

## HOST CONSENT AND AGREEMENT

29265

THIS HOST CONSENT AND AGREEMENT (this "Consent") is entered into as of February 24, 2009 by and among MMA LB POWER, L.P., a Delaware limited partnership (the "Debtor"), as debtor, MAP 2006, L.P., a Delaware limited partnership (together with its successors and permitted assigns, collectively referred to as the "Secured Party"), as secured party, for certain lenders (the "Lenders") under a financing transaction provided to the Debtor, and the CITY OF LONG BEACH, a municipal corporation (the "Customer"), as customer.

## RECITALS

WHEREAS, pursuant to an Asset Purchase Agreement dated as of February 12, 2007, California New Power 2006-1, LLC, an Arkansas limited liability company ("CNP"), sold to the Debtor the "Uni-Solar Photovoltaic System" (as more fully described in the Power Purchase Agreement, the "Facility") installed on the rooftop of the Exhibition Hall at the Long Beach Convention and Entertainment Center located in Long Beach, California, which is more fully described on Exhibit A hereto (the "Premises").

WHEREAS, the Debtor, as lessor, and CNP, as lessee, entered into a Facility Lease Agreement dated as of February 12, 2007 (the "Lease Agreement"), pursuant to which the Debtor leased the Facility to CNP.

WHEREAS, DeLiddo & Associates, Inc., a California corporation ("DEERs"), entered into a Power Purchase Agreement Major Terms and Conditions (as assigned, amended, modified or supplemented, the "Power Purchase Agreement"), dated as of May 27, 2005, with Customer, pursuant to which DEERs agreed to sell to Customer, and Customer has agreed to purchase from DEERs the electrical power generated by the Facility.

WHEREAS, pursuant to that certain Assignment, Assumption and Amendment of Power Purchase Agreement dated as of February 12, 2007 (the "PPA Amendment") among CNP, DEERs and Customer, DEERs sold the Facility to CNP, which succeeded to all of DEERs's rights and obligations in, to and under the Power Purchase Agreement.

WHEREAS, CNP and the Debtor had entered into that certain Collateral Assignment of Power Purchase Agreement, dated as of February 12, 2007 (the "CNP Collateral Assignment"), pursuant to which CNP granted to Debtor a security interest in all of CNP's right, title and interest in and to the Power Purchase Agreement in order to secure performance of CNP's obligations under and in respect of the Lease Agreement and certain other obligations.

WHEREAS, in connection with the CNP Collateral Assignment, CNP, the Debtor and the Customer entered into a Consent and Agreement to Collateral Assignment of Power Purchase Agreement, dated as of February 12, 2007 (the "Consent to CNP Collateral Assignment").

WHEREAS, due to an Event of Default under the Lease Agreement, the Debtor exercised its rights and remedies against CNP, resulting in a termination of the Lease Agreement and an exercise by Debtor of its remedies under the CNP Collateral Assignment, resulting in the Debtor succeeding to CNP's right, title and interest and all of CNP's obligations under the Power Purchase Agreement, and the Debtor notified Customer of such events.

WHEREAS, the Debtor wishes to enter into a financing arrangement with Secured Party and the Lenders and, in connection therewith, the Debtor will execute certain loan and security documents (collectively the "Loan Documents"), including, without limitation, an Assignment of Related Documents

(the "Assignment of Related Documents"), pursuant to which the Debtor will grant to the Secured Party, for the benefit of the Lenders, a perfected security interest in and lien upon (the "Security Assignment") substantially all of the assets of the Debtor, including, without limitation, its right, title and interest in and to the Facility and under the Power Purchase Agreement (collectively, the "Collateral").

WHEREAS, the Debtor and Secured Party wish to obtain Customer's consent to the Security Assignment and Customer is willing to grant such consent, all subject to and upon the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Assignment of Related Documents.

2. Acknowledgment of Customer

(a) Customer hereby acknowledges that (i) Debtor is the legal and beneficial owner of the Facility for all purposes, including, but not limited to, for all tax, accounting and commercial law purposes, and (ii) Debtor has terminated the Lease Agreement and has exercised its remedies under the CNP Collateral Assignment, and is the current "System Owner" under the Power Purchase Agreement.

(b) Customer hereby acknowledges notice of the Security Assignment by the Debtor to the Secured Party and consents to the pledge and assignment to Secured Party of all of Debtor's right, title and interest in, to and under the Power Purchase Agreement and the Facility pursuant to the Security Assignment.

(c) The Customer agrees that it shall make any and all payments due and owing to the Debtor pursuant to the terms of the Power Purchase Agreement to the account described in Exhibit B (the "Payment Account"). Notwithstanding the provisions of the Power Purchase Agreement, Customer shall not make any payments under the Power Purchase Agreement to any other account or pursuant to any other instructions from the Debtor without the prior written consent of the Secured Party. Upon written notice from the Secured Party that it is exercising its rights under the Security Assignment, the Customer agrees that it will make all payments to be made by it under the Power Purchase Agreement (including, without limitation, all purchase price payments for power, all Termination Fees (as defined in the Power Purchase Agreement) and any purchase price payments) pursuant to the Secured Party's written instructions.

3. Secured Party's Rights under the Security Assignment

(a) Customer acknowledges that, upon and after written notice to Customer by Secured Party that an Event of Default (as defined in the Loan Documents) has occurred and is continuing and that it is exercising its rights and remedies under the Security Assignment (and until Customer receives a further written notice from Secured Party with additional instructions regarding the status of the Debtor), then, in addition to such other rights and remedies that Secured Party may have under the Security Assignment or other applicable law, Customer will:

(i) make any and all payments due and owing by Customer under the Power Purchase Agreement directly to Secured Party at such bank account as Secured Party may specify from time to time in writing to Customer; and

(ii) tender performance of any and all other covenants by Customer under the Power Purchase Agreement to and for the benefit of Secured Party and as Secured Party may direct.

(b) The Secured Party shall have the right, but not the obligation, to provide or to cause to be provided the services to be provided by the System Owner under the terms of the Power Purchase Agreement and to do any other act or thing required of the Debtor under the Power Purchase Agreement or necessary and proper to prevent the termination of the Power Purchase Agreement, at the time and in the manner provided in paragraph (c) below. However, nothing herein shall require the Secured Party to cure any default of the Debtor under the Power Purchase Agreement or to assume or perform any obligation of the Debtor under the Power Purchase Agreement, but shall only give it the option to do so.

(c) The Customer shall not terminate the Power Purchase Agreement on account of any default or breach by the Debtor thereunder unless the Customer has provided written notice of such default or breach to the Secured Party at the address set forth below (or any other address that is provided to the Customer by the Secured Party by written notice) and has first provided to the Secured Party not fewer than 60 days, at Secured Party's option, (i) to effect a cure of the default (or, if the nature of the default is such that the same cannot be cured within such 60 days, then the Secured Party or its assignee or designee shall be afforded not fewer than 60 days to commence a cure of the default and such additional time thereafter as is reasonably necessary to diligently pursue and cure such default, provided that in no event shall such additional time exceed 90 days); or (ii) to declare the Debtor in default under any or all of the Loan Documents and commence foreclosure or other appropriate proceedings (if the Secured Party deems such proceedings appropriate) in respect of its Security Assignment, and such additional time thereafter as is reasonably necessary to complete such foreclosure or other proceedings (but in no event shall such additional time after commencement of such foreclosure or other appropriate proceedings exceed 90 days), and thereafter commence to perform the Debtor's duties under such Power Purchase Agreement. Foreclosure of the Security Assignment, or any sale, conveyance or assignment thereunder by the Secured Party, or any conveyance to the Secured Party, any Lender or its assignee, designee or any foreclosure sale purchaser in lieu thereof, shall not require the consent of the Customer or constitute a breach or event of default under the Power Purchase Agreement. Upon such foreclosure, sale, conveyance or assignment of the Debtor's interest under the Power Purchase Agreement, the Customer shall recognize the Secured Party, any Lender or other purchaser or grantee, or any subsequent assignee of the Secured Party as the "System Owner" under the Power Purchase Agreement, provided that (i) Secured Party or such other purchaser, grantee or assignee assumes the obligations of the Debtor under the Power Purchase Agreement arising from and after the date of such assignment and cures all outstanding defaults reasonably susceptible to cure, and (ii) such purchaser, grantee or assignee (or its affiliate providing management and/or maintenance services with respect to the Facility) has demonstrated capability to operate facilities similar to the Facility.

(d) If the Secured Party is prohibited by any order or injunction issued by any court or by reason of any action in connection with a bankruptcy or insolvency proceeding involving the Debtor from curing any event of default under the Power Purchase Agreement or from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified in paragraph (c) above for curing such event of default or commencing or prosecuting such foreclosure or other proceedings shall be extended by the period of such prohibition, but in no event shall such extension exceed 180 days after the date of such order or injunction.

(e) In the event that the Power Purchase Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding or is terminated for any other reason (except as a result of a default thereunder which was curable hereunder but was not appropriately cured pursuant to paragraph (c) above) and if, within 60 days after such termination, the Secured Party or its designee or assignee shall so request, the Customer will execute and deliver to the Secured Party or such assignee or designee a new agreement that is substantially identical to the Power Purchase Agreement, with a term equal to the remaining term of the Power Purchase Agreement before giving effect to such termination and with the same, covenants, agreements, terms, provisions and limitations as the Power Purchase Agreement.

(f) In the event the Secured Party, or its assignee or designee or any foreclosure sale purchaser succeeds to the Debtor's interest under the Power Purchase Agreement, whether by foreclosure or otherwise, or performs any of the Debtor's obligations under the Power Purchase Agreement, neither the Secured Party nor such assignee, designee or purchaser shall be liable for or be required to perform or cause to be performed any of the Debtor's obligations under the Power Purchase Agreement that (i) were unperformed prior to or at the time the Secured Party or such assignee, designee or purchaser succeeded to the Debtor's interest or commenced performance of the Debtor's obligations thereunder, and (ii) are not reasonably susceptible to cure. The Secured Party shall have the right to assign any interest it acquires in the Power Purchase Agreement to a person or entity that has (or has an affiliate providing management and/or maintenance services that has) demonstrated capability to operate facilities similar to the Facility and, upon such assignment, the Secured Party (including its agents, employees and contractors) shall be released from any further liability thereunder.

(g) The Customer hereby authorizes the Debtor and the Secured Party to file or record at any time and from time to time any financing statements and fixture filings describing the Power Purchase Agreement and/or the Facility, and the Debtor's and Secured Party's interest therein, and any amendments or continuations to such financing statements and fixture filings, as the Secured Party may request, to perfect and continue perfected, maintain the priority of, or provide notice of, the Secured Party's Security Assignment respecting the Collateral.

(h) The Customer agrees that the Facility at all times shall remain personal property and shall not become a part of the Premises. Upon the exercise of Secured Party's rights under the Security Assignment and the termination of the Power Purchase Agreement, the Secured Party shall have the right to enter the Premises and enforce its security interest in and remove the Facility or any part thereof in the manner proscribed by Section 8 of the Power Purchase Agreement.

(i) Customer further acknowledges and agrees that, regardless of whether or not Customer has received from Secured Party notice of any Event of Default under the Loan Documents, and notwithstanding anything to the contrary in the Power Purchase Agreement, in the event that the Power Purchase Agreement is terminated by Customer pursuant to Section 8 of the Power Purchase Agreement or by Debtor pursuant to Section 13 of the Power Purchase Agreement in connection with a default by Customer thereunder, Customer shall pay the Termination Fee and/or the Demobilization Fee (as such terms are defined in the Power Purchase Agreement) directly to Secured Party at such account as may be specified by Secured Party to Customer in writing. Secured Party hereby acknowledges that any such payments will be applied to the obligations under the Loan Documents in the manner required thereunder.

(j) Notwithstanding anything to the contrary set forth in the Power Purchase Agreement, Customer hereby expressly acknowledges and agrees that, in connection with any exercise by it of its purchase option under Section 9 of the Power Purchase Agreement, (i) the "fair market value" of the Facility must be expressly agreed to by each of Customer, Debtor and Secured Party, and (ii) in the event that the parties cannot agree as to the "fair market value" then the independent appraiser selected to determine such value must be expressly agreed to by each of Customer, Debtor and Secured Party; provided, however, that in each case, in the event that any Event of Default under the Loan Documents has occurred, and regardless of whether or not the Secured Party shall have exercised or then be exercising its rights or remedies under the Security Assignment, then the agreement of Debtor will not be required.

(k) Customer hereby expressly acknowledges and agrees that (i) the Power Purchase Agreement may not be amended or modified in any way, including but not limited to any modification by waiver or course of dealing, unless such amendment, modification or waiver is expressly consented to by Secured Party as evidenced by a writing signed by Secured Party, and (ii) all notices that it may deliver to Debtor under the Power Purchase Agreement, including, but not limited to, any notices with respect to

any default by Debtor thereunder, shall be copied to Secured Party at the address set forth below in this Consent.

(l) Customer acknowledges and agrees that Secured Party shall not have any liability or obligation under the Power Purchase Agreement as a result of this Consent or the Security Assignment, nor shall Secured Party be obligated or required to perform any of Debtor's obligations under the Power Purchase Agreement, unless, in connection with the exercise of remedies under the Security Assignment, Secured Party expressly notifies Customer in writing that Secured Party is electing to assume performance of the Power Purchase Agreement in connection with the exercise of its remedies under Security Assignment, in which case the obligations of Secured Party shall be no more than those of Debtor under the Power Purchase Agreement.

#### 4. Debtor's Waiver and Indemnity; No Release from Obligations

(a) Debtor hereby waives any rights which it may have pursuant to contract or law or otherwise against Customer arising out of, or resulting from, the exercise by Secured Party of its rights and remedies under the Security Assignment or this Consent and agrees to indemnify and hold harmless Customer, its successors and assigns, and their respective officers, directors and employees from and against any and all claims, losses or liabilities (including reasonable attorneys' fees) resulting therefrom.

(b) Debtor hereby agrees, expressly for the benefit of Customer, that notwithstanding anything contained in the Security Assignment to the contrary: (i) Debtor shall at all times remain liable to Customer under the Power Purchase Agreement to perform all duties and obligations of the "System Owner" thereunder to the same extent as if the Security Assignment and this Consent had not been executed, and (ii) the exercise by Secured Party of any rights assigned under the Security Assignment shall not release Debtor from any of its duties or obligations to Customer under the Power Purchase Agreement except to the extent that such exercise by Secured Party shall constitute performance of such duties or obligations.

#### 5. Notices

(a) Debtor and Secured Party agree, expressly for the benefit of Customer, that for all purposes of the Security Assignment, Customer shall not be deemed to have knowledge of and need not recognize any event, condition, right, remedy or dispute affecting the interests of Debtor or Secured Party under the Security Assignment unless and until Customer shall have received written notice thereof from Secured Party addressed as provided in Paragraph 5(d) below. In acting in accordance with the Power Purchase Agreement and this Consent, Customer may rely conclusively upon any such notice.

(b) Customer shall be entitled to rely conclusively upon any notice or instruction received by it from Secured Party pursuant to the Security Assignment or this Consent, and Customer shall have no obligation to inquire as to the accuracy of such notice or instruction or as to the relative priority of rights of any person asserting rights in and to the Power Purchase Agreement.

(c) Except as provided in Paragraph 3 of this Consent, unless and until Secured Party shall have notified Customer in writing that it is exercising its rights and remedies under the Security Assignment, Debtor shall have all rights and obligations of "System Owner" under the Power Purchase Agreement and Customer shall have no duty to consult with or otherwise deal with Secured Party concerning the Power Purchase Agreement. Without limiting the generality of the foregoing, prior to the receipt of Secured Party's written notice that it is exercising its remedies under the Security Assignment, as provided in Paragraph 3(a) hereof, Customer shall have no obligation to inquire as to whether Debtor has complied with the provisions of the Security Assignment and shall be entitled to rely upon any notice, consent, waiver or other action taken by Debtor in connection with the Power Purchase Agreement.

(d) Notices hereunder shall be given by hand, by first class, certified or registered mail, by a recognized overnight courier service or by telecopier (confirmed by mail or overnight courier) at

If to Secured Party:

MAP 2006, L.P.  
c/o MAP Royalty, Inc.  
2555 Park Blvd., Suite 1  
Palo Alto, CA 94306-1919  
Telephone: (650) 324-9095  
Facsimile: (650) 324-9098  
Attention: Stephen M. Hall

If to Debtor:

MMA LB Power, L.P.  
c/o MMA Renewable Ventures, LLC  
621 East Pratt Street, Suite 300  
Baltimore, Maryland 21201  
Telephone: (443) 263-2900  
Facsimile: (410) 727-5387  
Attn: Asset Management

If to Customer:

City of Long Beach  
333 West Ocean Boulevard, 13th Floor  
Long Beach, California 90802  
Facsimile: (562) 570-7650  
Attention: City Manager

With a courtesy copy to:

City of Long Beach  
333 West Ocean Boulevard, 13th Floor  
Long Beach, California 90802  
Telephone: (562) 570-6221  
Facsimile (562) 570-6215  
Attention: Property Services Bureau Manager

6. Representations and Warranties. Each of Customer, Debtor and Secured Party hereby represents and warrants, as to itself only (except that (i) the representations relating to the Power Purchase Agreement in paragraphs (b) and (c) below are made only by Customer and Debtor, as Secured Party is not a party to that agreement, (ii) the representation in paragraph (d) below is made only by Customer, and (iii) the representation in paragraph (e) below is made only by Debtor), to each of the other parties to this Consent that:

(a) It is a corporation, limited liability company or limited partnership duly incorporated or organized, validly existing and in good standing under the laws of its jurisdiction of formation and, to the extent such jurisdiction of formation is not the State of California, it is duly qualified to do business as a foreign corporation, limited liability company or limited partnership, as the case may be, in the State of California.

(b) It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Consent and the Power Purchase Agreement, and the execution, delivery and

performance of each of this Consent and the Power Purchase Agreement have been duly authorized by all necessary corporate or company action, as the case may be, on its part.

(c) Each of the Power Purchase Agreement and this Consent has been duly executed and delivered by it and constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium and other similar laws affecting the enforcement of creditors' rights generally and general principles of equity (regardless of whether such enforceability is at issue in the proceeding in equity or at law).

(d) Attached hereto as Exhibit C is a true, correct and complete copy of the Power Purchase Agreement, with all amendments thereto, in effect as of the date of this Consent.

(e) Except for the assignments contemplated hereby, the Debtor has not assigned or granted any security interest in any of its rights under the Power Purchase Agreement.

7. GOVERNING LAW. THIS CONSENT WILL BE INTERPRETED UNDER AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, U.S.A., EXCEPT THAT CALIFORNIA'S CHOICE OF LAW RULES SHALL NOT BE INVOKED FOR THE PURPOSE OF APPLYING THE LAW OF ANOTHER JURISDICTION.

8. Beneficiaries of Consent. The Secured Party is an intended beneficiary of this Consent. No termination, amendment or waiver of any provisions of this Consent or consent to any departure by the Customer from any provisions of this Consent shall in any event be effective unless the same shall be in writing and signed by Secured Party.

9. Counterparts. This Consent may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

*[Signature Pages Follow]*

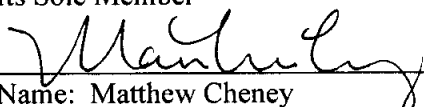
IN WITNESS WHEREOF, the parties hereto have caused this Consent and Agreement to be executed by their respective officers or agents thereunto duly authorized as of the date first above written.

**Debtor:**

**MMA LB POWER, L.P.,**  
a Delaware limited partnership,  
as Debtor

By: MMA LB Power GP, LLC,  
a Delaware limited liability company,  
Its General Partner

By: MMA Renewable Ventures, LLC, a  
Maryland limited liability company,  
Its Sole Member

By:   
Name: Matthew Cheney  
Title: Chief Executive Officer

**Secured Party:**

**MAP 2006, L.P.,**  
a Delaware limited partnership,  
as Secured Party

By: MAP Royalty, Inc.  
Its: General Partner

By: \_\_\_\_\_  
Name: Stephen M. Hall  
Title: President & Chief Operating Officer

**Customer:**

**CITY OF LONG BEACH,**  
a municipal corporation  
as Customer

By: \_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM:

\_\_\_\_\_, City Attorney



IN WITNESS WHEREOF, the parties hereto have caused this Consent and Agreement to be executed by their respective officers or agents thereunto duly authorized as of the date first above written.

**Debtor:**

**MMA LB POWER, L.P.,**  
a Delaware limited partnership,  
as Debtor

By: MMA LB Power GP, LLC,  
a Delaware limited liability company,  
Its General Partner

By: MMA Renewable Ventures, LLC, a  
Maryland limited liability company,  
Its Sole Member

By: \_\_\_\_\_  
Name:  
Title:

**Secured Party:**

**MAP 2006, L.P.,**  
a Delaware limited partnership,  
as Secured Party

By: MAP Royalty, Inc.  
Its: General Partner

By: Stephen M. Hall  
Name: Stephen M. Hall  
Title: President & Chief Operating Officer

**Customer:**

**CITY OF LONG BEACH,**  
a municipal corporation  
as Customer

By: \_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM:

\_\_\_\_\_, City Attorney

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Agreement to be executed by their respective officers or agents thereunto duly authorized as of the date first above written.

**Debtor:**

**MMA LB POWER, L.P.,**  
a Delaware limited partnership,  
as Debtor

By: MMA LB Power GP, LLC,  
a Delaware limited liability company,  
Its General Partner

By: MMA Renewable Ventures, LLC, a  
Maryland limited liability company,  
Its Sole Member

By: \_\_\_\_\_  
Name:  
Title:

**Secured Party:**

**MAP 2006, L.P.,**  
a Delaware limited partnership,  
as Secured Party

By: MAP Royalty, Inc.  
Its: General Partner

By: \_\_\_\_\_  
Name: Stephen M. Hall  
Title: President & Chief Operating Officer

**Customer:**

**CITY OF LONG BEACH,** ~~BY~~  
a municipal corporation ~~TO SECURE THE~~  
as Customer ~~THE CITY CHARTER.~~

By: \_\_\_\_\_ Assistant City Manager

Name: Patrick H. West  
Title: City Manager

APPROVED AS TO FORM

\_\_\_\_\_  
2-3, 20 09  
ROBERT E. SHANNON, City Attorney

By: \_\_\_\_\_  
RICHARD ANTHONY  
DEPUTY CITY ATTORNEY

APPROVED AS TO FORM:

\_\_\_\_\_  
\_\_\_\_\_, City Attorney

Exhibit A

The Premises

LOTS 9 AND 10 IN BLOCK "B" OF THE STRAND NO. 3, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11 PAGE 199 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TOGETHER WITH THAT PORTION OF LOTS 9, 10, 11, 12 AND 13 OF THE PARK VIEW TRACT, AS PER MAP RECORDED IN BOOK 12 PAGE 36 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHERLY OF A LINE PARALLEL WITH AND DISTANT SOUTHERLY 40.95 FEET, MEASURED AT RIGHT ANGLES FROM THE SOUTHERLY LINE OF OCEAN BOULEVARD, AS SAID STREET IS SHOWN ON THE MAP OF PARK VIEW TRACT, TOGETHER WITH THAT PORTION OF CEDAR AVENUE, ADJOINING SAID LAND ON THE EAST AND THAT PORTION ADJOINING WINDSOR PLACE ON THE SOUTH, THAT WOULD PASS WITH A LEGAL CONVEYANCE OF SAID LAND.

TOGETHER WITH (1) ALL EASEMENTS AND RIGHTS APPURTENANT THERETO EXCEPTED AND RESERVED BY CLARE E. HOSSOM, IN THAT CERTAIN GRANT DEED AND AGREEMENT DATED JUNE 10, 1969 EXECUTED BY HER AND CITY OF LONG BEACH AND RECORDED JULY 1, 1969 IN BOOK D-4421 PAGE 609, OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, AND (2) ALL EASEMENTS AND RIGHTS-OF-WAY APPURTENANT THERETO GRANTED TO CLARE E. HOSSOM, BY THAT CERTAIN EASEMENT DEED, EXECUTED BY CITY OF LONG BEACH, AS GRANTOR AND CLARE E. HOSSOM, AS GRANTEE, AND RECORDED JULY 1, 1969 IN BOOK D-4421 PAGE 617, OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ALL OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER LYING MORE THAN TWO HUNDRED (200) FEET BELOW THE SURFACE OF SUBJECT PROPERTY, TOGETHER WITH THE RIGHT TO DRILL INTO AND THROUGH SAID SUBJECT PROPERTY AND TO USE AND OCCUPY ALL PARTS OF SAID SUBJECT PROPERTY LYING MORE THAN TWO HUNDRED (200) FEET BELOW THE SURFACE THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR AND PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS FROM SAID SUBJECT PROPERTY OR OTHER LANDS, BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID SUBJECT PROPERTY OR ANY PORTION THEREOF WITHIN TWO HUNDRED (200) FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER, TOGETHER WITH THE LESSOR'S INTEREST IN THE OIL, GAS AND MINERAL LEASE OF RECORD, AS RESERVED BY SHERILL L. HOSSOM, ET AL., IN THE DEED RECORDED JUNE 8, 1987 AS INSTRUMENT NO. 87-903250, OFFICIAL RECORDS.

END OF LEGAL DESCRIPTION

Exhibit B

The Payment Account

Wachovia Bank, N.A.

Charlotte, NC 28288

ABA #: [REDACTED]

For Credit to: MMA LB Power, LP

621 East Pratt Street, Suite 300

Baltimore, MD 21202

Account #: [REDACTED]

Phone Advice Bruno Soenen 443 263 2997

Exhibit C  
The Power Purchase Agreement

# POWER PURCHASE AGREEMENT MAJOR TERMS AND CONDITIONS

## 29265

This Power Purchase Agreement ("Agreement") is made and entered into as of May 27, 2005 by and between the City of Long Beach, a municipal corporation, having its offices located at 333 West Ocean Boulevard, 3<sup>rd</sup> Floor, Long Beach, California 90802 Attention: Property Services Bureau ("THE CITY") and DeLiddo and Associates, DBA, DEERS, a California corporation, having its offices located at 140 South Elm Avenue, Suite B, Ripon, California, 95366 ("SYSTEM OWNER"). "SYSTEM", as described in Exhibit "A", refers to the Solar SYSTEM to be installed by SYSTEM OWNER at THE CITY's facility, ("PREMISES"), located at 300 East Ocean Boulevard, Long Beach, California 90802. THE CITY and SYSTEM OWNER may be referred to herein in the singular as "Party" and collectively as "Parties".

1. Term and Commencement Date: The Term of this Agreement shall begin on the date written above and shall end twenty ( 20 ) years after the Commencement Date except as such Term may be earlier terminated as provided in Sections 8, 9, and 10 of this Agreement. The Commencement Date shall be the date that SYSTEM OWNER delivers to THE CITY a mutually acceptable certificate (the "Acceptance Certificate", as identified in Exhibit "E") stating that the SYSTEM as identified on Exhibit "A" is installed and is in operating condition and THE CITY signs said certificate indicating its approval of the installation. Please see Memorandum of Commencement Date and Termination Date (Exhibit "F")
2. Purchase of Electricity: THE CITY will purchase all electricity from SYSTEM OWNER supplied by the SYSTEM.
3. Purchase Price: The annual price per kilowatt-hour will be as listed in Exhibit "B".
  - a. Billing System: SYSTEM OWNER will invoice THE CITY monthly in accordance with Exhibit "B".
  - b. Customer Service: SYSTEM OWNER shall provide all of the following:
    - i. SYSTEM OWNER will produce and send invoices to THE CITY's designee within fifteen (15) business days of the end of the billing cycle at the following address:

City of Long Beach  
Property Services Bureau  
333 West Ocean Boulevard, 3<sup>rd</sup> Floor  
Long Beach, California 90802  
Attn: Property Services Bureau Manager
    - ii. THE CITY will make payment for the good faith amount of the invoice to SYSTEM OWNER within sixty (60) days upon receipt of a valid invoice.

- iii. SYSTEM OWNER will post meter reads to a web site and make this web site available to THE CITY and its designees.
  - iv. SYSTEM OWNER will post 15-minute interval data to website and will make this data available to THE CITY within 24 hours.
4. Rebates and Other Incentives: Any grant, rebate, incentive payment or credit by Southern California Edison ("SCE") paid as a result of the design, construction and operation of the SYSTEM shall inure to the benefit of SYSTEM OWNER. THE CITY will cooperate in good faith as necessary to enable SYSTEM OWNER to obtain all available incentives and rebates, including assignment to SYSTEM OWNER of any incentive received by THE CITY from SCE, as consistent with this Agreement.
5. Meters: SYSTEM OWNER shall provide a revenue-grade Data Acquisition SYSTEM or Interval Data Recording (IDR) meter complete with industry standard telemetry for communication with Ethernet, cellular and other common output capabilities including but not limited to k/y out connection to THE CITY's own energy management SYSTEM (EMS) for the purposes of metering/monitoring/data collection of solar production. THE CITY shall have access to data from these meters, no less frequently than a daily download of such data. SYSTEM OWNER shall measure the actual amount of electricity supplied to THE CITY by the SYSTEM at the Electrical Interconnection Point using the revenue-grade IDR meter as described above. Meters shall be installed at SYSTEM OWNER's expense. SYSTEM OWNER shall have the meters tested annually at its own expense by an independent third party approved by THE CITY. THE CITY shall be allowed to observe that testing and SYSTEM OWNER shall provide notice of the testing to THE CITY at least ten (10) days prior to the test date. SYSTEM OWNER shall provide copies of such tests to THE CITY. In addition to the annual test, SYSTEM OWNER shall also test the meter at any reasonable time upon request of THE CITY. THE CITY shall reimburse SYSTEM OWNER for the cost of any test requested by THE CITY, unless such testing demonstrates that the meter was operating outside of its allowable calibration. THE CITY may also conduct occasional billing inquiry, validation and verification, or reconciliation procedures. During such THE CITY procedures, SYSTEM OWNER shall provide THE CITY with the data and information used to generate billing determinants, including any interval meter data representing generation output. THE CITY will use its reasonable efforts to provide or arrange for utility-metered data that can support the billing process, either directly through a data file transmission or through some arrangement with the local utility service provider. Bill adjustments for Meter errors will be according to SCE tariff Rule 17 part C.
6. Guarantee of Minimum Output Performance: SYSTEM OWNER has estimated that it will annually deliver to THE CITY, kilowatt-hours of electricity in the amounts identified in Exhibit "B". However, SYSTEM OWNER does not guarantee the output performance listed in Exhibit "B". However, if THE CITY decides to purchase the SYSTEM, SYSTEM OWNER will transfer to THE CITY the manufacturer's power output warranty.
7. Potential Revenue from Renewable Portfolio Standards and / or Renewable Energy Credits (collectively "RECs"): SYSTEM OWNER shall retain all RECs from the SYSTEM. SYSTEM OWNER is authorized to sell or transfer RECs (including the ownership of the

renewable attributes of the SYSTEM) to third-party purchaser selected by SYSTEM OWNER in SYSTEM OWNER's sole and absolute discretion.

8. Termination Rights of THE CITY: THE CITY shall have the right to terminate this Power Purchase Agreement at any time of this Power Purchase Agreement on thirty (30) days written notice to SYSTEM OWNER.

8.1 Termination Fee: In the event that THE CITY terminates this Power Purchase Agreement for any reason other than Default, THE CITY shall pay SYSTEM OWNER a Termination Fee as listed in Exhibit "C".

8.2. Demobilization: If THE CITY terminates this contract for any reason other than Default, End of Term, or exercising the Purchase Option defined below, THE CITY agrees to pay SYSTEM OWNER a demobilization fee of Five Hundred Thousand and 00/100 Dollars (\$500,000.00). This fee will increase annually from Commencement Date at a rate of 3% inflation. The demobilization fee will be paid to SYSTEM OWNER in addition to any Termination Fee due. In the event of termination, SYSTEM OWNER will remove the SYSTEM within 90 days of termination. THE CITY will pay SYSTEM OWNER 30% of the demobilization fee upon notice of termination based on receipt of a valid invoice according to Section 3.b.(ii). The balance of the demobilization fee will be due within 30 days of the removal of the equipment including SYSTEM OWNER bringing the PREMISES reasonably back to the condition it was in prior to SYSTEM installation, as provided in the separate agreement related to the membrane.

8.3. If at the end of term of this Agreement THE CITY does not elect to purchase or renew under Section 10, SYSTEM OWNER, at its sole cost, shall remove the SYSTEM and return the PREMISES reasonably back to the condition it was in prior to SYSTEM installation.

9. Option to Purchase: /THE CITY shall have an option to purchase the SYSTEM and any alterations, materials or equipment (collectively "SYSTEM OWNER's SYSTEM") at any time during this Power Purchase Agreement including any early termination of this Agreement. 2 THE CITY shall, within one hundred and eighty (180) days before the expiration or early termination of this Agreement, advise SYSTEM OWNER as to whether it shall enter negotiations with SYSTEM OWNER to exercise its option to purchase SYSTEM. 3 SYSTEM OWNER and THE CITY shall first attempt to agree on a fair market value price for SYSTEM. 4 In all events, "fair market value" shall mean the price that would be established in an arm's length transaction between an informed and willing buyer and an informed and willing seller under no compulsion, respectively, to buy or sell, and neither of which is related to THE CITY, SYSTEM OWNER or any financing entity of SYSTEM OWNER. 5 If the parties cannot agree on a value, fair market value shall be determined at the time of the option by an independent energy appraiser mutually acceptable to both THE CITY and SYSTEM OWNER. 6 Upon acceptable pricing terms, SYSTEM will be transferred to THE CITY according to Exhibit "D".

10. Option to Renew Power Purchase Agreement: At the end of the Term of this Power Purchase Agreement, THE CITY may purchase the SYSTEM according to Section 9 of this Power



Purchase Agreement or at the sole discretion of THE CITY may renew the Power Purchase Agreement for additional years at the prices described in Exhibit "B".

11. Temporary Shutdown of SYSTEM: If, during the Term of this Power Purchase Agreement, renovations or damage to the SYSTEM occurs from actions other than by SYSTEM OWNER or Force Majeure, which significantly reduces or eliminates the use of electricity from the SYSTEM or requires the temporary shutdown of the SYSTEM, THE CITY and SYSTEM OWNER may, by mutual consent, do either of the following as a means of avoiding default under this Agreement. Under either alternative, THE CITY will make a good faith effort to give as much notice as possible to SYSTEM OWNER prior to SYSTEM shutdown:
  - a. THE CITY may pay SYSTEM OWNER "in-lieu" fees during the duration of the reduction or shutdown. These in-lieu fees shall be based on the actual payments made by THE CITY on a daily basis during the same period in the previous calendar year, unless THE CITY and SYSTEM OWNER mutually agree to an alternative "in-lieu" fee methodology; or
  - b. THE CITY and SYSTEM OWNER may agree to extend the Term of the Agreement by one day for each day that the SYSTEM was shut down as an alternative to THE CITY payment of in-lieu fees.
  
12. FORCE MAJEURE: Neither party hereto shall be liable for any failure of performance due to causes beyond its reasonable control, the occurrence of which could not have been prevented by the exercise of due diligence, such as Acts of God, acts of the other party, acts of civil or military authority, earthquakes, fires, floods, epidemics, windstorms, explosions, natural disasters, sabotage, wars, riots, changes in laws, regulations, tariffs mandated or approved by federal, state or other governmental or regulatory entities, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party as soon as possible after the event or occurrence (but in no event more than 30 days thereafter). During the period of such delay or failure to perform by SYSTEM OWNER, THE CITY, at its option, may purchase electricity from other sources and reduce its schedules to SYSTEM OWNER by such quantities, without liability to SYSTEM OWNER. The ability of either party to obtain a better price shall not constitute an event of Force Majeure hereunder.
  
13. Event of Default, THE CITY: The following may be considered an Event of Default by THE CITY at the option of SYSTEM OWNER as the non-defaulting party:
  - a. THE CITY's failure to pay undisputed invoices for a continuous period of one hundred and twenty (120) or more days.
  - b. The renovation, damage, destruction or closure of the PREMISES, which is a result of any event other than Force Majeure, where the SYSTEM is installed which results in the permanent shutdown of the SYSTEM and THE CITY has not terminated this Agreement.
  - c. For terms other than those listed in (a) and (b) above, failure by THE CITY to perform or comply with any material term of this Power Purchase Agreement within ninety (90) days of written notice by SYSTEM OWNER, unless SYSTEM OWNER agrees in writing to a longer period to cure the default.

- 13.1. Remedies of SYSTEM OWNER: If THE CITY causes an Event of Default, ~~SYSTEM OWNER~~ shall have the right to terminate this Agreement and collect the Termination Fee as listed in Exhibit "C" and the Demobilization Fee listed in Section 8.2 above and any other rights available at law or equity.
14. Event of Default, SYSTEM OWNER: The following may be considered an Event of Default by SYSTEM OWNER at the option of THE CITY as the non-defaulting party:
- a. SYSTEM OWNER's failure to pay undisputed invoices or credits for a continuous period of one hundred and twenty (120) or more days.
  - b. SYSTEM OWNER's failure to maintain the SYSTEM to industry standards or other SYSTEM deficiencies other than solar intensity that results in reduced output of SYSTEM electricity below 50% of the annual output listed in Exhibit "B".
  - c. For terms other than those listed in a and b above, failure by SYSTEM OWNER to perform or comply with any material term of this Power Purchase Agreement within ninety (90) days of written notice by THE CITY, unless THE CITY agrees in writing to a longer period to cure the default.
- 14.1. Remedies of THE CITY: If SYSTEM OWNER causes an Event of Default, THE CITY shall have the option to exercise all rights or remedies available to it at law or equity or initiate other appropriate proceedings to enforce the terms and provisions of this Agreement and its rights hereunder including Termination without penalty or further payment hereunder.
15. Assignment: This Agreement shall be assignable by either party in whole or in part without the written consent of the other party; provided that assignee is not a direct competitor of the other party, has equal or greater creditworthiness compared to the original party, and has demonstrated capability to perform its obligations under this Power Purchase Agreement.
16. Financing: SYSTEM OWNER may pledge its interest in this Agreement as security for loans or financing. If SYSTEM OWNER's lender(s) requests additional terms and conditions to those already provided in this Agreement, THE CITY agrees to consider any such requests in good faith, but may refuse such requests in its sole and absolute discretion and may withhold consent or approval of such additional terms and conditions.
17. Debt Liability Disclaimer / Hold Harmless: THE CITY is not liable for any debts, liabilities, settlements, liens, or any other obligations of the SYSTEM OWNER or its heirs, successors or assigns. THE CITY and its agencies, departments and divisions shall not be liable for and shall be held harmless and indemnified by SYSTEM OWNER for any claims or damages arising out of any other contract to which SYSTEM OWNER is a party, tort, action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other acts taken or not taken by the SYSTEM OWNER, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the SYSTEM OWNER. THE CITY has no obligation to defend or undertake the defense on behalf of the SYSTEM OWNER or its heirs, successors or assigns. SYSTEM OWNER shall defend THE CITY and

its agencies, departments and divisions from any claims, actions, lawsuits, administrative proceedings or damages associated with any contract, tort, action or inaction, error in judgment, act of negligence, intentional tort, mistakes, or other acts taken or not taken by the SYSTEM OWNER, its employees, agents, servants, invitees, guests, or anyone acting in concert with or on behalf of SYSTEM OWNER in connection with the performance of this Agreement.

18. Compliance with Applicable Laws, including Utility Interconnection Standards: SYSTEM OWNER, at its own cost and expense, shall comply with all applicable laws and regulations relating to the operation of the SYSTEM and the generation and sale of electricity to THE CITY, including obtaining and maintaining all relevant approvals and permits. In particular, SYSTEM OWNER agrees throughout the Term of the Power Purchase Agreement to fully comply with any and all operational standards and requirements imposed by the Utility Interconnection Agreement, as required by the Self-Generation Incentive Program, and to comply with the interconnection requirements. In all cases, SYSTEM OWNER's interconnection shall be acceptable to the servicing distribution utility or the energy service provider, as applicable. THE CITY will cooperate with SYSTEM OWNER and, if necessary, will provide consents and execute with the local distribution utility such agreements as are necessary to permit the interconnection of the SYSTEM. This interconnection shall be done at no cost or liability to THE CITY and SYSTEM OWNER shall reimburse THE CITY for all out of pocket costs incurred in connection with any interconnection agreement.
19. Maintenance and Repair: SYSTEM OWNER shall provide reasonable notice to THE CITY prior to any maintenance and repair activities. SYSTEM OWNER shall provide an annual inspection of the SYSTEM. SYSTEM OWNER shall provide an annual cleaning of the SYSTEM panels. SYSTEM OWNER will provide all scheduled maintenance as detailed by the SYSTEM manufacturer.
20. Taxes: SYSTEM OWNER shall pay all lawful taxes, assessments or charges that at any time may be levied upon any interest in this Agreement including the SYSTEM.
21. Confidentiality of Information: The following confidentiality provisions shall apply to this agreement:
  - 21.1 SYSTEM OWNER's Confidentiality Requirement: Any financial, statistical, personal, technical and other data and information relating to THE CITY's operations which are designated confidential by THE CITY and made available to SYSTEM OWNER in order to carry out this Power Purchase Agreement shall be protected by the SYSTEM OWNER from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the SYSTEM OWNER for its own information of serious nature. THE CITY shall identify all confidential data and information at the time it is provided.
  - 21.2 THE CITY's Confidentiality Requirements: Any mechanical, technical and other data and information relating to the SYSTEM which are designated confidential by SYSTEM OWNER and made available to THE CITY in order to carry out this

Agreement shall be protected by THE CITY from unauthorized use and disclosure through the observance of the same procedural requirements as are applicable to THE CITY for its own information of serious nature. SYSTEM OWNER shall identify all such confidential data and information at the time it is provided.

- 21.3 Confidentiality. Neither THE CITY or SYSTEM OWNER shall make any public announcement or disclosure of any information related to this Agreement without the specific prior written consent of the other, except for such disclosures to the parties' lenders, creditors, beneficiaries, partners, members, officers, employees, agents, consultants, attorneys, accountants, and exchange facilitators as may be necessary to permit each party to perform its obligations hereunder and as required to comply with applicable laws and rules of any exchange upon which a party's shares may be traded.
- 21.4 Confidentiality does not apply to information, which is known to a receiving party from other sources or which is otherwise publicly available.
22. Audit: SYSTEM OWNER agrees that THE CITY or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. SYSTEM OWNER agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. SYSTEM OWNER will, at a minimum, maintain one complete set of records at a location in California to facilitate such Audit, or alternatively, at THE CITY's option, deliver, at SYSTEM OWNER's expense, these records to a place designated by THE CITY. SYSTEM OWNER agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, SYSTEM OWNER agrees to include a similar right of THE CITY to audit records and interview staff in any subcontract related to performance on this Agreement. Any adjustment in THE CITY's favor resulting from the audit will accrue compounded interest from the date paid to SYSTEM OWNER at an interest rate equal to the rate THE CITY earns on its pool of cash investments. In addition, if the audit results in an adjustment in THE CITY's favor of 3% or higher of the amount billed to THE CITY, in the period being audited, then SYSTEM OWNER will pay the total cost of the audit.
23. Governing Law: This Agreement shall be governed and shall be interpreted in accordance with the laws of the State of California.
24. Ownership: Subject to the rights provided to THE CITY pursuant to other terms hereof, the SYSTEM and all alterations, additions, improvements or installations made thereto by SYSTEM OWNER and all SYSTEM OWNER property used in connection with the installation, operation and maintenance of the SYSTEM is, and shall remain, the personal property of SYSTEM OWNER ("SYSTEM OWNER Property"). In no event shall any SYSTEM OWNER Property be deemed a fixture, nor shall THE CITY, nor anyone claiming by, through or under THE CITY (including but not limited to any present or future mortgagee of THE CITY) have any rights in or to the SYSTEM OWNER Property at any time except as

otherwise provided herein. Except as provided in this Agreement, THE CITY acknowledges and agrees that SYSTEM OWNER may grant or cause to be granted to a secured party a security interest in SYSTEM OWNER Property.

25. Applicable Laws and Requirements: All activities conducted by SYSTEM OWNER pursuant to this Power Purchase Agreement shall be in compliance with all applicable zoning requirements and all applicable Federal, State, and local laws, ordinances, rules and regulations, and all issued permits and licenses (collectively "Applicable Laws and Requirements"), and shall be conducted at SYSTEM OWNER's own cost and expense.
2. SYSTEM OWNER shall provide THE CITY with two (2) copies of all permits, approvals and conditions issued by applicable Federal, State, and local governmental entities. 3. SYSTEM OWNER shall immediately suspend any use of the SYSTEM upon notice by any governmental authority having jurisdiction that any of SYSTEM OWNER's activities under the License constitutes a violation of any of the Applicable Laws and Requirements until the violation, if any, is corrected and the applicable governmental authority concurs that the violation is corrected. SYSTEM OWNER shall immediately notify THE CITY regarding any alleged violation. Such event shall not be considered a Force Majeure. Failure of SYSTEM OWNER to immediately suspend use of the SYSTEM and/or to notify THE CITY in accordance with this provision after receiving a notice of any violation, which may pose a risk to public health or safety, is considered an event of Default by SYSTEM OWNER.
26. No Interference with THE CITY Uses/Quiet Enjoyment: SYSTEM OWNER shall operate, maintain and repair the SYSTEM in a manner that will not unreasonably obstruct or interfere with THE CITY's use of the PREMISES or the rights of any other occupants of the PREMISES. In the event such unreasonable interference occurs, SYSTEM OWNER agrees to promptly take all reasonable steps necessary to eliminate such interference. SYSTEM OWNER will use its best efforts to maintain its SYSTEM in a manner that does not interfere with THE CITY.
27. Estoppel Certificate: THE CITY shall, upon not less than thirty (30) days prior written request and receipt of a mutually acceptable Estoppel Certificate from SYSTEM OWNER or SYSTEM OWNER's lender, execute, acknowledge and deliver to SYSTEM OWNER or to SYSTEM OWNER's lender a mutually agreeable comment in writing, substantially in the form of a, "Form of Estoppel Certificate", which may be relied upon by any prospective Lender.
28. Subordination to Existing Leases, Easements and Rights of Way: SYSTEM OWNER acknowledges and understands that this Agreement and all rights of SYSTEM OWNER are subject and subordinate to all existing leases, easements, labor agreements, rights of way, declarations, restrictions or other matters of record and all existing agreements of THE CITY with respect to the PREMISES. SYSTEM OWNER shall be provided with a Preliminary Title Report ("PTR") showing the all existing leases, easements, right-of-way, declarations, restrictions and all other matters of record, which affect the PREMISES. SYSTEM OWNER shall be allowed a period of ten (10) days in which to review the PTR and either approve or disapprove same. Should SYSTEM OWNER disapprove of any matter continued in the PTR, SYSTEM OWNER reserves the right to cancel this Agreement. THE CITY reserves the right to grant additional licenses, easements, leases or rights of way, whether recorded or

unrecorded, as may be necessary, which do not unreasonably interfere with SYSTEM OWNER's use of the PREMISES to operate the SYSTEM.

29. THE CITY Inspection of SYSTEM: THE CITY shall be permitted non-emergency access to inspect the SYSTEM upon twenty-four (24) hours prior written notice to SYSTEM OWNER. Personnel of SYSTEM OWNER must accompany THE CITY's personnel during any non-emergency inspection of the SYSTEM, unless SYSTEM OWNER agrees in writing to waive its right to accompany THE CITY personnel on all non-emergency inspections. This requirement in no way prohibits THE CITY from inspecting any and all portions of the PREMISES other than the SYSTEM itself. In the event of emergency, THE CITY may inspect the SYSTEM unaccompanied and must notify SYSTEM OWNER within twenty-four (24) hours after such inspection.
30. THE CITY's Obligations: Subject to any specific limitations in this Agreement, THE CITY shall at all times during the term of this Agreement use commercially reasonable efforts to maintain the PREMISES other than the SYSTEM, in good condition and repair so as to be able to receive and utilize the electricity delivered to THE CITY from the SYSTEM. THE CITY will maintain in good working order and available at all times, its connection and service contract(s) with the relevant utilities so that THE CITY can, upon any suspension or interruption of electricity from the SYSTEM, provide THE CITY with the full requirements for electricity. All obligations of THE CITY in this Power Purchase Agreement regarding maintenance shall be subject to the right of THE CITY during periods of renovation of any part of the PREMISES to issue a shut down order to the SYSTEM, consistent with Section 11 or 12 of this Power Purchase Agreement.
31. SYSTEM OWNER's obligations, including maintenance and repair: SYSTEM OWNER shall cause the SYSTEM to be operated and maintained at SYSTEM OWNER's sole expense, including the cost of capital repairs and replacements, in a commercially reasonable manner throughout the term of this Agreement. SYSTEM OWNER warrants that all of its operating and maintenance personnel will be adequately qualified, unionized, and trained throughout the term of this Agreement. Preventative Maintenance, resulting in SYSTEM outage, shall not be performed during on-peak times according to SCE applicable tariff.
32. THE CITY's Structural Certification: THE CITY shall determine that the structural integrity of the facility is adequate to support the SYSTEM. SYSTEM OWNER shall provide and install a 20-year roof solution that includes a roof maintenance agreement that is acceptable to SYSTEM OWNER and THE CITY. This work will be done as a part of a separate agreement with SYSTEM OWNER and THE CITY.
33. Insurance: THE CITY will be responsible for and will maintain insurance covering the SYSTEM against any fire or casualty, naming SYSTEM OWNER as an additional named insured. In addition, both THE CITY and SYSTEM OWNER shall maintain insurance consistent with the requirements of the Southern California Edison Interconnection Agreement and Self-Generation Incentive Program Contract.

By SYSTEM OWNER. Prior to any inspections or construction by SYSTEM OWNER and concurrent with the effective date of this Agreement and in partial performance of SYSTEM

OWNER's obligation hereunder, SYSTEM OWNER shall procure and maintain the following insurance coverages at SYSTEM OWNER's sole expense for the duration of this Agreement and any extensions, renewals, or holding over thereof, from insurance companies admitted to write insurance in the State of California or from non-admitted insurers that are on the California's List of Eligible Surplus Lines Insurers (LESLI) and that have a minimum rating of or equivalent to A:VIII by A.M. Best Company:

- (a) Commercial General Liability equivalent in coverage scope to Insurance Services Office, Inc. (ISO) form CG 00 01 11 85 or 10 93 in an amount not less than Three Million Dollars (\$3,000,000) per occurrence and general aggregate. This insurance shall include coverage for products and completed operations and sudden and accidental pollution liability and shall not exclude or limit coverage for contractual liability, independent contractors, or cross liability protection. This insurance shall be endorsed to include City of Long Beach, and its boards, officials, employees, and agents as additional insureds by an endorsement equivalent in coverage scope to ISO form CG 20 26 11 85 and to waive the insurer's rights of subrogation against THE CITY and its boards, officials, employees, and agents.
- (b) Commercial Automobile Liability equivalent in coverage scope to ISO form CA 00 01 06 92 covering Auto Symbol 1 ("Any Auto") in an amount not less than Two Million Dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.
- (c) Workers' Compensation insurance required by the State of California and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident. This insurance shall be endorsed to waive the insurer's rights of subrogation against THE CITY and its boards, officials, employees, and agents.

All insurance required hereunder shall be separately endorsed to require at least thirty (30) days' prior written notice of cancellation (ten (10) days if cancellation is for nonpayment of premium), non-renewal, or material changes in coverage (other than reduction of limits due to claims paid) to City, and to provide that coverage shall be primary and not contributing to any other insurance or self-insurance maintained by THE CITY or its officials, employees, and agents.

SYSTEM OWNER shall require any contractors or subcontractors to procure and maintain the insurance required herein unless otherwise agreed in writing by THE CITY's Risk Manager or designee.

Upon full execution of this Agreement, SYSTEM OWNER shall deliver to THE CITY, certificates of insurance and the required endorsements evidencing the coverage required by this Agreement, including the certificates and endorsements of any SYSTEM OWNER's contractors and subcontractors, for approval as to sufficiency and form. The certificates and endorsements for each insurance policy shall contain the original signatures of persons authorized by that insurer to bind coverage on its behalf. SYSTEM OWNER shall provide THE CITY with copies of certificates of insurance and endorsements for renewal policies

within thirty (30) days of policy termination. If SYSTEM OWNER fails to provide THE CITY with copies of certificates of insurance and endorsements for renewal policies within ~~thirty (30) days of policy termination~~, then THE CITY shall reserve the right to require SYSTEM OWNER to deliver complete certified copies of all said policies within thirty (30) days of SYSTEM OWNER's receipt of written notice from SYSTEM OWNER requesting complete certified copies of all said policies at any time.

Such insurance required herein shall not be deemed to limit SYSTEM OWNER's liability relating to performance under this Agreement. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Agreement.

Not more frequently than every three (3) years, if in the opinion of THE CITY the amount of the foregoing insurance coverages is not adequate, SYSTEM OWNER shall amend its insurance coverage and or, if applicable, require its contractors or subcontractors to amend their insurance coverage, as required by THE CITY's Risk Manager or designee.

Any modification or waiver of the insurance requirements herein shall be made only with the written approval of THE CITY's Risk Manager or designee.

34. Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions of this Agreement or to protect its interest in any manner arising under this Agreement, or to recover damages for breach of this Agreement, or to enforce any judgment resulting from this Agreement and the transaction contemplated hereby, the prevailing party shall be entitled to reasonable attorneys' fees and court costs.
35. Further Assurances. THE CITY and SYSTEM OWNER shall promptly perform, execute and deliver or cause to be performed, executed and/or delivered any and all acts and assurances, including the delivery of any documents, as either party may reasonably require in order to carry out the intent and purpose of this Agreement.
36. Severability. In case any one (1) or more of the provisions contained in this Agreement for any reason is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
37. Notices, Means/Receipt. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, national overnight courier service (next business day delivery) or by facsimile to the attention of the respective person signing this Agreement or their representative at the addresses listed herein, and shall be deemed received upon the earlier of (i) if mailed, three (3) business days after the posting by a U.S. Post Office; (ii) if personally delivered, the date of delivery to the address of the person to receive such notice; (iii) if sent by national overnight courier service (next business day delivery), one (1) business day after delivery to such courier service; or (iv) if given by facsimile, upon electronic evidence of receipt.



SYSTEM OWNER: DeLiddo and Associates, dba DEERS  
140 South Elm Avenue, Suite B  
Ripon, California 95366  
Fax: 209.254.4474

THE CITY: City of Long Beach  
Attn: City Manager  
333 West Ocean Boulevard, 13<sup>th</sup> Floor  
Long Beach, California 90802  
Fax: 562.570.7650

With a Courtesy Copy to: City of Long Beach  
Attn: Property Services Bureau Manager  
333 West Ocean Boulevard, 3rd Floor  
Long Beach, California 90802  
Fax: 562.570.6215

38. Counterparts. This Agreement may be executed in one (1) or more counterparts, and all the counterparts shall constitute but one (1) and the same agreement, notwithstanding that all parties hereto are not signatory to the same or original counterpart.
39. Time. Time is of the essence of every provision contained in this Agreement. Without limiting the foregoing, any failure by SYSTEM OWNER or THE CITY to meet the time limits contained herein will be deemed a material breach of this Agreement.
40. Non-Waiver. Unless otherwise expressly provided in this Agreement, no waiver by THE CITY or SYSTEM OWNER of any provision hereof shall be deemed to have been made unless expressed in writing and signed by THE CITY or SYSTEM OWNER as the case may be. No delay or omission in the exercise of any right or remedy accruing to THE CITY or SYSTEM OWNER, as the case may be, upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by THE CITY or SYSTEM OWNER of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.
41. Captions. Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.
42. Exhibits. All Exhibits attached hereto shall be incorporated herein by reference as if set out herein in full.
43. Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

44. Notice of Possessory Interest; Payment of Taxes. THE CITY is a public entity, and as such, THE CITY's underlying fee and reversionary interest in the subject property is, or may be, exempt from property tax assessments. In accordance with California Revenue and Tax Code Section 107.6, THE CITY states that by entering into this Agreement, a possessory interest by SYSTEM OWNER subject to property taxes may be created, and if so, SYSTEM OWNER or other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest.

45. Sales and Use Tax. SYSTEM OWNER shall cooperate with THE CITY in all matters relating to taxation and the collection of taxes, particularly with the respect to self-accrual of use tax. SYSTEM OWNER shall cooperate as follows: (a) for all the leases and purchase of materials, equipment, supplies, or other tangible personal property totaling over \$100,000 shipped from outside California, a qualified SYSTEM OWNER shall complete and submit to the appropriate governmental entity the form in Appendix "A" attached hereto; and (b) for construction contracts and subcontracts totaling \$5,000,000 or more, SYSTEM OWNER shall obtain a subpermit from the California Board of Equalization for the work site. "Qualified" means that the SYSTEM OWNER purchased at least \$500,000 in tangible personal property that was subject to sales or use tax in the previous calendar year.

In completing the form and obtaining the permit(s), SYSTEM OWNER shall use the address of the work site as its business address and may use any address for its mailing address. Copies of the form and permit(s) shall also be delivered to the City Engineer. The form must be submitted and the permit(s) obtained as soon as SYSTEM OWNER receives a notice to Proceed. SYSTEM OWNER shall not order any materials or equipment over \$100,000 from vendors outside California until the form is submitted and the permit(s) obtained and, if SYSTEM OWNER does so, it shall be a material breach of this Agreement. In addition, SYSTEM OWNER shall make all purchases from the Long Beach sales office of its vendors if those vendors have a Long Beach office and all purchases made by SYSTEM OWNER under this Agreement which are subject to use tax of \$500,000 or more shall be allocated to the City of Long Beach. SYSTEM OWNER shall require the same form and permit(s) from its subcontractors.

SYSTEM OWNER shall not be entitled to and by signing this Agreement waives any claim or damages for delay against THE CITY if SYSTEM OWNER does not timely submit these forms to the appropriate governmental entity. SYSTEM OWNER may contact the City Treasurer at (562) 570-6169 for assistance with the form.

46. City Council Approval: This Power Purchase Agreement is subject to City Council approval. Upon such approval, SYSTEM OWNER shall execute the Power Purchase Agreement and return the documents to THE CITY for full execution.

47. Final Agreement: This Power Purchase Agreement, together with all exhibits attached hereto or mentioned herein, shall constitute the full and final agreement between the Parties and may not be amended, modified or terminated except by a writing evidencing said change and changes signed by Parties hereto. This Power Purchase Agreement shall become binding when accepted in writing by THE CITY and SYSTEM OWNER.

In Witness Whereof, and intending to be legally bound, the parties hereto subscribe their names to this instrument on the date first written above.

THE CITY

GERALD R. MILLER

Name

CITY MANAGER

Title

*[Handwritten Signature]*

Authorized Signature of THE CITY

SYSTEM OWNER

JACK P. DELUDDO  
Name

PRESIDENT  
Title

*[Handwritten Signature]*  
Authorized Signature of SYSTEM OWNER

JOHN ABKEMEIER  
Name

PROJECT DEVELOPMENT  
Title

*[Handwritten Signature]*  
Authorized Signature of SYSTEM OWNER

APPROVED AS TO FORM

May 26, 2005  
ROBERT E. SHANNON, City Attorney  
By: *[Handwritten Signature]*  
DEPUTY CITY ATTORNEY

## EXHIBIT "A" – SYSTEM DESCRIPTION

SYSTEM OWNER will provide and install a 600kW to 705kW Uni-Solar photovoltaic "SYSTEM" on the roof of the PREMISES.

The SYSTEM complies with all attributes of the Southern California Edison ("SCE") Self-Generation Incentive Program as well as utilizes components that are listed on the California Energy Commission's list eligible equipment.

The Photovoltaic system modules are manufactured by United Solar Ovonic. The SYSTEM components are specified by Uni-Solar to maximize efficiency and power production performance. It will comprise of Uni-Solar Triple Junction 136 Watt Laminates (model# PVL-136) and will be applied to the membrane. The DC output will be converted to AC and interconnected to run in parallel with SCE. SatCon inverters will be used as a part of the PV SYSTEM.

The installation and commissioning of the SYSTEM will be completed within the time constraints allowable by the SCE Self-Generation Incentive Program.

SYSTEM OWNER will supply all necessary drawings, layouts, product data sheets, etc. to comply with all permitting and SCE Self-Generation Incentive Program requirements.

SYSTEM OWNER will maintain the SYSTEM including the base membrane throughout the term of this agreement.

## EXHIBIT "B" – RATES AND BILLING SYSTEM

Each year beginning at the commencement date and ending 20 years thereafter or upon earlier termination as provided in the Agreement, THE CITY shall pay for the amount of kWh produced by the SYSTEM. The rate at which THE CITY shall pay SYSTEM OWNER will be calculated on an annual basis and shall be the greater of \$.0765 per kWh (increasing annually at a 3% inflation rate) or the kWh rate as calculated by multiplying THE CITY's actual avoided electrical expense as a result of the operation of the SYSTEM by 90%. The actual avoided electrical expense shall be the total amount of avoided billing / charges from SCE as a result of the installation of the SYSTEM.

The annual anticipated kWh production of the SYSTEM is 1,082,538.00 kWh. SYSTEM OWNER will invoice THE CITY monthly in the amount equal to  $(\$0.0765 \times 1,082,538.00 / 12)$  \$6,901.37. THE CITY shall make payments on a monthly basis and payments will commence thirty (30) days after successful completion of the scope of work and acceptance of the project by THE CITY (see Exhibit "E"). THE CITY shall be obligated to pay SYSTEM OWNER the monthly amount. At the end of each year of the Term of the Agreement, SYSTEM OWNER shall furnish to THE CITY a Reconciliation Report for the previous Term year. SYSTEM OWNER shall refund to THE CITY any overcharged amounts or invoice THE CITY for undercharged amounts based upon the difference between the sum of the monthly payments (\$82,816.45) and the actual amount due SYSTEM OWNER for that Term year.

### Examples:

1. SYSTEM produces 1,082,538.00 kWh in Year 1, 90% of the actual avoided electrical expense is less than \$.0765 per kWh, THE CITY has paid monthly invoices in full. Amount due to THE CITY is \$0.00. Amount due to SYSTEM OWNER is \$0.00.
2. SYSTEM produces 982,538.00 kWh in Year 1, 90% of the actual avoided electrical expense is less than \$.0765 per kWh, THE CITY has paid monthly invoices in full. Amount due to THE CITY at year end in the form of a refund is \$7,650.00.
3. SYSTEM produces 1,182,538.00 kWh in Year 1, 90% of the actual avoided electrical expense is less than \$.0765 per kWh, THE CITY has paid monthly invoices in full. Amount due to SYSTEM OWNER at year end is \$7,650.00.
4. If the actual avoided electrical expense for Year 1 is \$100,000.00 based on 1,000,000 kWh actually produced or \$.10 per kWh, THE CITY shall pay SYSTEM OWNER at the greater of 90% of the avoided electrical expense = \$90,000.00 ( $\$.10 \text{ per kWh} \times 90\% = \$.09 \text{ per kWh} \times 1,000,000 \text{ kWh}$ ) and \$76,500.00 ( $\$.0765 \text{ per kWh} \times 1,000,000 \text{ kWh}$ ). Amount due to SYSTEM OWNER at year end would be equal to  $(\$90,000.00 \text{ less } \$82,816.45)$  \$7,183.00.

EXHIBIT "C" – TERMINATION VALUES

Year	Termination Amount	
1	\$6,937,000.00	
2	\$6,937,000.00	
3	\$6,937,000.00	
4	\$6,937,000.00	
5	\$6,937,000.00	
6	\$1,500,000.00	
7	\$1,400,000.00	
8	\$1,300,000.00	
9	\$1,200,000.00	
10	\$1,100,000.00	
11	\$1,000,000.00	
12	\$1,000,000.00	
13	\$1,000,000.00	
14	\$750,000.00	
15	\$750,000.00	
16	\$750,000.00	
17	\$500,000.00	
18	\$500,000.00	
19	\$500,000.00	
20	\$0.00	
21	\$0.00	
22	\$0.00	
23	\$0.00	
24	\$0.00	
25	\$0.00	
26	\$0.00	
27	\$0.00	
28	\$0.00	
29	\$0.00	
30	\$0.00	

EXHIBIT "D" - TRANSFER OF SYSTEM

SYSTEM transfer in the event of Ownership change from SYSTEM OWNER to THE CITY:


Pursuant to SYSTEM transfer according to Sections 8 or 9, SYSTEM OWNER will provide 90 days prior notice to THE CITY and upon transfer date, a Bill of Sale, which transfers title to the equipment from SYSTEM OWNER to THE CITY including any manufacturer's warranty and a guarantee that such transfer is free and clear of all liens and encumbrances of any kind.

EXHIBIT "E"  
ACCEPTANCE CERTIFICATE

<u>Quantity</u>	<u>Equipment Description (Manufacture, Model, Serial Numbers)</u>
1	Anticipated 791 KiloWatt (749.487 per As-Builts) Uni-Solar Brand Photovoltaic Distributed Generation System Includes 500 KiloWatt and 225 KiloWatt SATCON Brand DC to AC Inverters and related connectors, wiring, switches, circuit breakers and all such apparatus required for interconnectivity to the Long Beach Convention and Entertainment Center Electric Service and the Southern California Edison Power Grid.

THE CITY hereby acknowledges receipt of the Equipment described above (the "Equipment") as fully installed and in good working condition and THE CITY hereby accepts the Equipment after full inspection thereof as satisfactory for all purposes of the Agreement executed by THE CITY and SYSTEM OWNER, subject to those certain punch list items more fully described in a letter dated February 13, 2007 from THE CITY to SYSTEM OWNER and URS Corporation. THE CITY agrees to make payments, commencing as set forth in Exhibit B – Rates and Billing System.

CITY OF LONG BEACH

By:   
Gerald R. Miller  
City Manager

Equipment  
Acceptance Date: February 13, 2007

APPROVED AS TO FORM

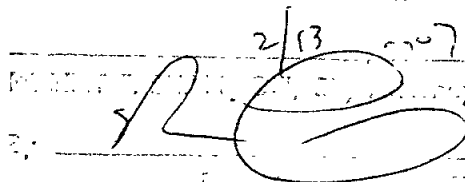
  
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EXHIBIT "F"

MEMORANDUM OF COMMENCEMENT DATE AND TERMINATION DATE

The undersigned are the Parties to that certain Power Purchase Agreement Major Terms and Conditions, dated May 27, 2005, for installation of a Solar SYSTEM located at 300 East Ocean Boulevard, Long Beach, California. Pursuant to the terms of said Power Purchase Agreement, the undersigned hereby acknowledge and agree upon the following dates:

1. The Commencement Date of the Power Purchase Agreement to be February 13, 2007.
2. The Termination Date of the Term of the Power Purchase Agreement to be February 13, 2027.
3. The above is agreed to by the undersigned as of February 9, 2007.

DELIDDO AND ASSOCIATES, INC.  
dba DEERS

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF LONG BEACH,  
a municipal corporation

By: *Gerald R. Miller*

Gerald R. Miller  
City Manager

APPROVED AS TO FORM

2/13, 2007  
*[Signature]*

EXHIBIT "F"

MEMORANDUM OF COMMENCEMENT DATE AND TERMINATION DATE

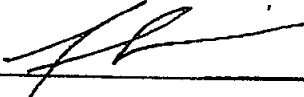
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3. The above is agreed to by the undersigned as of February 9, 2007.

DELIDDO AND ASSOCIATES, INC.  
dba DEERS

By: 

Its: PRESIDENT

By: 

Its: PROJECT DEVELOPER

CITY OF LONG BEACH,  
a municipal corporation

By: Gerald R. Miller  
City Manager

**Assignment, Assumption and Amendment of  
Power Purchase Agreement**

This Assignment, Assumption and Amendment of Power Purchase Agreement (this "Agreement") is entered into as of this 12<sup>th</sup> day of February 2007 among the City of Long Beach (the "City"), a municipal corporation, DeLiddo & Associates, Inc. dba DEERS ("DEERS"), a California corporation, and California New Power 2006-1, LLC ("CNP"), an Arkansas limited liability company of which DEERS is the sole member.

**BACKGROUND**

A. The City and DEERS previously entered into that certain Power Purchase Agreement Major Terms and Conditions ("PPA") dated as of May 27, 2005 pursuant to which DEERS, as "System Owner" (as defined therein), agreed (i) to operate a photovoltaic system" (as more fully described therein, the "System") installed on the rooftop of the Exhibition Hall at the Long Beach Convention and Entertainment Center located in Long Beach, California and sometimes identified as 300 East Ocean Boulevard, Long Beach, California and (ii) to sell to the City the power generated by the System.

B. DEERS previously transferred and conveyed to CNP all of DEERS' right, title and interest in the System pursuant to a Bill of Sale dated as of May 15, 2006, and in connection therewith, DEERS now desires to transfer and convey to CNP all of DEERS' rights and obligations as "System Owner" in, to and under the PPA and to obtain the City's acknowledgment of such transfer and conveyance.

C. Following the execution and delivery of this Agreement, CNP intends to (i) enter into a sale-lease back transaction pursuant to which CNP will sell the System to MMA LB Power, L.P., a Delaware limited partnership ("MMA"), but in which CNP will remain in place as the operator of the System and the seller of the power generated thereby to the City and (ii) assign all of its rights under the PPA to MMA as security for CNP's obligations under the facility lease to be entered into between CNP, as lessee, and MMA, as lessor.

D. In connection with the assignment from DEERS to CNP and in anticipation of the transfer of title to the System from CNP to MMA, the parties hereto desire to amend certain provisions of the PPA relating to the purchase and renewal options in favor of the City.

E. Accordingly, the parties hereto desire to enter into this Agreement in order to document their respective, rights, obligations and understandings under and in respect of the PPA.

1. Assignment, Assumption, and Acknowledgment.

- (a) Assignment and Delegation. DEERS hereby assigns, transfers and conveys over to, all of DEERS' right, title and interest as "System Owner", in, to and under the PPA, and also hereby transfers, conveys and delegates over to CNP all of DEERS' duties, obligations and liabilities as "System Owner" under the PPA.
- (b) Assumption. CNP hereby accepts the foregoing assignment, transfer and conveyance of the rights of "System Owner" in, to and under the PPA, and CNP hereby assumes all of the duties, obligations and liabilities as "system Owner" in, to and under the PPA. Without limiting the generality of the foregoing, CNP expressly agrees to be bound by all of the terms and provisions of the PPA as though it were originally named as a party thereto.
- (c) Acknowledgment by DEERS and CNP. DEERS and CNP hereby expressly acknowledge and agree that the City may for all purposes deal with CNP as the "System Owner" from and after the date hereof, and that any payments falling due from the City from and after the date hereof shall be made by the City directly to CNP, without regard to whether any portion thereof may be attributable to or otherwise accrued in respect of the period prior to the date of this Agreement. DEERS and CNP agree that they shall settle any and all accounts in respect of the transfer contemplated by this Section 1 between themselves, and in no event shall the City be required to make any duplicate payment or have any obligation to allocate any payments between them.
- (d) Guaranty by DEERS. For the benefit of the City, DEERS hereby unconditionally guarantees the full and timely performance by CNP of all of the obligations of the "System Owner" under the PPA at all times following the effectiveness of the transfer and conveyance contemplated by this Section 1.
- (e) Acknowledgment by the City. The City hereby expressly acknowledges the transfer and conveyance of the right and obligations of "System Owner" under the PPA from DEERS to CNP as provided in this Section 1, and the City agrees that, from and after the date of this Agreement, it will deal with CNP as the operator of the System and the seller of the power generated thereby pursuant to the PPA. Notwithstanding the use of the defined term "System Owner" in the PPA, the City further acknowledges that CNP intends to transfer title to the System to MMA (as stated in the recitals to this Agreement), and agrees that, from and after such time as the City may receive written notice of the transfer of title to the System from CNP to MMA, the City will treat and deal with MMA in all respects as the "owner" of the System, even though CNP will remain as the counterparty to the PPA and as the operator of the System.

2. Amendments to PPA.

(a) Section 9 of the PPA (Option to Purchase) is hereby amended to read in its entirety as follows:

"9. Option to Purchase. THE CITY shall have the option to purchase the SYSTEM, including any alterations, materials or equipment related thereto on the date that occurs on the sixty-first (61<sup>st</sup>) monthly anniversary of (i.e., the date that occurs 5 years and one month after) the Commencement Date, and on each of the tenth, fifteenth and twentieth anniversaries of the Commencement Date (each such anniversary, a "Purchase Option Date"). THE CITY shall be required to give written notice of its election to exercise its option to purchase under this Section 9 no later than one hundred eighty (180) days prior to the relevant Purchase Option Date. On the relevant Purchase Option Date, THE CITY shall pay to the purchase price for the SYSTEM by wire transfer of immediately available funds to such account as may be designated by SYSTEM OWNER, and SYSTEM OWNER shall convey, or shall cause to be conveyed, legal title to the SYSTEM to THE CITY. The purchase price to be paid by THE CITY upon the exercise of this option hereunder shall be the "fair market value" of the System as installed on-site for THE CITY as such value is determined by mutual agreement of THE CITY, SYSTEM OWNER and, in the event that SYSTEM OWNER is not then the legal and beneficial owner of the System, by such party as is then the legal and beneficial owner of the SYSTEM. In all events, "fair market value" shall mean the price that would be established in an arm's length transaction between an informed and willing buyer and an informed and willing seller under no compulsion, respectively, to buy or sell, and neither of which is related to THE CITY, SYSTEM OWNER or any financing entity of SYSTEM OWNER. If the parties cannot agree on a value, fair market value shall be determined at the time of the option by an independent energy appraiser mutually acceptable to both THE CITY and SYSTEM OWNER and, in the event that SYSTEM OWNER is not then the legal and beneficial owner of the System, by such party as is then the legal and beneficial owner of the SYSTEM."

(b) Section 10 of the PPA (Option to Renew . . .) is hereby deleted in its entirety as follows:

(c) Section 24 of the PPA (Ownership) is hereby amended to read in its entirety as follows:

"24. Ownership. Subject to the rights provided to THE CITY pursuant to other terms hereof, the SYSTEM and all alterations, additions, improvements or installations made thereto by SYSTEM OWNER and all other property of SYSTEM OWNER used in connection with the installation, operation and maintenance of the SYSTEM is, and shall remain at all times the property of SYSTEM OWNER, or, in the event the SYSTEM OWNER transfers and conveys its interest therein, the

property of such transferee. Notwithstanding the installation of the SYSTEM at the PREMISES as a fixture, in no event shall THE CITY, nor anyone claiming by, through or under THE CITY (including but not limited to any present or future mortgagee of THE CITY) have any rights in or to the SYSTEM or any other property of SYSTEM OWNER used in the installation, operation or maintenance thereof. THE CITY acknowledges and agrees that SYSTEM OWNER may grant to a third party a security interest in, or may transfer its interests in, the SYSTEM and other property of SYSTEM OWNER used in connection therewith to a third party.

(d) Section 28 of the PPA (Subordination . . .) is hereby amended to read in its entirety as follows:

"28. Access. THE CITY hereby grants to SYSTEM OWNER a license to enter upon the Premises in order to access the Facility for purposes of repairing, maintaining, assembling, packing, unpacking, installing, replacing and/or removing the Facility and/or any component parts thereof, provided that, (i) SYSTEM OWNER provides reasonable advance notice to THE CITY of SYSTEM OWNER'S access to the Premises, and (ii) SYSTEM OWNER shall repair any and all damage to the Premises or any part thereof caused by SYSTEM OWNER in the exercise of its rights of access granted hereunder. THE CITY reserves the right to grant additional licenses, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, which do not unreasonably interfere with SYSTEM OWNER's use of the PREMISES to operate the SYSTEM."

(e) The following is added as a new Section 34 to the PPA as follows:

"34. Services Contract. The Parties intend that, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement shall be deemed to be a service contract with respect to the sale to the CITY of electrical energy produced at an alternative energy facility."

4. Representations. Each of the parties hereto hereby represents and warrants to each of the other parties hereto that (i) it is a duly formed and validly existing legal entity in its jurisdiction of formation, (ii) it has the requisite corporate or company power and authority to enter into this Agreement and carry out its obligations hereunder, (iii) the execution and delivery of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all necessary corporate or company action, as the case may be, and (iv) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

5. Miscellaneous. Except as expressly amended hereby, each and every provision of the PPA is hereby ratified and confirmed in all respects, and for the avoidance of doubt, each of the parties signatory to this Agreement accepts and agrees to the amendments set forth herein. This Agreement shall be governed by, and construed in all respects in accordance with, the internal laws of the State of California, without regard to any conflicts of laws

principles which may result in the application of the substantive law of any other jurisdiction. This Agreement may be executed in multiple counterparts and by the parties hereto on separate counterparts, but all such counterparts taken together shall constitute but one single instrument. Time is of the essence of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK].

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by its duly authorized representative as of the date first above written.

THE CITY OF LONG BEACH,  
a municipal corporation

DELIDDO & ASSOCIATES, INC.  
d/b/a DEERS,  
a California corporation

By: *[Signature]*

Name: *Gerald R. Miller*  
Title: *City Manager*

By: \_\_\_\_\_

Name: Jack P. De Liddo  
Title: President

CALIFORNIA NEW POWER 2006-1, LLC  
An Arkansas limited liability company

By: DeLiddo & Associates, Inc.,  
Its Sole Member

By: \_\_\_\_\_

Name: Jack P. DeLiddo  
Title: President

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ATTEST TO THE SIGNATURE

*2/13 2007*

*[Signature]*

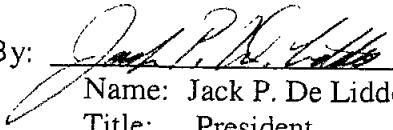


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THE CITY OF LONG BEACH,  
a municipal corporation

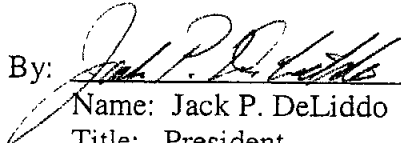
DELIDDO & ASSOCIATES, INC.  
d/b/a DEERS,  
a California corporation

By: \_\_\_\_\_  
Name: Gerald R. Miller  
Title: City Manager

By:  \_\_\_\_\_  
Name: Jack P. De Liddo  
Title: President

CALIFORNIA NEW POWER 2006-1, LLC  
An Arkansas limited liability company

By: DeLiddo & Associates, Inc.,  
Its Sole Member

By:  \_\_\_\_\_  
Name: Jack P. DeLiddo  
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