

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, 3rd 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, 3rd 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 this 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. 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. SYSTEM OWNER and THE CITY shall first attempt to agree on a fair market value price for 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. 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. 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. 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 relating to 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, 13th 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 SYTEM 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, is 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

Gerald R. Miller

Authorized Signature of THE CITY

SYSTEM OWNER

JACK P. DELIDDO
Name

PRESIDENT
Title

Jack P. Deliddo
Authorized Signature of SYSTEM OWNER

JOHN ABKEMEIER
Name

PROJECT DEVELOPMENT
Title

[Signature]
Authorized Signature of SYSTEM OWNER

APPROVED AS TO FORM

May 26, 2005
ROBERT E. SHANNON, City Attorney

By *Charles Parkin*
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

Quantity

Equipment Description (Manufacture, Model, Serial Numbers)

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. THE CITY agrees to make payments, commencing as set forth in Exhibit B – Rates and Billing System.

THE CITY: City of Long Beach

Accepted By: _____

Title: _____

Equipment
Acceptance Date: _____

EXHIBIT "F" – MEMORANDUM OF COMMENCEMENT DATE AND TERMINATION DATE

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

1. The Commencement Date of the Power Purchase Agreement to be:
_____.
2. The Termination Date of the Term of the Power Purchase Agreement to be:
_____.
3. The above is agreed to by the undersigned as of _____.

DELIDDO AND ASSOCIATES, INC.
dba DEERS

By: _____

Its: _____

By: _____

Its: _____

CITY OF LONG BEACH,
a municipal corporation

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____