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BOARD OF PORT COMMISSIONERS CITY OF OAKLAND

RESOLUTION APPROVING THE ASSIGNMENT AND TRANSFER OF THE SOLAR ENERGY SUPPLY AND LICENSE AGREEMENT BETWEEN THE PORT OF OAKLAND AND SUNEDISON, LLC TO SUN3 H3 HOLDINGS, LLC AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE AMENDMENT SUCH AGREEMENT TO REFLECT SUCH TRANSFER.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item 2.2 dated April 26, 2018, and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report, and in related agenda materials and in testimony received;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. Based upon the Agenda Report and other information received, the Board hereby finds and determines as follows:

- a) The Port of Oakland ("Port") and SunEdison, LLC ("SunEdison") are parties to that certain Solar Energy Supply and License Agreement dated June 21, 2006 and amended and restated on November 7, 2006 (the "Agreement");
- b) The Agreement (i) granted to SunEdison a non-exclusive right to enter Port property to install, maintain, and operate a 750 Kilo-Watt photovoltaic system for the generation of solar energy, and (ii) required SunEdison to sell all the solar electricity generated from such system to the Port at prices negotiated in the Agreement;
- c) In 2007, SunEdison assigned the Agreement to its wholly owned subsidiary, SunE POK1 Holdings, LLC, who assumed all of SunEdison's rights, title and interest in the Agreement;

d) In 2009, SunE POK1 Holdings, LLC merged with SunE WG17 San Diego, LLC and named the merged entity SunE H3 Holdings, LLC ("SunE H3");

e) In 2016, SunEdison filed for bankruptcy, and in 2017, Longroad Solar Portfolio Holdings, LLC ("Longroad Energy") acquired many of SunEdison's assets, including the management and control of SunE H3 and its rights and obligations under the Agreement;

f) The bankruptcy court approved the sale of SunEdison's assets to Longroad Energy, finding, 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;

g) The bankruptcy court's order was dated May 18, 2017, and the time for appeal has run without an appeal;

h) 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 have been approved by the Board, and Port staff and SunE H3 have agreed upon an amendment to the Agreement to recognize SunE H3 as the licensee and seller of the solar electricity under the Agreement; and

i) The assignments, transfers, and proposed amendment to the Agreement described in subsection h above are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 "Existing Facilities" of the CEQA Guidelines which exempt 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 assignments, transfers, and proposed amendment to the Agreement all fall within this exemption.

Section 2. The Board hereby approves the assignments, transfers and proposed amendment to the Agreement SunE H3 and authorizes the Executive Director to execute the proposed amendment to the Agreement and such documents as may be necessary to complete such assignments and transfers, subject to the approval as to form and legality by the Port Attorney.

Section 3. This resolution is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this resolution, is signed as approved as to form and legality by the Port Attorney, and is delivered to the other contracting party, there shall be no valid or effective agreement.

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