

FOURTH AMENDMENT TO OPERATING AGREEMENT NO. 15-3354
BETWEEN THE CITY OF LOS ANGELES
AND
HECATE ENERGY HARBORSIDE, LLC
FOR THE PHOTOVOLTAIC SOLAR POWER SYSTEMS

THIS FOURTH AMENDMENT TO OPERATING AGREEMENT NO. 15-3354 (this "Fourth Amendment"), is made and entered into on _____, 20__, by and between the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners ("Board") of the Harbor Department (collectively referred to as "City" or "Harbor Department"), and HECATE ENERGY HARBORSIDE, LLC, a Delaware limited liability company, with an address of 115 Rosa Parks Blvd., Nashville, TN 37203 ("Operator").

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 12. Integration. Except as specifically provided herein, this Fourth Amendment shall not in any manner alter, change, modify, or affect any of the rights, privileges, duties, or obligations of either of the parties hereto under or by any reason of said Agreement, and except as expressly set forth herein, all of the terms, covenants, and conditions of said Agreement shall remain in full force and effect and are hereby ratified by the parties hereto.

[Signature Page Follows]

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

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

Dated: _____

By _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLEGES
Commission Secretary

HECATE ENERGY HARBORSIDE, LLC.

Dated: _____

By _____

(Print/type name and title)

Attest _____

(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

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

By _____
Helen J. Sok, Deputy/Assistant

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

CONSENT TO ASSIGNMENT OR TRANSFER

THIS CONSENT TO ASSIGNMENT OR TRANSFER ("Consent") is made and entered into on _____, 20__ ("Effective Date"), by and between the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners ("Board") of the Harbor Department (collectively referred to as "City" or "Harbor Department"), and HECATE ENERGY HARBORSIDE, LLC, a Delaware limited liability company, with an address of 115 Rosa Parks Blvd., Nashville, TN 37203 ("Operator").

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signature Page Follows]

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

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

Dated: _____

By _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLEGES
Commission Secretary

HECATE ENERGY HARBORSIDE, LLC.

Dated: _____

By _____

(Print/type name and title)

Attest _____

(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

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

By _____
Helen J. Sok, Deputy/Assistant

EXHIBIT V
FORM OF SUB-OPERATING AGREEMENT

TO FOLLOW

EXHIBIT S

CONSENT TO SECURITY INTEREST IN OPERATING AGREEMENT NO. 15-3354

THIS CONSENT TO SECURITY INTEREST IN OPERATING AGREEMENT No. 15-3354 ("Consent") is made as of this _____ day of _____, 20____, by and between _____ ("Lender") and THE CITY OF LOS ANGELES, acting by and through its Board of Harbor Commissioners ("City").

WHEREAS, the City holds certain real property in trust for the State of California which is located in the County of Los Angeles, State of California, and as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Premises"), which is include within approximately 7500 acres of property designated as the Harbor District within the City of Los Angeles;

WHEREAS, the City entered into that certain Operating Agreement No. 15-3354 between the City of Los Angeles and Hecate Energy Harborside LLC for the Photovoltaic Solar Power Systems dated October 15, 2015 ("Original Agreement"), between City and Hecate Energy Harborside LLC ("Operator"), which Original Agreement has been amended by (i) that certain First Amendment to Operating Agreement No. 15-3354 for the Photovoltaic Solar Power Systems dated March 17, 2016 between City and Operator, (ii) that certain Second Amendment to Operating Agreement No. 15-3354 for the Photovoltaic Solar Power Systems dated July 6, 2016 between City and Operator, and (iii) that certain Third Amendment to Operating Agreement No. 15-3354 for the Photovoltaic Solar Power Systems dated December __, 2016 between City and Operator (the Original Agreement, as so amended, is referred to herein as the "Agrément").

WHEREAS, pursuant to a written _____ [Loan Agreement] dated _____, _____, ("Credit Agreement") by and between Operator and Lender, Lender has made or will make a loan (the "Loan") to Operator for the purpose of financing the activities contemplated in the Agreement, among other things. Payment of the Loan will be secured by, among other things, a grant by Operator of a security interest, lien, collateral assignment and pledge (collectively, "Lien") of, in and against all of Operator's right, title and interest in the Agreement, any and all personal property, and the photovoltaic solar power systems ("PV System(s)"), including carports, and any system component further described in the Harbor Engineering Permit for each respective PV System owned by Operator and located on or used in connection with the Premises or Operator's activities under or pursuant to the Agreement (collectively, the "Collateral"); and

WHEREAS, the Lender has requested that, as a condition to making the Loan to Operator, the City execute and deliver this Consent to Lender.

NOW, THEREFORE, in consideration of the foregoing promises and for good and for valuable consideration, receipt of which is hereby conclusively acknowledged, the parties hereto mutually covenant and agree as follows:

1. The City hereby consents to the Lender's imposition of the Lien upon Operator's right, title and interest in the Collateral by the Lien. Notwithstanding anything contained in the Agreement to the contrary, (a) the appointment of a receiver for Operator's property by Lender or the exercise of similar remedies by Lender regarding the interest of Operator under the Agreement or the levy upon Operator's effects by Lender regarding the interest of Operator under the Agreement or the levy upon Operator's effects by Lender will not constitute a default

EXHIBIT S

by Operator under the Agreement, and (b) any transfer of Operator's interest under the Agreement or in the Premises through foreclosure or other enforcement of the Lien by Lender, or any similar action or transaction in lieu thereof, shall be permitted without any requirement that the City consent thereto; provided, however, that notwithstanding anything contained herein to the contrary, any successor operator to Operator other than Lender or a Lender Party (defined in Section 9 below) shall be subject to the approval of the Los Angeles Board of Harbor Commissioners (the "Board"), which approval shall not be unreasonably withheld or delayed. If the Lender (or a Lender Party) shall acquire title to Operator's interest in the Agreement, Lender (or such Lender Party) shall be entitled to assign the Agreement to a third party, subject to the approval (not to be unreasonably withheld or delayed) of the Board acting reasonably, and upon such assignment Lender (and such Lender Party) shall be relieved of all liability under the Agreement and this Consent.

2. The City hereby represents that as of the date of this Consent (a) the Agreement is unmodified (except as listed in the Recitals hereto) and is in full force and effect, (b) all sums payable by Operator under the Agreement have been paid through _____, (c) the term of the Agreement is twenty (20) years, unless terminated pursuant to Section 8 of the Agreement; The City hereby agrees that until the time, if any, that the obligations secured by the Lien shall be satisfied or Lender shall give the City written notice that the obligations secured by the Lien have been satisfied:

a. No cancellation, surrender, acceptance of surrender or modification of the Agreement shall be binding upon Lender or affect the liens created by the Lien, without the prior written consent of Lender.

b. No notice, demand, election or other communication required or permitted to be given under the Agreement (all of the foregoing hereinafter in this Section 3(b) collectively being referred to as "notices", and each of them, as a "notice") which shall be given by City to Operator shall be binding upon or affect Lender, unless a copy of said notice shall be given to Lender within the time when such notice shall be required or permitted to be given to Operator. In the case of an assignment of the Lien or change in address of Lender, the assignee thereof or Lender, by notice to City, may change the address to which copies of notices are to be sent as herein provided. All notices and copies of notices to be given to Lender as provided in this Section 3(b) shall be given in the same manner as is provided in the Agreement in respect of notices to be given by City or Operator.

c. Lender shall have the right to perform any term, covenant, condition or agreement and to remedy any default by Operator under the Agreement, and the City shall accept such performance by Lender with the same force and effect as if furnished by Operator.

d. If the City shall give a notice of default to Operator pursuant to the provisions of the Agreement, and if such default shall not be remedied within the applicable grace period provided for in the Agreement, and the City shall thereby, or otherwise, become entitled to terminate the Agreement or declare the Agreement forfeited, then before terminating the Agreement or declaring it forfeited, the City shall give to Lender not less than thirty (30) days additional written notice of the default without a timely cure following the first notice, and shall allow Lender such additional thirty (30) days' within which to cure the default; provided, however, that if Lender elects to cure such default, Lender shall cure the nonpayment of amounts that are readily

EXHIBIT S

ascertainable and then cure amounts that are not readily ascertainable when such amounts are ascertained in accordance with generally accepted accounting principles. Operator may delegate irrevocably to Lender the authority to exercise any or all of Operator's rights under this Agreement. Any provision of the Agreement or the documents evidencing or creating the Lien which gives to Lender the privilege of exercising a particular right of Operator under the Agreement if Operator has failed to exercise such right shall not be deemed to diminish any right or privilege which Lender may have (i) under this Consent, or (ii) by virtue of any such delegation of authority from Operator to exercise its rights without regard to whether or not Operator has failed to exercise such right.

3. [Intentionally Omitted]

4. So long as the Lien affects the Collateral, or if Lender, a Lender Party or any purchaser at foreclosure (or by statement of sale of personal property, assignment of agreement, or by transfer in connection with any bankruptcy or similar proceeding) shall acquire Operator's interest in the Agreement, the City agrees that if any court of competent jurisdiction shall render a decision which has become final that prevents the performance by the City of any of its obligations under the Agreement, the rights and obligations of Operator and the City shall be determined in accordance with the provisions of applicable law.

5. So long as the Lien affects the Collateral and the Lender retains its right to cure any defaults in the Agreement as provided for in the Agreement or this Consent, the fee title to the Premises shall always be solely in the City, and neither Operator nor Lender or Lender Party shall ever assert any real property interest of any kind in the Premises or ever assert any title or mortgage/real property security interest in the Premises. The City will deliver to Lender an estoppel certificate executed by the Executive Director within forty-five (five) days after Lender's request. The estoppel certificate will certify, subject to any applicable exceptions, that the Agreement is in full force and effect, will identify any modifications to the Agreement, will indicate whether, to the knowledge of City by its Executive Director, any default then exists under the Agreement. The term "Lender Party" means Lender, its successors and assigns approved by the Board or the Executive Director under Section 10 below, and their respective affiliates, nominees or designees.

6. Notwithstanding anything contained in the Agreement to the contrary, wherever in the Agreement the consent or approval of the City, the Board or the Executive Director is required, such consent or approval shall not be unreasonably withheld or delayed.

7. Any notices sent to the City shall, until further notice, be addressed as follows:

The City of Los Angeles Board of
Harbor Commissioners 425 South
Palos Verdes Street San Pedro,
California 90731 Attention: Office of
City Attorney

EXHIBIT S

8. Any notices sent to Lender shall, until further notice, be addressed as follows:

9. This Consent may not be modified except by an agreement in writing signed by the City and Lender or their respective successors-in-interest. This Consent shall inure to the benefit of and be binding upon the City and Lender, and their respective heirs, representatives, successors and assigns.

10. This Consent may be recorded in the Official Records of the County of Los Angeles.

11. The City understands that Lender will be accepting the Lien and making the Loan in reliance upon the truth of the statements made by the City in this Consent.

IN WITNESS WHEREOF, the parties have executed this Consent by their respective duly authorized representatives.

CITY

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

Dated: _____

By _____
Executive Director

Attest: _____
Acting Secretary

DRAFT

EXHIBIT S

EXHIBIT A

DESCRIPTION OF PREMISES

[to be provided at time of execution]

DRAFT

EXHIBIT J-2

MILESTONES

The Operator shall incorporate and meet the following Milestones when performing the Scope of Work in this Agreement:

1. Upon approval of this Agreement by the Board and City Council, the Operator shall submit an Application for Port Project (APP) for the 12 Site Locations within 30 days.

2. PPA's for Site Locations to be developed under LADWP's FiT Set Pricing (FiT100) Program shall be obtained by March 2016 and August 2016 for Tier Levels 3 and 4, respectively. It is understood that Site Locations to be developed under the 50 MW LADWP Solar FiT (FiT50) Program already have an approved PPA.

3. As set forth in Operator's respective PPA, Operator shall have all PV Systems achieve Substantial Completion Date by December 31, 2017.

EXHIBIT U

[DATE]

[NAME]
[COMPANY]
[ADDRESS]
[ADDRESS]

Dear Mr/Mrs [NAME],

SUBJECT: ADVANCE NOTICE OF UTILITY RIGHT-OF-WAY ACCESS UNDER PERMIT NO. [XXX] WITH [TENANT NAME]

The City of Los Angeles Harbor Department (Harbor Department) executed Agreement No. 15-3354 (Operating Agreement) with Hecate Energy Harborside LLC (Hecate) for the installation of photovoltaic solar power systems (PV System) on several sites within the Port of Los Angeles (Port). This is part of the Harbor Department's goal to reduce greenhouse gas emissions and other harmful pollutants that result from Port-related operations. A portion of your premises has been identified as a site for installation of a PV System that will feed clean energy into the Los Angeles Department of Water & Power electrical power system (power grid). The location is depicted on the enclosed exhibit.

Under Section [XX. XXXXXX] of Permit No. [XXX], certain rights regarding the installation of utilities, including without limitation, electrical conduit and power lines, were reserved by the Harbor Department. That section reads as follows:

"[XX. XXXXXX]. This Agreement and the Premises are and shall be at all times subject to the reservations listed below and additional reservations City may reasonably require after the Effective Date, of which Tenant shall receive advance written notice, for which Tenant shall receive no compensation unless otherwise provided.

[X.X.X] Utility or other Rights-of-Way. Rights-of-way for sewers, pipelines (public or private), conduits for telecommunications, electric, gas, and power lines, as may from time to time be determined to be necessary by Board, including the right to enter upon, above, below or through the surface to construct, maintain, replace, repair, enlarge or otherwise utilize the Premises for such purpose, without compensation or abatement of rent and with as minimal interference with the Permitted Uses as possible. If Board makes such determination of necessity, City shall issue a written right of entry or other entitlement to the applicable third-party requiring it and/or its parent to name Tenant as an additional insured on any

insurance policies required by City and to defend and indemnify Tenant from and against any claims, demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal action that arise from or are related to such third-party's entry onto the Premises. Tenant may directly charge any third-party entering the Premises for damages incurred by Tenant on Tenant-owned property as a result of the third-party entry."

Pursuant to this reservation of authority in Permit No. [XXX], the Harbor Department hereby notifies Tenant that Hecate shall install, operate, manage, and maintain a photovoltaic solar power system in accordance with the Operating Agreement, at the Premises and as depicted on the enclosed exhibit.

Further, the Permit lists improvements that exist within your premises that are considered "City Owned Improvements". One of these is the building within the premises that was approved for this use.

Based on the language above, the Harbor Department has required Hecate (and its successors as operators of the solar power system) to insure, defend, and indemnify both the Harbor Department and [Tenant Name] while it constructs, installs, repairs, or maintains this solar power system during the construction and ongoing operation of the system on the premises.

Finally, and according to the reservation clause, the Harbor Department will make every effort to minimize interference to your operation while the solar power system is being installed and operated. Prior to the commencement of construction, we will schedule a coordination meeting to discuss the installation of this important component of the Harbor Department's Clean Air Action Plan.

Thank you in advance for your cooperation and for being a valuable partner in this sustainable energy project. If you have any questions for comments, please don't hesitate to contact me at (310) 732-0399 or jhedge@portla.org.

Sincerely,

JACK C. HEDGE
Director of Cargo & Industrial Real Estate

JH:PA:raw
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Attachment