



Executive Director's

Report to the
Board of Harbor Commissioners

DATE: AUGUST 3, 2017

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ FIRST AMENDMENT TO
AGREEMENT NO. 14-3279 WITH ANNENBERG FOUNDATION**

SUMMARY:

Staff requests approval of the First Amendment to Agreement No. 14-3279 (First Amendment) between the Annenberg Foundation and the City of Los Angeles Harbor Department (Harbor Department). The First Amendment will terminate Guaranty Agreement No. 14-3279 (Guaranty Agreement) for the reimbursement of the Harbor Department's expenditures for undertaking certain engineering design work for the Berth 57 wharf retrofit and ground improvements and exploration of design alternatives for AltaSea at the Port of Los Angeles (AltaSea). The First Amendment also serves as a mutual general release for both parties relating to any claims, liabilities etc. that result from the Guaranty Agreement.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines as determined by the Director of Environmental Management;
2. Approve the First Amendment to Agreement No. 14-3279;
3. Authorize the Executive Director to execute and the Board Secretary to attest to the First Amendment to Agreement No. 14-3279; and
4. Adopt Resolution No. _____.

DISCUSSION:

Background - On November 7, 2013, the Board approved Lease No. 904 (Lease) with Rockefeller Philanthropy Advisors, Inc. and subsequent lease assignment to AltaSea at the Port of Los Angeles (AltaSea), a non-profit public benefit corporation. Lease No. 904 provides for the development and use of 35.62 acres of Harbor Department property as an urban marine research center, with a public promenade and interpretive center. Under the terms of the Lease, the City of Los Angeles Harbor Department (Harbor Department) was required to perform work related to the Berth 57 wharf retrofit and ground improvements to determine the feasibility and potential cost savings of alternative design. Since AltaSea was required to perform various tasks and meet certain conditions prior to the Harbor Department initiating any work it is required to perform, the Annenberg Foundation (Annenberg), AltaSea's principal donor, guaranteed

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reimbursements to the Harbor Department of up to \$500,000 in engineering consultant costs related to the conceptual design work for Berth 57 in the event AltaSea fails to perform all of its obligations under the Lease.

On October 16, 2014, the Board approved Agreement No. 14-3280 with Moffatt & Nichol for professional engineering services in the amount of \$500,000 to prepare conceptual design alternatives with comprehensive construction cost estimates for the above mentioned AltaSea project component. Concurrently, the Board also approved the Guaranty Agreement to ensure the repayment of any funds expended such professional services utilized to prepare conceptual design alternatives the Berth 57 Wharf Retrofit and Ground Improvements project. This project was a component of the AltaSea at the Port of Los Angeles (AltaSea) Project for the Southern California Marine Institute.

The Harbor Department expended \$358,000 under the design concept contract with Moffatt & Nichol. Design work performed under the contract resulted in AltaSea and the Harbor Department negotiating a proposed Amended and Restated Lease that will reduce costs for each party and activate the AltaSea project faster than previously expected. The Harbor Department's project cost savings under the proposed Restated and Amended Lease far outweigh the \$358,000 Moffatt & Nichol contract expenditure. The Amended and Restated Lease No. 904 (Restated Lease) is being presented to the Board concurrently with this item that requests the release of the Annenberg Foundation from the Guaranty Agreement in the amount of \$358,000. Staff therefore requests the Board to approve the First Amendment, terminating the Guaranty Agreement and releasing Annenberg from its obligation to pay for conceptual design work.

The Guaranty Agreement enabled the Harbor Department to explore potential cost savings of alternative designs for Berth 57 and any associated environmental review requirements, as well as the independent value of conceptual design of the Berth 57 wharf and ground improvements to any future alternate use. As a result of conceptual design work performed, AltaSea began exploring alternative delivery options and project scopes that culminated in the proposed Restated Lease that reduces Harbor Department commitment for this wharf improvement scope from \$28 million to \$10 million.

Through these proposed lease terms including this wharf project scope reduction of \$18 million, the Harbor Department has received significant value for the \$358,000 spent. Staff recommends terminating the Guaranty Agreement (Transmittal 2) and releasing the Annenberg Foundation from this limited guaranty, concurrent with the approval of the Restated Lease.

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ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a First Amendment to Agreement No. 14-3279 with the Annenberg Foundation which would terminate the Guaranty Agreement and release the Annenberg Foundation from its limited guaranty. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines

FINANCIAL IMPACT:

The completed design work produced under the Guaranty Agreement was instrumental in revising AltaSea's proposed concept design for the SCMI headquarters at Berth 57. This project concept revision resulted in approximately \$18 million in savings by reducing the Harbor Department's investment obligation for this wharf structure from approximately \$28 million to \$10 million under the Restated Lease.

Termination of the Guaranty Agreement in the event that AltaSea project fails to perform all of its obligations under the Lease means the Harbor Department will bear the full cost of the \$358,000 design expenditure regardless of the AltaSea project status.

CITY ATTORNEY:

The First Amendment has been prepared and approved as to form and legality by the Office of the City Attorney.

TRANSMITTAL:

- 1. First Amendment

FIS Approval:  (initials)
CA Approval:  (initials)


MICHAEL J. GALVIN
Director of Waterfront & Commercial Real Estate


MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:


EUGENE D. SEROKA
Executive Director