

# 29265

## SECOND AMENDMENT OF POWER PURCHASE AGREEMENT

**THIS SECOND AMENDMENT OF POWER PURCHASE AGREEMENT** (“Second PPA Amendment”) is entered into as of this 4<sup>th</sup> day of April, 2017 (“Effective Date”) among the City of Long Beach (the “City”), a municipal corporation, and Dissigno Holdings, LLC (“Dissigno”), an Oregon limited liability company. The City and Dissigno 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 Assignment and Assumption Agreement and Bill of Sale by and among Dissigno, MMA RC Power, L.P., and MMA LB Power, L.P., dated October 1, 2016, through which MMA LB Power, L.P. assigned to Dissigno and Dissigno assumed the right, title, and interest of MMA LB Power, L.P. in (1) that certain solar photovoltaic system located at the Long Beach Convention Center, and (2) that certain Power Purchase Agreement Major Terms and Conditions (the “Original PPA”) by and between MMA LB Power, L.P. and the City, dated May 27, 2005, and as further amended by that certain Assignment, Assumption and Amendment of Power Purchase Agreement by and between MMA LB Power, L.P. and the City, dated on February 12, 2007 (the “First PPA Amendment”), and that certain Letter Agreement to Enter into a Replacement PPA (“Letter Agreement”) by and between MMA LB Power, L.P. and the City dated February 14, 2007 (the Original PPA, First PPA Amendment, and Letter Agreement together shall be referred to herein as the “Long Beach PPA”);

**WHEREAS**, the City and Dissigno 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 Second PPA Amendment, capitalized terms shall have the meanings specified in the Original PPA.

### ARTICLE 2 AMENDMENTS

- 2.1 **Amendments to the Long Beach PPA.** The Parties agree to amend the Long Beach PPA as follows:

- 2.1.1 **Section 1 of the Original PPA. Term and Commencement Date.** The first sentence of Section 1 shall be struck in its entirety and replaced with: “The Term of this Agreement shall begin on the date written above and shall

end thirty (30) years after the Commencement Date except as such Term may be earlier terminated as provided in Sections 8, 9 and 10 of this Agreement.”

- 2.1.2 Section 8.2 of the Original PPA. Demobilization. The following sentence shall be inserted after the last sentence of Section 8.2: “The demobilization fee shall be updated to reflect the increase in cost of demobilizing the SYSTEM in the event that the SYSTEM OWNER installs additional modules to increase the total capacity of the SYSTEM, and such mutually-agreed upon updated fee shall be evidenced by a written amendment to this Agreement.”
- 2.1.3 Section 8.3 of the Original PPA. SYSTEM Removal. Section 8.3 shall be struck in its entirety and replaced with: “8.3. SYSTEM Removal. If (i) at the end of the term of this Agreement THE CITY does not elect to purchase or renew under Section 10, or (ii) this Agreement is terminated by THE CITY due to a SYSTEM OWNER Event of Default, then SYSTEM OWNER, at its sole cost, shall remove the SYSTEM and ensure that the PREMISES are in good condition, reasonable wear and tear excepted, and the membrane remains in working order after removal of the SYSTEM.
- 2.1.4 Section 9 of the First PPA Amendment. Option to Purchase. The first sentence of Section 9, shall be struck in its entirety and replaced with: “THE CITY shall have the option to purchase the SYSTEM, including any alternations, materials or equipment related thereto on the date that occurs on the sixty-first (61<sup>st</sup>) monthly anniversary of (i.e. the date that occurs 5 years and one month after) the Commencement Date, and on each of the tenth, fifteenth, twentieth, twenty-fifth and thirtieth anniversaries of the Commencement Date (each such anniversary, a “Purchase Option Date”).”
- 2.1.5 Section 11 of the Original PPA. Temporary Shutdown of SYSTEM. The first sentence of Section 11 shall be struck in its entirety and replaced with: “If, during the Term of this Power Purchase Agreement, renovations or damage to the SYSTEM occurs from (i) actions or omissions other than by SYSTEM OWNER, or (ii) Force Majeure, which significantly reduces or eliminates the use of electricity from the SYSTEM or requires temporary shutdown of the SYSTEM, THE CITY and SYSTEM OWNER may, by mutual consent, do either of the following.”
- 2.1.6 Exhibit “A” in the Original PPA. System Description. The following paragraph shall be inserted following the sixth paragraph: “SYSTEM OWNER may provide and install additional photovoltaic system modules to increase the total capacity of the SYSTEM up to 1.0 MW. Additional modules installed by SYSTEM OWNER shall be from a manufacturer selected by SYSTEM OWNER.”

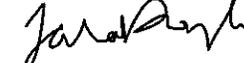
- 2.1.7 Exhibit "B" in the Original PPA. Rates and Billing System. The first sentence of the first paragraph shall be struck in its entirety and replaced with: "Each year beginning at the Commencement Date and ending thirty (30) years thereafter or upon earlier termination as provided in the Agreement, THE CITY shall pay for the amount of kWh produced by the SYSTEM."
- 2.1.8 Exhibit "B" in the Original PPA. Rates and Billing System. The following sentence shall be inserted after the last sentence of the second paragraph: "The annual anticipated kWh production of the SYSTEM and the amount the SYSTEM OWNER will invoice THE CITY monthly shall be amended to reflect the increase in annual anticipated kWh in the event that the SYSTEM OWNER installs additional modules to increase the total capacity of the SYSTEM. The rate at which THE CITY shall pay SYSTEM OWNER shall continue to be calculated in accordance with the first paragraph of this Exhibit "B"."
- 2.1.9 Exhibit "C" in the Original PPA. Termination Values. The following sentence shall be added to Exhibit "C": "This Table shall be updated to reflect the increase in value of the SYSTEM in the event that SYSTEM OWNER installs additional modules to increase the total capacity of the SYSTEM, and such mutually-agreed upon updated Table shall be evidenced by a written amendment to this Agreement."
- 2.1.10 Letter Agreement. In consideration of the Parties' agreement herein to extend the term of the Original PPA from twenty (20) years to thirty (30) years the Letter Agreement is hereby terminated in its entirety.

### ARTICLE 3

#### EFFECT ON THE ORIGINAL PPA AND FIRST PPA AMENDMENT

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

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

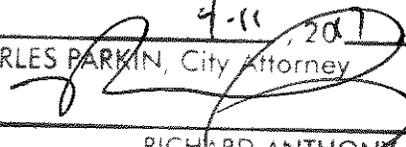
<p><b>CITY OF LONG BEACH</b></p> <p>By: <u></u></p> <p>Name: <u>Patrick H. West</u></p> <p>Title: <u>City Manager</u></p> <p>Date: <u>2/18/17</u></p>	<p><b>DISSIGNO HOLDINGS, LLC</b></p> <p>By: <u></u></p> <p>Name: <u>Tara Doyle</u></p> <p>Title: <u>Partner</u></p> <p>Date: <u>8 March 2017</u></p>
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Assistant City Manager

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

APPROVED AS TO FORM

4-11, 2017  
CHARLES PARKIN, City Attorney

By 

RICHARD ANTHONY  
DEPUTY CITY ATTORNEY