

## **AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING**

**THIS AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING** (this "MOU") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the **LANCASTER POWER AUTHORITY**, a joint powers authority ("LPA"), and **US TOPCO ENERGY INC.**, a California corporation ("Topco") (LPA and Topco are sometimes referred to herein individually as a "Party" and collectively as the "Parties").

### **Recitals**

- A. Topco is in the business of developing renewable energy systems and related infrastructure, projects, and technology.
- B. Topco desires to develop projects and build or have built photovoltaic solar power plants in the City of Lancaster (the "City"), the Antelope Valley, and throughout the State of California (the "State").
- C. LPA desires Topco to construct or have constructed photovoltaic solar power plants in and near the City.
- D. LPA desires to encourage the development of renewable power generation in and around the City to stimulate economic development in the City, including job creation, an enhanced tax base, attraction of desirable businesses and potential direct earnings from photovoltaic power generation.
- E. Topco and LPA desire to investigate, among other opportunities, the development of one (1) or more photovoltaic solar power plant(s) in the City that is/are capable of generating a total aggregate amount up to 200 megawatts of electrical power.
- F. Now, therefore, in consideration of the mutual understandings and agreements set forth herein, the parties hereby agree as follows:

### **Agreement**

- 1. **Definitions.** As used in this MOU, the following terms shall have the stated meanings:
  - 1.1. "Confidential Information" means information, other than Excluded Information, which is disclosed either orally or in writing by or on behalf of a Party to another Party in connection with the Proposed Project and which is identified by or on behalf of the disclosing Party as confidential. In designating information as Confidential Information, the disclosing Party shall have a reasonable, good faith belief that the information is confidential or exempt from disclosure under applicable law (including, without limitation, the California Public Records Act and the Federal Freedom of Information Act). Such information is confidential, proprietary or generally not available to the public and shall remain the property of the disclosing Party. Confidential Information shall include such information supplied prior to the date hereof by or on behalf of a Party in connection with the Proposed Project.
  - 1.2. "Excluded Information" means information which:
    - 1.2.1. at the time of its disclosure by or on behalf of a Party was already known by or in the possession of the receiving Party;
    - 1.2.2. after the time of its disclosure is obtained by a Party from a third party who lawfully possesses such information and is not under any contractual, legal or fiduciary obligation to a Party to keep such information confidential;

- 1.2.3. at the time of disclosure or thereafter is published or otherwise made generally available to the public, unless such publication or general availability is the result of a breach of this Agreement;
- 1.2.4. at the time of disclosure or thereafter must be disclosed by LPA pursuant to applicable law (including, without limitation, the California Public Records Act and the Federal Freedom of Information Act); or
- 1.2.5. at the time of this Agreement or thereafter is required to be disclosed by a Party in any judicial, regulatory, or administrative proceeding, unless the judicial, regulatory, or administrative body before whom such proceeding takes place has required such data or information to be kept confidential.
- 1.3. “Advisors” means, when used with reference to a Party, the attorneys, accountants, consultants, technical advisors, financial advisors and lenders of such Party and its affiliates.
- 1.4. “LPA” shall also include all of its elected and appointed boards, officials, officers, agents and employees.
- 1.5. “Proposed Project” is defined in Section 2.
2. Development of Photovoltaic Solar Power Plant(s). LPA and Topco will work together to develop one (1) or more photovoltaic solar power plant(s) in the City that is/are capable of generating a total aggregate amount of at least 50-megawatts of electrical power (the “Proposed Project”). In general terms, Topco will develop, own and operate the Proposed Project. LPA will provide site control, permitting assistance, and other utility services for the Proposed Project. LPA will purchase from Topco and Topco will sell to LPA (at a predetermined and fixed price) one hundred percent (100%) of the electric power produced by the Proposed Project, including each separate and/or distinct portion thereof. LPA will resell all or a portion of such electrical power to one (1) or more retailer(s) of electrical power and shall be responsible for negotiating and securing from such retailer(s) the necessary “Power Purchase Agreement(s).” Topco, with LPA's assistance and guidance, will dedicate resources to work with public and private utilities, governmental and quasi-governmental entities to expedite permitting and the construction of inner connects to the Proposed Project.
3. Other Projects. Topco will explore and propose to the LPA ways to construct or have constructed photovoltaic solar power plants and associated infrastructure within the City, the Antelope Valley, and throughout the State, LPA ownership of photovoltaic solar power plants, municipal power purchase agreements directly with public and private utilities, governmental and quasi-governmental entities and other related projects. Additionally, Topco and the LPA will work together and in good faith in an effort to develop a program that allows residents within the City to purchase solar systems for their homes and finance the purchase of such system through a special assessment district. Such a program is commonly referred to as a “Property Assessed Clean Energy” or “PACE Program.”
4. Proposed Project Financing. LPA and Topco will explore ways to work together to secure and apply for Federal Stimulus Funds or other grants for the Proposed Project, for projects and infrastructure related to renewable energy and associated development in the City and for the other projects described in Section 3.
5. Obligation to maintain confidentiality. Each Party agrees not to disclose any other Party's Confidential Information without such Party's prior written consent, except as

provided in Section 7; provided, however, a Party may disclose another Party's Confidential Information to the Party's officers, directors, employees, and Advisors and to its affiliates and the officers, directors, employees, and Advisors of its affiliates (collectively, "Representatives") who need to know such Confidential Information and agree to maintain the confidentiality of the Confidential Information in accordance with the terms hereof. In addition, each Party may disclose Confidential Information received by it hereunder to any potential developer, contractor, funding source, trustee or any power or transmission provider or purchaser or any other entity that may participate in or be affected by the development, construction, financing, ownership or operation of the Proposed Project and who agree to maintain the confidentiality of the Confidential Information in accordance with the terms hereof.

6. Use of confidential information. Each Party agrees not to use Confidential Information other than for the purpose of evaluating, negotiating, or implementing the Proposed Project. Nothing in this Agreement shall constitute an obligation of a Party to disclose Confidential Information to the other Party.
7. Disclosure pursuant to legal requirements. Notwithstanding any provision to the contrary contained herein, a disclosure by a Party that otherwise would be prohibited by this Agreement shall be permitted if such disclosure is compelled by a judicial, regulatory, administrative body of competent jurisdiction, or by law, but then only if in conformance with the following provisions:
  - 7.1. The disclosing Party shall:
    - 7.1.1. take all reasonable steps to preserve the privileged nature and confidentiality of Confidential Information, including requesting that Confidential Information not be disclosed to non-Parties or the public;
    - 7.1.2. give the other Party prompt notice of any legal process and, to the extent practicable, gives the other Party the opportunity to seek an appropriate protective order or to pursue such further legal action as may be necessary to preserve the privileged nature and confidentiality of Confidential Information; and
    - 7.1.3. provide reasonable assistance to and cooperation with the other Party to preserve the privileged nature and confidentiality of Confidential Information.
  - 7.2. If LPA receives a request for records concerning the Proposed Project under the California Public Records Act or the Federal Freedom of Information Act, it shall:
    - 7.2.1. give notice to Topco of the request within three (3) business days of receipt, along with a copy thereof;
    - 7.2.2. consult and reasonably cooperate with Topco concerning the request and LPA's anticipated response thereto, including identifying particular records which LPA believes may be subject to disclosure;
    - 7.2.3. provide Topco with the opportunity to respond and comment on the records identified by LPA under Section 7.2.2 which response Topco shall provide within five (5) business days after such identification of records. If Topco objects to the disclosure of a record, Topco shall cite the statutory basis for such objection. LPA shall not disclose such record; provided, however, that if the person requesting the records files a legal action to compel disclosure, Topco shall reimburse LPA for any and all costs incurred by it in defending such action, including costs and attorney's fees, and for plaintiff's costs and attorneys' fees paid by LPA if awarded by the court in a final judgment on the action.

8. Delivery of confidential written materials. Any written materials conveyed under this Agreement, which the disclosing Party believes constitute Confidential Information, shall be clearly marked "CONFIDENTIAL."
9. Return of written materials. Upon request by a Party, the other Party shall return all written Confidential Information to the requesting Party or, at the election of the requesting Party, shall destroy such written Confidential Information. Upon receipt of such a request, fifteen (15) days shall be allowed for the Party receiving the request to assemble and return or, if so elected in accordance with this paragraph, to destroy all written Confidential Information in the possession of the Party receiving the request. The receiving Party shall not be deemed to have retained or failed to destroy any Confidential Information which is in electronic form if such information is deleted from local hard drives so long as no attempt is made to recover such information from servers or back-up source. Notwithstanding the foregoing, either Party may retain a printed or electronic set of Confidential Information in the offices of its legal counsel solely for purposes of enforcement of agreements and compliance with applicable regulatory requirements. Each Party's legal counsel shall make such retained set of Confidential Information available for review at its offices by the other Party's legal counsel upon reasonable notice. Any obligation to destroy records under this Agreement shall be consistent with and subject to applicable provisions of state and federal law.
10. Publicity. Until a formal development and operating agreement has been signed, both by Topco and LPA, neither Party shall issue any press release or otherwise publicize or disclose to any third party (except consultants or other third parties, that the LPA may rely upon for evaluating such agreements) the details of the corroborative work undertaken as part of this MOU without the prior written consent of the other Party, which consent shall not be unreasonably withheld. This paragraph shall not apply to any statements made by either Party in connection with, or at the time of, the approval of this MOU.
11. Term and Termination. This MOU shall become effective immediately upon approval by the LPA Board of Directors and shall terminate upon the earliest to occur of the following: (a) the execution by the parties of one or more definitive agreements with respect to the subject matter of this MOU; or (b) six months from the date hereof. The term of this MOU can be extended upon the written mutual agreement of both Topco and LPA.
12. Non-Binding Effect. This MOU is intended to serve as a general basis for commencing negotiations for one or more definitive agreements between the LPA and Topco with respect to the matters referenced herein. This MOU does not contain all the detailed provisions to be incorporated in any such definitive agreement(s), but does reflect the current mutual intentions of the parties. With the exception of Section 5 and 10 hereof, which are intended to be binding upon the parties, neither the LPA nor Topco shall have any legal obligation under or by virtue of this MOU, including any obligation to enter into any definitive agreement or other contract, to provide any services, to disclose any information, to make any investment or pay any consideration or compensation, whether or not expressly described herein; provided that the parties agree to cooperate in good faith along the lines described in this MOU.
13. Assignment. The qualifications and identity of Topco are of particular concern to the LPA. It is because of those qualifications and identity that the LPA has entered into this MOU with Topco. Therefore, Topco shall not make any total or partial sale, grant, transfer, conveyance or assignment of the whole or any part of this MOU without prior

written approval of LPA, except as expressly set forth herein. Notwithstanding the foregoing, LPA approval of an assignment of this MOU, or any part thereof, shall not be required in connection with any transfer to an entity or entities in which Topco retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

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

“Topco”

“LPA”

US TOPCO ENERGY, INC.,  
a California corporation

LANCASTER POWER AUTHORITY,  
a joint powers authority

By: \_\_\_\_\_  
\_\_\_\_\_, Chief Executive Officer

By: \_\_\_\_\_  
R. Rex Parris, Chairman

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Geri K. Bryan, Secretary

By: \_\_\_\_\_  
David R. McEwen, Legal Counsel