The foregoing shall not limit City's obligations pursuant to Section 8.8.1 of the Agreement to keep, maintain and repair wharf structures on or under the Demised Premises, other than those that are repaired by Tenant as set forth herein, on an “as is” basis as conditions existed on the Effective Date of the Agreement.
- iv. Parcel 57.5 Improvements – Tenant shall grind and repave approximately 40,000 square feet of asphalt at Parcel B57.5 in the area between Parcels B58 and B57. Tenant may determine the

feasibility of using solar panels to construct a shaded area on Parcel B57.5 for classroom activities and special events. Tenant's feasibility study for use of solar panels at Parcel B57.5 shall include Environmental Review under Section 3.2.5. If solar panels are not feasible on Parcel B57.5, Tenant shall not be required to complete any additional improvements other than as set forth in this Section 3.3.4.3(a)(iv).

- v. Parcel 57.5 Temporary Improvements - Tenant may use or sublease portions of Parcel B57.5 in accordance with Section 13.4.1(c), subject to Environmental Review under Section 3.2.5, for operations and installation of modular containers to conduct and oversee research activity. The foregoing use shall be permitted on Parcel B57.5 for up to five (5) years from effective date of this Fourth Amendment or until six (6) months following completion of all Tenant Improvements for Parcel B57, whichever is earlier.

(b) Schedule – Tenant shall complete improvements to the Berth and Warehouse on Parcels B58 or B60 no later than June 30, 2024. Tenant shall complete any remaining Improvements set forth in Section 3.3.4.3 (a) i-iv no later than December 31, 2025. Tenant may extend the foregoing deadlines for up to one (1) year each upon prior written notice to City. City and Tenant will meet and confer in good faith upon City receiving a written notice from Tenant, prior to July 1, 2023, requesting a meeting to evaluate the scope of work and whether any time extensions are required for Tenant to complete the Improvements set forth in this Section 3.3.4.3.

(c) Required Minimum Investment – Tenant shall invest no less than 80% of the estimated project cost of \$35 million in Parcels B57.5, B58, B59, B60.”

- 4. Section 3.3.6.1. Section 3.3.6.1 is hereby removed in its entirety and replaced with the following provision:

“Section 3.3.6.1 Parcels B57.5, B58, B59, B60, B60B, B72A and B72B. Reimbursement for Remediation of Environmentally Regulated Material including addressing soil, groundwater, and hazardous building materials.

(a) In compliance with the Remediation Reimbursement Process in Exhibit M, City shall reimburse Tenant up to six million dollars (\$6,000,000) of Tenant's actual costs for remediation addressing soil, groundwater and hazardous building materials related to Existing City Improvements and New Tenant Improvements. Following Tenant's evaluation of the scope of remediation work allowable under this section, and upon written notice from the Tenant and prior to July 1, 2023, the Parties shall meet and confer in good faith to determine if the project completion dates referenced in Section 3.3.4.3 require adjustment, which shall be subject to the approval process described

in Section 3.3.4.3(b). Tenant shall be eligible for reimbursement in phases, subject to the Executive Director's determination that Tenant has completed the following conditions:

- i. Tenant shall be reimbursed up to three million dollars (\$3,000,000) upon completion of Parcels B58-B60 Tenant Improvements in accordance with Section 3.3.4.3 and completion of Parcels B60B, B72A and B72B Tenant Improvements in accordance with Section 3.3.4.7, and submission by Tenant to City of documentation showing actual costs paid for the remediation for Parcels B58-B60 and Parcels B60B, B72A and B72B. Tenant may request reimbursement under this Subsection individually for each Parcel B58-B60 after the Tenant Improvements for each such individual parcel has been completed;
 - ii. After payment under subsection (i) herein, any remaining amount of the six million dollars (\$6,000,000) may be paid upon Tenant's execution of the construction contract for Parcel B57 Tenant Improvements, which shall include a performance bond for the project, said payment conditioned on Tenant's acceptance of Parcel B57 in accordance with Section 3.2.1.3(c) and submission by Tenant to City of documentation showing actual costs paid for the remediation.
5. Section 7.6.1. Section 7.6.1 is deleted in its entirety and replaced with the following provision:

"7.6.1 City Monetary Contribution for Tenant's Improvements at Berth 58 Warehouse.

(a) Monetary Contribution:

- i. Following Tenant's compliance with the requirements set forth in Sections 7.6.1(b) and (c), City shall commit Six Million Dollars (\$6,000,000) as set forth in Section 7.6.1(d), to partially fund the Berth 58-60 Warehouse Improvements listed in Section 3.3.4.3(a), not including, however, 1) any expenditures to complete the solar energy project on the Premises or 2) for payments toward any aspects of the Berth 58 Warehouse Improvements for which Tenant could request reimbursement from City for remediation of environmentally regulated material under Section 3.3.5.1 of the Agreement;
- ii. City's monetary contribution to the Warehouse 58-60 Improvements shall not be included in the calculation of

Rent Credits under Section 5.8.

(b) Conditions Precedent to City Monetary Contribution – Tenant Improvements and Subleasing: Tenant shall provide evidence to the City, acceptable to the Executive Director, for the following components as a condition precedent to the City committing its funds as set forth in Section 7.6.1(d):

- i. Tenant shall use commercially reasonable efforts to cause its subtenant to complete the solar energy project on the Premises at Parcels B58 through B60 and Parcels B60B, B72A and B72B capable of generating approximately 2 Megawatts of power by December 31, 2023. The Executive Director may grant Tenant an extension of up to one year if at least 90-days prior to December 31, 2023 Tenant provides a written request for an extension and evidence of Tenant’s commercially reasonable efforts to complete the solar energy project;
- ii. Tenant shall provide evidence to City that the \$500,000 proceeds from the solar project sublease with Signal Street Operating, LLC is invested in the Warehouse 58-60 Improvements project scope as defined in Section 3.3.4.3.
- iii. Tenant shall provide evidence for the following components of subtenant occupancy at Warehouse 58 (including existing subleases outside of Warehouse 58 that provide Tenant the right to relocate such subtenant(s) to Warehouse 58 and for which Tenant advises City of its intent to relocate such subtenants to Warehouse 58 following construction of the Berth 58 Warehouse Improvements). If the conditions set forth in this Section 7.6.1(b)(iii) are not met prior to Tenant requiring City’s monetary contribution to proceed with the Warehouse 58-60 Improvements, despite Tenant using commercially reasonable efforts to satisfy said conditions, then City and Tenant agree to meet and confer to resolve said conditions in a reasonable manner that will provide City a comparable level of monetary security through existing subleases and would allow Tenant to proceed with the Warehouse 58-60 Improvements and receive the City’s monetary contribution under this Section 7.6.1:

1. Subleases for space at Warehouse 58 utilize at least 85% of the rentable space;

2. Subleases for space at Warehouse 58 show an average lease term between 3 and 5 years; and
3. Subleases for space at Warehouse 58 show a rental revenue threshold of at least 85% of the following five successive year's proforma values of the subleases referenced in Section 7.6.1(b)(iii)(1) starting from the rent commencement date or nine months following Tenant's delivery of sublease premises to sublessee, whichever is earlier: Year 1 = \$904,500; Year 2 = \$931,635; Year 3 = \$959,584; Year 4 = \$988,372; and Year 5 = \$1,018,023.

(c) Conditions Precedent to City Monetary Contribution – Berth 58 Warehouse Construction Contract: Tenant has elected to complete construction of Berth 58 Warehouse Improvements by June 30, 2024 as provided in Section 3.3.4.3(b), provided Tenant will have the option to extend such timeline for up to one (1) year based on Tenant's construction schedule conditioned on Tenant entering a construction contract to commence work no later than April 1, 2023 for the Berth 58 Warehouse Improvements listed in Section 3.3.4.3(a) that is compliant with conditions listed below in this Section 7.6.1(c). Tenant shall provide evidence to the City, acceptable to the Executive Director, for the following construction contracting procedures and contracting obligations for the Berth 58 Warehouse Improvements as set forth in Section 3.3.4.3(a) as a condition precedent to the City committing its funds as set forth in Section 7.6.1(d):

- i. Tenant shall undertake the following construction contracting procedures;
 1. Utilize the design-bid-build method of construction project procurement;
 2. Comply with all California Public Works contracting requirements, including payment of prevailing wages as determined by the State of California, for the Berth 58 Warehouse Improvements;
 3. Utilize industry standard competitive bidding procedures, at a minimum as set forth in Exhibit M, Section (A)(7), for the selection of contractors for the construction of the Berth 58 Warehouse Improvements; and

4. Provide the proposed Berth 58 Warehouse Improvements bid(s)/contract(s) documents to City for review prior to advertisement, and after such submittal, City shall have thirty (30) business days to review and submit any requests or objections to Tenant regarding the bid/contract documents, provided however, such review shall not constitute City's approval that the bid/contract's terms are compliant with federal, state or local laws, and City reserves a right of refusal to fund its account under 7.6.1(d)(i)(3) in the event the bid/contract documents are not acceptable to City and are used by Tenant for awarding the Warehouse 58 Improvements project.

ii. Tenant shall undertake the following contracting obligations;

1. Include certain terms in the bid/contract documents, including but not limited to, requiring the contractor(s) to indemnify City, name City as an additional insured, require any environmental remediation work to be separate bid items and require the selected contractor(s)' Project Manager(s) to provide City with written monthly progress reports; during the review period set forth in Section 7.6.1(c)(i)(4), City may request additional terms or removal of terms after discussion with and concurrence by Tenant; and
2. Obtain payment and performance bonds for the Warehouse 58 Improvements project prior to the commencement of construction.

(d) Tenant Funding Structure and City On-Going Payment Obligations:

i. Tenant Funding Structure;

1. Tenant shall set aside its funds for the cost of the Warehouse 58 Improvements into an account at a financial institution of its choice, with said funds amounting to no less than the Berth 58 Warehouse Improvements construction contract (hereinafter "Construction Contract") minus \$6 million;
2. The account established by Tenant shall be

designated as solely for the purpose of paying for the Warehouse 58 Improvements; the Parties agree that no withdrawals shall be made from the account for any purpose except to pay the Berth 58 Warehouse Improvements until such contract work is complete;

3. Tenant shall authorize its selected financial institution to provide City with oversight access to Tenant's account for purposes of monitoring funding levels and payments made for the Berth 58 Warehouse Improvements, including providing City with automatic notifications of any and all withdrawals from the account; and
4. Upon completion of the Warehouse 58 Improvements and final payments made to the contractor(s), Tenant shall be authorized to remove any remaining funds from its account without further obligation to City.

ii. On-Going Payment Obligations

1. City shall make payments to the Tenant based on the Construction Contract terms and conditions, as follows:
 - a. City shall make proportional progress payments according to the Construction Contract based on the percentage derived from dividing \$6,000,000 by the total Construction Contract amount (example: if the Construction Contract is \$15,000,000, then City's proportional progress payment shall be 40% based on the equation $\$6,000,000/\$15,000,000 = 40\%$);
 - b. City shall make progress payments only if Tenant is in compliance with Section 7.6.1(c-d).
2. Prior to making a progress payment to the contractor, City shall receive a written report on project progress from the contractor(s)' Project Manager(s); City reserves the right to monitor and conduct field inspections of the contractor(s)' work

for compliance with the Construction Contract(s) terms, and City's payments shall be conditioned upon City's review process. Unless City's review process results in objections from City, City's proportionate share of the progress payments shall be made within thirty (30) days of its receipt of each written report on project progress and a payment application. If City makes any objections then the parties will meet and confer and City will make its proportionate share of the progress payment within thirty (30) days following resolution of City's objections;

iii. Initial Payment Obligations

1. After Tenant meets the requirements of Sections 7.6.1(b) and (c), City shall make proportional reimbursements (calculated as set forth in Section 7.6.1(d)(ii)(1)(a)) from the \$6,000,000 funds in Section 7.6.1(a)(i) to Tenant for expenditures for the Berth 58-60 warehouse improvements set forth in Section 3.3.4.3(a), that were incurred by Tenant prior to having met the requirements of Sections 7.6.1(b) and (c) but otherwise in compliance with terms of the Agreement.

Except as amended herein, all remaining terms and conditions of Lease No. 904A shall remain in full force and effect.

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IN WITNESS THEREOF, the parties hereto have executed this Fifth Amendment to Lease No. 904A on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Dated: _____, 2022

By: _____
EUGENE D. SEROKA
Executive Director


Attest: _____
AMBER M. KLESGES
Board Secretary

ALTASEA AT THE PORT OF LOS ANGELES



Dated: October 19, 2022

By: _____
TERRY TAMMINEN
President/CEO

Attest:  _____
Jenny Krusoe, Founding Executive Director
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

10/20, 2022
MICHAEL N. FEUER, City Attorney
Steven Y. Otera, General Counsel

By  _____
Heather M. McCloskey, Deputy