

TRANSMITTAL			0150-10534-0003
TO Eugene D. Seroka, Executive Director Harbor Department	DATE 11/30/17	COUNCIL FILE NO.	
FROM The Mayor		COUNCIL DISTRICT 15	
<p>PROPOSED FOURTH AMENDMENT TO OPERATING AGREEMENT NO. 15-3354 WITH HECATE ENERGY HARBORSIDE LLC</p> <p>Transmitted for further processing and Council consideration. See the City Administrative Officer report attached.</p> <p> MAYOR (Ana Guerrero)</p> <p>RHL:ABN:101800421</p>			

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: November 21, 2017

CAO File No. 0150-10534-0003

Council File No.

Council District: 15

To: The Mayor

From: Richard H. Llewellyn, Jr., Interim City Administrative Officer

Reference: Correspondence from the Harbor Department dated November 13 2017; referred by the Mayor for report dated November 16, 2017

Subject: **PROPOSED FOURTH AMENDMENT TO OPERATING AGREEMENT NO. 15-3354 WITH HECATE ENERGY HARBORSIDE LLC**

RECOMMENDATIONS

That the Mayor:

1. Approve the Harbor Department (Port) Resolution No. 17-8179 authorizing the proposed Fourth Amendment to Operating Agreement No. 15-3354 to Hecate Energy Harborside LLC; and,
2. Return the document to the Port for further processing, including Council consideration.

SUMMARY

The Harbor Department (Port) Board of Harbors Commissioners (Board) requests approval of Resolution No. 17-8179 authorizing a proposed Fourth Amendment (Amendment) to Operating Agreement No. 15-3354 (Agreement) with Hecate Energy Harborside LLC (Hecate). In 2015, the Mayor, Council and Board approved a 20-year Agreement to develop, construct, install, manage, maintain and operate photovoltaic (PV) solar power systems (PV Systems) at 12 specific locations throughout the Port of Los Angeles (POLA). A PV system is a method of converting solar energy into direct current electricity and employs solar panels composed of a number of solar cells to supply usable solar power. The PV systems will generate approximately 10 megawatts (MW) of electricity for sale to the City of Los Angeles (City) Department of Water and Power (LADWP) to fulfill a commitment to install a minimum of 10 MW of clean renewable energy within the POLA.

The business arrangement is pursuant to Power Purchase Agreements between Hecate and LADWP. The PV Systems were anticipated to be in service for a term of 20 years and, initially, begin commercial operations by December 31, 2016. The proposed PV Systems are to be compatible with the POLA's Clean Air Action Plan (CAAP), which was established in 2006. The Port entered into an agreement with the State of California (State) Department of Justice, Office of the Attorney General (State AG) to install a minimum of 10 MW of PV systems in the POLA. The Agreement supports the larger goals of the CAAP to expand the use of clean energy and related infrastructure while continuing to improve air quality in the region. The PV System will help spur the clean energy economy in the Port and City to meet renewable energy goals.

The proposed Fourth Amendment consists of a request by Hecate to the Port to modify the Agreement in order to account for certain planning development and finance challenges currently faced by Hecate. The Amendment will extend the Agreement and modify milestones for Hecate to achieve commercial operations (operations) that are required for the PV Systems and to transact the sale of energy to LADWP by June 2017. The Port anticipates that the pre-commercial operations, which includes construction of the PV System, as set forth by LADWP and third-party permitting agencies will be completed by December 31, 2017.

The Port states that Hecate has faced several delays in securing permits and complications in obtaining and structuring financing plans related to the terms of the Agreement. These delays have caused Hecate to be in technical default of the Agreement since July 2017. The Port staff has been working with Hecate and its new partner, True Green Capital Management LLC (True Green), to modify contracting terms and develop financing to begin construction and installation of the PV Systems. True Green is an investment management firm that specializes in funding and financial alternative energy projects in the United States through self-managed investment funds and "tax-equity" investors. Potential investors can take advantage of Federal tax credits offered for solar and other alternative energy development. Hecate and True Green state that construction will begin upon approval of the Amendment. The proposed Amendment will include the following changes:

- Restructure and transfer ownership from Hecate parent's company, Hecate Energy LLC, to USPS LA Solar Holdings LLC (LA Solar), a subsidiary of investment funds managed by True Green, to facilitate financing for the PV Systems;
- Extend the milestone dates for pre-commercial operations for the PV Systems from June 2017 to December 31, 2017, to ensure the Port fulfills its commitment to the State AG to provide 6.7 megawatts by March 2018;
- Authorize the Port with greater control over duties, transfers and rights under the Agreement;
- Change two sub-contractors under Hecate to those owned and controlled by LA Solar;
- Provide notice to Port tenants, pursuant to the Port lease provisions, to install, operate and maintain the PV Systems on the property of the tenants and to insure and indemnify Port tenants as a third party to the amended term, rights and conditions in the Agreement;
- Require the Port to use its best efforts not to interfere or impede the material operation of the PV Systems, such as obstruction of sunlight, according to the provisions of the Agreement, and,
- Acknowledge, except as contained in the proposed Amendment, all other terms and conditions of the Agreement will remain in full force and effect (i.e., Affirmative Action).

The Port states that the proposed Amendment is consistent with the LADWP determination: to allow Hecate/True Green and other facility-occupied tenants to continue with the PV Systems; to finalize additional construction financing; and, to make changes to permitting and related issues for the site locations. The solar site locations include warehouse roofs, parking lots and underused ground areas. All permits for the rooftop PV Systems have been submitted and have undergone POLA engineering review. According to the Port, Hecate has submitted all design drawings and permits from the City's Building and Safety Department for the installation of six rooftop PV Systems. Upon approval of this Amendment, Hecate and True Green will begin installation on three rooftop PV Systems and the other three will begin after final repairs are made to those rooftops. The PV Systems for the parking lots are still under design and review with other permitting agencies, and will begin upon approval of the permits.

The approval of the proposed Amendment will allow for the necessary finances with the appropriate tax equity investors to fund the installation of the PV Systems. The Port states that failure to approve the proposed Amendment may result in the suspension of the project, cancellation of the proposed Agreement, and not fulfilling the deadlines set forth in the Agreement between the Port and State AG. In addition, LADWP has the right to cancel the contract for selling electricity generated from Port installations, if the Port does not produce the agreed upon minimum of 10 MW from its PV Systems.

BACKGROUND

In 2006, the POLA and Port of Long Beach adopted a joint action to improve air quality in the South Coast Air Basin by adopting the CAAP to reduce the health risks posed by air pollution from port-related operations such as ships, trains, trucks, terminal equipment and other activities. The Port states that its PV System is compatible with the POLA's CAAP to expand the use of clean energy, reduce greenhouse gas emissions, and provide electricity at the Port that would otherwise come from the LADWP electrical grid.

In 2015, the joint action led to an agreement between the Port and Hecate to provide a commercial operation for PV Systems to the LADWP. The Agreement also complies with the State to support the CAAP by agreeing to install a minimum of 10 MW of PV Systems in 12 sites within the POLA. The 12 locations will generate at least 10 MW of clean renewable energy.

In March 2016, the Port approved the First Amendment with Hecate to make operational changes. In July 2016, the Second Amendment was approved to change the list of site locations for the PV Systems. The changes were due, in part, to a lengthy CEQA review process, which would have delayed meeting the deadline to start the commercial operation. In February 2017, the Third Amendment provided additional insurance and indemnification (insure/reimburse after loss) at the various site locations and extended the deadline to start the operations of the PV Systems. The Port Director of Environmental Management states that the required environmental review is due for each PV System site location at the time the operator submits an application for the Port project and prior to obtaining all necessary approvals, pursuant to the Agreement and CEQA compliance.

FISCAL IMPACT STATEMENT

Approval of the proposed Fourth Amendment to the Agreement with Hecate and True Green will have no effect on compensation to the Port. This action changes the start date of commercial operations and the amended actions listed in the Port report. Each solar power system (PV System) will be in operation for 20 years, beginning on the operational date of each site location. The Port will be paid approximately \$146,090 per year and a total of \$2,931,800 for 10 megawatts from the sale of the electricity to the LADWP over the 20-year term of the Agreement. Revenue will be deposited into the Harbor Revenue Fund.