

THIRD AMENDMENT OF POWER PURCHASE AGREEMENT

THIS THIRD AMENDMENT OF POWER PURCHASE AGREEMENT ("Third PPA Amendment") is entered into as of this 21st day of September ("Effective Date") among the City of Long Beach (the "City"), a municipal corporation and VS Long Beach Solar One, LLC, a Delaware limited liability company. The City of Long Beach and VS Long Beach Solar One LLC are referred to individually herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, reference is hereby made to that certain Asset Purchase Agreement and that certain Assignment and Assumption Agreement and Bill of Sale by and between Dissigno Holdings, LLC, an Oregon limited liability company and MMA LB Power, L.P., a Delaware limited partnership, dated October 1, 2016, through which MMA LB Power, L.P. sold and assigned to Dissigno Holdings, LLC and Dissigno Holdings, LLC assumed the rights, title and interest of MMA LB Power, L.P., in (1) that certain photovoltaic system located at the Long Beach Convention Center at 300 East Ocean Blvd., Long Beach, California (the "System"), and (2) that certain Power Purchase Agreement Major Terms and Conditions by and between the City and DeLiddo & Associates, Inc. ("DEERS"), a California corporation, dated May 27, 2005 (the "Power Purchase Agreement"), as amended by that certain Assignment, Assumption and Amendment of Power Purchase Agreement between the City, DEERS, and California New Power 2006-1, LLC, an Arkansas limited liability company, dated February 12, 2007 (the "First PPA Amendment"), and further amended by that certain Second Amendment of Power Purchase Agreement by and between the City and Dissigno Holdings, LLC, dated April 4, 2017 (the "Second PPA Amendment"). The Original PPA, the First PPA Amendment, and the Second PPA Amendment together shall be referred to herein as the "Long Beach PPA".

WHEREAS, the System Commencement Date of the Term of the Agreement occurred on February 13, 2007.

WHEREAS, the System is in need of repair and/or reconstruction and the Parties desire to repair and/or reconstruct the System so that the City may continue to purchase the electricity supplied by the System in accordance with the Long Beach PPA. In connection with the contemplated repair and/or reconstruction of the System, the Parties desire to amend the Long Beach PPA by providing a description of the System as it will be repaired and/or reconstructed, and updating the projected system output and termination and demobilization values for the System to be repaired and/or reconstructed as contemplated in the Second PPA Amendment.

WHEREAS, concurrently with this Third PPA Amendment the City has executed an Agreement to Consent Transfer of Convention Center Photovoltaic System and Power Purchase Agreement to VS Long Beach Solar One, LLC.

WHEREAS, the Parties desire to amend the Long Beach PPA as set forth below;

NOW THEREFORE, for good and valuable consideration (the receipt and adequacy whereof is hereby acknowledged) the Parties agree as follows:

ARTICLE I INTERPRETATION

- 1.1 Defined Terms.** Unless otherwise defined in this Third PPA Amendment, capitalized terms used and not otherwise defined herein shall have the meanings specified in the Original PPA.
- 1.2 System Owner.** The System Owner shall now be known as VS Long Beach Solar One, LLC a Delaware LLC.

ARTICLE 2 AMENDMENTS

- 2.1 Amendments to the Original PPA.** The Parties agree to amend the Original PPA as follows:
- 2.1.1 Section 8.2. Demobilization.** The first two sentences of Paragraph 8.2 shall be struck in their entirety and be replaced with: "If THE CITY terminates this contract for any reason other than Default, End of Term, or exercising the Option to Purchase, THE CITY agrees to pay SYSTEM OWNER a demobilization fee of two hundred and fifty thousand and 00/100 dollars (\$250,000.00)." This fee will increase annually from the Effective Date at a rate of 3% inflation.
- 2.1.2 Section 28. License.** The following is added as the first sentence of Section 28: "THE CITY hereby grants to SYSTEM OWNER a non-exclusive license to access, at any time, all those portions of the PREMISES reasonably necessary for SYSTEM OWNER to operate the SYSTEM and otherwise perform its obligations under this Agreement."
- 2.1.3 Section 30. The City's Obligations.** A second paragraph shall be added to Section 30 to state the following: "THE CITY shall use commercially reasonable efforts to enter into all required interconnection applications or arrangements with the local electric utility for the SYSTEM and shall use commercially reasonable efforts to enter into all required net energy metering applications or arrangements with the local electric utility for the SYSTEM."
- 2.1.4 Exhibit "A". System Description.** "Exhibit 'A' – System Description" shall be struck in its entirety and replaced with "Exhibit 'A' – System Description" attached to this Third PPA Amendment as "Attachment 1".

2.1.5 Exhibit "B". Rates and Billing System. Exhibit "B" shall be struck in its entirety and replaced with "Exhibit 'B' – Rates and Billing System" attached to this Third PPA Amendment as "Attachment 2"

2.1.6 Exhibit "C". Termination Values. Exhibit "C" shall be struck in its entirety and replaced with "Exhibit 'C' – Termination Values" attached to this Third PPA Amendment as "Attachment 3".

2.2 **Further Agreements.** The Parties hereby further agree that the City shall enter into all required interconnection applications or arrangements with the local electric utility and will enter into all required net energy metering applications or arrangements with the local electric utility for the successful completion of the repair and/or reconstruction of the System as described in "Exhibit 'A' – System Description" (Attachment 1 of this Third PPA Amendment). The City shall execute a new Acceptance Certificate, as provided in Exhibit E of the Original PPA, upon the successful completion of the repair and/or reconstruction of the System as described in "Exhibit 'A' – System Description" (Attachment 1 of this Third PPA Amendment). The City shall make payments on a monthly basis as described in "Exhibit 'B' – Rates and Billing System" (Attachment 2 of this Third PPA Amendment) and payments will commence thirty (30) days after the execution of the new Acceptance Certificate, as provided in Exhibit B of the Long Beach PPA and as amended herein.

ARTICLE 3 EFFECT ON THE ORIGINAL PPA, FIRST PPA AMENDMENT, AND SECOND PPA AMENDMENT

3.1 **Original PPA, First PPA Amendment and Second PPA Amendment.** The Original PPA, the First PPA Amendment, and the Second PPA Amendment shall continue in full force and effect and are hereby in all respects ratified and confirmed except as specifically amended in this Third PPA Amendment. The Original PPA, the First PPA Amendment, and the Second PPA Amendment shall henceforth be read and construed in conjunction with this Third PPA Amendment.

IN WITNESS WHEREOF, the Parties have executed this Third PPA Amendment on the dates specified below to be effective as of the Effective Date.

CITY OF LONG BEACH By: <u>[Signature]</u> Name: <u>Tom Modica</u> Title: <u>Assistant City Manager</u> Date: <u>10/10/17</u>	VS LONG BEACH SOLAR ONE, LLC By: <u>[Signature]</u> Name: <u>Mark Milius</u> Title: <u>Authorized Agent of Manager</u> Date: <u>09/21/17</u>
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APPROVED AS TO FORM

10.4.2017
CHARLES PARKIN, City Attorney
By: [Signature]
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

ATTACHMENT 1
EXHIBIT “A” – SYSTEM DESCRIPTION

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SYSTEM OWNER will provide and install at a minimum a 960kW AC photovoltaic system to repair and/or reconstruct the "SYSTEM" on the roof of the PREMISES.

The SYSTEM complies with all attributes of the Southern California Edison ("SCE") interconnection applications or arrangements and utilizes components that are listed on the California Energy Commission's list of eligible equipment.

SYSTEM OWNER shall select PV module technology, inverters, and other SYSTEM components that are approved by the California Energy Commission's list of eligible equipment for the repair and/or reconstruction of the SYSTEM. For the repair and/or reconstruction of the solar PV array on the rooftop of the PREMISES, SYSTEM OWNER shall install a solar racking system on the roof of the PREMISES in the location of the existing solar array and in other open rooftop space of the PREMISES. SYSTEM OWNER shall install 72-cell PV modules on the solar racking system throughout the rooftop of the PREMISES where the new solar racking system is located. The solar array DC output will be converted to AC using inverters approved to be interconnected to run in parallel with SCE in compliance with any interconnection applications or arrangements with SCE. SYSTEM OWNER shall install string inverters as part of the SYSTEM in locations approved by the local building code and in compliance with any interconnection applications or arrangements with SCE.

The installation and commissioning of the repaired and/or reconstructed SYSTEM will be completed within the time constraints allowable by the required interconnection applications or arrangements with the local electric utility SCE for the repair and/or reconstruction of the "SYSTEM" on the roof of the PREMISES .

SYSTEM OWNER will maintain the SYSTEM throughout the term of this agreement.

ATTACHMENT 2
EXHIBIT “B” – RATES AND BILLING SYSTEM

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Each year beginning at the Commencement Date and ending thirty (30) 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 \$0.0765 per kWh in Year 1, increasing 3% annually for inflation for the term of the PPA (the Minimum Billed Rate further clarified in the table below) 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 Minimum Billed Rate for each year starting with Commencement Date is as follows:

Year	1	2	3	4	5	6	7	8	9	10
	\$0.0765	\$0.0788	\$0.0812	\$0.0836	\$0.0861	\$0.0887	\$0.0913	\$0.0941	\$0.0969	\$0.0998
	11	12	13	14	15	16	17	18	19	20
Year	\$0.1028	\$0.1059	\$0.1091	\$0.1123	\$0.1157	\$0.1192	\$0.1228	\$0.1264	\$0.1302	\$0.1341
Year	21	22	23	24	25	26	27	28	29	30
	\$0.1382	\$0.1423	\$0.1466	\$0.1510	\$0.1555	\$0.1602	\$0.1650	\$0.1699	\$0.1750	\$0.1803

SYSTEM OWNER will invoice THE CITY monthly in an amount equal to Minimum Billed Rate multiplied by the monthly kWh production. 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 repaired and/or reconstructed SYSTEM 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 THE CITY any overcharged amounts or invoice THE CITY for undercharged amounts based on the difference between the sum of the monthly payments and the amount due SYSTEM OWNER for that Term year.

Examples:

1. SYSTEM produces 1,000,000 kWh in Year 1, 90% of the actual avoided electrical expense is less than \$0.0765 per kWh, THE CITY has paid monthly invoices in full totaling \$76,500.00. Amount due to THE CITY is \$0.00. Amount due to SYSTEM OWNER is \$0.00.
2. SYSTEM produces 1,000,000 kWh in Year 2, 90% of the actual avoided electrical expense is less than \$0.0788 per kWh THE CITY has paid monthly invoices in full totaling \$78,800.00. Amount due to THE CITY is \$0.00. Amount due to SYSTEM OWNER is \$0.00.

3. 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 per kWh x 90% = \$.09 per kWh x 1,000,000 kWh) and \$76,500.00 (\$.0765 per kWh x 1,000,000 kWh). Amount due to SYSTEM OWNER at year end would be equal to (\$90,000.00 less \$76,500.00) = \$13,500.00.

ATTACHMENT 3
EXHIBIT “C” – TERMINATION VALUES

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Year Number	Year	PPA Value
1	2017	\$6,937,000.00
2	2018	\$6,937,000.00
3	2019	\$6,937,000.00
4	2020	\$6,937,000.00
5	2021	\$6,937,000.00
6	2022	\$1,500,000.00
7	2023	\$1,400,000.00
8	2024	\$1,300,000.00
9	2025	\$1,200,000.00
10	2026	\$1,100,000.00
11	2027	\$1,000,000.00
12	2028	\$1,000,000.00
13	2029	\$1,000,000.00
14	2030	\$750,000.00
15	2031	\$750,000.00
16	2032	\$750,000.00
17	2033	\$500,000.00
18	2034	\$500,000.00
19	2035	\$500,000.00
20	2036	\$500,000.00