

FOURTH 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 FOURTH AMENDMENT TO OPERATING AGREEMENT NO. 15-3354 (this "Fourth Amendment"), is made and entered into on _____, 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, with an address of 115 Rosa Parks Blvd., Nashville, TN 37203 ("Operator").

RECITALS

WHEREAS, City and Operator entered into the Operating Agreement No. 15-3354 dated October 15, 2015 ("Operating Agreement") for the development, construction, installation, operation, management, and maintenance of photovoltaic solar power systems at the Port of Los Angeles ("POLA").

WHEREAS, prior to the date hereof, City and Operator amended the terms of the Operating Agreement pursuant to (i) the First Amendment dated March 17, 2016 ("First Amendment"), (ii) the Second Amendment dated July 6, 2016 ("Second Amendment"), and (iii) the Third Amendment dated on or about December 30, 2016 ("Third Amendment"), to modify the site locations and such other amendments as set forth therein (the Operating Agreement with all such listed amendments to date shall be referred to as the "Agreement").

WHEREAS, on or prior to the date hereof, Operator's parent entity, Hecate Energy LLC, will transfer ("TGC Transfer") one hundred percent (100%) of its membership interests in Operator to USPS LA Solar Holdings, LLC, a subsidiary of investment funds managed by True Green Capital Management LLC ("TGC").

WHEREAS, City and Operator desire to further amend the Agreement in accordance with the terms hereof.

WHEREAS, following the execution of this Amendment, Operator shall delegate a portion of its rights, title, duties or obligations under the Agreement to USPS LA Solar FiT "A", LLC ("USPS A") and USPS LA Solar FiT "B", LLC ("USPS B") (collectively referred to as "Sub-Operators") by entering into sub-operating agreements with each of USPS A and USPS B, in the form attached hereto as Exhibit V ("Sub-Operating Agreements"), and City consents to such delegation on the terms and conditions set out in this Amendment. The form of the Sub-Operating Agreement Operator shall enter into with the Sub-Operators shall be substantially similar to the form in Exhibit V, and Operator shall have the right to modify such form of Sub-Operating Agreement with Executive Director's prior written consent. Sub-Operating Agreements that are substantially

different from Exhibit V will require the Board's consent.

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. Pre-commercial Operation. Article 1, Section 1.2 of the Agreement shall be deleted in its entirety and replaced with the following new Section 1.2 and 1.2.1:

"1.2 Substantial Completion Date. For the purposes of this Agreement, "Substantial Completion Date" shall mean the respective date each of the PV Systems (as defined below) achieves Pre-commercial Operation as defined in Operator's PPA (as defined below) with Los Angeles Department of Water and Power, wherein Pre-commercial Operation is defined as follows:

Pre-commercial Operation means all of the following have been satisfied by Seller:

(a) Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement and the Facility possesses all the characteristics, and satisfies all of the requirements, set forth for this Facility in this Agreement;

(b) The Seller achieved site control in the form of: (i) ownership of the Site; or (ii) a lease of the Site; or (iii) a licensee of the Site from the Site owner, which permits Seller to perform its obligations under this Agreement;

(c) Seller has obtained all Permits required for the construction, operation and maintenance of the Facility in accordance with this Agreement (including those identified in Appendix D), and all such Permits are final and non-appealable;

(d) Seller has caused the CEC to pre-certify or certify the Facility as RPS Compliant.

(e) The facility has successfully completed final inspections and releases have been posted by a LADWP Electric Service Representative and the Los Angeles Department of Building and Safety, as indicated by LADWP's Work Management Information System.

1.2.1 For the purposes of this Agreement, the capitalized defined terms found in Section 1.2 above shall have the same definitions found in Operator's PPA with DWP. In the event of any conflict, the terms defined in this Agreement shall prevail."

Section 2. Permanent Removal Definition. Article 1, Section 4.2.1 of the Agreement is hereby amended to add the following new subsection 4.2.1.3 thereto:

"4.2.1.3 Interpretation. Notwithstanding anything to the contrary in this Agreement, for clarity purposes, as used

herein, (a) the term "removal" shall include the physical removal of all or any part of a PV System which has rendered the PV System inoperable for more than nine (9) months from the date of inoperability; provided however, in the event of such inoperability, Operator shall notify City of such condition within seven (7) business days and meet with City to discuss steps to resolution; and (b) "permanent removal" or any variation of the foregoing shall mean a removal of all or any part of a PV System that extends beyond nine (9) months in duration from the date of actual removal."

Section 3. Section 7.3 Correction. Article 1, Section 7.3.1(ii)(b) of the Agreement is hereby amended by deleting the words "Article 1, Section 5.11.4(c) through 5.11.6(f)" therein and replacing such words with the following corrected reference: "Article 1, Sections 7.3.1(ii)(c) through 7.3.1(ii)(n)" in the last line thereof.

Section 4. Assignment of Agreement. Article 1, Section 9 of the Agreement is hereby deleted in its entirety and replaced with the following:

"9.1 Assignment; Transfer. Operator shall not assign transfer, or delegate any of its rights, duties, or obligations or any portion thereof under this Agreement without the prior written consent of City. Operator acknowledges City may require amendments to be made to this Agreement prior to providing its written consent to such assignment, transfer, or delegation. Notwithstanding the foregoing, Operator may transfer, pledge, encumber, or assign this Agreement in accordance with the form of Consent to Security Interest attached to this Fourth Amendment and incorporated by reference as Exhibit S and which final form shall require prior Board and Council approval upon Operator securing the specific lender.

9.1.1 TGC Transfer. City acknowledges the TGC Transfer as described in the aforementioned recitals. City and Operator agree that said TGC Transfer does not change the terms and conditions of this Agreement and does not release Operator from its duties and obligations under this Agreement unless as specifically provided for herein.

9.2 Obligations on Delegations. If the City provides its prior written consent to a delegation of Operator's rights, duties, or obligations or any portion thereof under this Agreement to a third party ("Delegatee") in accordance with Section 9.1, Operator shall cause the Delegatee not to assign, transfer or delegate any of its rights, duties or obligations or any portion thereof under such delegation without the prior written consent of the City.

9.3 Change of Control. For the purpose of Sections 9.1 and 9.2, the following shall be deemed an assignment or transfer of all of the Operator's or Delegatee's rights, duties, or obligations, requiring the prior written consent of the City:

(a) If Operator or Delegatee is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of Operator or Delegatee, or the sale or other transfer of a material percentage of the capital stock or ownership interests of Operator or Delegatee. The phrase "material percentage" shall mean the ownership of, and the right to vote, stock or membership or ownership interests possessing forty-nine (49%) or more of the total combined voting power of all classes of an entities' capital stock or ownership interests issued, and outstanding;

(b) If Operator or Delegatee is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of any partner or partners owning a total of forty-nine (49%) or more of the partnership, or the dissolution or deemed dissolution of the partnership; and

(c) If Operator or Delegatee, or any party constituting Operator or Delegatee, is an individual, the death or incapacity of Operator or Delegatee."

Section 5. Exhibit J-1. Exhibit J-1 of the Agreement is hereby deleted in its entirety and replaced with Exhibit J-2 which is attached to this Fourth Amendment. The Agreement is hereby further amended to delete any and all references to Exhibit J-1 within the document and replaced with Exhibit J-2.

Section 6. The Agreement is hereby amended to add the following language as Article 1, Section 5.1.1, subsection "h":

"h. Operator's final as-built drawings, as-built engineering plans, specifications and any and all other related documents as part of and including both the APP and Harbor Engineer's Permit (as discussed above), respectively, shall be attached to this Agreement as Exhibit T incorporated by reference herein without further action by the Board or Council."

Section 7. The Agreement is hereby amended to add the following language as Article 1, Section 4.3.5:

"4.3.5 City's Notification to its Tenants. City shall provide written notification to its tenants as necessary of the installation, operation, and maintenance of the PV Systems at said locations. A draft form of the notification is attached to this Agreement as Exhibit U. Operator and City agree that the final form of Exhibit U, which City uses for its tenants, may be modified in City's sole discretion."

Section 8. The Agreement is hereby amended to add the following language as Article 1, Section 4.3.6:

"4.3.6 City Best Efforts. City shall use its best efforts to avoid material interference with Operator's installation, construction, operation and maintenance of the PV Systems at the Site Locations. For the purposes of this Agreement, material interference shall *not* include: any act, construction or operation by third parties, including City's tenants or operators; any acts or incidents defined as Force Majeure as set forth in Article 1, Section

6.3 of this Agreement; City's projects contemplated as a result of compliance with state, local, or federal law, including but not limited to environmental laws and regulations, CEQA, NEPA, environmental impact reports, mitigation measures, and master plan amendments; and/or City's projects required by a court ruling or by local, state, or federal agencies. Notwithstanding this provision, nothing in this Section 4.3.6 herein shall limit, proscribe, or hinder the Board's powers, duties, and authority in its possession, management, and control of the Harbor Department and its assets in accordance with the Los Angeles City Charter. In the event Operator considers a circumstance a material interference as stated herein whereby a respective PV System is producing less than fifty percent (50%) of the expected production, Operator shall notify and demonstrate to City the material interference and City shall use its best efforts to cure said material interference. If such material interference has not been cured within three (3) months from the date of Operator's notice to City, City will best efforts to find Operator substitute sites in accordance with Article 1, Section 4.2 of this Agreement."

Section 9. The following shall be added to the Agreement as Article 1, Section 9.4:

"9.4 Consent to Delegation to Sub-Operators. In accordance with Section 9.1 of the Agreement (as amended pursuant to this Amendment), City hereby consents to the delegation by Operator of its rights, duties and obligations under the Agreement to USPS A and USPS B in accordance with the Sub-Operating Agreements, subject to the following terms and conditions:

(a) USPS A shall develop, construct, install, operate, manage, maintain, and conduct all other services related to the PV Systems located at the following sites in accordance with the terms and conditions set forth in the Sub-Operating Agreement by and among Operator and USPS A:

- (i) Berth 54-55
- (ii) Berth 153, 154-155
- (iii) Catalina Express
- (iv) Marina South
- (v) PMA

(b) USPS B shall develop, construct, install, operate, manage, maintain, and conduct all other services related to the PV Systems located at the following sites in accordance with the terms and conditions set forth in the Sub-Operating Agreement by and among Operator and USPS B:

- (i) Cannery
- (ii) US Customs House

- (iii) Berth 161
- (iv) Cruise Terminal
- (v) Liberty Plaza

9.4.1 USPS LA Solar Holdings, LLC shall be responsible for financing USPS A's and USPS B's performance under the Sub-Operating Agreement. Nothing in the Agreement or this Amendment shall impose any obligation on the City to USPS LA Solar Holdings, LLC, TGC, any and all respective investors, any respective finance partners, or any of their agents.

9.4.2 The delegation by Operator of its rights, duties and obligations under the Agreement to USPS A and USPS B under the terms of the Sub-Operating Agreement shall not release Operator from its obligations under the Agreement or to impose any obligation on the City by USPS A and/or USPS B or give USPS A and/or USPS B any rights against the City."

Section 10. Article 1, Section 7.2.4 is deleted in its entirety and replaced with the following:

"7.2.4 Temporary Removal Adjustment Limitation. In no event during any temporary removal period will the compensation to Operator from a single removed PV System exceed the Agreement compensation to be paid to City attributable of all PV Systems over the previous twelve (12) month period, unless temporary removal exceeds twelve (12) months. In no event during any material interference event as described in Article 1, Section 4.3.6 will compensation to Operator from a single PV that has been rendered materially interfered exceed the Agreement compensation to be paid to City attributable to that specific PV System which has been impacted by the material interference over the previous twelve (12) month period provided that the PV System has been relocated as set forth in Article 1, Section 4.2 of this Agreement."

Section 11. Exhibit B-2. The single one page entitled "Legal Description" within Exhibit B-2 referenced in the Second Amendment shall be deleted in its entirety. The remaining pages, excluding the aforementioned single one page, shall remain in its entirety as Exhibit B-2 and incorporated by reference to the Agreement and said exhibit is not modified or affected unless as expressly stated herein.

Section 12. Integration. Except as specifically provided herein, this Fourth 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 set forth herein, all of the terms, covenants, and conditions of said Agreement shall remain in full force and effect and are hereby ratified by the parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this 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: _____
AMBER M. KLEGES
Commission Secretary

HECATE ENERGY HARBORSIDE,
LLC.

Dated: 10/17/17

By Nicht Burg
NICHOLAS BULLINGER, COO
(Print/type name and title)

Attest [Signature]
CRAIG VENTURA, V.P. OPERATIONS
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

October 18, 2017
MICHAEL N. FEUER, City Attorney
Janna B. Sidley, General Counsel

By [Signature]
Helen J. Sok, Deputy/Assistant

Account #	W.O. #
Ctr/Div #	Job Fac. #
Proj/Prog #	
Budget FY:	Amount:
<u>2017/2018</u>	<u>[Signature]</u>
TOTAL	
For Acct/Budget Div. Use Only:	
Verified by:	<u>[Signature]</u>
Verified Funds Available:	<u>[Signature]</u>
Date Approved:	<u>10/18/17</u>

CONSENT TO ASSIGNMENT OR TRANSFER

THIS CONSENT TO ASSIGNMENT OR TRANSFER ("Consent") is made and entered into on _____, 20__ ("Effective Date"), 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, with an address of 115 Rosa Parks Blvd., Nashville, TN 37203 ("Operator").

RECITALS

WHEREAS, City and Operator entered into the Operating Agreement No. 15-3354 dated October 15, 2015 ("Operating Agreement") for the development, construction, installation, operation, management, and maintenance of photovoltaic solar power systems at the Port of Los Angeles ("POLA"). The Operating Agreement was amended pursuant to (i) the First Amendment dated March 17, 2016, (ii) the Second Amendment dated July 6, 2016, and (iii) the Third Amendment dated on or about December 30, 2016, and (iv) the Fourth Amendment dated on or about the date of this Consent, to modify the site locations and such other amendments as set forth therein (the Operating Agreement with all such listed amendments to date shall be referred to as the "Agreement").

WHEREAS, Section 9.1 of the Agreement provides, among other things, that Operator shall not assign, transfer, or delegate any of its rights, duties, or obligations or any portion thereof under the Agreement without the prior written consent of City. Section 9.3 of the Agreement further provides that, for the purpose of Section 9.1, the following shall be deemed an assignment or transfer of all of the Operator's rights, duties, or obligations, requiring the prior written consent of the City:

(a) If Operator is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of Operator or the sale or other transfer of a material percentage of the capital stock or ownership interests of Operator. The phrase "material percentage" shall mean the ownership of, and the right to vote, stock or membership or ownership interests possessing forty-nine (49%) or more of the total combined voting power of all classes of an entities' capital stock or ownership interests issued and outstanding;

(b) If Operator is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of any partner or partners owning a total of forty-nine (49%) or more of the partnership, or the dissolution or deemed dissolution of the partnership; and

(c) If Operator, or any party constituting Operator, is an individual, the death or incapacity of Operator."

WHEREAS, Operator's parent entity, USPS LA Solar Holdings, LLC, wishes to

transfer one hundred percent (100%) of its membership interests in Operator ("Transfer") to USPS LA Solar Investment, LLC (the "Transferee") which is owned by G-1 Energy, LLC and investment funds managed by True Green Capital Management LLC. The closing of the Transfer is proposed to take place approximately on or before **December 15, 2017**.

WHEREAS, in accordance with Section 9.1 of the Agreement, City has agreed to consent to the Transfer under the terms and conditions set forth in this Consent.

NOW, THEREFORE, in consideration of the covenants, terms, and conditions contained herein, the parties do hereby mutually agree as follows:

Section 1. Recitals Incorporated. The above recitals are hereby incorporated in this Consent as if fully set forth again.

Section 2. Consent to Assignment. In accordance with Section 9.1 of the Agreement and effective from the Effective Date, City hereby consents to the Transfer in accordance with the terms and conditions set out in this Consent. Operator shall provide City with written notice of the closing of the Transfer within three (3) business days of the closing. If the closing of the Transfer has not occurred on or after **ninety (90) days** after the Effective Date, this Consent shall be void and of no force or effect and Operator shall be required to seek new written consent from the City for the Transfer in order to comply with Section 9.1 of the Agreement.

Section 3. Further Assignment. This Consent shall not be deemed to be a consent to any future transfer or assignment. Nothing herein shall be construed as a waiver of City's transfer or assignment approval rights under the Agreement.

Section 4. Ratification of Agreement. The Operator, Transferee, and City acknowledge and agree that all of the terms, covenants and conditions of the Agreement shall remain in full force and effect without modification or change.

Section 5. Counterparts; Signatures. Separate copies of this Consent may be signed by the parties hereto, with the same effect as though all of the parties had signed one copy of this Consent. Signatures received by facsimile or via other electronic transmission system shall be accepted as original signatures.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Consent 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: _____
AMBER M. KLEGES
Commission Secretary

HECATE ENERGY HARBORSIDE,
LLC.

Dated: _____

By _____

(Print/type name and title)

Attest _____

(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

_____, 20____
MICHAEL N. FEUER, City Attorney
Janna B. Sidley, General Counsel

By _____
Helen J. Sok, Deputy/Assistant

EXHIBIT V
FORM OF SUB-OPERATING AGREEMENT

EXHIBIT V

**SUBCONTRACT OF OPERATING AGREEMENT FOR SOLAR PHOTOVOLTAIC
SYSTEMS AT THE PORT OF LOS ANGELES (FIT "[A]")**

THIS SUBCONTRACT OF OPERATING AGREEMENT FOR PHOTOVOLTAIC SOLAR POWER SYSTEMS AT THE PORT OF LOS ANGELES (FIT "[A]") (the "Agreement") is made and entered into as of the ____ day of _____, 2017, by and between HECATE ENERGY HARBORSIDE, LLC, a Delaware limited liability company ("**Hecate Energy**") and USPS LA Solar FiT "[A]", LLC (previously doing business as Hecate Energy FIT "[A]" LLC), a Delaware limited liability company ("**Subcontractor**").

RECITALS:

A. Pursuant to that certain Operating Agreement for Photovoltaic Solar Power Systems at the Port of Los Angeles ("**POLA**") entered into between The City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners ("**Board**") of the Harbor Department (collectively, "**City**" or "**Harbor Department**"), and Hecate Energy, dated October 15, 2015, amended by that First Amendment to Operating Agreement No. 15-3354, dated March 17, 2016, further amended by that Second Amendment to Operating Agreement No. 15-3354, dated July 6, 2016, further amended by that Third Amendment to Operating Agreement No. 15-3354, dated on or about December 30, 2016, and further amended by that Fourth Amendment (the "Fourth Amendment") to Operating Agreement No. 15-3354, dated ____, 2017 (as amended, the "**Operating Agreement**"), Operator has the right to finance, develop, construct, install, operate, manage, maintain and conduct any other related services for up to twelve (12) photovoltaic solar power systems (the "**PV Systems**") at locations at POLA (the "**PV Site Locations**") as agreed upon by City and Operator at POLA, in accordance with the terms and conditions set forth in the Operating Agreement. A copy of the Operating Agreement is attached hereto as Exhibit A.

B. Certain access rights to the PV Site Locations are granted to Hecate Energy by the City under the Operator Agreement, subject to the terms thereof (the "**Rights of Access**").

C. Under the terms of the Operating Agreement, the energy produced by the PV Systems is required to be sold pursuant to certain qualifying agreements ("**Qualified PPAs**") with the City of Los Angeles Department of Water and Power (the "**LADWP**").

D. Pursuant to that certain Competitive Offer Power Purchase Agreement entered into between Subcontractor and LADWP, dated July 31, 2014 (the "**FiT [A] PPA**"), Subcontractor has certain rights to enter into Qualified PPAs with LADWP, and will enter into such Qualified PPAs for the sale of energy produced by photovoltaic solar power systems (each, a "**FiT [A] System**") to be located at certain of the PV Site Locations (the "**System Locations**"). The System Locations are described in Exhibit B hereto, as modified from time to time in accordance with this Agreement. The FiT [A] Systems are described in Exhibit C hereto.

EXHIBIT V

E. Hecate Energy desires to subcontract and delegate, and Subcontractor desires to accept and agree to perform and observe, Hecate Energy's rights, duties, liabilities and obligations as Operator under the Operating Agreement to the extent related to the FiT [A] Systems and the System Locations, and grant the Rights of Access applicable to the System Locations (the "**System Access Rights**," and collectively with the System Access Rights, the "**Subcontracted Interests**"), subject to and in accordance with the terms and conditions hereinafter set forth. Under the terms of the Agreement, the delegation and subcontract of the Subcontracted Interests remains subject in all respects to the terms and conditions set forth in the Operating Agreement.

F. Pursuant to that certain Competitive Offer Power Purchase Agreement entered into between USPS LA SOLAR FIT "[B]", LLC (previously known as Hecate Energy Fit "[B]", LLC), a Delaware limited liability company (the "**Other Subcontractor**") and LADWP, dated July 31, 2014, the Other Subcontractor has certain rights to enter into Qualified PPAs with LADWP, and will enter into such Qualified PPAs for the sale of energy produced by certain other photovoltaic solar power systems (the "**Other Systems**") to be located at certain other PV Site Locations (the "**Other System Locations**").

G. Subject to and in accordance with the terms set forth in that certain other Sub-Operating Agreement for Photovoltaic Solar Power Systems at POLA (FiT [B]) to be entered into on the date hereof between Hecate Energy and Other Subcontractor (the "**Other Agreement**"), Hecate Energy subcontracts and delegates to Other Subcontractor, and Other Subcontractor agrees to perform and observe, Hecate Energy's rights, duties, liabilities and obligations as Operator under the Operating Agreement to the extent related to the Other Systems and Other System Locations, and grant the Rights of Access applicable to the Other System Locations (collectively, the "**Other Subcontracted Interests**"). Under the terms of the Other Agreement, the delegation and subcontract of Other Subcontracted Interests remains subject in all respects to the terms and conditions set forth in the Operating Agreement.

H. Pursuant to Section ___ of the Fourth Amendment, the City has consented to the delegation and subcontract of the Subcontracted Interests to Subcontractor pursuant to this Agreement, and the delegation and subcontract of the Other Subcontracted Interests to Other Subcontractor pursuant to the Other Agreement; provided further for the avoidance of doubt that such subcontracts and delegations do not give Subcontractor or Other Subcontractor any direct rights or interests with respect to the Subcontracted Interests and the Other Subcontracted Interests under the terms of the Operating Agreement, any privity with the City for purposes thereof or any rights against the City or any direct enforcement or performance rights under the Operating Agreement, and City has no liability or obligation to Subcontractor or Other Subcontractor with respect to any rights or interest conferred under this Agreement or the Other Agreement. All rights of Subcontractor and Other Subcontractor with respect to the Subcontracted Interests and the Other Subcontracted Interests are exercisable only under their respective agreements with Hecate Energy.

I. Capitalized terms used in this Agreement and not defined herein have the meanings ascribed thereto under the Operating Agreement.

EXHIBIT V

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants and agreement herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, Hecate Energy and Subcontractor agree as follows:

1. Subcontracted Rights and Subcontracted Obligations.

A. Subject to and in accordance with the terms of this Agreement, Hecate Energy hereby subcontracts and delegates to Subcontractor, and Subcontractor hereby subcontracts from Hecate Energy, the Subcontracted Interests; provided further for the avoidance of doubt, the Subcontracted Interests remain subject to the terms of the Operating Agreement. The rights, title and interest of Hecate Energy as Operator pursuant to the Operating Agreement with respect to the Subcontracted Interests are referred to herein as the “**Subcontracted Rights**”). Subcontractor’s Subcontracted Rights are exercisable only pursuant to this Agreement, and to the extent such rights are exercisable only by Operator directly pursuant to the Operating Agreement, Hecate Energy’s exercise of such Subcontracted Rights under the Operating Agreement shall be on behalf of Subcontractor and, where the Operating Agreement provides for discretion or choices in the manner of exercising any such right, Hecate Energy shall consult with Subcontractor and exercise such rights in the manner selected by Subcontractor, subject in all respects to the terms of the Operating Agreement. For the avoidance of doubt, the terms “Subcontracted Interests,” “Subcontracted Rights” and “Subcontracted Obligations” by definition include only the applicable rights and obligations of Operator as conferred under and subject to all limitations and requirements set forth in the Operating Agreement.

B. Subject to and in accordance with the terms of this Agreement and the Operating Agreement, Subcontractor agrees to perform all of Hecate Energy’s obligations and liabilities as Operator under the Operating Agreement to the extent applicable to the Subcontracted Interests (the “**Subcontracted Obligations**”); provided further for the avoidance of doubt, that nothing in this Agreement limits the obligations or liabilities of Hecate Energy to City under the Operating Agreement or releases Hecate Energy from any such obligations or liabilities.

C. The Subcontracted Interests include, without limitation, Hecate Energy’s rights and obligations as Operator to finance, develop, construct, install, operate, manage, maintain and conduct any other related services for the FiT [A] Systems (the “**Subcontract Scope of Work**”).

D. Hecate Energy hereby grants to Subcontractor the System Access Rights.

2. Term; FiT [A] System Term.

A. This Agreement shall continue in force for the term of the Operating Agreement (the “**Term**”), commencing on the date hereof and ending one (1) hour before the expiration date of the term of the Operating Agreement, as such date may be extended, or earlier terminated or canceled, pursuant to the terms of the Operating Agreement (the “**Termination Date**”).

B. The term of operation for each FiT [A] System (the “**System Term**”) shall commence on the PV System Commencement Date applicable to such “FiT [A] System (the “**System Commencement Date**”) and expire on the PV System Expiration Date applicable to such

EXHIBIT V

FiT A System (the “**System Expiration Date**”), in each case, as such date is determined under the Operating Agreement, including any early termination pursuant to the terms of the Operating Agreement.

3. **Compensation to Hecate Energy.** Subcontractor shall pay to Hecate Energy compensation in the amount that may be due from Hecate Energy to City under the terms of the Operating Agreement from time to time (the “**OA Compensation Payment**”). Notwithstanding the preceding, because this Agreement subcontracts and delegates only a portion of Hecate Energy’s entire Operating Rights under the Operating Agreement, it is understood and agreed that the foregoing payment obligation of Subcontractor to Hecate Energy is limited to the portion of the OA Compensation Payment and all other expenses payable by Hecate Energy to City under the Operating Agreement that is properly attributable to revenue received under the FiT [A] PPAs or that is otherwise properly attributable to the FiT [A] Systems and/or the System Locations (the “**Compensation**”).

4. **Removal of any FiT [A] System.**

A. **Temporary Removal of a FiT [A] System.** Subcontractor shall be entitled to the Compensation due from the City to Operator under the Operating Agreement as applicable to a temporary removal of a FiT [A] System (the “**System Compensation**”) and Hecate Energy shall pay over to Subcontractor the full amount of all System Compensation received from City from time to time under the Operating Agreement promptly following receipt.

5. **Permanent Removal of FiT [A] System.** Recognizing that many of the Subcontracted Rights and Subcontracted Obligations that arise in connection with a permanent removal of a FiT [A] System include discretion, judgment, decision-making and similar options or choices for the manner of exercise and/or decision-making (the “**Discretionary Interests**”), Hecate Energy shall consult with Subcontractor regularly and as is reasonable or necessary to ensure Hecate Energy’s actions and decisions with respect to the Discretionary Interests are undertaken so as to reflect the desires, choices, applicable facts and interests of Subcontractor. Such Discretionary Interests include, without limitation, provisions related to the calculating the reimbursement valuation applicable to the subject FiT [A] System (such as the amount of Tax Incentives lost and other factual inputs affecting the discounted cash flow analysis), negotiating with the City and conducting the appraisal procedure to determine the amount due from City as reimbursement for the permanent removal of the subject FiT [A] System (the “**System Price**”). Operator shall pay to the Subcontractor the System Price due from the City to Operator under the Operating Agreement, and Hecate Energy shall pay over to Subcontractor the full amount of the System Price received from City from time to time under the Operating Agreement promptly following receipt.

6. **Compliance With the Operating Agreement.**

A. Throughout the Term, Subcontractor shall comply with and be bound by the terms and conditions of the Operating Agreement to the extent applicable to the Subcontracted Interests.

B. The provisions of the Operating Agreement are hereby incorporated in their entirety as additional terms and covenants of this Agreement as if they were recited herein. If

EXHIBIT V

any of the terms of the Operating Agreement are inconsistent with any terms of this Agreement, the terms of the Operating Agreement shall control.

C. Subcontractor's duties and obligations with respect to the Subcontracted Obligations shall mirror those of Operator under the Operating Agreement, and with respect to any failure by Subcontractor to perform the Subcontracted Obligations, Hecate Energy shall be entitled under this Agreement to the same rights, privileges and remedies accruing to City under the Operating Agreement with respect to such failure.

D. To the extent the Operating Agreement requires or necessitates actions be undertaken directly by Operator with respect to any portion of the Subcontracted Interests ("Direct Actions"), Subcontractor shall take all actions it is able and permitted to take, and to provide Hecate Energy with all notices, information, documentation and the like reasonably available to Subcontractor to enable Hecate Energy to take the Direct Actions pursuant to the Operating Agreement, which shall include, for example, providing notices and status updates to Hecate Energy to enable Hecate Energy to comply with any requirements to provide the same or related information to the City, providing copies of documents, reports or other written materials to Hecate Energy that Hecate Energy will then provide to the City, providing information and related documentation to Hecate Energy to enable Hecate Energy to engage in discussions, negotiations with the City, and obtaining Governmental Approvals and providing Hecate Energy with documents it needs to establish to the satisfaction of the City that such Governmental Approvals were obtained. For purposes of this Agreement, Subcontractor's obligations under this Agreement with respect to the Subcontracted Interests shall be considered satisfied once Subcontractor complies with all requirements of performance by it (i.e., actions other than the Direct Actions). Hecate Energy shall be responsible for taking all Direct Actions under the Operating Agreement, provided that Subcontractor satisfies its obligations to enable Hecate Energy to take the Direct Actions.

E. In addition, Hecate Energy is responsible for providing Subcontractor with all notices, documents and other information related to all Subcontracted Obligations to enable Subcontractor to perform such obligations as required under the Operating Agreement, which shall include for example conveying to Subcontractor the content of communications from the City to Hecate Energy such as the requirement to temporarily remove a FiT [A] System. Subcontractor shall be fully protected in acting or refraining from acting upon any written notice, certificate, instruction, request, legal opinion or other paper or document (whether in its original, electronic mail, or facsimile form), as to the due execution thereof and the validity and effectiveness of the provisions thereof and as to the truth of any information contained therein, which Subcontractor in good faith believes to be genuine.

F. Other specific instances of such corollary rights and obligations of Hecate Energy and Subcontractor to each other include that Subcontractor shall notify Hecate Energy of the occurrence of an emergency related to a FiT [A] System promptly following actual knowledge of such occurrence and with sufficient time to enable Hecate Energy to provide notice to the City of such occurrence within twenty-four hours (24) of Subcontractor's actual knowledge. Similarly, Subcontractor shall provide Hecate Energy with all information and take all actions reasonably needed or requested by Hecate Energy to enable Hecate Energy to comply with the terms of the Operating Agreement with respect to excavations at the System Locations.

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7. FiT [A] Systems.

A. The “**Substantial Completion Date**” for each FiT [A] System is the applicable Substantial Completion Date for such FiT [A] System under the Operating Agreement, and the “**Commercial Operation Date**” for each FiT [A] System is the applicable Commercial Operation Date for such FiT [A] System under the Operating Agreement.

B. Subcontractor shall notify Hecate Energy in writing of the Substantial Completion Date and Commissioning of each of the respective FiT [A] Systems. Hecate Energy shall schedule and arrange for the City to conduct an inspection of each of the FiT [A] Systems for a date, mutually agreeable to Subcontractor and City, which is within ten (10) business days of Subcontractor’s notification of the Substantial Completion Date of the applicable FiT [A] Systems. Following notification from Hecate Energy, Subcontractor shall permit such visits to the System Locations for inspection of the FiT [A] Systems pursuant to the terms of this Agreement, which may also include any follow up inspections by the City permitted under the terms of the Operating Agreement.

C. Subcontractor shall notify Hecate Energy of the date on which it intends to perform Commissioning with respect to each FiT [A] System, and Hecate Energy shall provide copies of such notice to the City under the Operating Agreement. Within [5] days of the successful Commissioning, Subcontractor shall provide to Hecate Energy written notification of the Commercial Operation Date for each respective FiT [A] System, and shall cause the as-built condition of a FiT [A] System to be documented during Commissioning and provided to Hecate Energy.

8. **Interconnection Agreement.** Subcontractor shall, at its sole cost and expense, negotiate and enter into an agreement with the LADWP for Interconnection with respect to the FiT [A] Systems (as amended, supplemented or otherwise modified from time to time, the “**Interconnection Agreement**”). Subcontractor shall provide to Hecate Energy copy(ies) of the fully executed and final Interconnection Agreement for each FiT [A] System, and Hecate Energy shall cause such copies of the Interconnection Agreements as Exhibit E, E-1, E-2, etc., as applicable, to the Operating Agreement. Subcontractor shall provide Hecate Energy with all information and supporting documents to enable Hecate Energy to satisfy its obligations with respect to invoices for the services performed during the preceding month with respect to the Subcontracted Interests.

9. **PPAs for the FiT [A] Systems.** Subcontractor shall be responsible for entering into an agreement to sell Energy from an Eligible Renewable Electricity Resource as defined in the FiT Program with LADWP (the “**PPA(s)**”) to satisfy Hecate Energy’s obligation under Article 1, Section 2.2.1 of the Operating Agreement with respect to each FiT [A] System. Subcontractor shall provide to Hecate Energy copy(ies) of the fully executed and final PPA(s), and Hecate Energy shall provide such copies to the City in accordance with the terms of the Operating Agreement. Exhibit C to the Operating Agreement as applicable to the PPA(s) shall be incorporated in the terms of this Agreement immediately upon each PPA being incorporated in Exhibit C to the Operating Agreement (including any supplements, updates or amendments thereto), and shall be automatically attached as Exhibit D hereto. Subcontractor shall comply with all the terms, conditions, and provisions of the PPA. In the event LADWP and Subcontractor amend a PPA or

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add supplemental documents to any PPA, Subcontractor shall provide Hecate Energy copy(ies) of the fully executed and final amendment(s) and/or supplemental documents, and Hecate Energy shall provide such copy(ies) to the City in accordance with the terms of the Operating Agreement. Upon termination of any PPA, Subcontractor shall notify Hecate Energy of such termination and shall remove the applicable FiT [A] System at Subcontractor's sole cost and expense and in accordance with the requirements under the Operating Agreement.

10. **City's Obligations.** Hecate Energy shall not be liable to Subcontractor under this Agreement to the extent any breach by City of the term of the Operating Agreement, including with respect to providing services related to the Subcontracted Interests. In the event that City fails to furnish required services or fails to perform any other obligation imposed on City by the Operating Agreement with respect to the Subcontracted Interests, Hecate Energy shall cooperate with Subcontractor in attempting to obtain to enforce any rights or remedies available to Operator under the Operating Agreement; provided, however, that Subcontractor shall reimburse Hecate Energy for any and all costs and expenses (including reasonable attorneys' fees) incurred by Hecate Energy in connection therewith.

11. **Condition and Delivery of the System Locations.** The System Locations shall be delivered to Subcontractor in "as is" condition [as of the date of this Agreement] except as expressly provided herein. Hecate Energy makes no warranty or representation as to the condition of any System Location, the compliance of any System Location with codes or applicable law, or that any System Location is suitable for Subcontractor's use.

12. **Termination and Surrender.**

A. Subcontractor agrees to surrender each System Location upon the expiration of the applicable FiT [A] Term, and to surrender all System Locations upon the expiration of the Term or earlier termination of this Agreement in accordance with the terms and conditions hereof, in each case, in the condition specified in the Operating Agreement, which shall include the removal of all improvements constructed by Subcontractor, at Subcontractor's sole cost and expense, unless otherwise requested by Hecate Energy.

B. If Hecate Energy requests Subcontractor to temporarily or permanently remove any part of the FiT [A] Systems from or to temporarily or permanently cease operations of any part of the FiT [A] Systems in order to comply with the applicable requirements under the Operating Agreement, Subcontractor shall promptly remove such part of the FiT [A] System(s) and perform all related Subcontracted Obligations. Hecate Energy agrees to exercise on behalf of and, if applicable, as directed by Subcontractor, the Subcontracted Rights as applicable to the City's rights under the Operating Agreement with respect to temporary and permanent removals of the FiT [A] Systems.

13. **FiT [A] Systems.** Subcontractor shall design, construct and install the FiT [A] Systems in accordance with the applicable specifications under the Operating Agreement and applicable exhibits thereto, and so as to ensure the FiT [A] Systems collectively are capable of generating no less than [] megawatts of solar power during the Term.¹ [Hecate Energy agrees

¹ NTD - The aggregate total of the required megawatts applicable to the FiT[A] Systems under this Agreement and the required megawatts for the Other Systems under the Other Agreement shall be equal to 10 megawatts.

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to take all action necessary to cause the FiT [A] Systems to be considered PV Systems under the Operating Agreement. The FiT [A] Systems shall be installed and operated at the System Locations.

14. **Ownership of FiT [A] Systems.** Prior to the Commercial Operation Date for each FiT [A] System, Hecate Energy shall cause Subcontractor to own 100 percent of all right, title and interest in such FiT [A] System, including without limitation, by virtue of an assignment, transfer and/or contribution of all such ownership rights (including all related warranties) in the FiT [A] System to Subcontractor by Hecate Energy or any affiliate of Subcontractor and Hecate Energy. Hecate Energy further agrees to take whatever action may be necessary to cause 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 a System Location by or on behalf of Subcontractor from time to time during the Term to be and remain the personal property of Subcontractor; provided that any improvements to the System Locations constructed by the Subcontractor for the purposes of this Agreement shall be subject to approval from Hecate Energy prior to the start of construction.

15. **Installments at the System Locations.** Subcontractor shall not make any alterations or additions to the System Locations without first obtaining the consent in writing of Hecate Energy. With respect to any installation made pursuant to such consent, Subcontractor shall leave such installation in the System Locations at the end of the term, unless Hecate Energy's consent shall have specified that such installation must be removed at the end of the Term, in which case Subcontractor shall remove such installation at or prior to the end of the Term. Subcontractor shall repair any damage occurring in connection with any removal of any alterations or additions to the System Locations and, upon removal, shall restore the System Locations to the condition required by the Operating Agreement.

16. **Permitted Use.** Subcontractor shall use the System Locations solely for the purpose of the installation, construction, operation, interconnection, inspection, maintenance, repair, improvement, enhancement, alteration, replacement, and removal of the FiT [A] Systems and uses incidental thereto (collectively, the "**Permitted Use**") in accordance with the terms of this Agreement.

17. **Coordination.** To minimize disruption to the Harbor Department and tenant operations, Hecate Energy shall coordinate with the Harbor Department and any of the Harbor Department's tenants operating at the System Locations all development, construction, installation, operation, management and maintenance work required by Subcontractor. Subcontractor shall notify Hecate Energy of any site impacts to tenants on the System Locations that cannot be mitigated and provide Hecate Energy with proposed solutions to those impacts. Any lay down area used by the Subcontractor for the purposes of this Agreement shall be coordinated by Hecate Energy with Harbor Department and tenants prior to the start of construction.

18. **Discretionary Actions.** The Discretionary Interests shall also include, without limitation, Subcontracted Interests with respect to which Operator has discretion to: (i) undertake or not undertake any action, (ii) give or withhold consent, (iii) choose to make or not make an election, declare a default, exercise remedies, provide notices or initiate communications, (iv) enter

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into or conduct negotiations or discussions, offer suggestions or recommendations or provide an opinion, (v) determine whether a standard such as "reasonable satisfaction" is met, (vi) make any decision, and (vii) determine or provide the factual information used to reach any conclusion, valuation or similar assessment; provided further for the avoidance of doubt, an action, such as a designation or identification that is undertaken to comply with a formal requirement, but which does give Operator any discretion with respect to the manner of taking the action or which otherwise does not permit discretion, is not a Discretionary Interest. It is understood and agreed that Subcontractor has the right for purposes of this Agreement to make all determinations with respect to Discretionary Interests and, therefore, to the extent any Direct Action is with respect to a Discretionary Action, Hecate Energy shall consult with and take all reasonable action, subject to the terms of the Operating Agreement, to undertake the Direct Action so as give effect to Subcontractor determinations with respect to such Discretionary Interests and the exercise by Subcontractor of its rights with respect to Discretionary Interests under the terms of this Agreement. This provision is intended solely for the benefit of the Subcontractor and its successors and permitted assigns and is not intended to and will not entitle any other parties to any defense, claim or counterclaim, or confer any rights or benefits on any party.

19. Access to System Locations.

A. Hecate Energy hereby grants to Subcontractor the System Access Rights to the extent applicable to the Site Locations, and shall consult with Subcontractor and undertake any Direct Actions concerning Discretionary Interests with respect to the System Access Right so as to give effect to Subcontractor's rights under this Agreement, including with respect to reaching agreement with the City under the Operating Agreement, prior to the installation of any FiT [A] System on the Site Locations by Subcontractor, as to the terms of such Site Access Rights, including the nature and location of such utility equipment. In accordance with the terms of the Operating Agreement, Hecate Energy shall cause the agreed upon Site Access Rights reflected in Exhibit F to the Operating Agreement to be reflected in Exhibit E to this Agreement and incorporated herein.

B. Hecate Energy shall have the right to enter the System Locations during ordinary business hours or other times for the purpose of inspecting the System Locations to ensure Subcontractor's compliance with its obligations under this Agreement, and to perform any obligations of Hecate Energy under the Operating Agreement. In doing so, Hecate Energy shall, to the extent reasonably possible, minimize interference with the business conducted by the Subcontractor in the System Locations.

20. System Location Modification.

A. Subject to the terms set forth in this Agreement, Hecate Energy may modify Exhibit B hereto in its sole discretion. Hecate Energy shall notify Subcontractor in writing in the event of a Site Location Modification pursuant to the Operating Agreement that is with respect to any System Location (a "System Location Modification"); provided that, in the event there is a proposed System Location Modification that is subject to consent from Hecate Energy pursuant to the Operating Agreement, Hecate Energy shall consult with Subcontractor as reasonably necessary to effect such Direct Action so as to give effect to the Subcontractor's exercise of its Discretionary Interest under this Agreement, subject to the terms of the Operating Agreement.

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B. Hecate Energy shall have the right to modify Exhibits F hereto without Subcontractor's consent to accurately reflect the location of any and all System Access Rights with respect to a System Location after installation of the applicable FiT [A] System in the event the City shall modify Exhibit F to the Operating Agreement to accurately reflect the location of any Rights of Access with respect to such System Location.

C. Hecate Energy shall consult with Subcontractor regarding the Discretionary Interest as applicable to any discussions between Hecate Energy and Executive Director under the Operating Agreement to review substitute site locations to be made available for any FiT [A] System (a "**System Substitute Location**"), and such consultation shall be conducted as is reasonably necessary to enable Hecate Energy to undertake such Direct Action in a manner so as to give effect to the Subcontractor's exercise of its Discretionary Interest under this Agreement, subject to the terms of the Operating Agreement. Any System Substitute Location identified and determined acceptable by Hecate Energy and City under the Operating Agreement will be made available by Hecate Energy to Subcontractor on the same terms and conditions as set forth in this Agreement for the System Locations.

21. **Additional Covenants of Hecate Energy.**

A. Hecate Energy hereby agrees to take all actions necessary to ensure the effectiveness of the delegations and subcontract to Subcontractor pursuant to this Agreement, including without limitation, causing the identification of the FiT [A] Systems, Site Locations and PPAs, as set forth in the exhibits to this Agreement to be so considered for purposes of the Operating Agreement and shall cause all information in exhibits hereto to be properly and immediately reflected in the relevant exhibits to the Operating Agreement.

B. Hecate Energy agrees to consult with the Subcontractor prior to exercising any consent rights, entering into negotiations with the City or otherwise taking discretionary actions of Hecate Energy as Operator under the Operating Agreement, and to consult with Subcontractor to the extent reasonable or necessary to ensure Hecate Energy's Direct Actions are undertaken in accordance with the requirements of this Agreement, including with respect to giving effect to Subcontractor's wishes with respect to all Discretionary Interests.

C. To the extent Subcontractor's right to exercise any Subcontracted Rights or perform any Subcontracted Obligations under the terms of this Agreement is subject to receipt of any notice, approval, consent, document or other written materials from City under the terms of the Operating Agreement, Hecate Energy agrees to and shall be required under the terms of this Agreement to promptly notify Subcontractor in writing of the satisfaction of the applicable requirement and provide copies of such notice, approval, consent, document or other written materials, and take any other reasonable and necessary actions to enable Subcontractor to exercise the Subcontracted Rights and perform the Subcontracted Obligations as soon as permissible under the terms of the Operating Agreement.

D. Hecate Energy covenants and agrees that Subcontractor, upon paying the Compensation and all other charges herein provided for, and observing and keeping the covenants, agreements and conditions of this Agreement on its part to be kept, shall lawfully be entitled to the Subcontracted Rights, including without limitation the Site Access Rights, during the Term, or any extension thereof,. Without limiting the preceding, Hecate Energy covenants and agrees that, so

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long as no default on the part of Subcontractor under this Agreement is continuing, it will enforce the provisions of any agreement between Hecate Energy, as Operator under the Operating Agreement and any party with an interest related to the System Access, including without limitation, any rights with respect to any System Location so as to limit, to the extent of the terms of such agreement, the Subcontractor's loss of the Site Access Rights on account of a default on the part of such other party under any applicable agreement.

22. Default.

A. Each of the following shall constitute a default by Subcontractor hereunder, [but only if such action or inaction would also cause a default and give rise to a termination of the Operating Agreement by City]: failure by Subcontractor to pay Compensation, or any other amount owed pursuant to this Agreement, when due; failure by Subcontractor to perform any other obligation imposed by this Agreement; the appointment of a trustee or receiver to take possession of all or substantially all the assets of Subcontractor, unless possession is unconditionally restored to Subcontractor within thirty (30) days and the trusteeship or receivership is dissolved; the filing by or against Subcontractor of any proceeding under any insolvency or bankruptcy law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within sixty (60) days; any execution or other judicially authorized seizure of all or substantially all the assets of Subcontractor located on the premises at the System Locations, or of the Subcontracted Interests, unless that seizure is discharged within thirty (30) days; and termination of the PPAs.

B. In the event of a default by Subcontractor, Hecate Energy may terminate this Agreement and once Hecate Energy has terminated this Agreement, Subcontractor shall immediately surrender the Site Locations to Hecate Energy in accordance with the terms and conditions of this Agreement. In addition, Hecate Energy shall have all remedies against Subcontractor that are applicable and may be enforced by City against Hecate Energy under the Operating Agreement. Hecate Energy may cure any default by Subcontractor and any expenses incurred therewith shall be deemed Compensation hereunder, due from Subcontractor on demand by Hecate Energy.

23. Assignment, and Sublease.

A. Subcontractor may not assign transfer or delegate any of its rights, duties, or obligations or any portion thereof under this Agreement, or subcontract any of the Subcontracted Interests, without the prior written consent of Hecate Energy. Any purported assignment, transfer, subcontract or delegation in violation of this section shall be null and void and of no force or effect. Notwithstanding the foregoing, Operator may transfer, pledge, encumber, or assign this Agreement in accordance with the form of Consent to Security Interest attached to the Fourth Amendment and incorporated by reference in the Operating Agreement as Exhibit S and which final form shall require prior Board and Council approval upon Operator securing the specific lender.

B. If the Hecate Energy provides its prior written consent to a delegation of Subcontractor's rights, duties, or obligations or any portion thereof under this Agreement to a third party ("Delegatee") in accordance with this Section 23 of this Agreement, Subcontractor shall cause the Delegatee not to assign, transfer or delegate any of its rights, duties or obligations or any portion thereof under such delegation without the prior written consent of the Hecate Energy.

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C. For the purpose of this Section 23, the following shall be deemed an assignment or transfer of all of or Subcontractor's rights, duties, or obligations, requiring the prior written consent of Hecate Energy:

(i) If Subcontractor is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of Subcontractor, or the sale or other transfer of a material percentage of the capital stock or ownership interests of Subcontractor. The phrase "material percentage" shall mean the ownership of, and the right to vote, stock or membership or ownership interests possessing forty-nine (49%) or more of the total combined voting power of all classes of an entities' capital stock or ownership interests issued, and outstanding.

(ii) If Subcontractor is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of any partner or partners owning a total of forty-nine (49%) or more of the partnership, or the dissolution or deemed dissolution of the partnership.

(iii) If Subcontractor, or any party constituting Subcontractor, is an individual, the death or incapacity of Subcontractor.

24. **Indemnification by Subcontractor.** Subcontractor agrees to indemnify Hecate Energy and hold Hecate Energy harmless from and against any and all claims, damages, costs and expenses (including reasonable attorneys' fees) arising from (i) the business conducted by Subcontractor at the System Locations; (ii) the non-performance, non-observance, breach or default by Subcontractor of any term covenant or agreement on the part of Subcontractor to be performed pursuant to the terms of this Agreement; or (iii) from any act or omission of Subcontractor, its agents, contractors, servants, employees, concessionaires or licensees. In case any action or proceeding is brought against Hecate Energy by reason of any such claim, Subcontractor, upon notice from Hecate Energy, covenants to diligently defend such action or proceeding, and to retain legal counsel reasonably satisfactory to Hecate Energy in connection therewith.

25. **Waiver.** The waiver of any provision of this Agreement by any party shall be limited to the particular instance involved and shall not be deemed to waive any other rights of such party under any other terms of this Agreement. A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

26. **Subordination.** This Agreement and the rights of the Subcontractor hereunder are subject to and subordinate to the terms and conditions of the Operating Agreement.

27. **Notices.** All notices, consents and other communications required or permitted hereunder shall be in writing and shall be mailed, hand delivered, or sent by a nationally recognized overnight courier service, to Subcontractor at [____], and to Hecate Energy at [____]. In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to Hecate Energy shall

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be addressed to _____, and notice to Subcontractor shall be addressed to _____. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

28. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

29. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument

30. **Independent Contractor.** Subcontractor, in the performance of the Subcontract Scope of Work, is an independent contractor and not an agent or employee of the City or Hecate Energy. Subcontractor shall not represent itself as an agent or employee of the City or Hecate Energy and shall have no power to bind the City in contract or otherwise.

31. **Integration.** This Agreement and the terms of the Operating Agreement to the extent related to the Subcontracted Interests, which are incorporated by reference, contain the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.

32. **Severability.** Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

33. **Construction of Agreement.** This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty

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or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

34. **Titles and Captions.** The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

35. **Exhibits; Articles.** All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.

36. **Taxpayer Identification Number (TIN).** Subcontractor declares that its authorized TIN is _____.

[Signatures Immediately Follow.]

DRAFT

IN WITNESS WHEREOF, Hecate Energy and Subcontractor have caused this Agreement to be duly executed as of the day and year first above written.

Hecate Energy Harborside, LLC, a Delaware
limited liability company

By: _____
Name:
Title:

USPS LA Solar FiT “[A]”, LLC (f/k/a/ Hecate
Energy FiT “[A]” LLC), a Delaware limited
liability company

By: _____
Name:
Title: