

THIRD AMENDMENT TO OPERATING AGREEMENT NO. 15-3354
BETWEEN THE CITY OF LOS ANGELES
AND
HECATE ENERGY HARBORSIDE, LLC.
FOR THE PHOTOVOLTAIC SOLAR POWER SYSTEMS

THIS THIRD AMENDMENT ("Third Amendment") to Operating Agreement No. 15-3354 ("Agreement"), is made and entered into this _____ day of _____, 20__, by and between the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners ("Board") of the Harbor Department (collectively referred to as "City" or "Harbor Department") and HECATE ENERGY HARBORSIDE, LLC., a Delaware limited liability company, 115 Rosa Parks Blvd., Nashville, TN 37203 ("Operator").

RECITALS

WHEREAS, City and Operator entered into the Agreement on October 15, 2015 for the development, construction, installation, management, and maintenance of photovoltaic solar power systems at the Port of Los Angeles ("POLA"); and

WHEREAS, the Board has authority to approve site location modifications in the event substitutionary sites are necessary and both City and Operator have identified and agreed upon substitutionary site locations and in which Operator shall develop, construct, install, manage, and maintain photovoltaic solar power systems on said sites on the same terms and conditions set forth in the Agreement; and

WHEREAS, City and Operator entered into the First Amendment and Second Amendment on March 17, 2016 ("First Amendment") and July 6, 2016 ("Second Amendment") respectively to modify the site locations; and

WHEREAS, City and Operator intend for the Operator to provide insurance and indemnification for the benefit of not only the City's interests but also that of the tenants operating at the Site Location(s) in which the Operator shall develop, construct, install, manage, and maintain photovoltaic solar power systems; and

WHEREAS, City and Operator desire to further amend the Agreement;

NOW, THEREFORE, in consideration of the covenants, terms, and conditions contained herein, the parties do hereby mutually agree that the AGREEMENT BE AMENDED AS FOLLOWS:

Section 1. The Agreement is hereby amended to add the following language as Article 2, Section 3.15:

"3.15 Additional Insured. For each of the foregoing policies and as set forth in Article 2, Section 4.3 of the Agreement, Operator shall include an additional

insured endorsement (CG 2010 or equivalent) naming the current applicable Harbor Department tenants as identified in Exhibit R as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-day notice of cancellation for any other reason during the Term of this Agreement. In the event of a new tenant, the Harbor Department shall provide to Operator the newly designated tenant and Operator shall name the new tenant as an additional insured within fifteen (15) days of notice, and upon which Exhibit R shall be revised, replaced, and renumbered as "Exhibit R-1", "Exhibit R-2", and so forth without further action of the Board."

Section 2. The Agreement is hereby amended to add the following language as Article 2, Section 3.1.1:

"3.1.1 Third Parties. City and Operator acknowledge and agree that the respective tenants as specified in Article 2, Section 3.15 shall be a third-party beneficiary to the terms, conditions, rights and benefits set forth in Article 2, Section 3.1 above and may enforce the provision set forth in said Section 3.1 and that the Operator agrees to defend, indemnify, and hold harmless the respective tenants under the same terms and conditions outlined in Article 2, Section 3.1 as if the tenants were a party hereto."

Section 3. Article 1, Section 3.3.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

"3.3.1 Right of Access. City grants to Operator a non-exclusive right to access designated areas to install, construct, and operate the PV Systems and related facilities on, over, and/or under the Site Locations (as defined below) as are reasonably necessary for Operator to construct, operate, maintain and to interconnect the PV System(s) (collectively "Right of Access"); provided, however, the terms of such Right of Access, including the nature and location of such equipment, shall be mutually agreed upon by the parties prior to the installation of any PV System(s) on a particular Site Location by Operator. The agreed upon Right of Access for any respective PV System(s) shall be reflected in Exhibit F-2 in accordance with Article 1, Section 4 of this Agreement."

Section 4. The Agreement is hereby amended to delete any and all references to "Utility Easement" within the document and replace with the words "Right of Access."

Section 5. Exhibit J of the Agreement is hereby deleted in its entirety and replaced with Exhibit J-1 which is attached to this Third Amendment. The Agreement is hereby further amended to delete any and all references to "Exhibit J" within the document and replaced with the words "Exhibit J-1."

Section 6. Article 1, Section 3.2 is hereby deleted in its entirety and replaced with the following:

“3.2 Ownership of PV Systems. City and Operator acknowledge all ownership of the PV Systems belongs to the Operator during the term of the PPA(s). City and Operator acknowledge and agree that all equipment, including without limitation, all photovoltaic panels, racks, canopies, monitoring equipment, invertors, transformers, switches, and other solar generation equipment), materials, tools, and improvements installed on or located at the Premises by or on behalf of Operator from time to time during the Term of the Agreement shall be and remain the personal property of Operator. The foregoing acknowledgement and agreement shall apply in all circumstances, regardless of whether some or all of such items may be attached to the Premises or to structures on the Premises, or could otherwise be considered as real property fixtures under the Agreement or applicable law. City and Operator agree and acknowledge the foregoing said equipment and related parts are not fixtures, not intended to be affixed permanently to the City's real property, and shall be removable and severable.”

Section 7. Except as specifically provided herein, this Third Amendment shall not in any manner alter, change, modify, or affect any of the rights, privileges, duties, or obligations of either of the parties hereto under or by any reason of said Agreement, and except as expressly exercised herein, all of the terms, covenants, and conditions of said Agreement, as exercised, shall remain in full force and effect.

[signature page follows]

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IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment on the date to the left of their signatures.

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

Dated: _____

By _____
EUGENE D. SEROKA
Executive Director

Attest: _____
Secretary

HECATE ENERGY HARBORSIDE,
LLC.

Dated: _____

By Chris Bullinger
MANAGER, CHRIS BULLINGER
(Print/type name and title)

Attest Craig Overmyer
CRAIG OVERMYER, V.P. OPERATIONS
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

December 30, 2016
MICHAEL N. FEUER, City Attorney
Janna B. Sidley, General Counsel

By Helen J. Sok
Helen J. Sok, Deputy/Assistant

Account #	<u>54290</u>	W.O. #	
Ctr/Div #	<u>0424</u>	Job Fac. #	
Proj/Prog #	<u>000</u>		
Budget FY:		Amount:	
<u>2016/17</u>		<u>0</u>	
TOTAL			
For Acct/Budget Div. Use Only:			
Verified by:	<u>Bullinger</u>		
Verified Funds Available:	<u>True</u>		
Date Approved:	<u>12/29/16</u>		

EXHIBIT R
ADDITIONAL INSURED TENANT LIST

<u>PV SYSTEM LOCATION</u>	<u>CURRENT TENANT/OCCUPANT</u>
BERTH 54-55 WAREHOUSE MINER ST.	SSA PACIFIC INC.
BERTH 153 SHED WAREHOUSE FRIES ST.	PASHA STEVEDORING & TERMINALS, LP
BERTH 155 SHED WAREHOUSE FRIES ST.	PASHA STEVEDORING & TERMINALS, LP
ADMIN./AUTO REPAIR/PREP. BLDG. 300 WATER ST., WILMINGTON	WWL VEHICLE SERVICES AMERICAS, INC.
FORMER U.S. CUSTOMS OFFICE/WAREHOUSE FERRY ST.	ECO FLOW TRANSPORTATION, LLC
CABRILLO WAY MARINA MINER ST.	WESTREC MARINA MANAGEMENT, INC.
CATALINA EXPRESS PARKING LOT SWINFORD ST.	PARKING CONCEPTS, INC.
BERTH 91/92 CRUISE TERMINAL PARKING LOT	PARKING CONCEPTS, INC.
PACIFIC MARITIME ASSOC. SURPLUS PARKING LOT N. HENRY FORD AVE.	PACIFIC MARITIME ASSOCIATION
ARDAGH WAREHOUSE BARRACUDAT ST./EARLE ST.	ARDAGH METAL PACKAGING USA, INC.

- **Locations as referenced above are described in Exhibit B-2 and Exhibit F-2.**
- **Upon change of a tenant or occupant that utilizes space as described in Exhibit B-2 or Exhibit F-2, Exhibit R shall subsequently be revised, replaced and renumbered as Exhibit R-1, Exhibit R-2, and so forth without further action of the Board.**

EXHIBIT J-1

MILESTONES

The Developer shall incorporate and meet the following Milestones when performing the Scope of Work in this Agreement:

1. Upon approval of this Agreement by the Board and City Council, the Developer shall submit an Application for Port Permit (APP) for the 12 Site Locations within 30 days.

2. PPA's for Site Locations to be developed under LADWP's FiT Set Pricing (FiT100) Program shall be obtained by June 30, 2017. It is understood that Site Locations to be developed under the 50 MW LADWP Solar FiT (FiT50) Program already have an approved PPA.

3. Site Locations to be developed under FiT100 Tier Levels 3 and 4 shall achieve Commercial Operation by March 2018 and August 2018, respectively¹.

4. Site Locations to be developed under FiT50 shall achieve Commercial Operation by June 30, 2017.

¹ As required by the tentatively approved Amendment to Memorandum of Understanding Between the State of California, the Office of the Mayor of the City of Los Angeles, and the City of Los Angeles Harbor Department Creating a Partnership to Reduce Greenhouse Gases and Support the Port of Los Angeles Clean Air Action Plan.