

Harbor Department
Agreement 09-2787
City of Los Angeles

SOLAR POWER SYSTEM MEMORANDUM OF UNDERSTANDING

By and Between

The Los Angeles Department of Water and Power

And

Harbor Department of the City of Los Angeles

Dated _____

This Solar Power System Memorandum of Understanding (MOU) dated for convenience this _____ day of _____, 20__ is entered into by and between the Los Angeles Department of Water and Power (LADWP) and the Harbor Department of the City of Los Angeles (DEPARTMENT). The parties agree as follows:

R E C I T A L S

WHEREAS, in support of the promotion and development of new renewable energy resources in the City of Los Angeles (City), LADWP will install and operate solar power systems;

WHEREAS, this MOU, in part, fulfills the DEPARTMENT's obligations pursuant to the MOU between the State of California, the Office of the Mayor of the City of Los Angeles and the City of Los Angeles Harbor Department Creating a Partnership to Reduce Greenhouse Gases and Support the Port of Los Angeles Clean Air Action Plan ("State MOU") by providing approximately nine (9) megawatts (MW) electric output from solar power systems to help offset future incremental load resulting from DEPARTMENT electrification;

WHEREAS, while LADWP is not a party to the State MOU, it is the intent of the DEPARTMENT and LADWP to cooperate in planning, design, construction, operation and maintenance of solar power systems on various DEPARTMENT facilities; and

WHEREAS, the DEPARTMENT anticipates that the solar power systems installed on DEPARTMENT facilities pursuant to this MOU may provide approximately nine (9) MWs of electric output as projected in the Phase Two schedule of the State MOU.

Responsibilities and Tasks:

1. **Term of MOU.** The term of this MOU is thirty (30) years from the commencement date of this MOU. However the term of this MOU and any Letter of Agreement entered pursuant to this MOU may be extended by mutual agreement of the Parties. This MOU shall commence no later than the date the MOU is signed by the authorized representatives of both Parties after approval by Board of Water and Power Commissioners (LADWP Board) and Board of Harbor Commissioners. The MOU shall remain in effect for any successor in interest to either LADWP or DEPARTMENT.
2. **Initial Feasibility Study by LADWP.** Within four (4) months of the commencement date of this MOU, the DEPARTMENT shall provide to LADWP information and data in DEPARTMENT's possession relating to potential sites of installation of solar power systems on DEPARTMENT's property if it has not already done so. DEPARTMENT shall not be required to conduct site visits or calculations related to potential electric output or loads on structures. Within six (6) months of LADWP's receipt of DEPARTMENT'S information and data

relating to potential sites of installation of solar power systems on its properties, LADWP shall complete a survey of potential sites of installation of solar power systems on DEPARTMENT property and provide to DEPARTMENT a report including without limitation, (1) the sites considered, (2) the potential sites for installation of solar power systems, (3) calculations of the estimated anticipated output of each potential site, and (4) the structural ability of each potential site to carry the load of solar power system.

3. **Letter of Agreement.** For each solar power system installation (which may include one or more individual sites) covered by this MOU, a Letter of Agreement shall be executed. This Letter of Agreement may contain the following information: (1) Effective date and duration/term of the Letter of Agreement, (2) Location of the solar power system, (3) Type of solar power system, (4) Approximate electric output anticipated from the solar power system, and (5) Other conditions. However, the electric output would be an estimate and there is no guarantee as to the exact output of each installation. The term of the Letter of Agreement for each solar power system installation shall be set forth in the Letter of Agreement and shall be at a maximum of thirty (30) years. A form Letter of Agreement is attached as Exhibit A and hereby incorporated by reference and made a part of this MOU.

4. **Solar Power System.** The solar power systems that are the subject of this MOU will be solar photovoltaic (PV) equipment to be furnished and installed by LADWP at DEPARTMENT's site, including solar PV modules, associated electrical conduit and wiring, electrical subpanels and controls, electrical equipment and meters, structural mounting and supports (exclude parking lot support and building structural support), and all other components. LADWP and DEPARTMENT recognize that many areas of DEPARTMENT facilities are subject to the terms of permits and other agreements issued by the DEPARTMENT to third-parties, are not open to the public, and/or are subject to local, state, and/or federal security restrictions. The DEPARTMENT shall provide LADWP a list of any and all such existing restrictions for each solar power system installation prior to the commencement of the Letter of Agreement for the installation. LADWP and DEPARTMENT will account for such restrictions in selecting sites for solar power systems and locations of signage and displays. A list of any and all existing restrictions shall be incorporated into the Letter of Agreement for each solar power system installation.

The solar power systems, all energy generated therefore and any environmental attributes for the energy related to the construction and operation of the solar power systems will be owned by LADWP. In exchange for the placement of solar power systems on the hosting DEPARTMENT's facilities and the DEPARTMENT's assistance with educating the public on solar power systems, the DEPARTMENT may maintain U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED)-allowable points on

DEPARTMENT'S hosting facility provided that such maintenance of LEED-allowable points by the DEPARTMENT does not conflict with LADWP's ownership of the solar power systems, all energy generated therefrom and any environmental attributes for the energy related to the construction and operation of the solar power systems.

5. **Transfer of Funds.** Any agreement to transfer funds related to direct energy production and/or lease payments related to the solar power system installation for a term greater than three (3) years to a solar power system installation pursuant to this MOU shall be set forth in a Letter of Agreement which shall be approved by the governing boards of both LADWP and DEPARTMENT.
6. **Qualified Personnel and Notice of Access.** Qualified Personnel is a person who has completed LADWP solar installation training program or a person who works under the supervision of a person who has completed LADWP solar installation training program, and who has complied with the security regulations of the DEPARTMENT's Port Police and Homeland Security Divisions, the Transportation Worker Identification Credentials, and other security requirements. DEPARTMENT will assist LADWP with access to DEPARTMENT sites.
7. **Costs of Design, Materials, and Installation.** LADWP will design, furnish, install, operate, and maintain the solar power systems on the agreed upon DEPARTMENT facility at no costs to DEPARTMENT, including material costs and labor costs for installation. However, if DEPARTMENT desires to specify a specific type of equipment (e.g., high efficiency panels) that is not proposed by LADWP, DEPARTMENT will be responsible to LADWP for the additional cost per kilowatt (kW) of estimated output. In the case of a new building or building not yet constructed, DEPARTMENT design team will design and engineer the solar power system under guidance and final approval from LADWP engineers. Funding for these projects shall be subject to available funds budgeted and approved by the LADWP Board. Any ongoing repair of damage due to construction activities shall be as agreed upon in Section 29, Responsibility to Damage to DEPARTMENT Facilities and Solar Power System, of this MOU.
8. **Intellectual Property Designated by LADWP.** Subject to its legal obligations, including without limitation the California Public Records Act, DEPARTMENT shall not disclose the designs, drawings, and other intellectual property pertaining to the installation and maintenance of the solar power system that LADWP has marked as "CONFIDENTIAL INTELLECTUAL PROPERTY" without the prior written permission of LADWP. In the event of unauthorized disclosure(s), DEPARTMENT shall be liable for any and all damages incurred by LADWP resulting therefrom.

9. **Fair Market Value.** With respect to this MOU, Fair Market Value shall mean the amount that would be received in an arms-length transaction between an informed and willing buyer and an informed and willing seller, under no compulsion, respectively, to buy or sell such interest(s). The determination of Fair Market Value shall take into account the following: (1) the economic value as a going concern of the solar power system (in its condition or state of completion at the time of determination), (2) all agreements related to the solar power system (but only to the extent that any of the foregoing will remain in effect after the event triggering the determination of Fair Market Value), (3) the net present value (utilizing a market discount rate at the time of determination) of future energy output and environmental attributes from the solar power system during the remaining useful life of the solar power system calculated, giving due consideration to (a) the forecasted economic value to any willing buyer for all future energy output and environmental attributes from the solar power system for its remaining life based on avoided purchased power costs, and (b) the solar power system interconnection to the bulk transmission grid as an energy-only resource, and (4) all matters set forth in this MOU, including but not limited, to the (a) cost of tax credit and (b) federal funding; provided, however, that the determination of Fair Market Value shall not take into account any debt or collateral obligation of Seller encumbering or otherwise constituting a lien against the MOU.
10. **Ownership and Assignment.** LADWP will own the solar power systems. DEPARTMENT has the option to purchase any or all of solar power systems as installed with no warranties from the LADWP (however, LADWP shall assign to DEPARTMENT any manufacture's or third-party warranty that it may have that are so assignable at the time of purchase by DEPARTMENT if any) prior to the expiration of the term of this MOU or any Letter of Agreement but no sooner than ten (10) years after installation of the solar power systems. Sale price shall be based on the Fair Market Value as defined on Section 9, Fair Market Value. LADWP will keep all the energy efficiency and environmental benefit credits initiated from this MOU as discussed in Section 22, Energy Efficiency and Environmental Benefit Credit that have been received or earned prior to sale. LADWP may assign and/or transfer ownership for the sole purpose of capturing federal or state tax or other incentives, however, any assignment shall be conditioned on (1) assignee providing insurance and bonding reasonably required by DEPARTMENT, (2) assignee meeting all security requirements of the DEPARTMENT, U.S. Coast Guard, or other applicable security entities, and (3) assignee agreeing to indemnification language acceptable to DEPARTMENT that replaces Section 30, Indemnification. Notwithstanding the above, before LADWP assigns and/or transfers ownership in any solar power systems, LADWP shall grant DEPARTMENT a right of first refusal for such assignment or purchase of any solar power systems.

11. **Termination of MOU.** Any termination of the MOU or a Letter of Agreement must be by written mutual agreement between DEPARTMENT and LADWP.
12. **Removal of Equipment After Termination of MOU.** Following termination, the DEPARTMENT grants LADWP rights of access to the site for the purpose of removing all LADWP property from DEPARTMENT facility and restoring the site to its prior condition (except where property has been leased/permitted to a tenant, in which case DEPARTMENT will coordinate such access with tenant) for up to one hundred and twenty (120) calendar days. In the event, DEPARTMENT requests removal of equipment following termination of the MOU, LADWP shall have access for up to one hundred and twenty (120) calendar days from the date DEPARTMENT submits its written request to LADWP for the purpose of removing all LADWP property from DEPARTMENT facility and restoring the site to its prior condition. With respect to equipment removal and restoration, the parties will account for considerations including, without limitation, considerations and/or deductions for reasonable wear and tear caused by the passage of time and the installation of the solar power system. Notwithstanding the above, LADWP will not cover the cost of removal and restoration in case of Building Integrated Photovoltaic installations. In this case the material replacement cost will be covered by DEPARTMENT where the solar power system is installed.
13. **Site Selection.** LADWP and DEPARTMENT will jointly determine sites for the solar power systems which may include, without limitation, roof structures and parking lots. With respect to site selection, the final decision as to whether to proceed to install the solar power system at a particular site shall be within the sole discretion of LADWP. The agreement of both Parties is required before any specific project will be initiated. Additionally, the manner in which such plan will be implemented shall be mutually agreed upon by both Parties. The selection of a site and the type of solar power system at that site shall be set forth in a Letter of Agreement.
14. **Removal and Reinstallation of Solar Power Systems.** For all solar power systems except those where the Letter of Agreement states otherwise, if during the term of the applicable Letter of Agreement, DEPARTMENT determines that the roof or structure upon which solar power system has been placed needs to be replaced or repaired, DEPARTMENT shall be responsible for the repair or reinstallation of the roof (including cost). If such removal/reinstallation occurs after fifteen (15) years from of the original installation, LADWP will be responsible for the removal of solar power system prior to repair/replacement and reinstallation of the solar power system after repair/replacement of the roof (including cost). If such removal/reinstallation occurs prior to fifteen (15) years from the original installation, LADWP will be responsible for the removal of solar power system prior to repair/replacement and reinstallation of the solar power system after repair/replacement of roof, however DEPARTMENT shall

reimburse LADWP for the total costs of the removal and reinstallation of the solar power system including the indirect cost. Removal by LADWP shall be accomplished within ninety (90) calendar days from DEPARTMENT's written request for removal. Should LADWP fail to remove any equipment, make any repairs, or to perform required maintenance within the time allowed by this MOU, or on emergency or urgent basis where the standard time period does not apply, Section 53, LADWP Failure to Remove, Repair or Maintain, shall apply. Liability to the solar power system damage as a result of the DEPARTMENT performing the removal, repair, maintenance, and reinstallation will be borne by the DEPARTMENT. However, LADWP's responsibility for removal and reinstallation is limited to the first time removal and reinstallation. After the first time removal and reinstallation is required by DEPARTMENT repair/replacement for a solar power system, DEPARTMENT shall be responsible to LADWP for the actual costs of removal and reinstallation of solar power system. Notwithstanding the above, the first two repairs/replacements that require the removal and reinstallation of five percent (5%) or less and 1,000 total square feet or less of solar panels of a particular solar power system shall not count as the "first time removal and reinstallation is required by DEPARTMENT repair/replacement" and LADWP shall be responsible for the removal and reinstallation. If there is only five (5) years or less term left from the Letter of Agreement, LADWP will decide within its sole discretion if the reinstallation of solar panels is warranted and if LADWP decides not to reinstall panels, the Letter of Agreement for that project shall be terminated with DEPARTMENT having no further obligation to LADWP for that project.

15. **Minimal Useful Life of Roof and Adequate Support.** LADWP requires that the DEPARTMENT strives to make available facilities which have twenty five (25) years of useful life remaining for the subject roof or substrate where the solar power system is to be installed. Prior to signing a Letter of Agreement, LADWP shall have the sole discretion to request the DEPARTMENT to perform any repairs, upgrades or replacement to the DEPARTMENT's roof or substrate needed before LADWP performs the installation of the solar power system. DEPARTMENT shall have sole discretion whether or not to perform all, some, or none, of the requested repairs, upgrades or replacement. Prior to signing a Letter of Agreement, the parties shall agree as to what repairs, upgrades or replacement shall be made. Unless otherwise stated in the Letter of Agreement, any costs associated with upgrading or replacing the existing roof or substrate to support the solar power system shall be the financial and operational responsibility of the DEPARTMENT.

For each site, LADWP shall have the sole discretion to remove and replace subject solar panels during the term of this MOU. Such costs to remove and replace will be borne by the LADWP.

16. Promotion of Renewable Energy, Efficiency, Signage and Public Displays. As appropriate, DEPARTMENT and LADWP may perform any of the following:

- a) Provide space at each DEPARTMENT facility where a solar power system is placed for one or more permanent display(s) and signage with readout meters in publicly visible locations in order to promote the use of solar technology, conservation, demand side management and any other LADWP program. The purpose of the display(s) is to educate the public on the benefits of renewable energy technologies and monitor the performance of the solar power system. The final locations for the displays and type of display for installation on DEPARTMENT property shall be by mutual agreement. LADWP shall pay and provide labor as needed for the entire cost of the foregoing displays and signage, including installation, as well as any normal maintenance and repair costs to the displays as determined necessary by DEPARTMENT during the term of this MOU. LADWP and DEPARTMENT recognize that many areas of DEPARTMENT facilities are subject to the terms of permits and other agreements issued by the DEPARTMENT to third-parties, are not open to the public, and/or are subject to local, state, and/or federal security restrictions. LADWP and DEPARTMENT shall take this into account in selecting sites for solar power systems and locations of signage and displays. LADWP shall not install solar power systems on facilities where a display cannot be installed on-site or in another area acceptable to LADWP or cannot be installed to the satisfaction of LADWP.
- b) Provide public counter space or other type of display area for LADWP renewable energy promotional materials at DEPARTMENT facility where the solar power system is installed and at other facilities where DEPARTMENT maintains a public counter. Such materials shall be provided on a regular basis by LADWP at LADWP's expense.
- c) Provide website promotion through prominent placement of a website link or graphical advertising on DEPARTMENT web page. The website link will invite users of DEPARTMENT website to act upon and obtain additional information about LADWP renewable energy and energy efficiency programs. LADWP shall provide website advertising graphics. Any graphics provided by DEPARTMENT, LADWP or by third parties shall be mutually agreed upon by DEPARTMENT and LADWP. DEPARTMENT, at its expense, shall perform or direct the necessary website programming.
- d) Provide promotional advertising space in public newsletters and other informational material as mutually agreed to by the parties that DEPARTMENT may issue periodically to residents of the City. The advertising space shall be for the purpose of promoting LADWP renewable energy and energy efficiency programs. The size and placement of advertising shall be by mutual agreement.

17. **Delivery of Generated Electric Power.** LADWP will receive the actual electric energy produced by the solar power system into LADWP electric distribution grid. The physical interconnection shall occur on LADWP side of DEPARTMENT customer electric meter. The safety requirements for the physical interconnection shall be the responsibility of LADWP and at no additional cost to DEPARTMENT.
18. **Metering of Generated Electric Power.** DEPARTMENT grants permission to LADWP to install solar power system electric meters at its sole expense, for accounting purposes, in DEPARTMENT electrical rooms or locations with other LADWP electric meters. Electric power generated by the solar power system will be received, metered and recorded by LADWP.
19. **Required Building Permits.** Prior to any installation, all required permits must be obtained, including without limitation, permits from Los Angeles Department of Building and Safety and DEPARTMENT General Engineering Permit. DEPARTMENT authorizes LADWP to obtain and pay for required permits, plan checks, tests, and inspections, as necessary, from the Los Angeles Department of Building and Safety and other applicable permitting agencies (including a DEPARTMENT General Engineering Permit) for the purpose of installing and maintaining the solar power system on DEPARTMENT facilities. LADWP shall be exempt from any and all permit fees otherwise imposed by the DEPARTMENT.
20. **Required Environmental Permits.** DEPARTMENT authorizes LADWP to lead the effort in obtaining any required environmental permits on its behalf.
21. **Cultural Affairs Commission and State Historic Preservation Office Approvals.**
 - a) For new DEPARTMENT facilities construction, DEPARTMENT will obtain Cultural Affairs Commission approval when such approval is required for the solar power systems installation.
 - b) For all existing structures, LADWP will assist the DEPARTMENT in obtaining necessary approvals required by the Cultural Affairs Commission and State Historic Preservation Office directly related to the installation of solar power systems on DEPARTMENT-owned property pursuant to this MOU.
22. **Energy Efficiency and Environmental Benefit Credit.** LADWP will retain any and all energy efficiency and environmental benefit credits that may result from the installation and operation of solar power systems for the purpose of inclusion in LADWP's renewable energy portfolio, and applicable towards any current or future renewable energy portfolio standards that may be imposed by applicable

- governing bodies including but not limited to Renewable Energy Certificates, Emission Reduction Benefits, Greenhouse Gas Emissions reduction benefits, and Carbon Dioxide reduction benefits or credits as defined by applicable governing bodies.
23. **Security.** If DEPARTMENT changes security procedures or security access at a given facility (e.g. makes a non-public area accessible to the public) during the term of this MOU, LADWP is to be given written notice one hundred twenty (120) calendar days before DEPARTMENT implements the change unless notice is required by, including without limitation, new or changed regulations by the U.S. Coast Guard or other state or federal agencies and in cases of emergencies.
24. **Review of Design Documents Prior to Construction.** DEPARTMENT will have ninety (90) calendar days from its receipt of the proposed plans and application for DEPARTMENT General Harbor Engineering Permit to review and approve all plans prior to the construction start date of the solar power system. Failure by the DEPARTMENT to return comments to LADWP within the ninety (90) calendar days specified shall be deemed to constitute approval of said plans and shall thus require the issuance of applicable General Engineering Permits. The designs for each solar power system installation shall be mutually agreed upon. All designs are subject to the requirements of the DEPARTMENT's General Harbor Engineering Permit process requirements. The information on General Harbor Engineering Permit process requirements and forms can be found at the following website http://www.portoflosangeles.org/business/department_forms.asp. Design documents shall be completed at time of submittal. No partial or separate submittals will be accepted for DEPARTMENT's review, unless mutually agreed to by both Parties.
25. **Aesthetic Upgrades.** Any upgrades suggested by DEPARTMENT to upgrade aesthetic of the solar system will be paid for in full by DEPARTMENT. Any upgrades exceeding code/regulation requirements and LADWP standards solely for the purpose of aesthetic are considered aesthetic upgrade.
26. **Construction Schedule Coordination.** Whenever possible, LADWP will schedule construction activities in attempt to avoid any business disruption of DEPARTMENT's operations and/or its tenants. DEPARTMENT and LADWP shall review work schedules so that construction activities will not interfere with DEPARTMENT and/or its tenant's operations. All construction schedules are subject to DEPARTMENT approval. Requested changes to construction schedules by either party shall not be unreasonably withheld. LADWP is required to give at least thirty (30) calendar day's notification to DEPARTMENT of Notice to Proceed for construction work.

27. **Sustainable Construction Practices.** LADWP shall comply with the DEPARTMENTS guidelines for sustainable construction practices on all projects under this MOU.
28. **Worker's Compensation and Safe Work Practice.** DEPARTMENT shall make every reasonable effort to accommodate LADWP's construction and safe work practices, and shall make reasonable changes or improvements to DEPARTMENT facilities, or shall allow LADWP to perform such reasonable changes or improvements to support LADWP and all applicable safe work practices. All work practices should meet or exceed minimum safety requirements set forth by federal, state, and local government.
29. **Responsibility for Damage to DEPARTMENT or DEPARTMENT's tenants' Facilities and Solar Power System.** LADWP will assume all responsibility for damage and repairs that any installation, repair, removal, replacement, or maintenance performed by LADWP or its agents may cause to DEPARTMENT and/or DEPARTMENT's tenants' facilities and will take immediate steps, no later than ninety (90) calendar days from the date LADWP receives written notice as to such damage to DEPARTMENT facilities from the DEPARTMENT, to commence such necessary repairs to DEPARTMENT facilities. In case of a roof that is damaged by the installation, LADWP's liability will be limited to the repair of that section of the roof only.

Conversely, the DEPARTMENT will assume all responsibility for damage and repairs caused to LADWP's solar power system installation by acts or omissions of DEPARTMENT or its agents and will take immediate steps, no later than ninety (90) calendar days from the date the DEPARTMENT receives written notice as to such damage from the LADWP, to commence such necessary repairs and/or mitigate damages.

30. **Indemnification.** The DEPARTMENT undertakes and agrees to indemnify and hold harmless the LADWP, the LADWP Board, and all of their officers and employees, and, at the option of LADWP, defend the LADWP, and any and all of its Boards, officers, agents, representatives, employees, assigns and successors in interest from and against any and all suits and causes of action, claims, charges, damages, liabilities, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including DEPARTMENT's employees and agents, or damage or destruction to any property of either party hereto, or third persons, or loss of use, or interference or disruption of Department operations or those of its tenants, in any manner arising by reason of or incident to this MOU. Unless otherwise agreed, the DEPARTMENT will defend LADWP against any and all claims arising out of or related to this MOU. However, LADWP shall not seek indemnification from the DEPARTMENT and may reimburse a portion of or the entire amount of defense costs and amounts previously paid by DEPARTMENT

in the action if LADWP is determined by a court to be the responsible entity or upon the mutual agreement of both Parties. However, such indemnification of LADWP by the DEPARTMENT shall not be assignable to any third party unless otherwise mutually agreed upon by both Parties. In the absence of such agreement by both Parties, the DEPARTMENT and LADWP's assignee shall negotiate the terms of indemnification prior to assignment, if any, between the Parties.

31. **Insurance Requirements** (Applicable only to Departments that carry Commercial General or Excess Liability Insurance). It is hereby acknowledged that LADWP is self-insured and shall, during the term of this MOU, maintain sufficient resources in its self-insurance program to cover at least \$5 million in liability.

a) **INSURANCE – GENERAL STATEMENT**

- i. DEPARTMENT must provide evidence of insurance that conforms to the insurance requirements of this Section. Insurance requirements are explained in detail in the following language and “Contract Insurance Requirements” sheet, which specifically outlines the types and amounts of coverage required for this MOU. For DEPARTMENT’s information and use, “Special Endorsement Forms”, “Guidance for Submitting Evidence of Insurance” is available on LADWP’s website.
- ii. In compliance with this Section, acceptable evidence of required insurance, from insurers acceptable to LADWP, will be required to be submitted within 30-days of the date signing of the Letter of Agreement(s) and maintained current throughout the term of the Letter of Agreement(s). Said evidence of insurance must be on file with the LADWP Risk Management Section before design/construction work can commence work under the Letter of Agreement.
- iii. For further information regarding these requirements, please contact:

Los Angeles Department of Water and Power
 Risk Management Section
 Phone: (213) 367-4674
 Fax: (213) 367-0214
 Web: www.ladwp.com/riskmanagement

b) **INSURANCE – APPLICABLE TERMS AND CONDITIONS**

- i. **Additional Insured Status Required.**
 DEPARTMENT shall procure at its own expense, and keep in effect at all times during the term of this Letter of Agreement, the types and amounts of insurance specified on the attached Contract Insurance Requirements page. The specified insurance shall also, either by provisions in the policies, by LADWP's own

endorsement form or by other endorsement attached to such policies, include and insure LADWP, the LADWP Board, and all of its officers, employees and agents, their successors and assigns, as Additional Insured (except for Professional Liability and Workers' Compensation), against the area of risk described herein as respects DEPARTMENT's acts or omissions in its performance of the agreement as well as its indemnification obligations, hereunder. Such insurance shall not limit or qualify the liabilities and obligations of the DEPARTMENT assumed under the contract.

ii. Severability of Interests, Cross Liability and Contractual Liability Required

Each specified insurance policy (other than Workers' Compensation and Employers' Liability) shall contain a Severability of Interest and Cross Liability clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and a Contractual Liability Endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Agreement with LADWP."

iii. Primary and Non-Contributory Insurance Required

All such insurance shall be Primary and Noncontributing with any other insurance held by LADWP where liability arises out of or results from the acts or omissions of DEPARTMENT or its agents, or under the Indemnity provision of this MOU. Any insurance carried by LADWP which may be applicable shall be deemed to be excess insurance and the DEPARTMENT's insurance is primary for all purposes despite any conflicting provision in the DEPARTMENT's policies to the contrary.

iv. Liability for Premium Payment

LADWP shall have no liability for any premiums charged for such coverage(s). The inclusion of the LADWP, as additional insured, is not intended to, and shall not make LADWP a partner or joint venturer with DEPARTMENT in its operations.

iv. Proof of Insurance for Renewal or Extension Required

At least ten (10) calendar days prior to the expiration date of any of the policies required on the attached Contract Insurance Requirements page, documentation showing that the insurance coverage has been renewed or extended shall be filed with LADWP. If such coverage is canceled or reduced in coverage, DEPARTMENT shall, within fifteen (15) calendar days of such cancellation or reduction of coverage, file with LADWP evidence that the required insurance has been reinstated or provided through another insurance company or companies.

v. Submission of Acceptable Proof of Insurance and Notice of Cancellation

DEPARTMENT shall provide proof to the LADWP's Risk Manager of all specified insurance and related requirements either by production of the actual insurance policy(ies), by use of LADWP's own endorsement form(s), by other written evidence of insurance acceptable to the LADWP Risk Manager, but always in a form acceptable to the LADWP Risk Manager. The documents evidencing all specified coverages shall be filed with LADWP prior to LADWP beginning design and/or construction under a Letter of Agreement. Said proof shall contain at a minimum, the applicable policy number, the inclusive dates of policy coverages, the date the protection begins for LADWP, and the insurance carrier's name. It shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, material reduction in coverage or non-renewal except after written notice by certified mail, return receipt requested, to the LADWP Risk Manager at least thirty (30) calendar days prior to the effective date thereof. The notification shall be sent by registered mail to: Risk Management Section, L.A. Water and Power, Post Office Box 51111, JFB Room 465, Los Angeles, California 90051-0100.

vi. Failure to Maintain Evidence of Insurance and Provide as Cause for Termination

Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which the LADWP may immediately terminate or suspend the agreement.

vii. Specific Insurance Requirements

See Attachment A for "Contract Insurance Requirements."

32. **On-Site Construction Material, Access and Storage.** The DEPARTMENT will provide adequate area for construction activities, including fully secured material storage, material delivery and access by construction equipment. If on-site physical space is not available, alternative accommodations will be made by the DEPARTMENT in a timely manner. LADWP shall notify DEPARTMENT of area required at least thirty (30) calendar days prior to Notice to Proceed.
33. **Access to Site During Construction.** DEPARTMENT will provide access and keys to areas under construction except where local, state, and/or federal security restrictions restrict such access or where property has been leased/permitted to a tenant (in which case DEPARTMENT will only assist LADWP in coordinating with tenant but DEPARTMENT cannot unilaterally provide access and keys). Keys must be provided to LADWP Construction Site Manager within ten (10) calendar days before start of construction and such keys will be returned to DEPARTMENT within ten (10) calendar days of project completion. The LADWP Construction Site Manager will sign in, if applicable, with

DEPARTMENT security daily prior to entering DEPARTMENT facilities or accessing roof areas.

34. **Change of Operational Facility/Use.** If DEPARTMENT change the operational use of the facility which necessitates the removal of the solar power system, DEPARTMENT will compensate LADWP for the solar power system based on Fair Market Value as defined on Section 9, Fair Market Value
35. **Construction Regular and Extended Work Hours.** LADWP may work extended hours at facilities during construction period at the sole discretion of LADWP except where local, state, and/or federal security restrictions restrict such access or where property has been leased/permitted to a tenant as listed in the Letter of Agreement for each solar power system installation pursuant to Section 4, Solar Power System, of this MOU.
36. **Construction Site Security.** LADWP will provide necessary site security, to secure LADWP's construction materials and equipment. LADWP shall fully bear the cost and expense of such security.
37. **Access to Site for Maintenance.** DEPARTMENT grants to LADWP the right to enter DEPARTMENT's premises as well as temporarily use space necessary for maintenance work for the solar power systems sites, including those sites where the solar power systems and additional related equipment is installed except where specific local, state, and/or federal security restrictions restrict such access or where property has been leased/permitted to a tenant as listed in the Letter of Agreement for each solar power system installation pursuant to Section 4 of this MOU. LADWP personnel may access facilities to further performance of its obligations and effectuate the intent under the MOU. Access to restricted areas will require advance scheduling with sufficient notification given to DEPARTMENT for this purpose. This advance notification shall be at least a minimum of five (5) calendar days.
38. **Cost of Maintenance.** LADWP will maintain LADWP owned solar power system at no cost to DEPARTMENT for the term of this MOU and applicable Letters of Agreement.
39. **Facility Maintenance, Removal, and Reinstallation of Solar Power System.** Subject to Section 14, Removal and Reinstallation of Solar Power Systems, of this MOU, where necessary maintenance and repair of DEPARTMENT facility or of the solar power system supporting structure requires the removal and subsequent reinstallation of the solar power system components, in part or in whole, removal and reinstallation work shall be performed by qualified/LADWP personnel at no cost to DEPARTMENT as long as LADWP maintains ownership of the solar power system. The Letter of Agreement term will be adjusted accordingly to

recapture the days of loss in energy production due to the extended removal of solar power system components.

40. **Facility Tear Down and Rebuild, Removal and Reinstallation of Solar Power System.** Subject to Section 14, Removal and Reinstallation of Solar Power Systems, of this MOU, where necessary tear down and rebuild of DEPARTMENT facility requires the removal and subsequent reinstallation of the solar power system components, qualified/LADWP personnel will reinstall the solar power system after rebuilding DEPARTMENT facility at LADWP's expense. If the facility is no longer available for a solar power system installation, in whole or part, then the DEPARTMENT will attempt to provide LADWP with an alternate location. If an alternate location is not available, the DEPARTMENT will compensate LADWP based on Fair Market Value as defined on Section 9, Fair Market Value. If an alternate location is provided, DEPARTMENT's obligations for cost of reinstallation of solar power system at new location shall be limited to the labor cost of reinstallation and shall exclude, without limitation, cost of material unless the material is not applicable to the new location.

If required, the Letter of Agreement term will be adjusted accordingly to recapture the days of loss in energy production due to the extended removal of solar power system components.

41. **Emergency Access to Solar Power System.** DEPARTMENT may not move, open, alter, or disassemble the solar power system nor may it allow its agents, consultants, or others to do the same. LADWP shall be contacted in case of an emergency for appropriate restoration and/or repair to the solar power system.
42. **Emergency Operation of Solar Power System.** DEPARTMENT may not operate or attempt to operate the solar power system. LADWP shall be contacted in case of an emergency for appropriate restoration and/or repair to the solar power system.
43. **Emergency Notification.** DEPARTMENT shall notify LADWP in case of an emergency for appropriate restoration and/or repair to the solar power system at the following contact:

Trouble Board
1- (800) DIAL DWP or 1- (800) 342-5397

44. **Liability for Damage to Installed Solar Power System.** DEPARTMENT shall be liable for any and all damages to the installed solar power system as a result of DEPARTMENT actions. DEPARTMENT shall make every effort to contact LADWP prior to undertaking any action that may result in damage to solar power system. LADWP agrees to make every reasonable effort to accommodate

- DEPARTMENT's request for preparations or actions that would prevent or minimize damage to solar power system.
45. **Future Modifications to Solar Power System.** Future modifications to the completed solar power system may be performed by LADWP during the term of this MOU and respective Letter of Agreement at no cost to DEPARTMENT upon approval of the DEPARTMENT as to design and construction schedule as indicated in Sections 24, Review of Design Documents Prior to Construction, and 26, Construction Schedule Coordination.
46. **Force Majeure.** In the event that performance on the part of any party hereto shall be delayed or suspended as a result of circumstances beyond reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder shall include, but not be limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; acts of wars; terrorists attacks; natural calamities; earthquakes; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation; unforeseen supply shortages; to the extent that they are not caused by the party's willful or negligent acts or omissions or intentional or negligent misrepresentations of fact, and to the extent that they are beyond the party's reasonable control. Specifically and with limitation, if, as a result of circumstances beyond reasonable control and without the fault and negligence of the DEPARTMENT, as defined above, a structure upon which a solar power system is installed or to be installed is rendered unsuitable for such installation, DEPARTMENT shall not be obligated to find a replacement site or compensate LADWP pursuant to this MOU, and if, as a result of circumstances beyond reasonable control and without the fault and negligence of the LADWP, as defined above, an installed solar power system is destroyed, LADWP shall not be obligated to replace or reinstall such system pursuant to this MOU.
47. **Assignability of MOU.** Neither party may assign its rights or obligations under this MOU or any Letter of Agreement without the express written consent of the other City department or third party. The consent to a proposed assignment shall not be unreasonably withheld except as provided elsewhere in this MOU.
48. **Dispute Resolution.** The parties agree to make all reasonable efforts to resolve disputes regarding the performance or compliance with the terms of this MOU in a timely fashion. If disagreement regarding performance or compliance with this MOU cannot be resolved within thirty (30) calendar days from receipt of a written notice of dispute by either party, the parties agree to submit such disputes in proper form and manner to the LADWP and DEPARTMENT Board for mutual resolution.

49. **Contract for the Parties.** Any notices, requests or demands concerning this MOU shall be transmitted by DEPARTMENT or LADWP to the other party, as follows:

To DEPARTMENT: _____

Los Angeles, CA

Attention: _____

To LADWP: LADWP
Solar Power Program, Room 940
P.O. Box 51111, Los Angeles, CA 90051-0100
Attention: Solar Energy Program Manager
RE: LADWP/Harbor Department Solar Power
System MOU/Letter of Agreement

50. **Acquisition of Pre-Existing Solar Power Systems.** LADWP shall have the right to acquire the DEPARTMENT's pre-existing solar power systems installations upon mutual agreement between DEPARTMENT and LADWP as memorialized in a written agreement signed by the General Managers of DEPARTMENT and LADWP. The agreement shall reference the specific DEPARTMENT-owned solar power system installation to be transferred and provide for the transfer of DEPARTMENT's ownership to said installations or facilities to LADWP. Additionally, the agreement may also provide for a change to the interconnections for the installations or facilities from DEPARTMENT side of the meter to LADWP side of the meter; and the transfer of the DEPARTMENT's related operations and maintenance responsibilities, and financial obligations, in whole or in part, to LADWP upon .

LADWP shall have the right to transfer the DEPARTMENT's solar power systems installations upon mutual agreement between DEPARTMENT and LADWP, which shall not be unreasonably withheld, to provide for financial, tax, grant, and investment benefits. Such transfer shall consider DEPARTMENT operating and security requirements. All transfers shall be memorialized in a written agreement signed by the General Managers of DEPARTMENT and LADWP

51. **Buildings with Existing Asbestos and Hazardous Material.** DEPARTMENT shall disclose all known hazardous material and Asbestos in DEPARTMENT's building and structures to LADWP as best as they can. LADWP has the right to disqualify any of these structures. If LADWP decides to install a solar power system on such a facility, then LADWP will bear the extra cost of avoiding exposure of this hazardous material or asbestos or to remediate the hazardous material or asbestos.

- 52. Costs of Abatement of Asbestos and Hazardous Material Discovered During Construction.** Upon the discovery of Asbestos or hazardous materials that was not disclosed by DEPARTMENT and was not known by DEPARTMENT nor LADWP, then LADWP may remediate to the minimum legally required standard and cancel the project or, if LADWP decides to continue to install a solar power system on such a facility, then LADWP will bear the extra cost of avoiding exposure of this hazardous material or asbestos or to remediate the hazardous material or asbestos.
- 53. LADWP FAILURE TO REMOVE, REPAIR OR MAINTAIN.** If LADWP fails to remove any equipment, make any repairs, or to perform required maintenance within the time allowed by this MOU, DEPARTMENT may, but shall not be obligated to, remove such equipment, make such repairs, or to perform required maintenance. In such event, LADWP shall reimburse DEPARTMENT for DEPARTMENT's costs. Furthermore, if such work is required in less than thirty (30) calendar days due to an emergency or urgent basis involving the threat of further damage or disruption of operations to DEPARTMENT or DEPARTMENT's tenant's property or injury to persons and LADWP has been notified and does not perform such work in the time required by such emergency or urgency. Urgent or emergency work is defined as any removal, repair, or maintenance which when delayed may cause further damage or disruption of operations to DEPARTMENT or DEPARTMENT's tenant's property or structures or injury to persons. LADWP requires approval of emergency or urgent removal, repair, or maintenance and associated costs prior to the commencement of removal, repair, or maintenance. DEPARTMENT may, but shall not be obligated to, remove such equipment, make such repairs, or to perform required maintenance. LADWP shall reimburse DEPARTMENT for DEPARTMENT's labor and materials costs. Any work performed by DEPARTMENT pursuant to this Section shall in no event be construed as a waiver of the duty or obligation of LADWP to make future repairs or perform required maintenance as herein provided.

In witness, hereof, DEPARTMENT and LADWP have caused this MOU to be executed by their duly authorized representatives on the year and date written below.

Execution:

DEPARTMENT OF WATER AND POWER OF
THE CITY OF LOS ANGELES
BY
BOARD OF WATER AND POWER COMMISSIONERS OF
THE CITY OF LOS ANGELES

By *S. David Freeman*
S. DAVID FREEMAN, Interim General Manager

Date OCT 16 2009

And *Barbara E. Moschos*
Secretary

AUTHORIZED BY RES. 010-088
SEP 15 2009

APPROVED AS TO FORM

October 14, 2009
CARMEN A. TRUTANICH, City Attorney


By *Camilla M. Eng*
Camilla M. Eng, Deputy City Attorney
Department of Water and Power

THE CITY OF LOS ANGELES
HARBOR DEPARTMENT BY
BOARD OF HARBOR COMMISSIONERS OF
THE CITY OF LOS ANGELES

Date: 10/7/09

By: 

By Geraldine Knatz, Executive Director

Attest: 
Board Secretary

APPROVED AS TO FORM

10/2, 2009
CARMEN A. TRUTANICH City Attorney

By 
Simon Kann, Deputy City Attorney
Harbor Department

Exhibit A

**LETTER OF AGREEMENT
SOLAR POWER SYSTEM INSTALLATION**

In accordance with the SOLAR POWER SYSTEM MEMORANDUM OF UNDERSTANDING (“MOU”) effective _____, the Harbor Department of the City of Los Angeles (DEPARTMENT) and the Los Angeles Department of Water and Power (LADWP) hereby enter into this Letter of Agreement for the installation of a solar power system, to be installed by the LADWP on a DEPARTMENT facility.

DEPARTMENT and LADWP acknowledge and agree to the following terms and conditions of this Letter of Agreement:

1.0 INCORPORATION OF TERMS AND CONDITIONS OF MOU

The terms and conditions of the MOU are incorporated herein by this reference and attached hereto as Exhibit A. In the event of a conflict between this Letter of Agreement and the MOU, this Letter of Agreement shall govern.

2.0 EFFECTIVE DATE AND DURATION/TERM OF THE LETTER OF AGREEMENT

The Letter of Agreement shall commence on _____, 20__ and shall remain in full force and effect for ____ () years therefrom;

3.0 LOCATION OF INSTALLATION

The solar power system installation to be located at:

4.0 TYPE OF SOLAR POWER SYSTEM

5.0 SIZE OF SOLAR POWER SYSTEM INSTALLATION

The approximate size of the solar power system installation shall be _____ kW

6.0 OTHER CONDITIONS

DEPARTMENT OF WATER AND POWER OF
THE CITY OF LOS ANGELES

Date: _____ By: _____

Title: _____
General Manager

APPROVED AS TO FORM

_____, 2009
CARMEN A. TRUTANICH, City Attorney

By _____
Camilla Eng, Deputy City Attorney
Department of Water and Power

THE CITY OF LOS ANGELES
HARBOR DEPARTMENT BY
BOARD OF HARBOR COMMISSIONERS OF
THE CITY OF LOS ANGELES

Date: _____

By: _____

By _____, Executive Director

Attest: _____

Board Secretary

APPROVED AS TO FORM

_____, 2009
CARMEN A. TRUTANICH City Attorney

By _____
_____, Deputy/Assistant City
Attorney, Harbor Division