

## AGENDA REPORT

**Resolution: Approval of the Assignment and Transfer of the Solar Energy Supply and License Agreement Between the Port of Oakland and SunEdison, LLC to SunE H3 Holdings, LLC and Authorizing the Executive Director to Execute the Amendment to the Agreement To Reflect Such Transfer. (Engineering)**

**MEETING DATE:** 4/26/2018

**AMOUNT:** N/A  
Choose an item.

**PARTIES INVOLVED:** SunE H3 Holdings, LLC  
Longroad Solar Portfolio Holdings, LLC

**SUBMITTED BY:** Chris Chan, Director of Engineering

**APPROVED BY:** J. Christopher Lytle, Executive Director

**ACTION TYPE:** Resolution

### **EXECUTIVE SUMMARY**

In 2006, the Port of Oakland (Port) entered into a Solar Energy Supply and License Agreement (Agreement) with SunEdison, LLC (SunEdison) to purchase renewable energy from a solar photovoltaic system (PV System). Since the execution of the original agreement, the interest in the PV System has been assigned and transferred to an entity called SunE H3 Holdings, LLC. Staff is requesting the Board to approve the assignments and transfers described herein and authorize the Executive Director to execute the amendment to the Agreement to reflect such transfer as described in this Agenda Report.

### **BACKGROUND**

In 2006, the Port entered into the Agreement with SunEdison, LLC (SunEdison) to allow the construction of a 750 Kilo-Watt PV System along the North Field Runway at the Oakland International Airport and to sell the electrical energy, generating capacity and the environmental attributes produced by the PV System to the Port. The Agreement granted SunEdison a nonexclusive and nonpossessory right to enter Port property to install, maintain, own, operate, and replace solar panels in exchange for SunEdison's promise to sell all the electricity generated from the system to the Port at the prices negotiated in the Agreement.

In 2007, SunEdison assigned the Agreement to its wholly owned subsidiary company SunE POK1 Holdings, LLC who assumed all of SunEdison's rights, title and interest in the Agreement. SunEdison continued to maintain and operate the PV System.

In 2009, SunE POK1 Holdings, LLC merged with SunE WG17 San Diego, LLC under the name of SunE H3 Holdings, LLC (SunE H3).

In 2016, SunEdison filed for bankruptcy, and in 2017, Longroad Solar Portfolio Holdings, LLC (Longroad Energy) acquired many of SunEdison's assets, including management and control of SunE H3 and its rights and obligations under the Agreement. The bankruptcy court approved the sale of SunEdison's assets to Longroad Energy. In its order approving such sale, the bankruptcy court found, among other things, that (i) SunEdison had established a sound business justification for the sale of certain of its assets, (ii) Longroad Energy was a good faith purchaser for value, (iii) the sale price was not controlled by an agreement among potential bidders, (iv) neither SunEdison nor Longroad Energy had engaged in any conduct that would cause or permit the purchase and sale of the assets to be avoided or result in the imposition of any costs or damages under the Bankruptcy Code, and (v) the sale needed to be approved and consummated promptly in order to preserve the value of the purchased assets. The bankruptcy court's order was dated May 18, 2017, and the time for appeal has run without an appeal. Longroad Energy has decided not to change the name of SunE H3.

Neither the initial assignment from SunEdison to SunE POK1 Holdings, LLC nor the merger with SunE WG17 San Diego, LLC resulting in SunE H3 nor Longroad Energy's acquisition of SunE H3 were ever expressly consented to by the Port, and the Agreement still shows SunEdison and the Port as the contracting parties.

## **ANALYSIS**

SunE H3 has continued to perform SunEdison's obligations under the Agreement for the past 10 years, and the Port believes it will continue to perform under the Agreement now that it is owned by Longroad Energy. Section 14.2(b) of the Agreement requires that any assignee of the Agreement have similar or better experience operating and maintaining photovoltaic solar systems than SunEdison. SunE H3 has demonstrated its ability to operate and maintain the solar systems through its performance under the Agreement over the past 10 years. Since being acquired by Longroad Energy, SunE H3 has contracted with Borrego Solar to perform operation and maintenance services for the site. Port and SunE H3 have negotiated an amendment to the Agreement that recognizes SunE H3 as the contracting party. Pursuant to that amendment, SunE H3 has agreed to continue to provide and the Port will continue to purchase electrical energy, generating capacity, and environmental attributes from the PV System. Additionally, SunE H3 has agreed to perform all other terms, covenants, and conditions under the original Agreement.

Staff recommends that the Board approve the assignments and transfers described herein and authorize the Executive Director to execute the amendment to the Agreement to reflect such transfer as described in this Agenda Report.

## **BUDGET & STAFFING**

The proposed action does not have any budget or staffing impact.

## **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The matters contained in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

## **STRATEGIC PLAN**

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Care for our Environment

## **LIVING WAGE**

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements, do not apply because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.

## **SUSTAINABILITY**

Execution of the proposed transfer of ownership interest would allow the Port to continue receiving and using renewable energy at its Airport operations.

## **ENVIRONMENTAL**

CEQA: Execution of the proposed transfer of ownership interest is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 "Existing Facilities" of the CEQA Guidelines which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Approval of the proposed transfer of ownership interest of the lease falls within this exemption. No additional environmental review is required to take the action recommended in this Agenda Report.

## **GENERAL PLAN**

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

## **OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)/ PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)**

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction projects.

## **OPTIONS**

1. Adopt a resolution to approve the assignment and transfer of the Agreement between the Port and SunEdison to SunE H3 Holdings, LLC and authorizing the Executive Director to execute the amendment to the Agreement to reflect such transfer. This is the recommended action.
2. Do not approve the assignment and transfer of the Agreement between the Port and SunEdison to SunE H3 Holdings, LLC. This option would require that the Port provide some basis for the rejection of the transfer, or otherwise not be in compliance with the provisions of Section 14.2 of the original Agreement.

## **RECOMMENDATION**

Adopt a resolution to approve the assignment and transfer of the Agreement between the Port and SunEdison to SunE H3 Holdings, LLC and authorizing the Executive Director to execute the amendment to the Agreement to reflect such transfer.