



Executive Director's
Report to the

Board of Harbor Commissioners

DATE: JUNE 3, 2016

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - SECOND AMENDMENT TO OPERATING AGREEMENT NO. 15-3354 BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND HECATE ENERGY HARBORSIDE LLC

SUMMARY:

Staff requests approval of the Second Amendment to Agreement No. 15-3354 (Operating Agreement) with Hecate Energy Harborside LLC (Hecate) to change and update the list of approved installation sites outlined under Exhibit B and Exhibit F of the Operating Agreement. On March 27, 2016, staff presented the First Amendment to the Operating Agreement to the Board of Harbor Commissioners (Board) requesting that four sites be added in place of six original ground-mount installations that are unfeasible due to lengthy California Environmental Quality Act review process. Conditional Use Permits (CUP) required for those sites would not allow Hecate to complete installations before the deadline imposed by the Los Angeles Department of Water and Power (LADWP) Feed-In Tariff (FiT 50) program. The Board approved two of the four requested installation sites, resulting in a shortfall of 3.93 megawatts (MW) of the 10 MW prescribed under the Operating Agreement.

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 Second 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 Second Amendment to Operating Agreement No. 15-3354;
4. Authorize the Executive Director to append written legal descriptions, which will accompany the visual maps shown in Exhibit B-2; and
5. Adopt Resolution No. _____

DISCUSSION:

Background/Context - In November 2006, the Port of Long Beach and Port of Los Angeles took an unprecedented joint action to improve air quality in the South Coast Air Basin by adopting the San Pedro Bay Ports Clean Air Action Plan (CAAP), a sweeping

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plan aimed at significantly reducing the health risks posed by air pollution from port-related ships, trains, trucks, terminal equipment, and harbor craft. The City of Los Angeles Harbor Department (Harbor Department) subsequently entered into an agreement with the State of California Department of Justice, Office of the Attorney General (Attorney General), to support the CAAP. Under the agreement with the Attorney General, the Harbor Department would install 10 MW of Photovoltaic (PV) solar power within the Port of Los Angeles boundary as a general greenhouse gas reduction measure to replace electricity that would otherwise be provided by the LADWP electrical grid.

In October 2014, the Harbor Department released a Request for Proposal (RFP) for the development and operation of PV Systems within the Port of Los Angeles. The PV Systems would be developed under LADWP's FIT 50 program that would set the standards and requirements for the installation and operation of the PV Systems in regard to their connection to the LADWP electrical grid. The operator would own the PV Systems and be responsible for their operation and maintenance for the term of the Operating Agreement and be paid by LADWP under the terms of each site location's Power Purchase Agreement (PPA) with the LADWP. The Harbor Department in turn receives a percentage of the developer's gross annual revenue from sales of electricity to LADWP.

In February 2015, subsequent to the comprehensive review and scoring of all submitted proposals, Hecate was selected based upon their experience, qualifications, and revenue sharing proposal. On October 15, 2015, the Board approved Operating Agreement 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. The sites were subject to CEQA and CUP review before obtaining necessary permits and approvals. The original site locations set forth in Exhibit B and Exhibit F are listed in the table below:

NO.	PV SYSTEM INSTALLATION TYPE	SITE LOCATION
1	BUILDING ROOF TOP	BERTH 54-BERTH 55 CARGO SHEDS
2	BUILDING ROOF TOP	BERTH 153 CARGO SHED
3	BUILDING ROOF TOP	BERTH 154-155 CARGO SHED
4	PARKING LOT CANOPY	PARKING LOT AT 22ND STREET PARK
5	PARKING LOT CANOPY	PARKING LOT AT 22ND ST AND MINER ST
6	PARKING LOT CANOPY	PARKING LOT AT LIBERTY HILL PLAZA
7	PARKING LOT CANOPY	BERTH 161 C&M EMPLOYEE PARKING LOT
8	GROUND MOUNT	TRIANGLE NORTH OF "LAXT" RAIL LOOP
9	GROUND MOUNT	NORTH SHORE OF SEAPLANE LAGOON
10	GROUND MOUNT	WEST SHORE OF PIER 400 TRANS. CORRIDOR - NORTH
11	GROUND MOUNT	WEST SHORE OF PIER 400 TRANS. CORRIDOR - SOUTH
12	GROUND MOUNT	PIER 400 FACE F EMBANKMENT

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Under the Operating Agreement, Hecate has procured and is ready to install, maintain, and operate PV Systems at up to 12 site locations within the Port of Los Angeles which would generate up to 10 MW of clean energy as required by the Attorney General.

Due to the deadline for installation under the FiT 50 program, and the time it would take to complete CEQA and CUP approval for the ground-mount installations, the Harbor Department requested to delete five sites (numbered 8 through 12) from the original site list above. A sixth site (No. 5) was deleted in favor of holding the site for future development. These six sites (shaded in yellow above) were to be substituted with the following four replacement sites listed below.

NO.	PV SYSTEM INSTALLATION TYPE	SITE LOCATION
5	PARKING LOT CANOPY	MARINA PARKING SOUTH (2734-2816 MINER ST.)
8	PARKING LOT CANOPY	DOUBLETREE HOTEL PARKING LOT
9	BUILDING ROOF TOP	WWL ADMINISTRATION (500 E. WATER ST)
10	BUILDING ROOF TOP	FORMER U.S. CUSTOM BUILDING (300 FERRY ST)

At the Board meeting held on March 27, 2016, the Board elected only to approve two of the four substitute sites proposed (No. 9 and No. 10), which only added 0.84 MW and 0.51 MW, respectively, and left a deficit of 3.58 MW in order to reach the contracted 10 MW goal. The Board requested that staff do more research of container terminals or other large industrial sites within the Port of Los Angeles.

Staff has analyzed all of the major container facilities and larger industrial sites that have adequate areas to install solar canopies or roof top installations. The major hurdles with many of these sites are:

- (a) The Port of Los Angeles has limited property rights on land or buildings that have been leased to a private entity on a long-term permit. Since property rights of the land and buildings are transferred to the tenant for the term of their permit, most installations would require Hecate to enter into a direct agreement with the tenant and then the tenant would have to request consent to sublease from the Harbor Department and secure subsequent approval by the Board.
- (b) Hecate needs continuous, uninterrupted entitlement for 20 years in order to make the PV system installation financially viable under FiT 50. A tenant cannot encumber their site beyond their lease term as they have no legal right to do so. The Office of the City Attorney has indicated that there cannot be an automatic transfer of a potential Hecate sublease to the Harbor Department at the end of a tenant's permit term without Board approval at that time. While it would be unlikely that a major Harbor Department tenant would not renew their permit at term's end, Hecate is not able to accept the risk of a future Board requesting the PV system to be removed due to the arrangement with their financier which included the tax benefits derived, as well as the effect of the site revenue stream being discontinued.

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- (c) Some tenants have five-year options to extend as part of their cumulative 20-year or more remaining terms. Should a tenant choose not to renew at the time of one of those options, it creates the same situation as described under (b) above.
- (d) Hecate has a deadline for commercial operation to begin no later than December 31, 2016. Hecate has contracted with LADWP to produce 10 MW from the Port. Should they not be able to produce 10 MW, LADWP has the right to cancel their contract for selling that electricity generated from Port installations.

The only tenants that have a remaining term on their permit of 20 years or more are:

TENANT	REMAINING TERM	OPTIONS	TOTAL REMAINING TERM
APM TERMINALS PACIFIC, LTD.	11 YEARS	(3) 5-YEAR	26 YEARS
PACIFIC MARITIME ASSOCIATION	27 YEARS	NONE	27 YEARS
TRAPAC	23 YEARS	NONE	23 YEARS
CRAFTED	20 YEARS	NONE	20 YEARS

Harbor Department staff has met with both APM Terminals Pacific and Pacific Maritime Association in regard to parking lots at their respective leasehold locations. Both have been hesitant due to possible interruptions to their operations as a result of installation of the solar canopies and displacement of parking spaces that would occur during construction. Trapac's parking lot is affected by the shadow the administration building casts onto the parking lot due to its height. Crafted is exploring an alternative compensation method by which Hecate would repave a portion of their parking lot in exchange for the annual percentage compensation that would have been received from electricity generated at their site. Due to the condition of the parking lot at Crafted, Hecate would be unable to recondition all of the parking lot due to the expense involved. This would then require phasing of the pavement rehabilitation or further contributions from Crafted for the remainder of the cost which Crafted may be unable to incur.

Staff is recommending removal of the previously approved 22nd Street Park Parking Lot as a result of public outreach. This deletion results in a loss of 1.03 MW and a new approved total of 5.39 MW. With the deletion of the 22nd Street site, the Port is required to procure an additional 4.61 MW in order to reach the 10 MW minimum under the Operating Agreement.

Current sites that were approved under the original Operating Agreement and the First Amendment are as follows:

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Location	Roof Install	Full Coverage Canopy	T&L Canopy	Running Total
Berth 54-55 Warehouse (Fruit Terminal)	1.30			1.30
Berth 153 Warehouse	0.42			0.42
Berth 154-155 Warehouse	0.65			0.65
22nd Street Park Parking Lot		1.03		1.03
Liberty Plaza Parking Lot			0.50	0.50
Berth 161 Construction & Maintenance Parking Lot		1.17		1.17
WWL Admin./Service Building	0.84			0.84
U.S. Custom Building	0.51			0.51
Approved Operating Agreement Sites (MW):				6.42
Removal of 22nd Street Parking Lot Site:				-1.03
Adjusted Total of Approved Sites:				5.39

Additional substitute sites recommended by staff are as follows (Transmittal 1):

Proposed Additional Operating Agreement Sites

Location	Roof Install	Full Coverage Canopy	T&L Canopy	Running Total
Cruise Terminal			0.50	0.50
Westrec Marina Miner Street Marina			1.20	1.20
Catalina Express Parking Lot			1.20	1.20
PMA Surplus Parking Lot		0.90		0.90
Ardagh Warehouse Roof (Fish Harbor)	1.20			1.20
Total of Proposed Additional Operating Agreement Sites (MW):				5.00
Total MW for Approved Sites and Proposed Additional Sites:				10.39

Staff is also recommending the incorporation of written descriptions to the site maps shown in Exhibit B-2. The written descriptions were requested by Hecate to facilitate project financing and are subject to Harbor Department verification prior to incorporation in Exhibit B-2. The written descriptions are not amendments to the site locations, but provide further written specificity to the Exhibit B-2 visual maps.

Due to the uncertainty of whether any of the tenant-leased site locations will result in an agreement sufficient to meet the Harbor Department's goal of 10 MW, or achieve commercial operation status before December 31, 2016, staff recommends that the Board approve the combination of additional sites proposed above that will amount to an additional 5.00 MW.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a Second Amendment to Operating Agreement No. 15-3354 with Hecate to substitute solar sites outlined in Exhibits B-2 and F-2 of the Operation Agreement with new sites that will bring the operating agreement installed PV systems to 10 MW. In accordance with the requirements of the Operating Agreement, environmental review pursuant to CEQA will be required for each of the PV System sites at the time the Operator submits an application for Port Project and prior to obtaining all necessary approvals. Therefore, as an administrative activity involving an Amendment to an Operating Agreement, 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.

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It should be noted that State legislature recognized the environmental benefits of solar programs and streamlined the CEQA review process by creating a statutory exemption for rooftop and parking lot solar canopy projects (California Public Resources Code Section 21080.35). It is likely that some of the PV solar sites identified in this Second Amendment may qualify for the CEQA statutory exemption once the environmental review commences.

FINANCIAL IMPACT:

Percentage compensation over the term of the Operating Agreement is estimated to remain flat due to the PPAs with LADWP and does not include any compensation escalation over the term of the Operating Agreement. Total annual revenue to the Harbor Department was estimated to be \$141,090 under the original Operating Agreement approved in 2015, with total revenue over the term being approximately \$2,821,800 for 10 MW. Should the Board approve the sites as listed, the revenue to the Port would increase by approximately \$5,500 annually from original revenue estimates or approximately \$110,000 over the twenty year term.

CITY ATTORNEY:

The Second Amendment to Operating Agreement No. 15-3354 (Transmittal 2) has been reviewed and approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

- 1. Map of Revised Sites
- 2. Second Amendment

FIS Approval: *MB* (initials)
 CA Approval: *[Signature]* (initials)

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