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RECOMMENDATION APPROVED;  
RESOLUTION NO. 16-8029 ADOPTED; AND  
AGREEMENT NO. 16-3442 APPROVED  
BY THE BOARD OF HARBOR COMMISSIONERS

December 1, 2016

*Amber M. Klesges*

AMBER M. KLESGES  
Board Secretary



Executive Director's

Report to the

Board of Harbor Commissioners

**DATE: NOVEMBER 22, 2016**

**FROM: WATERFRONT & COMMERCIAL REAL ESTATE**

**SUBJECT: RESOLUTION NO. 16-8029 - AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND ALTASEA AT THE PORT OF LOS ANGELES FOR GRANT FUNDING FROM THE U.S. DEPARTMENT OF COMMERCE ECONOMIC DEVELOPMENT ADMINISTRATION; AND APPROVAL OF GRANT AWARD CONDITIONS**

**SUMMARY:**

Staff requests the approval of the Restated Agreement No. 16-3388 between AltaSea at the Port of Los Angeles (AltaSea) and the City of Los Angeles Harbor Department (Harbor Department) which will include the grant award conditions to comply with the obligations that come with the receipt of the grant from the U.S. Department of Commerce Economic Development Administration (EDA). The Restated Agreement requires that AltaSea is solely responsible for complying with all obligations of the grant award.

On May 5, 2016, the Board of Harbor Commissioners (Board) approved Agreement No. 16-3388 between the Harbor Department and AltaSea which governs the relationship between the two parties as co-applicants for the EDA Grant for \$3,000,000 of an approximately \$8.6 million project (Project) for developing infrastructure improvements.

On September 28, 2016, the Harbor Department received EDA confirmation of the acceptance of the grant application for \$3,000,000, and the accompanying request to execute the Financial Assistance Award documents describing the grant recipients' obligations. A Restated Agreement No. 16-3388 is required to incorporate the Financial Assistance Award documents into Agreement No. 16-3388 in order to expressly outline the obligations set forth through this EDA grant. As with the original agreement, AltaSea will be solely responsible for complying with all obligations that are described in the Financial Assistance Award.

**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 Restated Agreement with AltaSea at the Port of Los Angeles;

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3. Approve the award documents (including the City of Los Angeles Harbor Department as co-recipient) of the \$3,000,000 grant from the U.S. Department of Commerce Economic Development Administration;
4. Direct the Board Secretary to transmit the Agreement and award documents to City Council for approval pursuant to Charter Section 606 of the City Charter;
5. Authorize the Executive Director to execute and the Board Secretary to attest to the Agreement upon approval by City Council;
6. Authorize and direct the Executive Director or designee to execute the attached award documents of the Economic Development Assistance grant, and any subsequent award documents so long as they are consistent with the provisions of the Agreement, subject to approval as to form and legality by the Office of the City Attorney; and
7. Adopt Resolution No. 116-8029

**DISCUSSION:**

Background/Context – On December 23, 2013, AltaSea was granted Lease No. 904 (Lease) for the construction, operation, and maintenance of an urban marine research facility with a term of 50 years. The Lease provides conditions under which AltaSea may occupy 11 parcels totaling 35.62 acres located at City Dock 1 (Transmittal 1).

The Lease set forth an understanding that in order to further the vision of the San Pedro Waterfront Project, of which AltaSea is an integral part, the Harbor Department and Tenant would work cooperatively with one another to complete the Project, further the vision of the Project, and fulfill their respective obligations under the Lease. Such cooperation included a commitment to cooperate as it relates to grants and other similar applications for capital improvements.

*EDA Grant Funding* – In accordance with EDA regulations, the Harbor Department, as property owner, was required to be a co-applicant with AltaSea in order to be awarded a grant. Agreement No. 16-3388 set forth the relationship between the Harbor Department and AltaSea.

*Proposed Project* – AltaSea's proposed Project cost is \$8,588,000 (Transmittal 2). The grant award of \$3,000,000 will have with matching funds of \$3,000,000 and \$2,588,000 in additional contributions from AltaSea.

These improvements will allow proposed subtenants, which AltaSea has or will have, to occupy Berths 58-60. These proposed subtenants include Southern California Marine Institute, Catalina Sea Ranch, Ocean Exploration Trust (Bob Ballard-Nautilus 205), Seatrec, Blue Robotics, Boeing Advanced Technology, Long Beach City College, Cal Tech/JPL, and PermaCity.

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The grant funds would go toward an approximately \$8.6 million project (Project) for developing and activating the AltaSea premises sooner than previously planned (Transmittal 3). The Agreement, which governs the relationship between AltaSea and the Harbor Department as co-applicants to the EDA grant, provides that AltaSea will be solely responsible for all Project costs or expenditures beyond the grant award of \$3,000,000, as well as complying with all obligations that come with the grant award. The Project scope will include the development of the area between Berths 57 and 58, which will allow AltaSea to receive and service visiting research vessels and completion of the Launch Plaza between Warehouses 57 and 58, wharf rehabilitation including structural modification of the wharf, installation of concrete pilings and new decks, and installation of timber fenders, Signal Street improvements, entrance and signage improvements to Warehouses 58-60, and installation of subsurface utilities and restrooms during 2017. Those improvements to the wharf will allow for future building and bleacher seating improvement in the area between Warehouses 57 and 58. No Harbor Department funds are requested for the proposed Project.

Proposed Agreement – Staff requests Board approval of the Restated Agreement governing the responsibilities and obligations of each party as it relates to the EDA grant award. The Agreement will now include the Financial Assistance Award special award conditions for administering the grant, and the standard terms and conditions for construction projects funded by the EDA which specify the financial, programmatic and reporting requirements that come with the receipt of the EDA funds (Transmittal 4).

The EDA grant conditions include additional requirements to be completed at a later date after execution of the Financial Assistance Award including 1) Recording of a Covenant for Purpose, Use and Ownership (Transmittal 5), 2) Covenant of Use (Transmittal 6), and 3) the Economic Development Administration Certificate as to Project Site, Rights of Way and Easements (Transmittal 7).

Covenant for Purpose, Use and Ownership – This covenant is required to protect the Federal Interest (as defined by federal regulation and the EDA) in the property and to give notice of the Federal government's rights related to the property for the project life, which shall not exceed 20 years based on federal regulations. Following expiration of the project life, this covenant can be extinguished by application through the EDA and agreement to record the Covenant of Use, which is a permanent covenant. The Agreement will require that AltaSea extinguish the Federal Interest at the expiration of the project life of 20 years.

Covenant of Use - The Covenant of Use is a permanent covenant that restricts the property from being used 1) for inherently religious activities prohibited by applicable federal law, or 2) for any purpose that would violate the nondiscrimination requirements set forth in 13 CFR § 302.20. The portion of the covenant for religious use restrictions may be bought out prior to recording and as a result would not be included in the Covenant of Use. AltaSea will be required to buy out the Federal Share (as defined by federal regulation and the EDA) at the expiration of the project life to limit the restrictions in this covenant to only the nondiscrimination requirements. California State Lands Commission counsel has been consulted with to provide guidance on the feasibility of recording a permanent covenant for nondiscrimination purposes on State Tidelands.



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property and a determination has been made that recording of such a covenant is feasible conditioned on the restriction being compliant with State law and the Trust.

Economic Development Administration Certificate as to Project Site, Rights of Way and Easements - This Certification is required to be completed by both parties to the grant and generally 1) identifies the parcels of property required to complete the grant project, 2) certifies that adequate ownership interests, lease interests and permits are in place to meet the obligations of the grant project, and 3) certifies that eminent domain was not used or will not be used to acquire the property required for the project.

The Restated Agreement is identical to the previous Agreement with respect to AltaSea bearing sole responsibility for complying with all obligations of the grant award, including all Project costs above \$3,000,000 and the creation of new jobs. The award conditions state that as co-applicant, should AltaSea fail to perform satisfactorily or not comply with the award provisions, the Harbor Department's eligibility to secure future funding from EDA or Federal sources can be adversely impacted unless the Federal Interest (as defined by federal regulation and the EDA) is extinguished. If AltaSea fails to perform satisfactorily or not comply with the award provisions, AltaSea would be required to repay the EDA funds to extinguish the Federal Interest. The Restated Agreement also obligates AltaSea to 1) extinguish the Federal Interest at the expiration of the project life in order to remove the Covenant for Purpose, Use and Ownership and 2) compensate the EDA for the Federal Share to limit the Covenant of Use to only nondiscrimination requirements.

Award of the Grant – The Lease is currently being renegotiated to conform with AltaSea's updated business and project delivery plan. It is anticipated that the new restated or amended lease will maintain the original intent of the Lease but provide both parties flexibility in order of delivery of specific parcels and related infrastructure improvements.

The grant award can be accomplished under the terms of the existing Lease by AltaSea meeting prescribed conditions and accepting parcels 1A, 2A, 3 and 4 (Transmittal 8). The conceptual terms of a restated or amended lease that are currently being negotiated and which remain subject to further action of the Board, would also provide a parcel acceptance structure that would comply with the requirements of the EDA grant.

**ENVIRONMENTAL IMPACT:**

The proposed action is approval to enter into an Agreement with AltaSea and approve the award conditions that come with the acceptance of the EDA grant. This action is limited to the Agreement with AltaSea and the EDA. Any projects that may result from award of EDA grant money would be subject to separate environmental review. Therefore, as an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2 (f) of the Los Angeles City CEQA Guidelines.

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AltaSea and the Harbor Department are proposed joint recipients of the \$3 million grant award, but AltaSea will be solely responsible for complying with all obligations and the \$3 million in matching funds requirements, including the \$2,588,000 in additional contributions that will round out the approximately \$8.6 million Project cost. AltaSea will also fully bear all operating and maintenance costs associated with the Project. However, the award conditions state that as co-applicant, the Harbor Department's eligibility to secure future funding from EDA or other Federal sources may be adversely impacted if AltaSea fails to perform satisfactorily or otherwise not comply with award provisions. AltaSea is required to repay EDA funds to extinguish the Federal Interest, which should relieve any future adverse impact related to future funding from the EDA or other federal sources.

**CITY ATTORNEY:**

The Office of the City Attorney has reviewed and approved the Restated Agreement with AltaSea and the EDA Financial Assistance Award documents. With respect to the EDA Grant Award Conditions, there are no legal issues at this time.

**TRANSMITTALS:**

1. Site Map
2. Proposed Project Scope of Work and Cost
3. Rendering of Proposed Project
4. Restated Agreement
5. Covenant for Purpose, Use and Ownership
6. Covenant for Use
7. Economic Development Administration Certificate as to Project Site, Rights of Way and Easements
8. Proposed Project on Premises Map



MICHAEL J. GALVIN  
Director of Waterfront & Commercial Real Estate

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



MICHAEL DiBERNARDO  
Deputy Executive Director

APPROVED:



EUGENE D. SEROKA  
Executive Director