

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 _____, 2015, 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 6th Street, Suite 1010, San Pedro, California 90731 ("Applicant").

RECITALS

WHEREAS, Applicant proposes to construct a certain portion of a world class urban marine research facility commonly known as AltaSea at the Port of Los Angeles ("Project") on property consisting of approximately 16.5 acres and including approximately 255,000 square feet of institutional, research and commercial space ("Property") and controlled by the Los Angeles Harbor Department ("POLA"); and

WHEREAS, the Board approved the Project and certified a Final Environmental Impact Report SCH#2010121013 ("FEIR") for the Project on October 18, 2012, and considered a subsequent Addendum to the Environmental Impact Report in September 2013; and

WHEREAS, the City and Applicant entered into Lease No. 904 effective December 23, 2013 which authorizes Applicant to construct, operate and maintain the Project for a term of fifty years; and

WHEREAS, subsequent to entering into Lease No. 904, Applicant has proposed two independent modifications to parts of the Project as originally approved by the Board and described in the FEIR, namely (a) interim use proposals at Berths 58 through 60; and (b) building designs at Berths 56 and 57, and Applicant is responsible for completing these portions of the Project; and

WHEREAS, POLA, 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 the modified Project approval; and

WHEREAS, POLA has determined that 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, Applicant is responsible for the costs to fund the environmental assessment of the proposed modified 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. POLA, as the CEQA lead agency, is preparing a Mitigated Negative Declaration for Applicant's proposed interim uses as well as a Subsequent Environmental Impact Report of the Project under CEQA ("Environmental Assessment") as required by law in order for the Board and City to consider discretionary decisions to grant entitlements for and approve the proposed modifications to the Project. It is understood by the Applicant that POLA, as the CEQA 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 Assessment and to ensure that it reflects the independent judgment of the lead agency in terms of adequacy and objectivity.

B. Pursuant to Section 7.3.3 of Lease No. 904, 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 the federal action on the environment and is requiring the preparation of an Environmental Assessment ("EA"). 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 notwithstanding Lease No. 904, 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 the proposed modifications to the Project or property, nor obligate the City, Board, POLA and/or the Council to take any action to certify or amend the environmental assessment under CEQA or approve or amend the approval of the proposed modifications to the Project, or any lease, permit or entitlement of the Property. The 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, the Trade, Commerce and Tourism Committee 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, POLA 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. 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.

4. REIMBURSEMENT. Applicant agrees to reimburse City for One Hundred Percent (100%) of all staff, Corps oversight, and consultant costs of preparation and defense of the environmental review of the proposed modified Project to the extent that the environmental review is necessary for and related to Applicant's Project modifications, as follows:

A. Consultant Selection: POLA, 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. POLA 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"). In support of preparing the environmental documents, POLA may, in its sole discretion, select a second consultant to perform project management oversight and quality assurance/quality control services, the cost for which shall also be the responsibility of Applicant.

B. Scope of Work and Cost Estimate: Based on the scope of work and budgets in POLA's existing pool of on-call consultant agreements, an estimated scope of work and a maximum budget amount which shall not be exceeded to complete the Environmental Assessment is set forth in Exhibit A. Upon selection of a consultant, or consultants, POLA shall inform Applicant in writing of the selection and if needed, provide a modified estimated budget, which shall not exceed the amount specified in Exhibit A, for the proposed environmental review work.

C. Process for Cost Reimbursement: After POLA selects a consultant(s), POLA shall submit invoices on a monthly basis to Applicant (the "Monthly Invoice"), listing the monthly charges generated for the ongoing completion of the 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 POLA within thirty (30) days of its receipt by Applicant.

D. Wharf Improvements: The parties agree that POLA shall be responsible for costs, if any, to fund the environmental assessment of renovations to restore the wharf area of the Project in the event that POLA proceeds with any wharf improvements requiring additional environmental review. In the event such costs are incurred, POLA shall not include charges that are to the sole benefit of POLA and shall prorate any charges that benefit both parties in an amount totaling seventy-five percent (75%) to Applicant and twenty-five percent (25%) to POLA. Examples of such mutual charges include, but are not limited to, filing fees and advertising costs.

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

6. LEAD AGENCY'S INDEPENDENT JUDGMENT. The Supplemental EIR 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 Supplemental EIR and related tasks lies in the sole discretion of POLA. Applicant understands and agrees that any consultant(s) employed by POLA to perform services hereunder only owes a duty to POLA and said consultant(s) will be accountable to POLA 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. POLA 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 POLA shall be sent:

To Applicant:	AltaSea at the Port of Los Angeles 222 West 6 th Street, Suite 1010 San Pedro, CA 90731 Attn: Jenny Krusoe
With a copy to:	David C. Ulich, Esquire Sheppard Mullin Richter & Hampton LLP 1901 Avenue of the Stars, Suite 1600 Los Angeles, CA 90067-6055
To POLA:	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. This Agreement may be modified only by a written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

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 Consultant up to and including the effective date of termination. Upon termination of the Agreement, City shall determine the services actually performed by the Consultant up to the date of termination of this Agreement and the amount owed to Consultant. City shall allocate the portion of expenses due from Applicant and invoice Applicant according to the terms of the 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: 11/25/14

By: Jenny Krosde

Print name/Title: JENNY KROSDE / DEPUTY DIRECTOR

Attest: Krista Swingle

Print name/Title: Krista Swingle / operations coordinator

APPROVED AS TO FORM AND LEGALITY

12/3, 2014
MICHAEL N. FEUER, City Attorney
Janna B. Sidley, General Counsel

By: Heather M. McCloskey
Heather M. McCloskey, Deputy

EXHIBIT A

ENVIRONMENTAL REVIEW AND ASSESSMENT SCOPE OF WORK AND ESTIMATED NOT TO EXCEED BUDGET

Consultant Scope and Costs

A. MITIGATED NEGATIVE DECLARATION FOR INTERIM USE

1. Prepare Initial Study checklist and technical studies to support the Mitigated Negative Declaration.
2. Produce and distribute Draft Mitigated Negative Declaration for public review and comment.
3. Prepare Final Mitigated Negative Declaration with responses to comments, if required.

B. SUBSEQUENT EIR AND NEPA EA PREPARATION

1. Project kick-off meeting and project description review.
2. Prepare the Notice of Preparation (NOP) and Initial Study checklist: includes 2 rounds of internal review and final screencheck, production, mailing, and filing notices.
3. Prepare a subsequent Draft EIR with technical studies: includes 2 rounds of internal review and final screencheck, production, mailing, and filing notices.
4. Prepare a NEPA EA using the Corps template. Assume the same technical studies for the subsequent EIR will be used. Additionally, include a Section 404B1 alternatives analysis and detailed Section 106 review under the National Historic Preservation Act per the Corps guidelines. Includes 2 rounds of internal review and final screencheck, production, mailing, and Federal Register notice requirements by the Corps.
5. Prepare the Final EIR with all required sections and supporting documents (Mitigation Monitoring and Reporting Program and Findings): includes 2 rounds of internal review and final screencheck, production, mailing, and filing of notices.
6. Project Management: general project management of work and deliverables. Requires coordination with in-house consultant Project Manager described below.

7. Project Meetings: coordinate scoping meeting, Draft EIR public hearing (including NEPA EA if required), Final EIR Board hearing, regular project team meetings with Port staff and AltaSea. Includes court reporter and presentation materials for all public hearings.

The Estimated Costs for A and B shall not exceed: \$582,515

C. IN-HOUSE CONSULTANT PROJECT MANAGER AND OVERSIGHT - QA/QC -

For work described in A and B above, In-house Consultant Project Manager to oversee the environmental review process and documentation and provide quality assurance/quality control.

The Estimated Cost shall not exceed: \$250,000

Staff and Corps Oversight Costs

- A. PORT STAFF TIME – Oversight of environmental review process by Port Environmental Management Division staff and coordination of internal support services from other Port Divisions including, but not limited to, Planning, Goods Movement, and Engineering.

The Estimated Cost shall not exceed: \$100,000

- B. CORPS OVERSIGHT - Management and oversight of environmental review process by Corps Project Manager.

The Estimated Cost shall not exceed: \$50,000

- C. COUNTY CLERK FILING FEES – Estimated Cost: \$5,485

- D. NEWSPAPER ADVERTISING FEES – Estimated Cost: \$12,000