

OPERATING AGREEMENT
BETWEEN THE CITY OF LOS ANGELES
AND
HECATE ENERGY HARBORSIDE LLC.
FOR THE PHOTOVOLTAIC SOLAR POWER SYSTEMS

THIS OPERATING AGREEMENT ("Agreement"), is made and entered into this 15 day of October, 2015, 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 requires specialized services for the development, construction, installation, operation, management and maintenance of photovoltaic solar power systems at the Port of Los Angeles ("POLA");

WHEREAS, City released a Request for Proposals for Photovoltaic Solar Power Systems ("RFP") on October 15, 2014; and

WHEREAS, Operator submitted a proposal ("Proposal") and was selected based on the evaluation criteria set forth in the RFP; and

WHEREAS, Operator possesses extensive experience in the financing, development, construction, installation, operation, management, and maintenance of photovoltaic solar power systems and by virtue of training and experience, is well-qualified to provide such specialized services to City; and

WHEREAS, by reason of the nature and length of the specialized services required by City, it is not economical or feasible for City to have such specialized services performed by its own employees;

NOW, THEREFORE, in consideration of the covenants, terms, and conditions hereinafter contained to be kept and performed by the respective parties hereto, it is mutually agreed as follows:

ARTICLE 1: SPECIFIC TERMS AND PROVISIONS

Section 1. Term of Agreement.

1.1 Term. The term of this Agreement ("Term") shall commence on the date of its execution by the Executive Director upon authorization by the Board and Los Angeles City Council ("Commencement Date") and shall expire ("Expiration Date") on the twentieth (20th) anniversary of the Commercial Operation Date (as defined below) of

OPERATING AGREEMENT
BETWEEN THE CITY OF LOS ANGELES
AND
HECATE ENERGY HARBORSIDE LLC.
FOR THE PHOTOVOLTAIC SOLAR POWER SYSTEMS

THIS OPERATING AGREEMENT ("Agreement"), is made and entered into this _____ day of _____, 2015, 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 requires specialized services for the development, construction, installation, operation, management and maintenance of photovoltaic solar power systems at the Port of Los Angeles ("POLA");

WHEREAS, City released a Request for Proposals for Photovoltaic Solar Power Systems ("RFP") on October 15, 2014; and

WHEREAS, Operator submitted a proposal ("Proposal") and was selected based on the evaluation criteria set forth in the RFP; and

WHEREAS, Operator possesses extensive experience in the financing, development, construction, installation, operation, management, and maintenance of photovoltaic solar power systems and by virtue of training and experience, is well-qualified to provide such specialized services to City; and

WHEREAS, by reason of the nature and length of the specialized services required by City, it is not economical or feasible for City to have such specialized services performed by its own employees;

NOW, THEREFORE, in consideration of the covenants, terms, and conditions hereinafter contained to be kept and performed by the respective parties hereto, it is mutually agreed as follows:

ARTICLE 1: SPECIFIC TERMS AND PROVISIONS

Section 1. Term of Agreement.

1.1 Term. The term of this Agreement ("Term") shall commence on the date of its execution by the Executive Director upon authorization by the Board and Los Angeles City Council ("Commencement Date") and shall expire ("Expiration Date") on the twentieth (20th) anniversary of the Commercial Operation Date (as defined below) of

the last PV System (as defined below); subject, however, to earlier termination in accordance with the provisions set forth herein.

1.1.1 PV System Term. The term ("PV System Term") of each respective PV System (as defined below) shall commence ("PV System Commencement Date") on each PV System's respective Commercial Operation Date and expire on the twentieth (20th) anniversary thereof ("PV System Expiration Date"); subject, however, to earlier termination in accordance with the terms of this Agreement. In no event shall the term of operation of an individual PV System go beyond twenty (20) years.

1.1.2 PV System Term Activation Report. The dates for each respective PV System Term shall be established in a written document in the form attached hereto as Exhibit D, "PV System Activation Form." Each PV System shall have its own respective PV System Activation Form and shall be numbered and attached to this Agreement as Exhibit D-1, D-2, etc., as applicable without further action of the Board.

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) is fully constructed and commissioned (as defined below), with the exception of items on a punch list.

1.3 Commercial Operation Date. For the purposes of this Agreement, "Commercial Operation Date" shall mean the date a PV System is in full commercial operation with energy sold to the City of Los Angeles Department of Water & Power ("LADWP"). "Energy" shall mean the electrical energy generated by the PV System expressed in units of kilowatt hour or kWh.

Section 2. Rights Granted to Operator

2.1 Scope of Work. Operator shall finance, develop, construct, install, operate, manage, maintain and conduct any other related services for up to twelve (12) photovoltaic solar power systems ("PV System(s)") as agreed upon by City and Operator at POLA in accordance with the terms and conditions set forth in this Agreement. Operator's responsibilities include, but are not limited to, financing, engineering, acquiring all required permits, procurement, installation (including utilities), security (including TWIC cards for Operator's employees and contractors at Operator's expense), operation and maintenance, transportation, labor, materials, and any temporary or interim facilities required to maintain essential existing functions in operation throughout the operational period at each of the sites. Operator shall have the right and obligation to perform the functions as described herein and in the RFP and Proposal, which is attached hereto as Exhibit A and Exhibit B, respectively, and incorporated herein by reference. To the extent Exhibit A and Exhibit B conflicts with any terms of this Agreement, this Agreement shall prevail.

2.1.1 City's Right for Other Sites. City reserves the right to enter into or contract with any other companies or entities to allow use of any other sites, locations, or areas at POLA for the installation and operation of solar power systems.

2.2 City of Los Angeles Los Angeles Department of Water and Power. Operator shall comply with LADWP Feed-in Tariff Program ("FiT Program") Guidelines, which may be modified from time to time at the sole discretion of LADWP, as applicable to the PV Systems.

2.2.1 PPA. Operator shall be solely responsible for entering into an agreement to sell Energy from an Eligible Renewable Electricity Resource as defined in the FiT Program with LADWP ("PPA(s)"). Operator shall provide to City copy(ies) of the fully executed and final PPA(s) which shall become Exhibit C to this Agreement without any further action of the Board. Operator shall comply with all the terms, conditions, and provisions of its respective PPA(s) with LADWP. In the event LADWP and Operator amend the or add supplemental documents to respective PPA(s), Operator shall provide City copy(ies) of the fully executed and final amendment(s) and/or supplemental documents which shall be numbered and attached to this Agreement as Exhibit C-1, C-2, etc., as applicable without any further action of the Board.

2.2.2 Termination of PPA. Unless otherwise agreed by the parties, upon termination of Operator's PPA(s) with LADWP, Operator shall notify City of such termination and the respective PV Systems shall be removed at Operator's sole cost and expense and in accordance with Article 1, Section 4.4.6.

2.3 Operator's Representations, Warranties, and Covenants. Operator's representations, warranties, and covenants to the City as of the Commencement Date shall be consistent with Operator's PPA(s) with LADWP set forth in Exhibit C.

Section 3. PV Systems.

3.1 Operator's PV Systems. Operator shall provide to City PV Systems in accordance with the specifications described in Exhibit A, Exhibit B, and Exhibit C. Operator shall ensure said PV Systems are capable of generating no less than 10 megawatts of solar power during the term of this Agreement. PV modules shall have a minimum PV USA Test Conditions ("PTC") rating of 300 watts and a minimum module efficiency of 15.5%. Inverters shall have a weighted efficiency of not less than 96%.

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).

3.3 Interconnection. Operator shall be solely responsible for extending and terminating the AC power from PV Systems at all Site Locations to points of Interconnection (as defined below) to be established by LADWP and in compliance with

LADWP's voltage, phase, and frequency requirements. For purposes of this Agreement, "Interconnection" shall be defined as an LADWP facility designed, constructed, owned, operated, and maintained by LADWP for the safe operation of the PV Systems in parallel with LADWP's power distribution network.

3.3.1 Utility Easement. City agrees to grant to Operator a non-exclusive easement to install utility equipment on, over and/or under the Site Locations (as defined below) as is reasonably necessary for Operator to operate and interconnect the PV System(s) ("Utility Easement"); provided, however, the terms of such Utility Easement, including the nature and location of such utility equipment, shall be mutually agreed upon by the parties prior to the installation of any PV System(s) on the Site Locations by operator. The agreed upon Utility Easement for any respective PV System(s) shall be reflected in Exhibit F in accordance with Article 1, Section 4 of this Agreement.

3.3.2 Interconnection Agreement. Operator shall, at its sole cost and expense, negotiate and enter into an agreement with the LADWP for Interconnection ("Interconnection Agreement"), as amended, supplemented or otherwise modified from time to time. Operator is responsible for compliance with all terms and conditions set forth in the Interconnection Agreement. Operator shall provide to City copy(ies) of the fully executed and final Interconnection Agreement for each PV System, which shall be numbered and attached to this Agreement as Exhibit E, E-1, E-2, etc., as applicable without any further action of the Board.

3.3.3 Interconnection Cost. Operator shall be responsible for the payment of any and all related Interconnection costs and fees for the PV Systems as charged by LADWP. Operator acknowledges City has provided payment of Interconnection study fees for the PV Systems at the time execution of this Agreement. City shall not be responsible for any statements, invoicing, or any other billing related to Interconnection costs charged by LADWP on Operator.

Section 4. PV Systems Site Location(s).

4.1 Site Location(s). The PV Systems shall be installed and operated at the site location(s) set forth in Exhibit F, which is attached hereto and incorporated by reference to this Agreement ("Site Location(s)"). The Site Locations set forth in Exhibit F are in process of the California Environmental Quality Act ("CEQA") review which shall be completed prior to issuance of an Engineer's Permit in accordance with Sections 5.2.2.1 and 5.2.2.2 of this Agreement. The parties agree that the individual installations of solar PV Systems at each Site Location has independent utility and is not dependent upon the construction of a other Site Location or of the entirety of all Site Locations.

4.1.1 No Ownership Interest. Operator acknowledges that no possessory interest in any part of the Site Location(s) is conveyed or accrues under this Agreement. Ownership of the Site Location(s), including the real property, submerged property, buildings, facilities, fixtures, equipment and other property constituting the Site Location(s) shall remain with the City. Accordingly, City and Operator agree that nothing in this Agreement shall entitle Operator to file any claim, lien, or notice against any real property owned by City.

4.1.2 Acceptance and Surrender. Operator acknowledges and accepts the Site Location(s) "AS IS", "WHERE IS", with all faults and limitations, provided that nothing herein shall be construed to negate any provision of this Agreement. City makes no warranty or representation as to the condition of the Site Location(s), the compliance of the Site Location(s) with codes or applicable law, or that the Site Location(s) are suitable for Operator's use, it being assumed Operator has satisfied itself thereof and assumed all risk associated therewith. City is under no obligation to perform any work or provide any materials to prepare the Site Location(s) for Operator; provided that City will use commercially reasonable efforts in its sole discretion to prepare the Site Locations for the installation of the PV System. Operator agrees to surrender the Site Location(s) Premises upon the expiration or earlier termination of this Agreement in accordance with the terms and conditions of this Agreement.

4.2 Site Location Modification. Subject to the terms set forth in this Section 4.2 and in accordance with Article 1, Section 4.2.1.1 and 4.2.1.2, 5.2.2.1 and 5.2.2.2, City reserves the right to modify Exhibit F in the sole discretion of the Executive Director or his/her designee (collectively referred to as "Executive Director"). In the event Executive Director elects to modify, exclude, or adjust a site provided in Exhibit F ("Site Location Modification"), Executive Director shall notify Operator of such in writing; provided that, in no event, shall any Site Location Modification be proposed with respect to a site between (i) the date that is on or after the start of construction of such site, and (ii) prior to the seventh (7th) anniversary of the Commercial Operation Date of a PV System on such site, unless such Site Location Modification is granted in the sole discretion of the Operator. Notwithstanding the above, City shall have the right to modify Exhibit F to accurately reflect location of any and all Utility Easements after installation as set forth in Article 1, Section 3.3.1 of this Agreement without Operator's prior approval. Executive Director, in their sole discretion, may make substitute site locations available to the Operator. Operator and Executive Director shall enter into discussions to review substitute sites. If a substitute site is identified and acceptable to both Operator and City, said site will be made available on the same terms and conditions as set forth in this Agreement. The parties acknowledge that any change to the Site Locations may be subject to environmental review pursuant to CEQA and approval by the Board. If a substitute site is unacceptable to the parties, then Operator shall have no right to the substitute site and City shall be free to offer such sites to other parties on such terms and conditions the Executive Director deems appropriate. In no event shall the number of sites total more than twelve (12) individual sites.

4.2.1 City's Request for Temporary or Permanent Removal. If City requests Operator to temporarily or permanently remove any part of the PV Systems from or to temporarily or permanently cease operations of any part of the PV Systems due to Harbor Department Operations, Operator shall promptly remove the PV System(s). "Harbor Department Operations" shall include any and all repair, maintenance, and improvements related to rooftops; any and all work, preparation and plans related to Harbor Department capital improvement projects; responsibilities, tasks and obligations as mandated by the Los Angeles City Charter and the State Tidelands Trust; state or federal intervention; and/or Force Majeure events as set forth in Article 1, Section 6.3 of this Agreement.

4.2.1.1 Temporary Removal. During the Term of this Agreement, City shall be expressly limited to four (4) requests, in the aggregate, of Operator to temporarily remove all or any part of the PV Systems (specifically including any removals related to Site Location Modification) under this Agreement ("City Removal Limitation"), provided that in all cases, (i) City shall avoid temporary removal of a PV System if a reasonable alternative is available that would not require such removal and such alternative would not materially affect City, and (ii) in the case of a temporary removal, City shall limit the scope of such temporary removal to the greatest extent possible. Operator shall be responsible for all costs and expenses related to said temporary removal, including any tax consequences or any other diminution in value of the PV System (including any effects on performance of the PV System or the voiding of the PV System's warranties). In the event Operator's temporary removal of the rooftop PV System(s) extends beyond three (3) months from the date of actual removal, said temporary removal shall be subject to Article 1, Section 7.2.

4.2.1.2 Permanent Removal. Permanent removal of a PV System shall be subject to Article 1, Section 7.3. The City shall have no restriction on the number of requests to permanently remove all or any part of the PV Systems, provided that in all cases, City shall avoid permanent removal of a PV System if a reasonable alternative is available that would not require such removal and such alternative would not materially affect City.

4.3 Work on Site Locations with Harbor Department Tenants. Operator acknowledges some of the Site Locations may be used by City's tenants. Operator shall conduct all development, construction, installation, operation, management and maintenance work on said sites occupied with City's Tenants in accordance with the provisions set forth herein.

4.3.1 Coordination. Operator shall coordinate all development, construction, installation, operation, management and maintenance work with the Harbor Department and any of the Harbor Department's tenants operating at the

Site Location(s) to minimize disruption to the Harbor Department, POLA, and tenant operations. Operator shall notify City of any site impacts to tenants on the PV Systems site that cannot be mitigated and provide City with proposed solutions to those impacts.

4.3.1 No Interference. Neither Operator nor its agents, employees or subcontractors shall interfere with any work being done by City or any of its tenants at a Site Location. All work shall be performed so that there is no disruption to City or any of its tenants' or occupants' access to or use of its unit.

4.3.2 Compliance. Operator shall comply with any reasonable work schedule, rules and regulations proposed by City.

4.3.3 Performance of Work. All work shall be performed by labor with the proper jurisdictional qualifications and the labor employed by Operator and its contractors or subcontractors shall be harmonious and compatible with the labor employed by City or any of its tenants or occupants at the Site Location. Operator's work shall be performed in accordance with the approved plans and in compliance with all applicable law.

4.3.4 Work Site. All parties performing all work as set forth in this Agreement shall park off site and shall not park in tenant's parking areas. Any lay down area used by the Operator for the purposes of this Agreement shall be coordinated with Harbor Department and tenants prior to the start of construction and be kept in a safe and secure condition at all times, and shall be free from waste materials, rubbish, debris, and other garbage, including liquid and non-liquid materials whether spilled, dropped, discharged, blown out or leaked.

4.4 Existing Improvements.

4.4.1 Permitted Use. Operator shall use the Site Locations solely for the purpose of the installation, construction, operation, interconnection, inspection, maintenance, repair, improvement, enhancement, alteration, replacement, and removal of the PV Systems and uses incidental thereto (collectively, the "Permitted Use") and in accordance with this Agreement.

4.4.2 Disclaimer. City specifically disclaims any representation or warranty that there will be sufficient solar access for the PV Systems due to actions occurring on property leased by third parties or that are otherwise beyond City's control.

4.4.3 Other Uses. City reserves the right to use the Site Locations, and the remainder of a roof of a building with a rooftop PV System for any purpose, or grant easements or sublicenses in favor of third persons, for any purpose other than the Permitted Use, including, but not limited to, the installation or operation of telecommunications equipment, satellite dishes, antennae, building service equipment or other improvements (collectively, "Other Uses"), so long as such

Other Uses do not cast shadows, block or restrict access to direct sunlight, or otherwise unreasonably interfere with any of Operator's rights under this Agreement. Any Other Use or sublicense or easement entered into after the Commencement Date of this Agreement therefor shall expressly provide that they are subject and subordinate in all respects to this Agreement and to the rights of Operator to the Site Locations as set forth hereunder.

4.4.4 Excavations. Operator or its contractor shall: (i) initiate the call to the applicable regional notification center at least two (2) full working days prior to excavating to allow operators (namely, utilities) of subsurface installations (including but not limited to pipelines, conduit, duct, wire, or other structures) to field mark or locate their lines; (ii) contact owners of existing subsurface installations that may interfere with excavation work; (iii) determine and field mark locations of subsurface installations and structures not marked by owners, including those owned by the Harbor Department, which is not a member of a regional notification center, does not participate in their activities, nor field marks its subsurface installations but will make its substructures records, including unpressurized drains (storms drains and sewers), available to the Operator or its contractor with prior notification; (iv) be responsible for field marking and location all subsurface installations prior to performing any excavation or underground work; (v) be responsible for exposing and protecting from damage all existing surface and subsurface installations; (vi) protect any structures or foliage from damage and replace all structures, landscaping, lawn and paving to the condition prior to the work performed by Operator; and (vii) refrain from preventing or impeding access to the Site Locations due to any excavation work.

4.4.5 Damage to Harbor Department Property. Operator shall be responsible for the repair of any damage to Harbor Department Property caused during the development, construction, installation, operation, management, and maintenance of the PV Systems.

4.4.6 Remediation. Upon termination of this Agreement, Operator shall take all actions necessary to return the City's premises where the applicable PV System was to be installed to the condition the Operator first encountered it in at Operator's sole cost and expense upon the Expiration Date or termination of this Agreement as set forth in Article 1, Section 8.

4.4.6.1 Corrective Action. In the event of fire, destruction or damage to panels in the PV Systems, Operator shall take all corrective actions to clean up, remove, repair or otherwise expiate any resulting harm.

4.5 Operator's Improvements. Any improvements to the Site constructed by the Operator for the purposes of this Agreement shall be approved by the City prior to the start of construction. Upon the Expiration Date or termination as set forth in Article

1, Section 8, of this Agreement, all improvements shall be removed at Operator's sole cost and expense, unless otherwise requested by the City.

4.6 Rooftops.

4.6.1 Preparation of Rooftops for PV System Construction/Installation. City will perform roofing repairs and/or replacement as deemed necessary by City to accommodate the construction and installation of rooftop PV Systems.

4.6.2 Operator Responsibility of Rooftops. Operator shall be responsible for the repair of all damage, destruction, or harm to the rooftops caused by the development, construction, installation, operation, management and maintenance of the PV Systems. Operator shall also be responsible for any structural retrofit required to install the PV Systems. The aforementioned work shall be performed in accordance with Article 1, Section 4.3 herein.

4.7 Existing Conditions. Operator has accepted the Premises as set forth Article 1, Section 4.1.2 herein. As such, Operator shall be responsible for remediation of all contaminants which may be on, below or emanating from the Premises whether or not such contamination occurred before or after Operator took possession of the Premises unless a Baseline Report for the Premises is obtained as set forth below.

4.7.1 Baseline Conditions - City's Baseline Report. Notwithstanding Article 1, Section 4.7, Operator acknowledges and agrees that it has reviewed and approved the document attached hereto as Exhibit G, if any, which document constitutes the written depiction of the environmental condition of the Premises on the Effective Date ("City's Baseline Condition") and which hereinafter shall be referred to as the "City's Baseline Report." Operator shall be responsible only for contamination above the City's Baseline Condition for those contaminants covered in the City's Baseline Report.

4.7.2 Baseline Conditions - Operator's Baseline Report. Notwithstanding Article 1, Section 4.7., if the City has not determined the City's Baseline Condition and Operator elects, at its sole cost and expense, to prepare a baseline report depicting the baseline condition ("Operator's Baseline Condition"), and the Operator's Baseline Report is approved by City, in its sole but reasonable discretion, ("Operator's Baseline Report") attached hereto as Exhibit H, if any, then the Operator's Baseline Report shall establish the condition of the Premises as of the Effective Date. Operator shall be responsible only for contamination above the Operator's Baseline Condition levels for those contaminants covered in the Operator's Baseline Report.

4.7.3 Remediation. Operator shall remediate or cause the remediation of any spill, discharge or any other contamination that occurs on the Premises during the Term of this Agreement, whether caused by Operator or a third-party (other than invitees or third-parties whose access to the Premises has been

requested by City), that contaminates or threatens to contaminate the Premises, soil, sediment, groundwater or air of the Premises or of adjacent premises (including the soil, sediment, groundwater or air of those adjacent premises) in accordance with Article 1, Section 4.4.6 herein.

4.7.4 Operator Responsibility; Indemnity. Operator bears sole responsibility for full compliance with any and all Applicable Laws regarding the use, storage, handling, distribution, processing, and/or disposal of environmental material. Operator agrees that any claims, damages, fines or other penalties asserted against or levied on City and/or Operator as a result of noncompliance with any environmental laws shall be the sole responsibility of Operator and that Operator shall indemnify and hold City harmless from any and all such claims, damages, fines and penalties, as well as any costs expended to defend against such claims, damages, fines and penalties, including attorneys' and experts' fees and costs that result from contamination or Operator's non-compliance during the Term regarding the use, storage, handling, distribution, processing and/or disposal of environmental material. City shall provide Operator with sixty (60) days' notice to comply with any claims, damages, fines and penalties, or if Operator has not complied with such claims, damages, fines and penalties, or if Operator has not requested a meet and confer to discuss compliance within such sixty (60) days, then City, at its sole option, may pay such claims, damages, fines and penalties resulting from Operator's noncompliance with any environmental laws, and Operator shall indemnify and reimburse City for any such payments.

4.7.4.1 Operator Environmental Reports. Operator shall provide to City a full written environmental fact sheet associated with the PV modules installed upon the respective Substantial Completion Date for each respective PV System. Operator shall also provide to City a written report for any PV modules broken during installation or removal of a PV System.

4.7.5 Rebuttable Presumption When Baseline Report Prepared. Operator acknowledges and agrees that a presumption shall exist that any contamination not specifically depicted and analyzed in the City's Baseline Report or the Operator's Baseline Report, as the case may be, constitutes contamination for which, as between City and Operator, Operator is solely responsible. City shall provide written notice of the existence of any such contamination to Operator. Operator may rebut such presumption by providing to City, within ninety (90) days of City's written notice, conclusive evidence demonstrating that such contamination did not occur during the Term of this Agreement. Otherwise, such presumption shall be deemed confirmed making Operator solely responsible for such contamination. Whether any information submitted by Operator rebuts the aforementioned presumption shall be within the City's sole and absolute discretion, exercised reasonably and in good faith. This provision shall survive the expiration or earlier termination of this Agreement.

4.7.6 Operator Obligations In the Event of Contamination During the Term of the Agreement.

4.7.6.1 Duty to Remediate. Upon discovery of any contamination, Operator shall, at its sole cost remediate the contamination in accordance with the provisions set forth in this Agreement.

4.7.6.2 Compliance with Government Agency Orders. Operator shall report any contamination to the respective government agencies as required by law and thereafter, if such government agency asserts jurisdiction over such contamination, Operator shall, at its sole cost and expense as between City and Operator, manage the contamination and all associated issues consistent with environmental laws or the governmental agencies with jurisdiction, if any. If a schedule for such management of the contamination is not prescribed by environmental laws, or by the governmental agencies with jurisdiction if any, the Harbor Department shall reasonably prescribe such schedule in consultation with Operator.

4.7.6.3 Site Characterization. Whether a governmental agency asserts jurisdiction over the contamination or not, Operator shall characterize (including sampling and analysis) and remediate all contamination in conformity with environmental laws, and the Port of Los Angeles "Site Characterization Guidance Manual" as it exists as of the Effective Date or as it may be subsequently amended ("Site Characterization Guidance Manual"), to the extent it does not conflict with protocols established by any other governmental agency asserting jurisdiction over the contamination. Operator acknowledges receipt of a copy of such Manual. Following the Effective Date, Operator shall be solely responsible for obtaining and maintaining the current version of the Site Characterization Guidance Manual.

4.7.6.4 Copies to City. Operator shall provide copies to City of all communications between Operator (and any third-parties acting for or on its behalf), and any governmental agency with jurisdiction regarding all contamination and remediation.

4.7.7 City's Rights to Remediate. If Operator fails to wholly or partially fulfill any obligation set forth in Article 1, Section 4.7.6., City may (but shall not be required to) take all steps it deems necessary to fulfill such obligation. Any action taken by City shall be at Operator's sole cost and expense and Operator shall indemnify and pay for and/or reimburse City for any and all costs (including any administrative costs) City incurs as a result of any such action it takes.

4.7.8 Environmentally Regulated Material on Premises. Operator shall not cause or permit any environmental material to be generated, brought onto, handled, used, stored, transported from, received or disposed of (hereinafter sometimes collectively referred to as "handle" or "handled") in or about the premises, except for: (i) limited quantities of standard office and janitorial supplies containing chemicals categorized as environmentally regulated material listed in the APP process (as defined in Article 1, Section 5.1) and the material safety data sheet which includes but is not limited to any and all hazardous materials and chemicals ("Material Safety Data Sheet") for the parts and equipment of the respective PV System(s); (ii) environmentally regulated material which are necessary for Operator to undertake the Permitted Uses; and (iii) environmentally regulated material handled in accordance with all state and federal rules, regulations, and environmental laws. Operator shall handle all such environmental material in strict compliance with environmental laws in effect during the term of this Agreement.

4.7.9 Environmental Compliance.

4.7.9.1 Generally; Notice. In its use and occupancy of the Premises, Operator shall comply (and shall immediately halt and remedy any incident of non-compliance) with: (a) environmental laws; (b) all applicable environmental policies, rules and directives of the Harbor Department as set forth on Exhibit I hereto. Operator shall immediately upon receipt provide City with copies of any notices or orders or similar notifications received from any governmental agency regarding compliance with any environmental laws.

4.7.10 Waste Disposal. Operator shall dispose of any waste, equipment, or parts related to the PV Systems during the Term or at the Expiration Date of this Agreement in accordance with all state and federal rules, regulations and environmental laws. If Operator disposes of any soil, material or groundwater contaminated with environmentally regulated material, within thirty (30) days of Operator's receipt of original documents, Operator shall provide the Harbor Department copies of all records, including a copy of each uniform hazardous waste manifest indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site and the location of the disposal site. The name of the City of Los Angeles, the Port of Los Angeles or the Harbor Department shall not appear on any manifest document as a generator of such material.

4.7.11 Laboratory Testing. In discharging its obligations under this Section, Operator shall perform any tests using a State of California Department of Health Services certified testing laboratory or other similar laboratory of which the Harbor Department shall approve in writing. By signing this Agreement, Operator hereby irrevocably directs any such laboratory to provide City, upon written request from City, copies of all of its reports, test results, and data

gathered. As used in this Section, "Operator" includes agents, employees, contractors, subcontractors, and/or invitees of the Operator.

4.7.12 Survival of Obligations. Except as otherwise provided in this Article 1, Section 4.7, this Section 4.7.12 and the obligations herein shall survive the expiration or earlier termination of this Agreement.

Section 5. Design, Construction and Installation of the PV Systems.

5.1 Design. Operator shall design the PV Systems in accordance with the requirements described in Exhibit A, Exhibit B, Exhibit C, and described herein.

5.1.1 Requirements.

- a. Operator shall investigate the Site Locations where the PV Systems shall be constructed and installed, including suitability of structures, location of utilities, and point of Interconnection for the proposed PV Systems and determine the construction and installation methods required, including the preparation and submittal for approval by City of structural calculations for the acceptable staging of equipment or materials on rooftops to avoid their overstressing.
- b. Operator shall prepare all PV System plans, specifications, and estimates using engineers licensed in the State of California.
- c. Operator's submitted plans, specifications, and estimates shall comply with all applicable federal, state and local codes, rules and regulations.
- d. Operator shall file an Application for Port Permits (APP) and obtain the necessary environmental clearance as specified in Article 1, Section 5.2.2 and a Harbor Engineer's Permit.
- e. Operator shall not start construction unless and until approval of a Harbor Engineer's Permit in the name of the Operator for each of the PV Systems.
- f. Operator shall provide weekly status reports throughout the design phase, as well as any additional briefing requested by City.
- g. Operator shall submit final as-built engineering plans (in both AutoCAD and PDF formats), specifications (in PDF format), and estimates (in PDF format), including construction cost and as-built value for each of the PV Systems to City no later than

ninety (90) days after the Substantial Completion Date for each of the PV Systems.

5.2 Construction and Installation. Operator shall construct and install the PV Systems in accordance with Exhibit A, Exhibit B, and Exhibit C of this Agreement.

5.2.1 Status Reports. Operator shall provide weekly status reports throughout this phase, as well as any additional briefing requested by City.

5.2.2 Environmental Regulations Compliance During Construction.

5.2.2.1 Compliance with CEQA, Pub. Res. Code § 21000 et seq., is a condition precedent to the City's obligations under this Agreement. Operator shall not have any right to install the PV Systems until the City has fully complied with CEQA, issued a statement to Operator attesting to the fact that City has fully complied with CEQA as it relates to all applicable PV Systems included in the Agreement ("CEQA Certification"), and issued a notice to proceed ("City NTP") to Operator.

5.2.2.2 If the City, in its discretion, determines that a negative declaration (ND), mitigated negative declaration ("MND") or environmental impact report ("EIR") is required to comply with CEQA, then City shall promptly provide Operator with a written statement detailing the reasons that City believes that an ND, MND or EIR is required to comply with CEQA and the estimated cost to comply with CEQA for the applicable PV System. Unless Operator issues City a written statement signed by an authorized representative of Operator agreeing to pay for all of the estimated costs to comply with CEQA within thirty (30) days of receipt of City's written statement, then the Agreement shall terminate as to the applicable PV System, and neither Operator or City shall have any liability to the other (other than any such liabilities that have accrued prior to such termination). If the City proceeds to complete such environmental assessments, then Board approval will be required to adopt the ND, MND, or certify the EIR as required by law.

5.3 Governmental Approvals. Operator understands and agrees that the ability of Operator to use the Site Locations for the PV Systems is expressly contingent upon Operator, at its sole cost and expense, obtaining all certificates, permits, or other approvals (collectively the "Governmental Approvals") that may be required by any local, state or federal agencies, including but not limited to the Board of Harbor Commissioners, City of Los Angeles Department of Building & Safety, and LADWP, California Public Utilities Commission, California Energy Commission, Federal Energy Regulatory Commission, and any local zoning authority (collectively referred to as "Governmental Authority"). Operator shall diligently prosecute all applications necessary to obtain Governmental Approvals from the requisite Governmental Authorities.

5.3.1 Cooperation. City will (i) cooperate with Operator's effort to obtain and maintain the Governmental Approvals and perform the development and construction of the PV Systems and (ii) take no action which would likely have a material adverse effect upon Operator's ability to obtain and maintain Governmental Approvals. In connection with such cooperation, City shall not be required at its expense to engage, pay or retain any third parties or to incur any out of pocket expenses in connection with any Governmental Approvals or the development and construction, and shall be reimbursed by Operator for any monies reasonably expended in connection therewith; provided that City give Operator advance notice of such out-of-pocket expenditures.

5.4 Milestones.

5.4.1 Generally. Operator shall diligently pursue all milestones as set forth in the schedule detailed in Exhibit J ("Milestones"). Both City and Operator agree that time is of the essence in connection with the completion of the PV Systems, and that Milestones for the development, financing and construction of the PV Systems must be achieved in a timely fashion. Operator shall strive to achieve the Milestones mutually agreed to at the time of PPA execution by the Operator and LADWP.

5.5 PV Systems Inspection. Operator shall notify City in writing of the Substantial Completion Date and Commissioning (as defined below) of each of the respective PV Systems. At discretion of City, Operator will schedule and arrange for City to conduct an inspection of each of the PV Systems. The inspection shall be scheduled for a date, mutually agreeable to Operator and City, which is within ten (10) business days of Operator's notification of Substantial Completion Date of the applicable PV Systems. Based on the inspection, City may, within ten (10) business days of the inspection, prepare and provide to Operator a punch list of any observed defects or deficiencies in the construction work or discrepancies between installed equipment and workmanship and this Agreement. Operator shall be responsible for completion, correction, or otherwise addressing issues identified by the City, and shall provide a written response to document actions taken in response to the punch list items. If requested by City, Operator shall schedule and arrange a follow-up inspection for City after all punch list items are resolved. All punch list items shall be resolved prior to the Commercial Operation Date of the PV Systems except those items specifically excepted by mutual agreement between City and Operator.

5.6 Commissioning. Operator shall comply with all applicable requirements for Commissioning each of the PV Systems. No later than fourteen (14) days prior to Commissioning, Operator shall notify City of the date on which it intends to perform Commissioning. Within seven (7) days of the successful Commissioning, Operator shall provide to City written notification of the Commercial Operation Date for each respective PV System. For the purposes of this Agreement, "Commissioning" shall mean the inspection and testing of each component in a PV System to assure that they have

been completely, properly, and safely installed before the PV System is turned on and that they are operating properly and within expected parameters after the PV System is turned on. The as-built condition of a PV System shall be documented during Commissioning. The PV System's performance will be benchmarked during Commissioning so it can be compared with future performance.

5.7 Mechanics Liens. Operator shall promptly pay for Operator's Work in full when due and shall not permit any lien to attach to the Site Locations, lay down areas, or other property in which Operator has been granted the right to conduct the Permitted Uses. Operator will promptly discharge any such lien. City shall have the right to post notices of non-responsibility.

Section 6. Operation and Maintenance (O&M).

6.1 Operator's Operation Obligations. Operator shall operate the PV Systems in accordance with Exhibit A, Exhibit B, and Exhibit C of this Agreement and in accordance with all state and federal rules and regulations.

6.1.1 Monitoring System. Operator shall install, own and maintain, at its sole cost and expense, a monitoring system and services necessary to allow remote reading of each PV System's performance and environmental benefits in real time through a secure website. Operator shall provide City access to said website along with complete performance data during the Term of this Agreement. Operator will use commercially reasonable efforts to assist City with incorporating each PV System's data feeds with a planned future City website that will showcase all alternative energy systems within POLA at no cost to the City.

6.2 Operator's Maintenance Obligations. Operator shall maintain the PV Systems consistent with Exhibit B, Exhibit C, and with the terms and conditions set forth in this Agreement. Operator shall maintain, at its sole cost and expense, the PV Systems, any and all related equipment, and the Site Locations, including without limitation the portions of the building roof upon which the PV Systems are located (if applicable) or the property upon which a ground mounted PV System is constructed. Premises will be maintained in good condition and state of repair in conformance with this Agreement, all applicable laws and commonly accepted industry standards.

6.3 Emergency Repairs. Operator shall notify City within twenty-four hours (24) of actual knowledge of the occurrence of an emergency related to a PV System. In the event of an emergency affecting the Site Locations, Operator shall make the repairs as quickly as possible without regard to the month of the year, but not later than five (5) business days' after notice thereof, subject to Force Majeure and to the extent such repairs can be practicably made in such period. For the purposes of this Agreement, "Force Majeure" shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, wildland fire or firestorm, storm or flood, or any order, regulation, or restriction imposed by governmental, military, or lawfully established civilian

authorities (i) which prevents Operator or City from performing any of its obligations under this Agreement; (ii) which could not reasonably be anticipated as of the date of this Agreement; (iii) which is not within the reasonable control of, or the result of negligence, or failure to maintain a PV System, willful misconduct, breach of contract, intentional act, omission, or wrongdoing on the part of the Operator or City; and (iv) which despite the exercise of reasonable efforts Operator or City is unable to overcome or avoid or cause to be avoided.

Section 7. Compensation.

7.1 Payment to City. For the Term of this Agreement and in accordance with Exhibit B, Operator shall pay to City upon the Commercial Operation Date of the *first* PV System annually Seven and Two Hundredths Percent (7.02%) ("Percentage of Gross Annual Revenue") of Operator's Gross Annual Revenue (as defined below) from LADWP for energy from all PV Systems. First year revenue to City is estimated to be One Hundred Forty One Thousand and Ninety Dollars (\$141,090). For purposes of this Agreement "Gross Annual Revenue" shall mean Operator's gross annual revenue received from LADWP for the sale of energy. Estimated gross annual revenue to Operator in the first year of the Term is in the amount of Two Million Nine Thousand One Hundred and Forty-Six Dollars (\$2,000,146) per year as set forth in Exhibit B of this Agreement. Payments to City from Operator shall be made electronically directly from LADWP at the same time Operator receives its payment from LADWP.

7.2 Temporary Removal Adjustment.

7.2.1 Rooftop PV System Temporary Removal. In accordance with Article 1, Section 4.2.1.1, for PV Systems that are mounted on the rooftop of a City's building, City shall be entitled to have the PV System removed for the purpose of roof replacement or major roof repair. Compensation to Operator will be calculated as described in Section 7.2.3.1 below. City will notify Operator in writing of the need to temporarily remove the PV System(s) in whole or in part with no less than sixty (60) days prior written notice including specification of the required date the PV System removal must be completed. Operator will complete the removal as expeditiously as possible. Removal will include all Operator equipment (PV modules, inverters, and panels as well as racking system and wiring and conduit, and associated apparatus) that would need to be removed in order to effect a roof repair or replacement. Operator is responsible for removal and replacement of the PV System. City will provide a covered location from which the removed PV System and Operator equipment may be stored during removal. Should Operator not complete removal as scheduled, City will be entitled to waive compensation for lost electrical production for the number of days that Operator delays removal beyond the City's specified date of removal completion.

7.2.2 Other PV System Temporary Removal. In accordance with Article 1, Section 4.2.1.1, for all other PV System installations (ground or carport), City is

entitled to a temporary removal of up to three (3) months for the purpose of major construction or required access to utilities and/or pipelines without owing any compensation from lost solar power generation revenue to Operator. Temporary removal of a PV System that lasts more than three (3) months will be subject to compensation as described in Article 1, Section 7.2.3 below. City will notify Operator in writing of the need to temporarily remove the PV System in whole or in part with no less than sixty (60) days prior written notice including specification of the required date the PV System removal be completed. Removal will include all Operator equipment including but not limited to PV modules, panels, racking, wiring conduit, and associated apparatus, that would need to be removed in order to access utilities, pipelines, and/or complete any major construction required. Should Operator not complete removal as scheduled, City will be entitled to waive compensation for lost electrical production for the number of days that Operator delays removal beyond the City's specified date of removal completion.

7.2.3 Temporary Removal Adjustment Calculation. Compensation from City to Operator for the temporary removal of the PV System(s) will be calculated as follows:

7.2.3.1 For either temporary removal situation, the time and date when the PV System stops and resumes delivering power to LADWP for compensation shall be documented and agreed upon by both Operator and City in writing. Compensation for temporary removal of PV modules from a PV System will be calculated using electrical production data/revenue from the PV System nearest in distance ("PV Comparison Site") as installed by the Operator under this Agreement. Nearest distance will be calculated based upon the shortest direct distance without consideration for roads, topography, water, or other real property improvements. Beginning on the day of disconnection of the complete or partial removal of the PV System, Operator will keep records of the PV System Comparison Site's energy production for each day the PV System has been removed by recording the total power produced each day as well as the revenue the PV System Comparison Site generates based upon that individual day's LADWP electricity purchase rates.

7.2.3.2 Revenue in Dollars Per PV Panel Per Day Calculation. Operator will determine the total number of days including the number of PV modules removed within each calendar month. The amount of compensation from City to Operator shall be determined by the following formula:

$$\begin{array}{c} \# \text{ PV MODULES} \\ \text{REMOVED} \end{array} \times \begin{array}{c} \# \text{ DAYS} \\ \text{REMOVED} \end{array} \times \left(\frac{\begin{array}{c} \text{TOTAL PRODUCTION REVENUE} \\ \text{IN \$ OF PV COMPARISON SITE} \\ \text{MODULES} \end{array}}{\begin{array}{c} \# \text{ OF PV MODULES IN} \\ \text{COMPARISON SITE} \end{array}} \right) = \begin{array}{c} \text{TOTAL MONTHLY} \\ \text{REIMBURSEMENT} \\ \text{AMOUNT} \end{array}$$

In the instance that different specification of PV modules are installed between the removed PV System and the PV Comparison Site and there is not a PV module of the same original as installed efficiency specification to compare with, Operator will make adjustments to production revenue calculation based upon efficiency rating of each different PV module type as follows:

$$\frac{\text{PV MODULE REMOVED EFFICIENCY}}{\text{PV COMPARISON SITE MODULE EFFICIENCY}} = \text{ADJUSTMENT FACTOR}$$

$$\begin{array}{c} \# \text{ PV} \\ \text{MODULES} \\ \text{REMOVED} \end{array} \times \begin{array}{c} \# \text{ DAYS} \\ \text{REMOVED} \end{array} \times \left(\frac{\begin{array}{c} \text{TOTAL PRODUCTION REVENUE} \\ \text{IN \$ OF PV COMPARISON SITE} \\ \text{MODULES} \end{array} \times \begin{array}{c} \text{ADJUSTMENT} \\ \text{FACTOR} \end{array}}{\begin{array}{c} \# \text{ OF PV MODULES IN COMPARISON SITE} \end{array}} \right) = \begin{array}{c} \text{TOTAL MONTHLY} \\ \text{REIMBURSEMENT} \\ \text{AMOUNT} \end{array}$$

7.2.3.3 Submission of Request for Compensation. As soon as data from the comparison site is available, Operator will complete, sign and date Exhibit K and submit this form to City for compensation, whose submission is described in Article 1, Section 7.4. City reserves the right to audit Operator's revenue calculations as described in Article 1, Section 7.5 to assure accuracy of Operator's calculation of reimbursement due.

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.

7.3 Permanent Removal of PV System(s). Permanent removal of a PV System(s) as set forth in Article 1, Section 4.2.1 will be determined in accordance with the following provisions.

7.3.1 City and Operator will each hire an appraiser at their own expense who is experienced in the appraisal of machinery and equipment, with experience appraising PV Systems. The appraiser will value the PV Systems based upon their remaining expected cash flows from the expected shut down

date to the end of the operating agreement term. The following methodology will be utilized:

(i) Discounted Cash Flow Analysis taking into account the trends in rates paid by LADWP and any expected decreases in the efficiency of the PV Systems as demonstrated by previous years' electricity production declines, if any. The appraiser will consider the Agreement revenue that would have been due City should the PV System(s) never been removed as an expense to the Operator against their net revenue. Discounting of the cash flow will be based upon verified documentation of the Operator's cost of capital at the time of disconnection. Cash flows will also consider any salvage values for the PV modules being removed at the time of disconnection based upon their estimated useful remaining life as an expense to Operator, as if the reversion of the PV System(s) would not have occurred until the end of the term of the Agreement. Should the removal of the PV System(s) occur within the first seven (7) years of the Commercial Operation Date of the respective PV System(s), the appraiser will consider the loss of tax credits or any other tax benefits related to the PV System(s) (collectively referred to as "Tax Incentives") the Operator incurred as a result of the early removal. Operator shall provide all such documentation and information attesting said loss of Tax Incentives to the appraiser to validate the value of the Tax Incentive loss. Operator will provide to City with copies of any data or documentation provided to the appraiser for the calculation of any Tax Incentive loss derivation. The appraiser must be able to verify such Tax Incentive loss for it to be considered as part of the Discounted Cash Flow Analysis.

(ii) The following process will be followed:

(a) Parties May Negotiate in Good Faith. The City and Operator may (but are not required to), in good faith, negotiate the PV System reimbursement valuation applicable to the subject PV System(s). Such good faith negotiations, initiated by either party, may include the involvement of a third party reviewer to review and make nonbinding recommendations regarding each party's rate adjustment proposal, discussions regarding external and internal factors that may be unique to the land and/or improvements so that the reviewer(s) can take them into consideration when making the recommendations in substantially the same manner as corroborated by the parties and applicable to the subject PV System(s). The parties shall have continuing opportunities to negotiate in good faith in an attempt to reach agreement on the PV System reimbursement valuation notwithstanding each party's obligation to perform its duties as described under Section (b) below. If the parties are able to reach an

agreement on the PV System reimbursement valuation, then said PV System reimbursement valuation shall be presented as a recommendation to the Board. However, if the parties are unable to reach final agreement during negotiation, the parties may continue to negotiate in good faith to attempt to reach agreement until arbitration commences pursuant to Section (f) below.

(b) Appraisal Process. If the parties cannot reach agreement on the PV System reimbursement valuation for the solar system(s) or the Board does not approve the agreed upon PV System reimbursement valuation as described in Section (a), then the parties shall determine the purchase price by the procedures described in Article 1, Sections 5.11.4 (c) through 5.11.6 (f) below.

(c) Step 1: Independent Appraisals. City and Operator shall each select an appraiser, who is a member of the Appraisal Institute American Society of Appraisers (or their successor organization) and meets the Minimum Qualifications as defined within this Operating Agreement (a "Qualified Appraiser"). Either Operator or City shall, when notified in writing by the other to do so, deliver to the other party the name and address of such appraiser (each, selected Qualified Appraiser, a "Main Appraiser"). The Executive Director shall immediately fix the time and place for a conference between the two parties and the Main Appraisers no later than fifteen (15) days from the date of the exchange of names and addresses of the Main Appraisers. At such meeting, both Operator and City may have discussions with the Main Appraisers as to any externalities that may affect the derivation of the PV System reimbursement valuation and determine the appraisal scope. The Appraisal Instructions to be given to the Main Appraisers are as defined within this Agreement. City and Operator shall each pay the fees and expenses of their respective Main Appraisers. The narrative appraisals must be completed according to the Uniform Standards of Professional Appraisal Practice (USPAP) for the year in which the appraisal is completed. No later than sixty (60) calendar days after the date of the appraiser meeting, a copy of the completed, final USPAP-compliant appraisal report procured by both City and Operator will be made available for review by the other party on the same day. If either City or Operator will be unable to deliver its appraisal report by the

appraisal report delivery deadline, the late party will inform the other party in writing of the reason for the delay and the expected date on which appraisal reports will be exchanged. If either party's appraisal report cannot be delivered within ninety (90) days of the appraiser meeting, the complying party shall have its appraisal report presented to the Board for approval. Upon exchange of the two appraisal reports, in the event that the determination of the compensation value in the two appraisal reports differs by fifteen percent (15%) or less, the recommended PV System reimbursement valuation that is the average of the determinations in the two appraisal reports shall be presented as a recommendation to the Board. If the PV System reimbursement valuations in the two appraisal reports differ by more than fifteen percent (15%), the parties shall proceed to Section (e) below.

(d) Step 2: Arbitration Appraiser Selection. The Main Appraisers selected by each party shall be instructed to agree upon and select an Arbitration Appraiser (as defined below) no later than four (4) weeks after the appraiser meeting described in Section (c). The Arbitration Appraiser shall be a Qualified Appraiser that is not under contract with the City for appraisal services. If the Arbitration Appraiser selected is not available to perform the task pursuant to the instructions set forth in Section (f) below or is unwilling to execute a City contract for the performance of appraisal services, then City and Operator shall inform the Main Appraisers and require them to repeat the selection process again until an available Arbitration Appraiser is selected. If the Main Appraisers cannot come to agreement on the selection of an Arbitration Appraiser within four (4) weeks from the date of the appraiser meeting, the Executive Director shall select an Arbitration Appraiser.

(e) Appraisal Review Period. The parties shall have two (2) weeks to review each other's appraisal reports from the date of the appraisal exchange as described in (c) above. The parties may continue to negotiate the PV System reimbursement valuation during this period. Within fifteen (15) calendar days of the appraisal report exchange in Section (c) above, the Executive Director shall fix a time and place for a negotiation meeting between the parties to be held no later than three (3)

weeks from the date of the appraisal report exchange. At such meeting, the parties shall attempt to reach a final agreement on the PV System reimbursement valuation. Either party may include its Main Appraiser in the meeting, if desired. If Operator and City reach agreement on the PV System reimbursement valuation, the Executive Director shall present the results as a recommendation to the Board. If Operator and City are unable to reach agreement on the PV System reimbursement valuation by the date that is fourteen (14) calendar Days from the date of the negotiation meeting, then the parties shall proceed to Section (f) below.

(f) Step 3: Appraiser Arbitration. City and Operator shall each pay one-half of the fees and expenses of the Arbitration Appraiser. The Arbitration Appraiser selected by the two Main Appraisers or the Executive Director, as the case may be, in Section (d) shall receive copies of both Operator and City's final appraisal reports that were procured in Section (c). The Arbitration Appraiser shall be allowed twenty-one (21) days to review both appraisal reports. After review of the two appraisal reports, the Arbitration Appraiser will determine which of the PV System reimbursement valuations from the two appraisal reports are the most reasonable, considering comparable data selection, market information and applicable valuation methodology. The Arbitration Appraiser will communicate its decision in writing to both Operator and City twenty-one (21) days after engagement. The Executive Director shall present the agreed-upon PV System reimbursement valuation and the Arbitration Appraiser's determinations as a recommendation to the Board. City shall make every effort to present the PV System reimbursement valuation for approval to the Board prior to the Periodic Adjustment Date.

(g) Appraisal Criteria. The following appraisal criteria shall apply to Sections (c) through (f).

(h) Appraiser Minimum Qualifications. The Main Appraiser must possess, at a minimum, an MAI or SRPA designation and must be licensed in the State of California. The Main Appraiser must perform all of the calculations and technical portions of the appraisal report as well as derive the final value conclusions within the

appraisal report. The Main Appraiser must have knowledge of PV Systems.

- (i) Main Appraisers must be in good standing with the California Bureau of Real Estate Appraisers (CBREA) or its successor organization and have no more than one complaint filed against him or her for any reason and no complaints that have resulted in any disciplinary actions. The Main Appraisers must certify in the appraisal report that he or she has never received any disciplinary actions from the CBREA. The Main Appraisers must be able to provide documentation of the sources of comparable PV System rental rate and sales data to the reasonable satisfaction of City and Operator.
- (j) Appraisal Instructions. The Main Appraiser shall consider the following in completing the appraisal report:
- (k) City of Los Angeles Administrative requirements that are in force upon Operator within its Operating Agreement at the date of value.
- (l) City regulations that may affect value.
- (m) Any public or private easements, such as utilities or rights-of-way or water rights.
- (n) City and Operator shall have the right to modify any conditions of the appraisal process upon mutual written agreement of the parties.

7.4 Invoices.

7.4.1 Operator shall submit invoices in quadruplicate to City monthly following the Commencement Date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Operator and shall include the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. _____ and that payment has not been received. I further certify that I have complied with the provisions of the City's Living Wage Ordinance.

(Operator's Signature)

7.4.2 Operator must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required in Article 2, Section 2 of this Agreement. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of City business, the same may be approved, audited and paid.

7.4.3 Operator shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and Operator shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

7.4.4 Further, where the Operator employs Subcontractors under this Agreement, the Operator shall submit to City, with each monthly invoice, a Monthly Subcontractor Monitoring Report Form (Exhibit O) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Operator shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subcontractor utilization. Invoices will not be paid without a completed Monthly Subcontractor Monitoring Report Form. All invoices are subject to audit. Operator is not required to submit support for direct costs items of \$25 or less.

7.4.5 For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Section
Harbor Department, City of Los Angeles
P.O. Box 191
San Pedro, CA 90733-0191

7.5 Recordkeeping and Audit Rights.

7.5.1 Operator shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Operator for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

7.5.2 During the term of this Agreement, City may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Operator and Subcontractors arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Operator, Subcontractors or any individual or entity acting for or on behalf of Operator or a Subcontractor, and (c) without regard to whether such writings have previously been provided to City. Operator shall be responsible for obtaining access to and providing writings of Subcontractors. Operator shall provide City at Operator's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by City. City's right shall also include inspection at reasonable times of the Operator's office or facilities which are engaged in the performance of the Scope of Work. Operator shall, at no cost to City, furnish reasonable facilities and assistance for such review and audit. Operator's failure to comply with this Article VI shall constitute a material breach of this Agreement and shall entitle City to withhold any payment due under this Agreement until such breach is cured.

Section 8. Termination.

8.1 Termination by City. Any of the following shall constitute a material breach and default by the Operator under this Agreement and City shall have the right to terminate this Agreement, notwithstanding the terms and conditions stated herein:

8.1.1 Operator's failure to pay under Article 1, Section 7 of this Agreement if the failure continues for thirty (30) business days after written notice of the failure from City to Operator; provided that, in no event shall any failure of LADWP to pay City be deemed a failure of Operator under this Section 8.1.1.;

8.1.2 Operator's failure to comply with any term, provision or covenant of this Agreement and does not commence to cure such failure within thirty (30) days after delivery of written notice of the failure from City to Operator or does not cure the failure within ninety (90) days after delivery of such notice. An extension may be granted by the Executive Director to cure such failure, as Operator commences to cure within thirty (30) days of delivery of the notice and diligently proceeds to cure such default to completion.

8.1.3 To the extent permitted by law:

8.1.3.1 A general assignment by Operator or any guarantor of the Agreement for the benefit of the creditors without written consent of City;

8.1.3.2 The filing by or against Operator, or any guarantor, of any proceeding under an insolvency or bankruptcy law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within sixty (60) days;

8.1.3.3 The appointment of a trustee or receiver to take possession of all or substantially all the assets of Operator or any guarantor, unless possession is unconditionally restored to Operator or that guarantor within thirty (30) days and the trusteeship or receivership is dissolved; and/or

8.1.3.4 Any execution or other judicially authorized seizure of all or substantially all the assets of Operator located on the premises, or of Operator's interest in this Agreement, unless that seizure is discharged within thirty (30) days; and

8.1.3.5 Termination of Operator's PPA(s) with LADWP.

8.2 City's Remedies on Operator's Default. On the occurrence of a default by Operator, City shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to City at law or in equity. These remedies are not exclusive but are instead cumulative. City may terminate this Agreement and recover possession of the Site Locations. Once City has terminated this Agreement, Operator shall immediately surrender the Site Locations to City in accordance with the terms and conditions of this Agreement.

8.3 Termination by Operator. The following shall be considered a default of the City. Operator shall have the right to pursue remedies at law or in equity and all the rights and remedies and Operator may terminate the Agreement in accordance with the terms and conditions set forth in this Agreement:

8.3.1 A Bankruptcy Event shall have occurred with respect to City; and

8.3.2 City breaches any material term of the Agreement and if (A) such breach can be cured within thirty (30) days after Operator's notice of such breach and City fails to so cure, or (B) City fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed.

8.4 Limitation of Liabilities.

8.4.1 Except as otherwise specifically and expressly provided in this Agreement, neither City or Operator shall be liable to the other under this Agreement for any indirect, special or consequential damages, including loss of use, loss of revenues, loss of profit, interest charges, cost of capital or claims of its buyers or members to which service is made.

8.4.2 Under no circumstances shall the non-defaulting party be required to make a termination payment or any other payment to the defaulting party (except for payments due under this Agreement for performance prior to termination).

8.5 Survival of Obligations. Article 1, Section 4.4.6.1 shall survive the expiration or earlier termination of this Agreement.

Section 9. Assignments, Transfers, and Delegations.

9.1 Assignments; Transfers. 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 the Executive Director. Any purported assignment, transfer or delegation in violation of this section shall be null and void and of no force or effect. Notwithstanding the foregoing, Operator may, without the consent of City, transfer, pledge, encumber, or assign this Agreement or the account, revenues or proceeds hereof, to any of Operator's lenders in connection with any financing or other financial arrangements for the PV Systems.

ARTICLE 2: STANDARD TERMS AND PROVISIONS

Section 1. Independent Contractor.

1.1 Operator, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of City. Operator shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

Section 2. Business Tax Registration Certificate.

2.1 The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Department. See Exhibit L.

Section 3. Indemnification and Insurance.

3.1 Indemnification. Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Operator undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Operator's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Operator or its

subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

3.2 Acceptable Evidence and Approval of Insurance. Electronic submission is the required method of submitting Operator's insurance documents. Operator's insurance broker or agent shall register with the City's online insurance compliance system **Track4LA™** at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on Operator's behalf.

3.3 General Liability Insurance. Operator shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Operator's normal limits of liability but not less than Five Million Dollars (\$5,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Operator. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Operator's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons. In addition to and concurrently with the aforesaid insurance coverage, Operator shall also procure and maintain, fire legal liability insurance with a minimum limit of Two Hundred and Fifty Thousand Dollars (\$250,000), covering legal liability of Operator for damage or destruction by fire or explosion to the works, structures and improvements owned by City provided that said minimum limits of liability shall be subject to adjustments by Executive Director to conform with the deductible amount of the fire insurance policy maintained by the Board; provided, however, City shall discuss any such prospective adjustments with Operator prior to Operator being required to procure and maintain such insurance in an amount with a minimum limit equal to or in excess of Five Hundred Thousand Dollars (\$500,000); provided, further, that Operator shall not be required to procure and maintain such insurance with a minimum limit exceeding Seven Hundred Fifty Thousand Dollars (\$750,000), unless the parties agree otherwise. The same cancellation notice as required for the commercial general liability policy described above must be included.

3.4 Automobile Liability Insurance. Operator shall procure and maintain at

its expense and keep in force at all times during the term of this Agreement, automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Operator's normal limits of liability but not less than Five Million Dollars (\$5,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

3.5 Workers' Compensation and Employer's Liability. Operator shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Operator shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Operator shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Operator, and for all employees of any subcontractor or other vendor retained by Operator.

3.6 Railroad Protective Liability Insurance. Operator shall provide a policy of Railroad Protective Liability insurance in which Pacific Harbor Line (PHL) acting for itself and its railroad users are named insureds and the City of Los Angeles, its boards, officers, agents and employees are included as additional insureds with Operator. The minimum limits of Railroad Protective Liability insurance shall be the limits normally carried by Operator but not less than Two Million Dollars (\$2,000,000) combined single limit for property damage and bodily injury including death. If the submitted policies contain aggregate limits, Operator shall provide evidence of insurance protection for such limits so that the required coverage is not diminished in the event that the aggregate limits become exhausted. Said limit shall be without deduction, provided that the Executive Director or designee may permit a deductible amount when it is justified by the financial capacity of Operator. Any deductible amount permitted by the Executive Director shall be paid solely by Operator.

3.7 Ocean Marine Liability. Operator shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connections with Operator's operations. The cost of the insurance shall be borne by

Operator. The coverage shall be written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's Rating is not available). Coverage shall include, but not be limited to:

- (i) Hull and machinery coverage up to the value of the vessel(s);
- (ii) Protection and Indemnity coverage with combined single limits of Five Million Dollars (\$5,000,000) per occurrence for bodily injury, illness, death, loss of or damage to the property of another, and Jones Act risks or equivalent thereto internationally.

Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall also contain an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents, and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

3.8 All Risk Builder's Risk/Installation.

3.8.1 Except as provided in Paragraph 3.8.2, Operator shall, at the Operator's own expense, provide all risk builder's risk insurance covering loss, damage or destruction of property, including material in transit and stored on and off site, satisfactory to the City, in an amount at least equal to the value of the construction and materials on hand. Operator shall keep such policy in force until the work is completed and accepted by the Executive Director. The Operator's insurance broker or agent shall submit for approval said insurance to the City's online insurance compliance system Track4LA™ at <http://track4la.lacity.org/>. Acceptable evidence of coverage shall name the City as an additional named insured and as loss payee as its interest may appear.

3.8.2 The Operator need not provide all risk builder's risk insurance for fills; excavations; rock work; concrete or masonry walls and bulkheads retaining earth; foundations entirely below ground or in earth fill; pipe, sewer systems, conduit, and electric light and power systems entirely below ground or submerged; ballast and grading for railroad tracks on or in earth; pavements, sidewalks and pits on solid earth or in fill outside of buildings; incombustible poles, area lighting and metal fencing not attached to exterior or interior of buildings. Operator is not relieved of the obligation to rebuild these improvements when damaged.

3.8.3 An installation risk or "floater" policy, written to cover only specific types of equipment during construction, may be provided to cover damage to work or high valued equipment or materials.

Each policy shall include a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

Notice of occurrences of claims under the policy shall be made to the City Attorney's office with copies to Risk Management.

3.9 Carrier Requirements. All insurance which Operator is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

3.10 Notice of Cancellation. Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

3.11 Modification of Coverage. Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Operator.

3.12 Renewal of Policies. At least thirty (30) days prior to the expiration of each policy, Operator shall direct their insurance broker or agent to submit to the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Operator neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be deducted from the next payment due Operator.

3.13 Right to Self-Insure. Upon written approval by the Executive Director, Operator may self-insure if the following conditions are met:

1. Operator has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Operator must have a formal resolution of its board of directors authorizing self-insurance.
2. Operator agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance

with respect to types of coverage and minimum limits of liability required by this Agreement.

3. Operator agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Operator agrees that any insurance carried by Department is excess of Operator's self-insurance and will not contribute to it.
5. Operator provides the name and address of its claims administrator.
6. Operator submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
7. Operator agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
8. Operator has complied with all laws pertaining to self-insurance.

3.14 Accident Reports. Operator shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Operator's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Operator, its officers or managing agents.

Section 4. Affirmative Action.

4.1 The Operator, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit M.

Section 5. Small/Very Small Business Enterprise Program and Local Business Preference Program.

5.1 It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Operator shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit N.

5.2 It is also the policy of the Department to support an increase in local and regional jobs. The Department's Local Business Preference Program aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector. Operator shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for Local Business Enterprises to achieve participation in subcontracts where such participation opportunities present themselves.

NOTE: Prior to being awarded a contract with the City, Operator and all Subcontractors must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

Section 6. Conflict of Interest.

6.1 It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and the Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

Section 7. Compliance with Applicable Laws.

7.1 Operator shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

Section 8. Governing Law/Venue.

8.1 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.

Section 9. Trademarks, Copyrights, and Patents.

9.1 Operator agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by City of any materials supplied by Operator in the performance of this Agreement.

Section 10. Proprietary Information. [Intentionally Omitted.]

Section 11. Confidentiality.

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Operator relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Operator or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Operator is required to safeguard such information from access by unauthorized personnel.

Section 12. Notices.

12.1 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 the Department shall be addressed to Director of _____, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Operator shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

Section 13. Taxpayer Identification Number (TIN).

13.1 The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Operator declares that its authorized TIN is 47-5123928. No payments will be made under this Agreement without a valid TIN.

Section 14. Service Contractor Worker Retention Policy and Living Wage Policy Requirements.

14.1 The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Operator shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

Section 15. Prevailing Wage.

15.1 Work performed on Port property may require payment of prevailing wages. The Operator is obligated to make that determination, and will be bound by and comply with the applicable provisions of the California Labor Code and Federal, State, and local laws related to the prevailing wage and labor. The Operator will indemnify and pay or reimburse the Harbor Department for any damages, penalties or fines (including but not limited to, attorney's fees and costs of litigation) that the Harbor Department incurs, or pays, as a result of noncompliance with applicable prevailing wage laws in connection with the work performed under the contract.

15.2 The "General Prevailing Wage Rates" will be those rates as determined by the Director of the Department of Industrial Relations of the State of California. The general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, predetermined increases, if applicable, or type of workman needed to execute this contract are from the State of California Director of the Department of Industrial Relations, and may be obtained by going to the website. Copies of these rates are also on file in the Office of Contract Compliance, Bureau of Contract Administration, telephone (213) 847-1922 (the contact information is provided for convenience only, but it is the Operator's responsibility to obtain the current applicable phone numbers and websites in the event that those provided are no longer correct).

Section 16. Improvement Payment and Performance Bond.

16.1 After award of the contract, but before any work is performed under the contract, the Operator will be required to file a Payment Bond with the Harbor Department to be approved by the City. The Operator shall provide the Payment Bond on a form provided by the Harbor Department. The Payment Bond shall be for not less than 100 percent of the amount of the work of improvement proposed by the contractor to satisfy claims of material suppliers, mechanics, laborers, and subcontractors employed by it on the work. The Payment Bond shall be issued by a surety who is authorized to issue bonds in California.

16.2 After award of the contract, but before any work is performed under the contract, the Operator will be required to file a Performance Bond with the Harbor Department to be approved by the City. The Operator shall provide the Performance Bond on a form provided by the Harbor Department. The Performance Bond shall be for 100 percent of the amount of the work of improvement proposed by the Contractor to guaranty faithful performance of all work. The Performance Bond shall be issued by a surety who is authorized to issue bonds in California.

Section 17. Wage and Earnings Assignment Orders/Notices of Assignments.

17.1 The Operator and/or any Subcontractor are obligated to fully comply with all applicable state and federal employment reporting requirements for the Operator and/or Subcontractor's employees.

17.2 The Operator and/or Subcontractor shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Operator and/or Subcontractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Operator or Subcontractor will maintain such compliance throughout the term of this Agreement.

Section 18. Project Labor Agreement.

18.1 A Project Labor Agreement (PLA) will be required during the construction of the PV Systems on Harbor Department property. The purpose for the PLA is to promote efficiency of construction operations during the construction of the PV Systems and provide for orderly settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring timely and economical completion of these PV Systems. The Operator shall set up a PLA with the Los Angeles/Orange Counties Building and Construction Trade Council where they are a signatory. See Exhibit P.

Section 19. Equal Benefits Policy.

19.1 The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Operator shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Operator and pursue any and all other legal remedies that may be available. See Exhibit Q.

Section 20. Compliance with Los Angeles City Charter Section 470(c)(12).

20.1 The Operator, Subcontractors, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Operator is required to provide and update certain information to the City as specified by law. Any Operator subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this Agreement:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subcontractor on Harbor Department Agreement No. _____. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subcontractor is required to provide to Operator names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information must be provided to Operator within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

20.2 Operator, Subcontractors, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

Section 21. State Tidelands Grants.

21.1 This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Operator agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

Section 22. Integration.

22.1 This Agreement contains 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.**

Section 23. Severability.

23.1 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.

Section 24. Construction of Agreement.

24.1 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 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.

Section 25. Titles and Captions.

25.1 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.

Section 26. Modification in Writing.

26.1 This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

Section 27. Waiver.

27.1 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.

Section 28. Exhibits; Articles.

28.1 All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

Section 29. Counterparts.

29.1 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

//

//

//

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

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

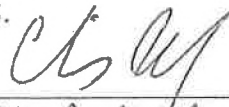
Dated: _____


By _____
EUGENE D. SEROKA
Executive Director

Attest: _____
Secretary

Dated: 10/5/15

HECATE ENERGY HARBORSIDE,
LLC.

By 
CHRIS BULLINGER
MANAGER, HECATE ENERGY HARBORSIDE, LLC
(Print/type name and title)

Attest 
CRAIG D. VETTER
(Print/type name and title)
V.P. OPERATIONS
HECATE ENERGY, LLC

APPROVED AS TO FORM AND LEGALITY

October 7, 2015
MICHAEL N. FEUER, City Attorney
Janna B. Sidley, General Counsel

By 
Helen J. Sok, Deputy/Assistant

Account #	W.O. #
Ctrl/Div #	Job Fac. #
Proj/Prog #	
Budget	
FY:	Amount:
TOTAL	
For Acct/Budget Div. Use Only:	
Verified by: _____	
Verified Funds Available: _____	
Date Approved: _____	

