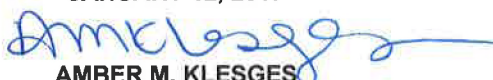


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RECOMMENDATION APPROVED;
RESOLUTION 17-8043 ADOPTED; AND
AGREEMENT NO. 17-3354-C APPROVED
BY THE BOARD OF HARBOR COMMISSIONERS

JANUARY 12, 2017


AMBER M. KLESGES
Board Secretary



DATE: DECEMBER 28, 2016

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. 17-8043 - THIRD AMENDMENT TO
OPERATING AGREEMENT NO. 15-3354 WITH HECATE ENERGY
HARBORSIDE LLC

SUMMARY:

Staff requests approval of the Third Amendment to Agreement No. 15-3354 (Operating Agreement) with Hecate Energy Harborside LLC (Hecate) in order to amend certain terms within the Operating Agreement that both staff and Hecate have determined require revision. Staff has determined that it is in the best interest of the City of Los Angeles (City) and the City's tenants whose premises will be used to develop, construct, manage, install and maintain photovoltaic solar power systems (PV Systems) for Hecate to provide additional insurance and indemnification. Staff is also requesting approval of an extension to the deadline for which Hecate must install certain Fit50 classified PV systems from the previous deadline of December 31, 2016 to June 30, 2017. This is consistent with a Los Angeles Department of Water & Power (LADWP) determination to extend the deadline in order for Hecate and others to finalize construction financing, along with other changes brought about by permitting and related issues.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Approve the Third Amendment to Operating Agreement No. 15-3354 with Hecate Energy Harborside LLC;
3. Authorize the Executive Director to execute and the Board Secretary to attest to the Third Amendment to Operating Agreement No. 15-3354; and
4. Adopt Resolution No. 17-8043

1/24/17: Los Angeles City Charter Section 373 was inadvertently omitted from the above recommendation. Note, "Agreement 17-3354-C" does require City Council consideration. See attached "Info Only - No Action Required Errata Memo" transmitted by the City Attorney's Office.

SUBJECT: THIRD AMENDMENT TO OPERATING AGREEMENT NO. 15-3354
WITH HECATE ENERGY HARBORSIDE LLC

DISCUSSION:

Background - On October 15, 2015, the Board approved Operating Agreement No. 15-3354 between Hecate and the Harbor Department. The Operating Agreement provides for each PV System to be in service for a term of 20 years on site locations that include warehouse roofs, parking lots, and underutilized ground areas. Under the Operating Agreement, Hecate would procure, install, maintain, and operate PV Systems at up to 12 site locations within the Port of Los Angeles which would generate at least 10 MW of clean renewable energy.

Hecate has since submitted design drawings and requested permits from Building & Safety for the installation of the PV Systems. Due to delays in the permitting process and complications in obtaining financing related to the structure of the Operating Agreement that does not incorporate typical ground lease property rights, there is a delay in the start of construction, and thus, the requirement to extend the deadline for commercial operation. This is in line with a similar determination made by LADWP to extend the deadline for the Fit50 program.

Staff is requesting an extension of the deadline for commercial operation of Fit50 PV System installations from the current deadline of December 31, 2016 to June 30, 2017. Staff is also requesting additional changes to the Operating Agreement as follows:

- Require Hecate to insure and indemnify 3rd party beneficiary Harbor Department tenants whose premises will be used in part for the installation of PV Systems and also allow those 3rd party beneficiary tenants to be modified if tenancy changes without further Board action.
- Delete the use of the term "Utility Easement" throughout the Operating Agreement and replace it with the term "Right of Access".
- For construction financing purposes, classify all equipment (PV Systems and their appurtenances) as personal property of Hecate and remain the property of Hecate.
- Acknowledge that no other rights granted under the Agreement have been changed except those outlined in the Third Amendment.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a Third Amendment to Agreement No. 15-3354 with Hecate to require Hecate to provide additional insurance and indemnification for PV systems on City and City's tenant's premises and to extend the deadline for installation of certain Fit50 PV systems, which are administrative activities. As such, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

SUBJECT: THIRD AMENDMENT TO OPERATING AGREEMENT NO. 15-3354
WITH HECATE ENERGY HARBORSIDE LLC

FINANCIAL IMPACT:

The Third Amendment will not have any effect on compensation to the Harbor Department. This action only changes the start date of commercial operation. Each PV System will be in operation for a term of 20 years commencing on each site's commercial operation date. As previously disclosed to the Board, annual revenue to the Harbor Department is estimated to be \$146,090, with total revenue over the term being approximately \$2,931,800 for 10 MW.

CITY ATTORNEY:

The Third Amendment to Operating Agreement No. 15-3354 (Transmittal 1) has been reviewed and approved as to form and legality by the Office of the City Attorney.

TRANSMITTAL:

1. Third Amendment

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


JACK C. HEDGE
Director of Cargo & Industrial Real Estate


MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:


EUGENE D. SEROKA
Executive Director

ES:MD:JH:PA:raw
Author: P. Andre
BL620raw Hecate 3rd Amend